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# Rules and Regulations

Federal Register

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

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in January 2014 and interest assumptions under the asset allocation regulation for valuation dates in the first quarter of 2014. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion (*Klion.Catherine@PBGC.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and Benefits Payable in Terminated Single-Employer Plans (29

CFR Part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for January 2014 and updates the asset allocation interest assumptions for the first quarter (January through March) of 2014.

The first quarter 2014 interest assumptions under the allocation regulation will be 3.35 percent for the first 20 years following the valuation date and 3.50 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2013, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.35 percent in the select rate, and an increase of 0.19 percent in the ultimate rate (the final rate).

The January 2014 interest assumptions under the benefit payments regulation will be 1.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for December

2013, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during January 2014, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

#### List of Subjects

##### 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

#### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 243, as set forth below, is added to the table.

#### Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	*	*	*	*	*	*	*	*	*
243	1-1-14	2-1-14	1.75	4.00	4.00	4.00	7	8	

■ 3. In appendix C to part 4022, Rate Set 243, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	*	*	*	*	*	*	*	*	*
243	1-1-14	2-1-14	1.75	4.00	4.00	4.00	7	8	

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for January–March 2014, as set forth below, is added to the table.

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
*	*	*	*	*	*	*
January–March 2014	0.0335	1–20	0.0350	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of December 2013.

**Judith Starr,**  
*General Counsel, Pension Benefit Guaranty Corporation.*  
 [FR Doc. 2013–29755 Filed 12–12–13; 8:45 am]  
**BILLING CODE 7709–02–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2013–0969]

**Safety Zone; Sacramento New Years Eve Fireworks Display, Sacramento River, Sacramento, CA**

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce the 1,000 foot safety zone in the navigable waters of the Sacramento River in Sacramento, CA on December

31, 2013 during the Sacramento New Years Eve Fireworks Display. The fireworks display will occur from 9 p.m. to 9:20 p.m. on December 31, 2013 for the annual Sacramento New Years Eve Fireworks Display. This action is necessary to control vessel traffic and to help protect the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulation in 33 CFR 165.1191, Table 1, Item number 29, will be enforced from 9 p.m. to 9:20 p.m. on December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Sacramento New

Years Eve Fireworks Display safety zone in the navigable waters of the Sacramento River around the Tower Bridge in Sacramento, CA in approximate position 38°34'49.98" N, 121°30'29.61" W (NAD 83). Upon the commencement of the fireworks display, scheduled to begin at 9 p.m. on December 31, 2013, the safety zone will encompass the navigable waters around the fireworks launch site on the Tower Bridge in Sacramento, CA in approximate position: 38°34'49.98" N, 121°30'29.61" W (NAD 83) within a radius of 1,000 feet. At the conclusion of the fireworks display the safety zone shall terminate. This safety zone will be in effect from 9 p.m. to 9:20 p.m. on December 31, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall

obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: November 26, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013-29730 Filed 12-12-13; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2013-0939]

RIN 1625-AA00

#### Safety Zone; 2013 Holiday Boat Parades, Captain of the Port Miami Zone; FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones during the month of December when holiday boat parades are scheduled to occur on the navigable waterways in the vicinity of Palm Beach and Miami, Florida. The safety zones consist of a series of moving zones around participant vessels as they transit the navigable waters of the United States during these events. The safety zones are necessary to provide for the safety of the participants, participant vessels, and general public on the navigable waters of the United States during the events. Non-participant persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zones unless authorized by the Captain of the

Port Miami or a designated representative.

**DATES:** This rule is effective from December 13, 2013 until December 14, 2013. For purposes of enforcement, actual notice will be used from December 7, 2013, until December 13, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0939]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 John K. Jennings, Sector Miami Prevention Department, U.S. Coast Guard; telephone (305) 535-4317, email [john.k.jennings@uscg.mil](mailto:john.k.jennings@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was waiting to receive all boat parade event applications to determine if other parades would need a safety zone and did not receive necessary information regarding all the events until October 31, 2013. Special local regulations for these events were previously promulgated at 33 CFR

100.701; however, the route and or date of these events does not correspond with the route and or date published in the Code of Federal Regulations. Furthermore, due to the diminishing size of these events, through participants or spectators, the Coast Guard no longer deems these events as needing a marine event permit or special local regulation. The events require a safety zone in order to ensure safety of the marine parade participants and the general public during the parades. The Coast Guard had insufficient time to publish an NPRM and to receive public comments prior to the issuance of this safety zone for these events. Any delay in the effective date of this rule would be contrary to the public interest as immediate action is needed to minimize potential danger to the general public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for reasons stated above.

#### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 46 U.S.C. 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to provide for the safety of life on the navigable waters during the holiday boat parades in the Captain of the Port Miami Zone.

#### C. Discussion of Final Rule

Multiple marine parades are planned for the holiday season throughout the Captain of the Port Miami Zone. The Coast Guard is establishing two safety zones for marine parades during the month of December, 2013 within the navigable waters of the Captain of the Port Miami Zone. The safety zones are listed below.

1. Palm Beach, Florida. On December 7, 2013, Marine Industries Association of Palm Beach County is sponsoring the Palm Beach Holiday Boat Parade. The marine parade will be held on the waters of the Intracoastal Waterway in Palm Beach, Florida. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Worth Daymarker 28 in North Palm Beach and end at the Loxahatchee River Daymarker 7, east of the Glynn Mayo Highway Bridge in Jupiter, Florida. A special local regulation was previously promulgated at 33 CFR 100.701; however, the route and date of the 2013

marine parade does not correspond with the route and date published in the Code of Federal Regulations. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for this year's marine parade. The safety zone consists of a moving zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the safety zone will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The safety zone will be enforced from 4:30 p.m. until 9:30 p.m. on December 7, 2013.

2. Miami, Florida. On December 14, 2013, Miami Outboard Club is sponsoring the Miami Outboard Holiday Boat Parade. The marine parade will be held on the waters of Biscayne Bay, Miami, Florida and the Intracoastal Waterway. The marine parade will consist of approximately 70 vessels. The marine parade will begin at the Miami Outboard Club on Watson Island, head west around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. A special local regulation was previously promulgated at 33 CFR 100.701, however, the date of the 2013 marine parade does not correspond with the date published in the Code of Federal Regulations. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for the 2013 marine parade. The safety zone consists of a moving zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the safety zone will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The safety zone will be enforced from 6:00 p.m. until 11:30 p.m. on December 14, 2013.

Non-participant persons and vessels may request authorization to enter the safety zones by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast

Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### D. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) These safety zones will be enforced for less than 11 hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding areas during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the event areas during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; (4) the safety zones will move with the parade, and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small

entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the safety zones during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review Section above, this rule will not have a significant economic impact on a substantial number of small entities.

##### 3. Assistance for Small Entities

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

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

##### 4. Collection of Information

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

##### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

##### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. *Taking of Private Property*

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

#### 9. *Civil Justice Reform*

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

#### 10. *Protection of Children*

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

#### 11. *Indian Tribal Governments*

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

#### 12. *Energy Effects*

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. *Technical Standards*

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

#### 14. *Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of two safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

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

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

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

■ 2. Add a temporary § 165.T07–0939 to read as follows:

#### **§ 165.T07–0939 Safety Zone; 2013 Holiday Boat Parades, Captain of the Port Miami Zone; FL.**

(a) *Regulated area.* The following regulated areas are moving safety zones:

(1) *Palm Beach, Florida.* All waters within a moving zone that will begin at Lake Worth Daymarker 28 in North Palm Beach and end at Loxahatchee River Daymarker 7, east of the Glynn Mayo Highway Bridge in Jupiter, Florida. The moving zone will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participating vessel, and 50 yards on either side of the parade participants. The safety zone will be enforced from 4:30 p.m. until 9:30 p.m. on December 7, 2013.

(2) *Miami, Florida.* All waters within a moving zone that will transit as follows: the marine parade will begin at the Miami Outboard Club on Watson Island, head west around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. The moving zone will include a buffer zone extending to 50 yards ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on either side of the parade participants. The safety zone will be enforced from 6:00 p.m. until 11:30 p.m. on December 14, 2013.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones without authorization from the Captain of the Port Miami or a designated representative.

(2) Non-participant persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zones may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within a safety zone is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Effective date.* This rule is effective December 13, 2013], until 11:30 p.m. on December 14, 2013. For purposes of enforcement, actual notice will be used from from 4:30 p.m. on December 7, 2013, until December 13, 2013.

Dated: November 21, 2013.

**A.J. Gould,**

*Captain, U.S. Coast Guard, Captain of the Port Miami.*

[FR Doc. 2013-29524 Filed 12-12-13; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0603; FRL-9904-12-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 1997 8-Hour Ozone National Ambient Air Quality Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving two State Implementation Plan (SIP) revisions for the Commonwealth of Pennsylvania. The SIP revisions consist of a demonstration that Philadelphia County is meeting the requirements of reasonably available control technology (RACT) of the Clean Air Act (CAA) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) under the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA's conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration is based on Philadelphia County's commitment to submit additional SIP revisions addressing source-specific RACT controls for major sources of VOC and NO<sub>x</sub> in the County. This action is being taken under the CAA.

**DATES:** This final rule is effective on January 13, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0603. All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web page. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in [www.regulations.gov](http://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 Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814-2038, or by email at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 19, 2013 (78 FR 36716), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed conditional approval of Philadelphia County's SIP revisions addressing the RACT requirements under the 1997 8-hour ozone NAAQS. The formal SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of Philadelphia Air Management Services (AMS) on September 29, 2006 and June 22, 2010 (hereafter the 2006 SIP revision and the 2010 SIP revision, respectively).

On November 29, 2005, EPA published an ozone implementation rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS (the Phase 2 Ozone Implementation Rule). *See* (70 FR 71612 (November, 29, 2005)). In the Phase 2 Ozone Implementation Rule, EPA required that states meet the RACT requirements under the 1997 8-hour ozone NAAQS, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 8-hour ozone attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. *See* 70 FR 71655.

However, the Court of Appeals for the District of Columbia Circuit subsequently held that a particular provision in the Phase 2 Ozone Implementation Rule, which allowed the NO<sub>x</sub> SIP call, a cap-and-trade program for NO<sub>x</sub>, to substitute as RACT for electric generating units (EGUs) for the 1997 ozone NAAQS, was inconsistent with the statutory requirements of section 172(c)(1) of the CAA and remanded that provision of

the rule to EPA. *See NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Since the Philadelphia County 2006 SIP revision relies on the NO<sub>x</sub> SIP Call to meet the NO<sub>x</sub> RACT requirements for EGUs and it does not specifically and sufficiently address the source-specific RACT determinations for 46 major sources that were previously approved under the 1-hour ozone standard, EPA determined that it cannot proceed with the final approval of this SIP revision, as proposed on August 26, 2008 (73 FR 50270) and on June 19, 2013 (78 FR 36716), withdrew the August 26, 2008 proposed rulemaking action to approve the 2006 SIP revision.

##### II. Summary of SIP Revisions

On September 29, 2006, PADEP submitted on behalf of AMS a SIP revision for Philadelphia County to meet the RACT requirements for the 1997 8-hour ozone NAAQS. The 2006 SIP revision consists of a RACT demonstration for Philadelphia County for NO<sub>x</sub> and VOC, and includes: (1) A certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA for Philadelphia County under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls and continue to represent RACT for the 8-hour implementation purposes; (2) the adoption of Federally enforceable permits that represent RACT control levels for four major VOC sources; and (3) a negative declaration that certain VOC sources do not exist in Philadelphia County.

On June 22, 2010, PADEP submitted another SIP revision addressing Philadelphia County's RACT requirements under the 1997 8-hour ozone standard. The 2010 SIP revision consists of: (1) The adoption of two regulations to meet control technique guideline (CTG) RACT requirements; and (2) a negative declaration for a particular CTG source category. The 2010 SIP revision supersedes portions of the 2006 SIP revision addressing specific CTG RACT requirements.

Finally, on April 26, 2013, PADEP submitted on behalf of AMS a letter committing to submit additional SIP revisions to address source-specific RACT controls under the 1997 8-hour ozone standard for Philadelphia County pursuant to section 110(k)(4) of the CAA. Additional details on the SIP revisions are included in the NPR and will not be restated here. No public comments were received on the NPR for this action.

### III. EPA's Rationale for Conditional Approval

In light of the DC Circuit decision in *NRDC v. EPA* regarding requirements in the Phase 2 Ozone Implementation Rule, EPA determined it could not approve the presumption in the 2006 SIP submittal that the NO<sub>x</sub> SIP Call constitutes RACT for EGU sources in Philadelphia County. Thus, AMS needs to perform a NO<sub>x</sub> RACT analysis for EGUs as provided in the April 26, 2013 commitment letter from PADEP for AMS. EPA also determined that the 2006 SIP revision does not specifically and sufficiently address whether the source-specific RACT controls for 46 major sources in Philadelphia County that were previously approved in the Pennsylvania SIP under the 1-hour ozone NAAQS continue to represent RACT for the 1997 8-hour ozone NAAQS. Therefore, to satisfy the major source RACT requirement for the 1997 8-hour ozone NAAQS, AMS must either: (1) Provide a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for major sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to represent adequately RACT for the 1997 8-hour ozone NAAQS; or (2) perform a source-specific RACT analysis for each source for which controls do not currently and adequately represent RACT for the 1997 8-hour ozone NAAQS.

In this rulemaking action, EPA is conditionally approving Philadelphia County's 1997 8-hour ozone RACT demonstration provided in the 2006 and 2010 SIP revisions, based upon the commitment from AMS in the April 26, 2013 letter from PADEP to submit additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by PADEP on behalf of AMS no later than twelve months from today's final conditional approval, will address source-specific RACT determinations for the following major sources in Philadelphia County: (1) Exelon—Delaware Station; (2) Exelon—Richmond Station; (3) Exelon—Schuylkill Station; (4) Veolia—Edison Station (formerly Trigen-Edison Station); (5) Veolia—Schuylkill Station (formerly Trigen—Schuylkill Station); (6) Philadelphia Energy Solutions Refinery (formerly Sunoco Refinery); (7) Kraft Nabisco (formerly Nabisco Biscuit Company); (8) Temple University, Health Sciences Center; (9) GATX Terminals Corporation; and (10)

Honeywell (formerly Sunoco Chemicals, Frankford Plant). The SIP revisions to be submitted will also include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to represent adequately RACT for the 1997 8-hour ozone NAAQS.

### IV. Final Action

In this rulemaking action, EPA is conditionally approving Philadelphia County's RACT demonstration under the 1997 8-hour ozone NAAQS, as provided in the 2006 and the 2010 SIP revisions. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon the April 26, 2013 letter from PADEP for AMS committing to submit to EPA, no later than twelve months from today's final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions will provide source-specific RACT determinations for 10 major sources of VOC and NO<sub>x</sub> in Philadelphia County and a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to adequately represent RACT for the 1997 8-hour ozone NAAQS. Once EPA has determined that AMS has satisfied this condition, EPA shall remove the conditional nature of this approval and Philadelphia County's 1997 8-hour ozone RACT demonstration will, at that time, receive a full approval status. Should AMS fail to meet the condition specified above, today's final conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration will convert to a disapproval.

### V. Statutory and Executive Order Reviews

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

*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 February 11, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action [add language that is unique to 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 29, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

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

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

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “RACT under the 1997 8-hour ozone NAAQS” for Philadelphia County at the end of the table. The added text reads as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	*
(1)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* RACT under the 1997 8-hour ozone NAAQS.	* Philadelphia County .....	* 9/29/06 6/22/10	* 12/13/13 [Insert page number where the document begins].	* Conditional approval. See § 52.2023(l).

■ 3. Section 52.2023 is amended by adding paragraph (l) to read as follows:

**§ 52.2023 Approval status.**

\* \* \* \* \*

(l) EPA conditionally approves Philadelphia County’s reasonably available control technology (RACT) demonstration under the 1997 8-hour ozone NAAQS, as provided in SIP revisions submitted on September 29, 2006 and June 22, 2010. Pursuant to section 110(k)(4) of the CAA, this

conditional approval is based upon an April 26, 2013 letter from Pennsylvania on behalf of Philadelphia County committing to submit to EPA, no later than twelve months from EPA’s final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by Pennsylvania on behalf of Philadelphia County, will address source-specific RACT determinations for ten (10) major

sources in Philadelphia County and will include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania’s SIP under the 1-hour ozone NAAQS for the remaining sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS.

[FR Doc. 2013–29588 Filed 12–12–13; 8:45 am]

**BILLING CODE 6560–50–P**

# Proposed Rules

Federal Register

Vol. 78, No. 240

Friday, December 13, 2013

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

## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-159420-04]

RIN 1545-BE14

#### Credit for Increasing Research Activities: Intra-Group Gross Receipts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations under section 41 of the Internal Revenue Code (Code) relating to the treatment of qualified research expenditures (QREs) and gross receipts resulting from transactions between members of a controlled group of corporations or a group of trades or businesses under common control (intra-group transactions) for purposes of determining the credit under section 41 for increasing research activities (research credit). These proposed regulations will affect controlled groups of corporations or groups of trades or businesses under common control (controlled groups) that are engaged in research activities. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 13, 2014. Outlines of topics to be discussed at the public hearing scheduled for April 23, 2014, at 10:00 a.m. must be received by March 13, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-159420-04), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-159420-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the

Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-159420-04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning these proposed regulations, David Selig, (202) 317-4137; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

These proposed regulations address how the interaction of section 41(f)(1) (relating to the treatment of controlled groups as a single taxpayer) and section 41(c)(7) (relating to the exclusion from gross receipts of amounts received by a foreign corporation that are not effectively connected to a United States trade or business) affects the computation of gross receipts resulting from intra-group transactions between domestic controlled group members (domestic members) and foreign corporate members of the controlled group (foreign corporate members). These proposed regulations apply to an intra-group transaction that is followed by a transaction between a foreign corporate member and a party outside of the controlled group involving the same or a modified version of tangible or intangible property or services that was the subject of the intra-group transaction, and the transaction with the party outside of the controlled group does not give rise to gross receipts that are effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

Section 41(f)(1) provides that in determining the amount of the research credit, all members of the same controlled group of corporations and all commonly controlled trades or businesses (whether or not incorporated) shall be treated as a single taxpayer. For this purpose, controlled group is defined by reference to section 1563(a), except that "more than 50 percent" is substituted for "at least 80 percent," and the determination is made without regard to subsections (a)(4) (regarding certain insurance companies) and (e)(3)(C) (regarding stock owned by

an employees' trust). The statute provides no rules, however, regarding how the single taxpayer treatment is to be implemented. Commentators have noted the ambiguity associated with similar provisions of the Code. See, e.g., Prop. Reg. § 1.199-1, 70 FR 67220, 67236 (November 4, 2005) ("the single corporation language in section 199(d)(4)(A) has created confusion among commentators and the proposed regulations clarify the meaning of this language").

The IRS and the Treasury Department believe that the single taxpayer concept should be interpreted consistently with the purpose the statute is intended to advance. The single taxpayer concept as it relates to the computation of the research credit first appeared in 1981 when Congress initially enacted the research credit. As originally enacted, the research credit was determined solely by reference to a taxpayer's QREs. Specifically, to ensure that the research credit was available only for actual increases in research expenditures, former section 44F(f)(1) provided that the QREs of a controlled group of corporations and all commonly controlled trades or businesses (whether or not incorporated) were aggregated and treated as those of a single taxpayer. H. Rept. No. 97-201, 1981-2 CB 364-365 (demonstrating that controlled groups are prevented from increasing research expenditures by shifting these expenditures from an entity that has a high baseline of research expenditures to one that does not).

In 1989, Congress modified the computation of the research credit (now section 41 of the Code) by adding the base amount concept embodied in section 41(a)(1)(B), which included gross receipts in the calculation of the research credit for the first time. See the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, § 7110) (the "1989 Act"). The legislative history of the 1989 Act explains that gross receipts were included in the computation of the research credit to address concerns with the existing rules and incentivize spending on research activities. In particular, Congress wished to modify the pre-existing incremental credit structure in order to maximize the research credit's efficiency by not allowing (to the extent possible) credits for research that would have been undertaken in any event. Congress

believed that businesses often determine their research budgets as a fixed percentage of gross receipts and determined that it was appropriate to compute the research credit, in part, based on the increase in a taxpayer's gross receipts. This approach also had the advantage of effectively indexing the research credit for inflation and preventing taxpayers from being rewarded for increases in research spending that are attributable solely to inflation. See H.R. Rep. No. 101-247, 101st Cong., 1st Sess. 1199-1200 (1989).

The 1989 Act also amended section 41 to provide certain parameters for measuring gross receipts. Specifically, section 41(c)(7) provides that gross receipts are reduced by returns and allowances made during the taxable year. Section 41(c)(7) also provides that in the case of a foreign corporation, only gross receipts effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States are taken into account in the computation of the research credit. See section 41(c)(7), as amended. The legislative history of the 1989 Act does not expressly address the purpose of the gross receipts provision relating to foreign corporations. The enactment of the controlled group aggregation rules in section 41(f)(1) (treating all members of a controlled group as a single taxpayer) preceded the enactment of the foreign corporation gross receipts rule in section 41(c)(7). Congress, however, did not make clear how the two provisions should interact and did not provide any additional indication regarding the consequences of being treated as a single taxpayer, including when the deemed single taxpayer is comprised of both domestic and foreign controlled group members.

#### *Current Regulatory Scheme*

Section 1.41-3(c) defines gross receipts generally as the total amount, determined under the taxpayer's method of accounting, derived from all its activities and from all sources. Section 1.41-6(i) interprets the single taxpayer concept of section 41(f)(1) to provide that transfers between members of a controlled group of corporations are generally disregarded for purposes of determining the research credit under section 41 for both gross receipts and QREs. The IRS and the Treasury Department believe that, in most cases, the general rule that disregards intra-group transactions for both gross receipts and QREs furthers the statutory purpose of ensuring that the computation of the research credit is

based upon an economic measure of gross receipts relative to QREs and not artificially increased by multiple intra-group transactions.

The IRS and the Treasury Department believe, however, that an interpretation of section 41(f)(1) that completely excludes gross receipts associated with certain transactions is inconsistent with Congressional intent. For example, assume that a domestic corporation incurs research expenditures and sells a product that it produced to a foreign corporate member, and the foreign corporate member then sells the product to a customer in a transaction that does not give rise to gross receipts effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States. If gross receipts from the sales transactions are excluded because the intra-group transaction is disregarded under § 1.41-6 and the foreign corporate member's gross receipts are excluded under section 41(c)(7) for the second transaction, the aggregate amount of gross receipts for purposes of determining the research credit is distorted. The distortion results because the QREs of the domestic member are included, but its gross receipts from the sale to the foreign corporate member are not. Accordingly, the IRS and the Treasury Department propose to revise the regulations to include gross receipts in this situation, including in cases where the property is modified prior to being transferred by the foreign corporate member, the gross receipts are in the form of royalties, interest, or other cash or non-cash remuneration, or the gross receipts relate to services ultimately provided by the foreign corporate member to a third-party customer.

However, the IRS and the Treasury Department believe that multiple inclusions of gross receipts associated with intra-group transactions involving the same or a modified version of tangible or intangible property or services would be inconsistent with Congressional intent. Thus, for example, it would not be appropriate to overstate gross receipts, and thereby reduce the research credit available to a controlled group, by taking into account the transfer of a single piece of property (including a modified form of the same property) more than one time (that is, first as a transfer between controlled group members and then as a transfer with a third party).

#### *Explanation of Provisions*

The proposed regulations retain the current rule that generally disregards

transactions among members of a controlled group for purposes of computing the research credit, but provide a narrow exception to this rule. Under the exception, gross receipts (within the meaning of § 1.41-3(c)) from an intra-group transaction are taken into account if (1) a foreign corporate member engages in a transaction with a party outside of the group (external transaction) involving the same or a modified version of tangible or intangible property or a service that was previously the subject of one or more intra-group transactions (an internal transaction); and (2) the external transaction does not give rise to gross receipts that are effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States. The exception harmonizes the application of sections 41(f)(1) and 41(c)(7) and is consistent with the purposes of these provisions as well as the broader statutory changes that made gross receipts a central feature of the research credit computation.

For example, if a domestic member transfers property to a foreign corporate member, and the foreign corporate member then transfers the property outside of the controlled group in a transaction that does not give rise to gross receipts that are effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States, the proposed regulations provide that the domestic member includes in its gross receipts amounts received from the foreign corporate member for that transaction. The amounts are taken into account in computing gross receipts in the taxable year in which the foreign corporate member engages in the external transaction. The fact that the foreign corporate member that ultimately engages in a transaction involving the property outside of the controlled group is not the same foreign corporate member to which the domestic member directly transferred the property (for example, one foreign corporate member re-transfers the property to another foreign corporate member) is not material to the determination of the domestic member's gross receipts.

To prevent multiple inclusions of gross receipts in cases in which transactions involving the same or a modified version of tangible or intangible property or services occur successively between domestic and foreign corporate members, the proposed regulations provide that only

the last internal transaction giving rise to gross receipts (within the meaning of section 1.41–3(c)) is taken into account in the research credit computation.

These proposed regulations embody the statutory requirement of consistency in determining a taxpayer's base amount (generally, the product of the fixed-base percentage and 4-year average annual gross receipts preceding the credit year). See section 41(c)(6). Accordingly, in computing the research credit for taxable years beginning on or after the date of publication of these proposed regulations as final regulations, QREs and gross receipts taken into account in computing a taxpayer's fixed-base percentage and a taxpayer's base amount must be determined on a basis consistent with the definition of QREs and gross receipts for the credit year, without regard to the law in effect for the earlier taxable years that are taken into account in computing the fixed-base percentage or the base amount. However, the proposed regulations do not specify the manner in which a taxpayer must make the base amount adjustments. The IRS and the Treasury Department recognize that accounting for intra-group transactions in prior years presents a unique burden because taxpayers may not have records for the base years with sufficient information to satisfy the proposed regulations' requirement of consistency. These proposed regulations are intended to capture some measure of intra-group gross receipts for purposes of satisfying the requirement of consistency, but are not intended to preclude research credit claims for taxpayers that do not have adequate information in their books and records for the base years. Accordingly, the IRS and Treasury Department request comments regarding the need for a rule or safe harbor in applying the consistency rule for purposes of determining the base amount in accordance with these proposed regulations.

#### QREs

These proposed regulations remove the rules in § 1.41–6(i)(4) (relating to the treatment of lease payments as QREs) to reflect changes to section 41 by the Tax Reform Act of 1986, Public Law 99–514.

These proposed regulations generally would not change the rules concerning whether payments between members of a controlled group constitute QREs. The IRS and the Treasury Department request comments concerning whether any revisions are necessary.

#### Proposed Effective Date

The amendments to § 1.41–6(i) are proposed to apply to taxable years

beginning on or after the date that these regulations are published as final regulations in the **Federal Register**.

#### Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed rules.

All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 23, 2014, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 13, 2014, and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by March 13, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of

the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these proposed regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*

■ **Par. 2.** In § 1.41–0, the table of contents is amended by:

- 1. Revising the section heading for § 1.41–6 and the entries for § 1.41–6(i), (i)(1), (i)(2), (i)(3), (i)(4), and (i)(5).
- 2. Adding a new entry for § 1.41–6(i)(6).
- 3. Adding a new entry for § 1.41–6(j)(4).

The addition reads as follows:

#### § 1.41–0 Table of contents.

\* \* \* \* \*

#### § 1.41–6 Controlled groups.

\* \* \* \* \*

(i) Transactions between controlled group members.

(1) In general.

(2) Exception for certain amounts received from foreign corporate controlled group members.

(3) In-house research expenses.

(4) Contract research expenses.

(5) Payment for supplies.

(6) Consistency requirement.

(j) \* \* \*

\* \* \* \* \*

(4) Intra-group transactions.

\* \* \* \* \*

■ **Par. 3.** Section 1.41–6 is amended by:

- 1. Revising the section heading.
- 2. Revising paragraph (i)(1).
- 3. Removing paragraph (i)(4).
- 4. Redesignating paragraphs (i)(2) and (3) as paragraphs (i)(3) and (4), respectively.
- 5. Adding new paragraph (i)(2).
- 6. Adding new paragraph (i)(6).
- 7. Revising the first sentence of paragraph (j)(1).

■ 8. Adding new paragraph (j)(4).

The revisions and additions read as follows:

**§ 1.41-6 Controlled groups.**

\* \* \* \* \*

(i) *Transactions between controlled group members*—(1) *In general*—*Treatment of transactions.* Except as otherwise provided in this paragraph, all activities giving rise to amounts included in gross receipts under § 1.41-3(c) (transactions) between members of a controlled group as defined in paragraph (a)(3) of this section (intra-group transactions) are generally disregarded in determining the QREs and gross receipts of a member for purposes of the research credit.

(2) *Exception for certain amounts received from foreign corporate controlled group members*—(i) *In general.* Notwithstanding paragraph (i)(1) of this section, gross receipts (within the meaning of § 1.41-3(c)) from an intra-group transaction are taken into account if—

(A) A foreign corporate controlled group member engages in a transaction with a party outside of the group (an external transaction) involving the same or a modified version of tangible or intangible property or a service that was previously the subject of one or more intra-group transactions (an internal transaction); and

(B) The external transaction does not give rise to gross receipts that are effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(ii) *Timing of inclusion.* The amount described as taken into account in computing gross receipts in paragraph (i)(2)(i) of this section is taken into account in the year a foreign corporate controlled group member engages in the external transaction described in paragraph (i)(2)(i)(B) of this section.

(iii) *Multiple intra-group transactions.* If there is more than one internal transaction, then only the last internal transaction giving rise to gross receipts (within the meaning of section 1.41-3(c)) is taken into account in the research credit computation pursuant to paragraph (i)(2)(i) of this section.

(iv) *Examples.* The following examples illustrate the principles of paragraph (i)(2) of this section.

*Example 1. Domestic Controlled Group Member Includes in Gross Receipts Proceeds From Intra-group Sale.* D and F are members of the same controlled group. D is a domestic corporation. F is a foreign corporation that is organized under the laws of Country. F does not conduct a trade or business within the United States, Puerto Rico, or any U.S.

possession. In Year 1, D sells Product to F for \$8x. In Year 2, F sells Product to F's unrelated customer for \$10x. Because the Product that F sells outside the group is the same Product that was the subject of an internal transaction (i.e., the sale from D to F), and the \$10x that F receives upon sale of Product outside the group is not effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States, the \$8x that D receives from F is included in D's gross receipts for purposes of computing the amount of the group credit. The \$8x of gross receipts is taken into account in Year 2, the year of the external transaction. See paragraph (i)(2) of this section. The \$10x that F receives from F's customer is excluded from gross receipts under section 41(c)(7) because it is not effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

*Example 2. Domestic Controlled Group Member Includes in Gross Receipts Amounts Received For Intra-group Transfer of License.* Assume the same facts as in *Example 1*, except in Year 1, D licenses intellectual property (license) to F for \$8x. F owns similar intellectual property that it plans to license to a customer together with the license it received from D. In Year 2, F licenses its intellectual property and sublicenses D's intellectual property to F's unrelated customer for \$20x. Because the intellectual property that F sublicenses outside the group is the same intellectual property that was the subject of an internal transaction (i.e., the license from D to F), and the \$20x that F receives for the license and sublicense of intellectual property outside the group is not effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States, the \$8x that D receives from F is included in D's gross receipts for purposes of computing the amount of the group credit. The \$8x of gross receipts is taken into account in Year 2, the year of the external transaction. See paragraph (i)(2) of this section. The \$20x that F receives from F's customer is excluded from gross receipts under section 41(c)(7) because it is not effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

*Example 3. Domestic Controlled Group Member Includes in Gross Receipts Proceeds From Intra-group Sale Following Multiple Internal Transactions.* D, F1, and F2 are members of the same controlled group. D is a domestic corporation. F1 and F2 are foreign corporations that are organized under the laws of Country. F1 and F2 do not conduct a trade or business within the United States, Puerto Rico, or any U.S. possession. In Year 1, D sells Product to F1 for \$8x. In Year 2, F1 sells Product to F2 for \$9x, and F2 sells Product to F2's unrelated customer for \$10x. Both D's sale to F1 and F1's sale to F2 are internal transactions involving Product that precede F2's external transaction involving Product. The \$10x that F2 receives upon sale of Product outside the group is not effectively connected with a trade or business within the

United States, the Commonwealth of Puerto Rico, or any possession of the United States. Accordingly, the group will include gross receipts from an internal transaction in its research credit computation pursuant to paragraph (i)(2)(i) of this section. Because F1's sale of Product to F2 does not produce gross receipts that are effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States, those gross receipts are not taken into account even though that sale is the most recent internal transaction preceding the external transaction. See section 41(c)(7) and paragraph (i)(2)(i) of this section. Therefore, D will include \$8x of gross receipts in its research credit computation in Year 2, the year of the external transaction, because the transfer from D to F1 is the last internal transaction giving rise to includible gross receipts. See paragraph (i)(2)(iii) of this section.

*Example 4. Foreign Partnership Controlled Group Member Includes in Gross Receipts Proceeds From Intra-group Sale.* Assume the same facts as in *Example 3*, except that F1 is a foreign partnership for federal income tax purposes and is part of the controlled group (within the meaning of § 1.41-6(a)(3)(ii)) that includes D and F2. Both D's sale to F1 and F1's sale to F2 are internal transactions involving Product that precede F2's external transaction involving Product. The \$10x that F2 receives upon sale of Product outside the group is not effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States. Accordingly, the group will include gross receipts from an internal transaction in its research credit computation pursuant to paragraph (i)(2)(i) of this section. F1's sale to F2 is the most recent internal transaction preceding the external transaction giving rise to gross receipts (see paragraph (i)(2)(iii)). The gross receipts from F1's sale to F2 are not excluded under section 41(c)(7) and paragraph (i)(2)(i) of this section because F1 is a partnership. Therefore, F1 will include \$9x of gross receipts in its research credit computation in Year 2 because the transfer from F1 to F2 is the last internal transaction giving rise to gross receipts. See paragraph (i)(2)(iii) of this section.

*Example 5. Domestic Controlled Group Member Includes in Gross Receipts Proceeds From Intra-group Sale Following Multiple Internal Transactions that Include a Section 721 Exchange.*

Assume the same facts as *Example 3*, except that in an exchange meeting the requirements of section 721(a), F2 transfers Product to PRS, a partnership that is not part of the controlled group within the meaning of § 1.41-6(a)(3)(ii). Both D's sale to F1 and F1's sale to F2 are internal transactions involving Product that precede F2's transfer of Product to PRS. The exchange engaged in by F2 does not give rise to gross receipts that are effectively connected with a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States. Because F1's sale of Product to F2 does not produce gross receipts that are effectively connected with

the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States, those gross receipts are not taken into account even though that sale is the most recent internal transaction preceding the external transaction. See section 41(c)(7) and paragraph (i)(2)(i) of this section. Therefore, D will include \$8x of gross receipts in its research credit computation in Year 2, the year of the external transaction, because the transfer from D to F1 is the last internal transaction giving rise to includible gross receipts. See paragraphs (i)(2)(i) and (i)(2)(iii) of this section.

\* \* \* \* \*

(6) *Consistency requirement.* In computing the research credit for taxable years beginning on or after the

date of publication of these regulations as final regulations in the **Federal Register**, QREs and gross receipts taken into account in computing a taxpayer's fixed-base percentage and a taxpayer's base amount must be determined on a basis consistent with the definition of QREs and gross receipts for the credit year, without regard to the law in effect for the taxable years taken into account in computing the fixed-base percentage or the base amount. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any taxable year taken into account in computing the fixed-base percentage or the base amount.

(j) *Effective/applicability dates—(1) In general.* Except as otherwise provided in this paragraph (j), these regulations apply to taxable years ending on or after May 24, 2005.

\* \* \* \* \*

(4) *Intra-group transactions.* Paragraphs (i)(1) and (2) of this section apply to taxable years beginning on or after the date of publication of these regulations as final regulations in the **Federal Register**.

**Beth Tucker,**  
*Deputy Commissioner for Operations Support.*

[FR Doc. 2013–29539 Filed 12–12–13; 8:45 am]

**BILLING CODE 4830-01-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No. 131122984–3984–01]

#### Impact of the Implementation of the Chemical Weapons Convention (CWC) on Legitimate Commercial Chemical, Biotechnology, and Pharmaceutical Activities Involving “Schedule 1” Chemicals (Including Schedule 1 Chemicals Produced as Intermediates) Through Calendar Year 2013

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention (CWC), through the Chemical Weapons Convention Implementation Act (CWCIA) and the Chemical Weapons Convention Regulations (CWCR), has had on commercial activities involving “Schedule 1” chemicals during calendar year 2013. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress on whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms are being harmed by such implementation. This certification is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the CWC.

**DATES:** Comments must be received by January 13, 2014.

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

- *Email:* [willard.fisher@bis.doc.gov](mailto:willard.fisher@bis.doc.gov). Include the phrase “Schedule 1 Notice of Inquiry” in the subject line;
- *Fax:* (202) 482–3355 (Attn: Willard Fisher);

- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** For questions on the Chemical Weapons Convention requirements for “Schedule 1” chemicals, contact Douglas Brown, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–1001. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

#### SUPPLEMENTARY INFORMATION:

##### Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC or “the Convention”), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled “Protection of Advanced Biotechnology,” calls for the President to certify to Congress on an annual basis that “the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1.” On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (i.e., States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons,

and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties in order to achieve the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

“Schedule 1” chemicals consist of those toxic chemicals and precursors set forth in the CWC “Annex on Chemicals” and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and precursors as posing a high risk to the object and purpose of the Convention.

The CWC (Part VI of the “Verification Annex”) restricts the production of “Schedule 1” chemicals for protective purposes to two facilities per State Party: a single small-scale facility (SSSF) and a facility for production in quantities not exceeding 10 kg per year. The CWC Article-by-Article Analysis submitted to the Senate in Treaty Doc. 103–21 defined the term “protective purposes” to mean “used for determining the adequacy of defense equipment and measures.” Consistent with this definition and as authorized by Presidential Decision Directive (PDD) 70 (December 17, 1999), which specifies agency and departmental responsibilities as part of the U.S. implementation of the CWC, the Department of Defense (DOD) was assigned the responsibility to operate these two facilities. Although this assignment of responsibility to DOD under PDD–70 effectively precluded commercial production of “Schedule 1” chemicals for protective purposes in the United States, it did not establish any limitations on “Schedule 1” chemical activities that are not prohibited by the CWC. However, DOD does maintain strict controls on “Schedule 1” chemicals produced at its facilities in order to ensure accountability for such chemicals, as well as their proper use, consistent with the object and purpose of the Convention.

The provisions of the CWC that affect commercial activities involving

“Schedule 1” chemicals are implemented in the CWC (see 15 CFR 712) and in the Export Administration Regulations (EAR) (see 15 CFR 742.18 and 15 CFR 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWC restrict commercial production of “Schedule 1” chemicals to research, medical, or pharmaceutical purposes (the CWC prohibit commercial production of “Schedule 1” chemicals for “protective purposes” because such production is effectively precluded per PDD-70, as described above—see 15 CFR 712.2(a)). The CWC also contain other requirements and prohibitions that apply to “Schedule 1” chemicals and/or “Schedule 1” facilities. Specifically, the CWC:

(1) Prohibit the import of “Schedule 1” chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of “Schedule 1” chemicals in excess of 100 grams aggregate per calendar year (i.e., declared “Schedule 1” facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Provide for government approval of “declared Schedule 1” facilities (15 CFR 712.5(f));

(4) Provide that “declared Schedule 1” facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new “Schedule 1” production facilities producing greater than 100 grams aggregate of “Schedule 1” chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of

“Schedule 1” chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of “Schedule 1” chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

For purposes of the CWC (see 15 CFR 710.1), “production of a Schedule 1 chemical” means the formation of “Schedule 1” chemicals through chemical synthesis, as well as processing to extract and isolate “Schedule 1” chemicals produced biologically. Such production is understood, for CWC declaration purposes, to include intermediates, by-products, or waste products that are

produced and consumed within a defined chemical manufacturing sequence, where such intermediates, by-products, or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible, but where, under normal or design operating conditions, isolation does not occur.

#### Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, “Schedule 1” chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving “Schedule 1” chemicals during calendar year 2013. To allow BIS to properly evaluate the significance of any harm to commercial activities involving “Schedule 1” chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

#### Submission of Comments

All comments must be submitted to one of the addresses indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on January 13, 2014. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S.

Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482-1093, for assistance.

Dated: December 6, 2013.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 2013-29736 Filed 12-12-13; 8:45 am]

**BILLING CODE 3510-33-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities and to delete products and a service previously furnished by such agencies.

**DATES:** *Comments Must Be Received on or Before:* 1/13/2014.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto: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 agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List to be furnished by the nonprofit agency listed:

*Products*

NSN: 6650-00-NIB-0027—Flat Top 28, Bifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0028—Flat Top 35, Bifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0029—Flat Top 7x28, Trifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0030—Flat Top 8x35, Trifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0031—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate  
 NSN: 6650-00-NIB-0032—Single Vision, Plastic, Clear  
 NSN: 6650-00-NIB-0033—Flat Top 28, Bifocal, Plastic, Clear  
 NSN: 6650-00-NIB-0034—Flat Top 35, Bifocal, Plastic, Clear  
 NSN: 6650-00-NIB-0035—Round 25 and 28, Bifocal, Plastic, Clear  
 NSN: 6650-00-NIB-0036—Flat Top 7x28, Trifocal, Plastic, Clear  
 NSN: 6650-00-NIB-0037—Flat Top 8x35, Trifocal, Plastic, Clear  
 NSN: 6650-00-NIB-0038—Progressives, Plastic, Clear  
 NSN: 6650-00-NIB-0039—SV, Aspheric, Lenticular, Plastic, Clear  
 NSN: 6650-00-NIB-0040—FT or round aspheric lenticular, Plastic, Clear  
 NSN: 6650-00-NIB-0041—Bifocal, Executive, Plastic, Clear  
 NSN: 6650-00-NIB-0042—Single Vision, Glass, Clear  
 NSN: 6650-00-NIB-0043—Flat Top 28, Bifocal, Glass, Clear  
 NSN: 6650-00-NIB-0044—Flat Top 35, Bifocal, Glass, Clear  
 NSN: 6650-00-NIB-0045—Flat Top 7x28, Trifocal, Glass, Clear  
 NSN: 6650-00-NIB-0046—Flat Top 8x35, Trifocal, Glass, Clear  
 NSN: 6650-00-NIB-0047—Progressives (VIP, Adaptar, Freedom), Glass, Clear  
 NSN: 6650-00-NIB-0048—Bifocal, Executive, Glass, Clear  
 NSN: 6650-00-NIB-0049—Single Vision, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0050—Flat Top 28, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0051—Flat Top 35, Bifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0052—Flat Top 7x28, Trifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0053—Flat Top 8x35, Trifocal, Polycarbonate, Clear  
 NSN: 6650-00-NIB-0054—Lenses, Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate  
 NSN: 6650-00-NIB-0055—Transition, Plastic, CR-39  
 NSN: 6650-00-NIB-0056—Photochromatic/Transition, (Polycarbonate Material)  
 NSN: 6650-00-NIB-0057—Photogrey (glass only)  
 NSN: 6650-00-NIB-0058—High Index transition (CR 39)

NSN: 6650-00-NIB-0059—Anti-reflective Coating (CR 39 and polycarbonate)  
 NSN: 6650-00-NIB-0060—Ultraviolet Coating (CR 39)  
 NSN: 6650-00-NIB-0061—Polarized Lenses (CR 39)  
 NSN: 6650-00-NIB-0062—Slab-off (polycarbonate, CR 39: trifocal and bifocal)  
 NSN: 6650-00-NIB-0063—High Index (CR-39)  
 NSN: 6650-00-NIB-0064—Prism (up to 6 diopters no charge) >6 diopters/diopter  
 NSN: 6650-00-NIB-0065—Diopter + or - 9.0 and above  
 NSN: 6650-00-NIB-0066—Lenses, oversize eye, greater than 58, excluding progressive.  
 NSN: 6650-00-NIB-0067—Hyper 3 drop SV, multifocal (CR 39)  
 NSN: 6650-00-NIB-0068—Add powers over 4.0  
 NSN: 6650-00-NIB-0069—Plastic or Metal  
 NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC  
 Contracting Activity: Network Contracting Office 8, Tampa, FL  
 Coverage: C-List for 100% of the requirements of Bay Pines Healthcare System, Bay Pines, FL and the James A. Haley Veterans Hospital, Tampa, FL as aggregated by Network Contracting Office 8, Tampa, FL

**Deletions**

The following products and service are proposed for deletion from the Procurement List:

*Products*

NSN: 7520-01-455-7236—Pen, Ballpoint, Stick Type, Recycled  
 NPA: West Texas Lighthouse for the Blind, San Angelo, TX  
 Contracting Activity: General Services Administration, New York, NY  
 NSN: 8955-01-E61-3689—Coffee, Roasted, Ground, 39 oz. bag resealable pouch  
 NPA: CW Resources, Inc., New Britain, CT  
 Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

**Tree Marking Paint and Tracer Element**

NSN: 8010-01-273-9343—Zones 8-10 (16 OZ Bottle)  
 NSN: 8010-01-273-9344—Zones 8-10 (16 OZ Bottle)  
 NSN: 8010-01-273-9345—Zones 8-10 (16 OZ Bottle)  
 NSN: 8010-01-273-9347—Zones 1-7 (16-OZ Bottle)  
 NSN: 8010-01-273-9348—Zones 1-7 (16-OZ Bottle)

NSN: 8010-01-274-2560—Zones 8-10 (16 OZ Bottle)  
 NSN: 8010-01-274-2561—Zones 8-10 (16 OZ Bottle)

**Tree Marking Paint, Water Clean Up**

NSN: 8010-01-441-6105—Red  
 NSN: 8010-01-441-6106—Red

**Tree Marking Paint, Citrus-Base**

NSN: 8010-01-483-6494—Blue  
 NSN: 8010-01-483-6498—Orange

**Tree Marking Paint, Water Resistant**

NSN: 8010-01-511-5100—Yellow  
 NSN: 8010-01-511-5101—Green  
 NSN: 8010-01-511-5107—White  
 NSN: 8010-01-511-5109—Paint, Tree Marking, Solvent Base, Black, 1 Gallon  
 NPA: The Lighthouse for the Blind, St. Louis, MO  
 Contracting Activity: GSA/FSS Regional Fleet Management Office, Kansas City, MO

*Service*

Service Type/Location: Janitorial/Custodial Service, U.S. Geological Survey Upper Midwest, Environmental Science Center, 2630 Fanta Reed Road, La Crosse, WI  
 NPA: Riverfront Activity Center, Inc., La Crosse, WI  
 Contracting Activity: Dept. of the Interior, Office of Policy, Management, and Budget, NBC Acquisition Services Division, Washington, DC

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2013-29752 Filed 12-12-13; 8:45 am]

**BILLING CODE 6353-01-P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED****Procurement List; Addition and Deletion**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and deletion from the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a product from the Procurement List previously furnished by such agency.

**DATES:** *Effective Date:* 1/13/2014.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely

Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:**

**Addition**

On 6/28/2013 (78 FR 38952-38953), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is 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 organization that will provide the service to the Government.
2. The action will result in authorizing small entities to provide the 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 service proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following service is added to the Procurement List:

*Service*

Service Type/Location: Custodial and Landscaping Service, GSA, PBS, Region 7, Tornillo-Guadalupe Land Port of Entry, 1400 Lower Island Road, Tornillo, TX

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX

Contracting Activity: General Services Administration, Fort Worth, TX

**Deletion**

On 11/1/2013 (78 FR 65618), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer 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 additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product 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 product deleted from the Procurement List.

**End of Certification**

Accordingly, the following product is deleted from the Procurement List:

*Product*

NSN: 7930-01-367-0989—Cleaner, Water Soluble

NPA: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY

Contracting Activity: General Services Administration, Fort Worth, TX

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2013-29751 Filed 12-12-13; 8:45 am]

**BILLING CODE 6353-01-P**

**DEPARTMENT OF ENERGY**

**Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington**

**AGENCY:** Department of Energy.

**ACTION:** Record of Decision.

**SUMMARY:** This is the first in a series of Records of Decision (RODs) to be issued by the U.S. Department of Energy (DOE) pursuant to the *Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington (TC&WM EIS, DOE/EIS-0391, December 2012)*. In this EIS, DOE considered alternatives for proposed actions in three major areas: (1) Storing, retrieving, and treating radioactive waste from 177 underground

storage tanks (149 Single-Shell Tanks [SSTs] and 28 Double Shell Tanks [DSTs]) at Hanford, and closure of the 149 SSTs; (2) decommissioning of the Fast Flux Test Facility (FFTF) and its auxiliary facilities; and (3) continued and expanded waste management operations on site, including the disposal of Hanford's low-level radioactive waste (LLW) and mixed low-level radioactive waste (MLLW), and limited volumes of LLW and MLLW from other DOE sites. The *Final TC&WM EIS* includes No Action alternatives to the proposed actions in each of the three major areas, as required under the National Environmental Policy Act (NEPA). DOE's decisions described herein pertain to all three major areas. DOE intends to issue subsequent RODs as identified under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** For copies of this ROD, the *Final TC&WM EIS*, or any related NEPA documents, please contact:

Ms. Mary Beth Burandt, NEPA Document Manager, U.S. Department of Energy, Office of River Protection, P.O. Box 1178, Richland, Washington 99352, 1-509-372-8828, [mary\\_e\\_burandt@orp.doe.gov](mailto:mary_e_burandt@orp.doe.gov).

This ROD and the *Final TC&WM EIS* are available on the DOE NEPA Web site at: [www.energy.gov/nepa](http://www.energy.gov/nepa) and on the Hanford Web site at: <http://www.hanford.gov/index.cfm?page=1117&>.

**FOR FURTHER INFORMATION CONTACT:** For further information about the *Final TC&WM EIS* and ROD, contact Ms. Burandt as listed above.

For general information on DOE's NEPA process, contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC-54, U.S. Department of Energy, Washington, DC 20585-0103, Telephone: (202) 586-4600, or leave a message at 1-800-472-2756, or email [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Hanford site, located in southeastern Washington State along the Columbia River, is approximately 586 square miles in size. Hanford's mission from the early 1940s to approximately 1989 included defense-related nuclear research, development, and weapons production activities. These activities created a wide variety of chemical and radioactive wastes. Hanford's mission now is focused on the cleanup and remediation of those wastes and ultimate closure of the site. An

important part of the mission includes the retrieval and treatment of waste from 177 underground radioactive waste storage tanks, including 149 SSTs and 28 DSTs, and closure of the SSTs. Hanford's mission also includes radioactive waste management on the site and decommissioning and closure of the FFTF, a nuclear test reactor that has been designated for closure (66 FR 7877, January 26, 2001).

The Final EIS implements the January 6, 2006, Settlement Agreement (as amended on June 5, 2008) signed by DOE, the Washington State Department of Ecology (Ecology), the Washington State Attorney General's Office, and the U.S. Department of Justice. That agreement settles NEPA claims made in the case *State of Washington v. Bodman* (Civil No. 2:03-cv-05018-AAM), which addressed the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington (HSW EIS, DOE/EIS-0286, February 13, 2004)*. The agreement also stipulates that the *TC&WM EIS* and its RODs supersede the *HSW EIS* and its ROD (69 FR 39449, June 30, 2004).

In addition, this *TC&WM EIS* ROD amends the 1997 *Tank Waste Remediation System ROD (TWRS ROD, 62 FR 8693, February 26, 1997)*. Information on the 1997 *TWRS ROD* and three subsequent *TWRS EIS* Supplement Analyses<sup>1</sup> can be found in the *Final TC&WM EIS* (Chapter 1, Section 1.2.3). In the third *TWRS* Supplement Analysis, DOE determined that Phase I of the *TWRS* project, the initial demonstration facility, was not substantially different from the facilities identified in the Phased Implementation Alternative selected in the *TWRS EIS* ROD. The *TWRS* ROD is hereby amended, and the Phase II facility will not be constructed. The *TC&WM EIS* analysis of supplemental treatment capacity for low-activity waste (LAW) from chemical separation of the tank waste is consistent with the Phase I concept as stated in the *TWRS* ROD.

To support its decision making for the needed actions described below, DOE prepared the *TC&WM EIS* pursuant to NEPA and in accordance with the Council on Environmental Quality (CEQ) and DOE NEPA implementing regulations (40 CFR Parts 1500–1508; 10

CFR Part 1021). The Environmental Protection Agency (EPA) and Ecology were cooperating agencies on the *TC&WM EIS*. DOE held a public comment period on the *Draft TC&WM EIS*, extending from October 30, 2009, through May 3, 2010, with public hearings in Washington, Oregon, and Idaho. DOE considered all public comments received in preparing the *Final TC&WM EIS*, which was issued in December 2012 and includes DOE's responses to those comments.

In September 2013, DOE issued a *Draft Hanford Tank Waste Retrieval, Treatment, and Disposition Framework (Framework)*. The *Framework* is not a proposal or a decision document.

### Purpose and Need for Agency Action

DOE needs to accomplish the following objectives:

- Safely retrieve and treat radioactive, hazardous, and mixed tank waste; close the SST system; and store and/or dispose of the waste generated from these activities. Further, DOE needs to treat the waste and close the SST system in a manner that complies with applicable Federal and Washington State laws and DOE directives to protect human health and the environment. Long-term actions are required to permanently reduce the risk to human health and the environment posed by waste in the 149 SSTs and 28 DSTs.

- Decommission FFTF and its support facilities at Hanford, manage waste associated with decommissioning the facilities, and manage disposition of the radioactively contaminated bulk sodium inventory at Hanford. These actions are necessary to facilitate cleanup at Hanford in compliance with Federal, state, and local laws and regulations.

- Expand or upgrade existing waste storage, treatment, and disposal capacity at Hanford to support ongoing and planned waste management activities for LLW and MLLW generated at Hanford and from other DOE sites; some tank waste; and FFTF decommissioning waste.

### Alternatives Considered

#### Tank Closure

Under the Tank Closure Alternatives, DOE evaluated each of the primary tank closure components, specifically, storage, retrieval, treatment, and disposal of tank waste and closure of the SST system.

- *Alternative 1: No Action.*

Alternative 1 is based on the No Action Alternative presented in the *TWRS EIS*, updated to reflect actions taken (interim stabilization of the SSTs) and new

information developed since the *TWRS EIS* was issued, including additional consideration of the past leak inventory associated with the Hanford 200-East and 200-West Area tank farms.

- *Alternative 2: Implement the TWRS EIS ROD with Modifications.* Alternative 2 considers all vitrification treatment with retrieval of 99 percent of the waste from SSTs in accordance with the *TWRS EIS* ROD and the three supplement analyses completed through 2001. Two sub-alternatives were separately evaluated. Under Alternative 2A, waste would be treated using the existing Waste Treatment Plant (WTP) configuration, but the SST system would not be closed. Under Alternative 2B, WTP current configuration capacity for producing vitrified, i.e., immobilized, LAW glass (referred to herein as ILAW) from WTP would be expanded; technetium-99 would be removed from the WTP LAW stream during the pretreatment process<sup>2</sup> and the SST system would be closed as landfill closure under the Resource Conservation and Recovery Act (RCRA) and covered with an engineered, modified RCRA Subtitle C barrier, a multi-layer barrier designed to provide 500-year protection.

- *Alternative 3: Existing WTP Vitrification with Supplemental Treatment Technology; Landfill Closure.* Alternative 3 includes retrieval of 99 percent of the waste from SSTs. Under Alternative 3A, the waste would be treated using the existing WTP configuration supplemented with thermal treatment capacity (bulk vitrification). Under Tank Closure Alternative 3B, the waste would be treated using the existing WTP configuration supplemented with nonthermal treatment capacity (cast stone). Under Alternative 3B, technetium-99 would be removed from the LAW stream during pretreatment and incorporated into the high-level radioactive waste (HLW) stream for immobilization and off-site disposal. Under Alternative 3C, the waste would be treated using the existing WTP configuration supplemented with thermal treatment capacity (steam reforming). The SST system would be closed as a landfill and covered with an engineered modified RCRA Subtitle C barrier. There would be separate treatment of candidate tank mixed transuranic (TRU) waste<sup>3</sup> under all

<sup>1</sup> DOE/EIS-0189-SA1 "Supplement Analysis for the Proposed Upgrades to the Tank Farm Ventilation, Instrumentation, and Electrical Systems under Project W-314 in Support of Tank Farm Restoration and Safe Operations" May 1997 DOE/EIS-0189-SA2 "Supplement Analysis for the Tank Waste Remediation System" May 1998 DOE/EIS-0189-SA3 "Supplement Analysis for the Tank Waste Remediation System" March 2001

<sup>2</sup> Under Tank Closure Alternatives 2 through 6 and the sub-alternatives within them, the contents of the cesium (Cs) and strontium (Sr) capsules currently stored on site would be treated in the WTP.

<sup>3</sup> For Tank Closure Alternatives 3 through 5, the *TC&WM EIS* evaluated treatment of the tank waste

three sub-alternatives, as described in the *TC&WM EIS*.

- *Alternative 4: Existing WTP Vitrification with Supplemental Treatment Technologies; Selective Clean Closure/Landfill Closure.*

Alternative 4 includes retrieval of 99.9 percent of the waste from SSTs. Waste would be treated using the existing WTP configuration supplemented with thermal treatment capacity (bulk vitrification) and nonthermal treatment capacity (cast stone). There would be separate treatment of the candidate tank mixed TRU waste, as described in the *TC&WM EIS*. Under this alternative, technetium-99 removal would not occur as part of WTP pretreatment. Tank farms BX and SX would be clean closed, which means the tanks, ancillary equipment, and contaminated soil would be removed, and the remaining tank farms would be closed as landfills and covered with an engineered modified RCRA Subtitle C barrier.

- *Alternative 5: Expanded WTP Vitrification with Supplemental Treatment Technologies; Landfill Closure.*

Alternative 5 includes retrieval of 90 percent of the waste from SSTs. WTP current configuration capacity for producing ILAW glass would be expanded and supplemented with thermal treatment capacity (bulk vitrification) and nonthermal treatment capacity (cast stone). Under this alternative, no technetium-99 removal would occur as part of WTP pretreatment; however, a sulfate removal process would allow higher waste loading in the ILAW glass. There would be separate treatment of the candidate tank mixed TRU waste as described in the *TC&WM EIS*. The SST system would be closed as a landfill and covered with an engineered Hanford barrier, a multi-layer barrier designed to provide 1,000-year protection.

- *Alternative 6: All Waste as Vitrified HLW.* Under Alternative 6, all vitrified waste produced in the WTP would be managed as immobilized HLW (IHLW). Alternative 6A includes retrieval of 99.9 percent of the waste from SSTs and vitrification in the WTP using an expanded IHLW production capacity. The SST system would be clean closed.<sup>4</sup> Alternative 6B includes retrieval of 99.9 percent of the waste from SSTs, pretreatment in the WTP, separation into HLW and LAW streams, and vitrification into IHLW and ILAW glass.

Both vitrified waste streams would be managed as HLW. The SST system would be clean closed. Alternative 6C includes retrieval of 99 percent of the waste from the SSTs. Like Alternative 6B, this waste would be pretreated in the WTP, and vitrified into IHLW and ILAW glass. Both vitrified waste streams would be managed as HLW. The SST system would be closed as a landfill and covered with an engineered modified RCRA Subtitle C barrier. Under all Tank Closure Alternative 6 sub-alternatives listed above (6A, 6B, and 6C), the resulting IHLW and ILAW glass would be stored in IHLW Interim Storage Modules and managed as IHLW pending ultimate disposition.

#### *Fast Flux Test Facility Decommissioning*

- *FFTF Alternative 1: No Action.*

Under Alternative 1, the FFTF Reactor Containment Building (RCB), along with the rest of the buildings within the 400 Area Property Protected Area, would be maintained under 100 years of administrative controls (site security and management). Activities under the *Environmental Assessment, Sodium Residuals Reaction/Removal and Other Deactivation Work Activities* (DOE/EA-1547, March 2006) would be completed. The reactor vessel, piping systems, and tanks would be left in place under an inert gas blanket and Remote Handled Special Components (RH-SCs) would be stored. Spent nuclear fuel would be removed, and systems not associated with maintaining safety-related functions would be deactivated or de-energized and isolated according to the deactivation plans.

- *FFTF Alternative 2: Entombment.*

Under Alternative 2, all above-grade structures around the main FFTF RCB and two adjacent support facilities would be dismantled. Demolition waste would be consolidated in below-grade spaces and stabilized with grout. RH-SCs would be removed and treated at either Hanford or the Idaho National Laboratory (INL), and then be disposed of at Hanford in an Integrated Disposal Facility (IDF) or at the Nevada National Security Site, depending on the treatment option selected. An engineered modified RCRA Subtitle C barrier would be constructed over the filled area. For both FFTF Alternative 2 and 3 Hanford's bulk sodium inventory would be converted to a caustic sodium hydroxide solution for reuse at Hanford.

- *FFTF Alternative 3: Removal.*

Under Alternative 3, all above-grade structures around the main RCB and the two adjacent support facilities would be dismantled. The RCB would be demolished to grade and the support facilities to below grade. Contaminated

demolition waste would be disposed of at Hanford in an IDF. The reactor vessel, its internal piping and equipment, and its attached depleted-uranium shielding would be filled with grout, removed, packed, and disposed of in an IDF. All other radioactively contaminated equipment and hazardous materials also would be removed for disposal.

#### *Waste Management*

- *Alternative 1: No Action.*

Alternative 1 evaluates continued storage of LLW, MLLW, and TRU waste at the Central Waste Complex (CWC), Waste Receiving and Processing Facility (WRAP), and T Plant in the 200-West Area, with no expanded storage capacity required. At the CWC, the LLW and MLLW would be processed for disposal in Low-Level Radioactive Waste Burial Grounds (LLBGs) Trenches 31 and 34. These trenches are the only lined trenches in the LLBGs and would receive on-site "non-CERCLA,"<sup>5</sup> non-tank LLW and MLLW until this waste stream is no longer generated. TRU waste would be shipped to and disposed of in the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico.

- *Alternative 2: Disposal in IDF, 200-East Area Only.* Alternative 2 evaluates continued storage and processing of LLW, MLLW, and TRU waste using existing and expanded capabilities at the CWC, WRAP, and T Plant. In Waste Management Alternative 2, disposal of LLW and MLLW in LLBGs Trenches 31 and 34 would continue until they are filled. Routine shipments of TRU waste for disposal at WIPP would continue. Also under Alternative 2, DOE analyzed the construction and operation of an IDF in 200-East, and the proposed River Protection Project Disposal Facility (RPPDF) would be constructed and operated in the 200 Area. The IDF-East would accept waste from tank treatment operations, onsite non-CERCLA sources, FFTF decommissioning, waste management, and MLLW and LLW from other DOE sites. Waste from tank farm cleanup operations would be disposed of in the proposed RPPDF. After closure, these disposal facilities would be covered with engineered modified RCRA Subtitle C barriers.

- *Waste Management Alternative 3: Disposal in IDF, 200-East and 200-West Areas.* Alternative 3 is similar to Alternative 2 for Waste Management, except in Alternative 3, an IDF would

stream associated with the candidate TRU waste as both TRU waste and HLW.

<sup>4</sup> Clean closure means the removal or remediation of all hazardous waste from a given RCRA-regulated unit so that further regulatory control under RCRA Subtitle C is not necessary to protect human health and the environment.

<sup>5</sup> "Non-CERCLA" waste refers to remediation waste not regulated under the Comprehensive Environmental Restoration, Compensation and Liability Act. CERCLA waste is disposed of in the existing Environmental Restoration Disposal Facility on site.

also be constructed and operated in the 200-West Area. IDF-East would be used for disposal of tank waste only; IDF-West would be used for disposal of on-site waste not generated from remediation activities and off-site LLW and MLLW, as well as FFTF decommissioning and waste management wastes. After closure, these disposal facilities would be covered with engineered modified RCRA Subtitle C barriers.

### Environmentally Preferred Alternatives

#### Tank Closure

*SST Closure*—Clean closure is the environmentally preferred alternative when considering only long-term groundwater impacts, e.g., impacts that may be incurred during the period after closure of a facility. In terms of land resources, clean closure may allow future use of the tank system area, but, unlike all other Tank Closure alternatives, would require significant new, permanent land disturbance for new facilities to treat, store, and dispose of waste. The Tank Closure No Action alternative is the environmentally preferred alternative when considering only short-term impacts, e.g., those that may be incurred during the operational period through facility closure. Such impacts include worker dose, land disturbance, and electrical use. Clean closure of the SST system compared with landfill closure would have the following potentially adverse short-term impacts: total land commitments would increase twofold, electrical use would increase by one order of magnitude, geologic resource requirements would increase as much as fivefold, sagebrush habitat affected would increase by as much as two orders of magnitude, radiation worker population dose from normal operations would increase over twofold, LLW and MLLW generation volumes would increase threefold, and total Occupational Safety and Health Administration recordable cases would increase as much as fivefold.

#### FFTF

FFTF Alternative 2 Entombment and Alternative 3 Removal are both environmentally preferred. The long-term analysis shows that the inventory remaining for the two alternatives is relatively small. Results for both alternatives show the groundwater impacts for the constituents of concern to be below the maximum contaminant levels under the Safe Drinking Water Act at the fence line of the FFTF facility. Short-term impacts for the land, water, transportation and socioeconomic analysis areas would be slightly smaller

for FFTF Alternative 2 Entombment. However, the air analysis and construction impacts would be slightly larger for the FFTF Alternative 2 Entombment.

#### Waste Management

Waste Management Alternatives 2 and 3 are both environmentally preferred. Short-term environmental impacts are projected to be very similar for these two waste management alternatives with no differences between impact areas. Long-term impacts analysis indicates that IDF-West may not perform as well as IDF-East, even when the infiltration rate is assumed to be equal for both facilities.

#### Preferred Alternatives

In accordance with CEQ guidance, the preferred alternative is the alternative that the agency believes would fulfill its statutory mission while giving consideration to environmental, economic, technical, and other factors. DOE identified its preferred alternative for each of the three major sets of actions evaluated in the *Final TC&WM EIS*. The preferred alternatives are identified in the *Final TC&WM EIS* Summary, Section S.7, Preferred Alternative, *TC&WM EIS* Chapter 2, Section 2.12, and a **Federal Register** notice referenced below, and summarized in the following paragraphs.

As stated in the *Final TC&WM EIS*, for the actions related to tank waste retrieval, treatment and closure, DOE prefers Tank Closure Alternative 2B, without removing technetium in the Pretreatment Facility. Tank Closure Alternative 2B includes 99 percent retrieval of waste by volume from the SSTs; leak detection monitoring and routine maintenance; new and existing storage facilities; operations and necessary maintenance, waste transfers and associated operations, and upgrades to existing tanks or construction of waste receipt facilities. Tank waste treatment includes pretreatment of all tank waste, with separation into LAW and HLW. New evaporation capacity, upgrades to the Effluent Treatment Facility (ETF), new transfer lines and processing of both vitrified LAW and secondary waste for disposal are part of tank waste treatment. Disposal activities include disposal of LAW on site and construction of IHLW Interim Storage Modules. SST closure operations include filling the tanks and ancillary equipment with grout to immobilize the residual waste. Disposal of contaminated equipment and soil would occur on site. Decisions on the extent of soil removal or treatment, would be

made on a tank farm or waste management area basis through the RCRA closure permitting process. The tanks would be stabilized, and an engineered modified RCRA Subtitle C barrier put in place followed by post-closure care.

DOE does not have a preferred alternative regarding supplemental treatment for LAW; DOE believes it is beneficial to study further the potential cost, safety, and environmental performance of supplemental treatment technologies. When DOE is ready to identify its preferred alternative regarding supplemental treatment for LAW, it will provide a notice of its preferred alternative in the **Federal Register**.

DOE identified its preference to consider options for retrieving, treating, and disposing of the candidate TRU waste evaluated in the *TC&WM EIS* and further clarified this preference in a **Federal Register** notice issued March 11, 2013 (78 FR 15358). As stated in that notice, DOE prefers to retrieve, treat, package, characterize and certify the wastes that are properly and legally classified as mixed TRU waste for disposal at WIPP. Initiating retrieval of tank waste for disposition as mixed TRU waste would be contingent on, among other things, DOE's obtaining the applicable and necessary permits, ensuring that the WIPP Waste Acceptance Criteria and all other applicable regulatory requirements are met, and making a determination that the waste is properly classified as mixed TRU waste. DOE is not deciding to implement its preferred or any other alternative associated with this matter in this ROD.

As stated in the *Final TC&WM EIS*, for FFTF Decommissioning, DOE's preference is for Alternative 2 Entombment, which would remove all above-grade structures, including the reactor building. Below-grade structures would remain in place and be filled with grout to immobilize the remaining radioactive and hazardous constituents, then covered with an RCRA-compliant barrier. The RH-SCs would be processed at INL and returned to Hanford, while bulk sodium inventories would be processed at Hanford for use in the WTP.

For waste management, DOE's preference is for a single IDF in 200-East; the RPPDF is also included, as are upgrades to several waste management facilities as described above. The disposal facilities would be closed with RCRA-compliant barriers. As stated in the *Final TC&WM EIS*, DOE would continue to defer the importation of off-site waste at Hanford, at least until the

WTP is operational. Any future decision to import off-site waste will be subject to appropriate NEPA review. The limitations and exemptions defined in DOE's January 6, 2006, Settlement Agreement with the State of Washington (as amended on June 5, 2008) in the case of *State of Washington v. Bodman* (Civil No. 2:03-cv-05018-AAM), will remain in place.

#### Public Comments on the Final TC&WM EIS

DOE received six letters regarding the *Final TC&WM EIS*, which were considered in developing this ROD. These letters were from the following organizations: Confederated Tribes and Bands of the Yakama Nation; the Nez Perce Tribe; the Oregon Department of Energy; the Hanford Advisory Board; Environmental Protection Agency Region 10; and a joint letter signed by the Natural Resource Defense Council, Hanford Challenge and Southwest Research and Information Center. Many of these comments are similar to those previously provided on the *Draft TC&WM EIS* and were discussed in the Comment Response Document of the *Final TC&WM EIS*.

The Confederated Tribes and Bands of the Yakama Nation disagreed with DOE's position on: Open and unclaimed lands at Hanford; the reliance on barriers and institutional controls to reduce risk; closure of the tank farms; DOE's application and consideration of the Tribal Scenarios; and groundwater modeling. DOE recognizes the concerns with long-term site use and restrictions which may be required to protect long-term human health and the environment. DOE reviewed several closure configurations in the *TC&WM EIS* and made its decision based on a thorough evaluation of both short-and long-term risks, technical practicability and cost. DOE evaluated three different tribal exposure scenarios in the *Final TC&WM EIS*. One represented an exposure scenario agreed to between DOE and the three Tribes (the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR)) in January 2005, which was evaluated in the *Draft TC&WM EIS*. In response to public comment from the Tribes, DOE revisited two other Tribal scenarios, the Yakama Nation Exposure Scenario for Hanford Site Risk Assessment, September 2007; and the Exposure Scenario for the CTUIR Traditional Subsistence Lifeways, September 2004. With respect to Tribal concerns about groundwater modeling, such as unproductive portions of the aquifer

and uncertainty in selected actions, DOE carefully considered the comments and, as a result, made appropriate changes to inventory and data reporting and presentation as described in the *Supplement Analysis of the "Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington"* (DOE/EIS-0391-SA-01, February 2012). The Yakama Nation expressed concern over unaccounted and unexplained revenue needs for supplemental technologies and future funding constraints. DOE has provided cost estimates of the alternatives evaluated in the *TC&WM EIS* (Section 2.11) to inform and support funding requests in the future. The Yakama Nation also expressed concern that there was no preferred alternative for the WTP secondary waste stream. DOE did include secondary waste streams in the *Final EIS* preferred alternative.

The Oregon Department of Energy expressed dissatisfaction with many of DOE's responses in the *Final TC&WM EIS* to their comments during the public comment period on the *Draft TC&WM EIS* and stated that DOE had misrepresented the comments. The dissatisfaction largely appears to be related to DOE's rejection of Oregon's proposal to analyze a new tank waste alternative. In considering Oregon's comments, DOE concluded, as acknowledged in Oregon's letter, that Oregon's proposal merely contained a different combination of very similar actions to those DOE was already analyzing in other alternatives. That is, DOE concluded that the alternatives evaluated in the *TC&WM EIS* included all of the elements in the Oregon proposal except in cases such as soil remediation beneath the tanks, remediation of cribs and trenches, and use of iron phosphate glass and fractional crystallization to remove hazardous constituents. DOE notes that remediation actions such as those for contaminated groundwater at Hanford are ongoing in accordance with CERCLA. DOE included its assumptions about the efficacy of such remediation actions in Chapter 7 and Appendix U of the *Final TC&WM EIS* for the purposes of analysis only in order to better inform specific tank-related decisions. In the *Final TC&WM EIS*, DOE explained in its response to Oregon's comment regarding iron phosphate and fractional crystallization that these technologies were not sufficiently mature for practical consideration in the evaluations. On the other hand, DOE added a number of features of the Oregon proposal to the *Final TC&WM*

*EIS*: additional tank waste storage capacity, dry storage of cesium and strontium capsules, on-site interim storage of IHLW and the concept of risk-based decisions on tank farm closures. The letter from Oregon also included comments on Ecology's views on a number of issues, and DOE will work with Oregon and Ecology to consider Oregon's perspectives in developing tank-related strategies that are appropriately protective of health and the environment at Hanford.

EPA's comments on the *Final TC&WM EIS* included support for many aspects of DOE's preferred alternative for tank closure, accompanied by concern regarding treatment of contamination in the vadose zone and potential impacts to groundwater. EPA recommended that DOE consider including opportunities for public comment in developing a Mitigation Action Plan. EPA also expressed a need for additional NEPA analyses for a future decision on supplemental treatment of LAW. In the *Final TC&WM EIS*, DOE included changes as a result of comments received during the 185-day public comment period, including mitigation actions which could be taken. Mitigation actions, such as potential soil remediation for SST closure identified in the *Final TC&WM EIS* preferred alternative that are subject to RCRA permitting, will involve a public comment process. When DOE is ready to identify its preferred alternative regarding supplemental treatment for LAW, DOE intends to follow established NEPA regulations and guidance and conduct the appropriate NEPA review.

The Nez Perce Tribe expressed concerns regarding the NEPA process in relation to DOE policies associated with consultation and communication with the Tribes. The Nez Perce Tribe acknowledged its involvement in the EIS development process and that the Tribe offered many perspectives on the document. The Nez Perce expressed concerns that DOE did not effectively utilize DOE's policies to consult with the Tribe, asked how DOE Order 144.1, *Department of Energy American Indian Tribal Government Interactions and Policy*, was implemented in the EIS process and expressed concern that DOE was "checking the box" during the EIS process. DOE recognizes there may be differing perspectives among the parties on the level of consultation needed for various activities. In preparing the *Final TC&WM EIS*, DOE focused on the Tribal-specific meetings and specific Tribal concerns. Information on communication and consultation with the Nez Perce Tribe can be found in Appendix C of the *Final TC&WM EIS*,

while Appendix Q and Appendix W contain information on the Tribal Scenarios analyzed. DOE agrees with the Nez Perce that the Hanford Advisory Board (HAB) was not a direct Tribal forum, but DOE believes the Board provided opportunities for discussion of the EIS on a broad range of topics, and DOE considered Tribal participation and membership on the Board to be an important element of DOE's dialogue with stakeholders.

The HAB requested that DOE not issue a ROD for 90 days to allow it time to review the final EIS. Other comments included support for a decision to build a second LAW plant and discontinue funding for bulk vitrification, cast stone and steam reforming technologies. The HAB expressed its view that supplemental waste treatment is needed to protect the groundwater and meet environmental regulations. In its tank closure preferred alternative, DOE has identified the process it will follow when it is ready to make a supplemental treatment decision. See the "Preferred Alternative" section. DOE agrees with the HAB's goals for protecting health and the environment at Hanford and will continue to work with the HAB in achieving these goals.

The Natural Resource Defense Council, Hanford Challenge and Southwest Research and Information Center submitted a joint letter regarding DOE's March 11 **Federal Register** notice of its preferred alternative related to candidate TRU tank waste. DOE will address the letter at the appropriate time, i.e., should DOE be ready to issue a ROD addressing these wastes.

### Decision

This is the first in a series of RODs that DOE intends to issue pursuant to the *Final TC&WM EIS*. Decisions announced in this ROD pertain to each of the three main areas analyzed in the EIS, i.e. tank closure, FFTF, and waste management, as follows.

#### Tank Closure

This *TC&WM EIS* ROD amends the 1997 *TWRS EIS* ROD concerning the decision to construct the WTP. Under this *TC&WM EIS* ROD, DOE will not construct the Phase II plant described in the 1997 *TWRS* ROD due to technical and financial impracticability as analyzed in the 2001 *TWRS* Supplement Analysis.

DOE has decided to implement Tank Closure Alternative 2B, "Expanded WTP Vitrification and Landfill Closure," without supplemental treatment at WTP and without technetium-99 removal in the WTP Pretreatment facility. Additionally, DOE

is not deciding on treatment of the cesium and strontium capsules in this ROD; when DOE is ready to make a decision, it will conduct an appropriate NEPA review and notify the public.

This ROD includes decisions involving the following major activities from Tank Closure Alternative 2B: Retrieval of 99 percent of the tank waste by volume; use of liquid-based retrieval systems; leak detection monitoring and routine maintenance; new waste receiver facilities, as needed; additional storage facilities for canisters; operations and necessary maintenance, waste transfers and associated operations such as use of the "hose in hose" transfer lines or installation of new transfer lines, where needed; and upgrades to existing DST and SST systems, which includes piping and other ancillary equipment as needs are identified. Tank waste treatment includes pretreatment of all tank waste, with separation into LAW and HLW. New evaporation capacity, upgrades to the ETF, new transfer lines and processing of both vitrified LAW and secondary waste for disposal are included in this decision. Disposal activities include disposal of LAW onsite and construction of enough IHLW Interim Storage Modules to store all the IHLW generated by WTP treatment prior to disposal. SST closure operations include filling the tanks and ancillary equipment with grout to immobilize the residual waste. Disposal of contaminated equipment and soil will occur on site. The tanks will be grouted and contaminated soil may be removed. The SSTs will be landfill-closed, which means they will be stabilized, and an engineered modified RCRA Subtitle C barrier put in place followed by post-closure care.

#### FFTF

DOE has decided to implement FFTF Alternative 2 Entombment. The RH-SCs will have the sodium residuals removed by treatment at INL and returned to Hanford for disposal in the IDF. Bulk sodium inventories located at Hanford will be converted to caustic sodium hydroxide in a Sodium Reaction Facility at Hanford, and then stored for ultimate use in the WTP.

#### Waste Management

DOE has decided to implement Waste Management Alternative 2, which includes disposal of LLW and MLLW at IDF-East from tank treatment operations, waste generated from WTP and ETF operations, on-site non-CERCLA sources, FFTF decommissioning waste and on-site waste management waste. DOE will construct and operate the

RPPDF for disposal of tank closure waste, as needed. Waste management activities will include continued operations at existing facilities as well as expansion of treatment capabilities at CWC, WRAP, and T plant. DOE will defer a decision on importing waste from other DOE sites (with limited exceptions as described in the Settlement Agreement with Ecology) for disposal at Hanford at least until the WTP is operational.

### Basis for the Decision

Consistent with the *TWRS EIS* ROD, DOE has determined that it is necessary to retrieve the 53 million gallons of waste from the tanks to meet regulatory requirements, avoid future long-term releases to the groundwater, and reduce health impacts to potential inadvertent intruders into the waste if administrative control were lost. DOE has determined, consistent with the current design and permit that the construction of WTP and treatment of the tank waste should proceed without technetium-99 removal in the WTP Pretreatment Facility. DOE has also determined that the tradeoffs regarding short-term impacts and resources, including worker exposure, and technical uncertainties outweigh the potential groundwater benefits that may be obtained by clean closure of the SST system. Therefore, DOE has determined landfill closure of the SST system, which would include corrective/mitigation actions that may require soil removal or treatment of the vadose zone, is a more appropriate approach for SST system closure than clean closure.

DOE will implement FFTF Alternative 2, Entombment, because this alternative fulfills the programmatic objectives for closure of the FFTF facilities, it is the more cost effective of the two alternatives, and it is also the environmentally preferred alternative. Implementation of FFTF Alternative 2 would result in very low impacts to human health and the environment.

In order to treat the tank waste in WTP and implement FFTF Alternative 2 disposal, capacity is needed for waste generated during those activities. For economic and operational efficiencies, DOE has decided to operate one IDF located in the 200-East Area, instead of two separate IDFs in 200-East and 200-West. In order to process waste generated during cleanup, upgrades to site infrastructure such as CWC, WRAP, and T plant will be implemented as cleanup progresses and needs for these upgrades are identified. The IDF disposal capacity is needed to dispose of waste from tank waste treatment and FFTF disposition activities.

## Mitigation Measures

In the *Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement (Hanford Comprehensive Land-Use Plan EIS (DOE/EIS-0222, September 1, 1999))* DOE identified specific mitigation measures, policies, and management controls that direct land use at Hanford. DOE committed to these mitigation measures, as documented in the *Hanford Comprehensive Land-Use Plan EIS ROD (64 FR 61615 November 12, 1999)*, which were reaffirmed in the *Supplement Analysis, Hanford Comprehensive Land-Use Plan EIS (EIS-0222-SA-02, June 2, 2008)* and in the amended ROD (73 FR 55824, September 26, 2008). These mitigation measures will continue to be implemented, as applicable, for the tank waste retrieval and treatment activities discussed in the *TC&WM EIS*. The *TC&WM EIS* did not identify any mitigation measures for the short-term resource areas that are needed in addition to those in the *Supplement Analysis, Hanford Comprehensive Land Use Plan EIS* and its amended ROD.

DOE has continued to evaluate potential mitigation measures for the contaminated soil at Hanford for several years. Most recently, DOE published the *Long-Range Deep Vadose Zone Program Plan* in October 2010. This program plan summarizes the current state of knowledge regarding deep vadose zone remediation challenges beneath the Central Plateau at Hanford and DOE's approach to solving these challenges. The challenges to implementing deep vadose zone remediation are the result of contaminant depth and spread; the presence of multiple contaminants and comingled waste chemistries; physical, chemical, and biological fate and transport mechanisms; uncertain contaminant behavior; limited availability and effectiveness of cleanup remedies; and the unknown efficacy of remediation performance over the periods and spatial scales needed for making decisions.

Nevertheless, all practicable means to avoid or minimize environmental harm for the decisions identified have been adopted. DOE will prepare and implement a Mitigation Action Plan to address long-term impact areas. Long-term mitigation measures related to SST closure will be refined and presented in the *TC&WM EIS Mitigation Action Plan*, which will be posted on the Hanford and DOE NEPA Web sites identified in **ADDRESSES**. DOE will periodically revisit and update the Mitigation Action Plan as appropriate prior to initiating actions pursuant to this ROD.

Issued in Washington, DC, on December 6, 2013.

**David Huizenga,**

*Senior Advisor for Environmental Management.*

[FR Doc. 2013-29734 Filed 12-12-13; 8:45 am]

**BILLING CODE 6450-01-P**

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9012-5]

### Environmental Impact 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 12/02/2013 through 12/06/2013 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>.

*EIS No. 20130356, Final EIS, FRA, MS, Tupelo Railroad Relocation Planning and Environmental Study, Review Period Ends: 01/13/2014, Contact: John Winkle 202-493-6067*

*EIS No. 20130357, Final EIS, FHWA, VA, Interstate 66 Corridor Tier 1 Final Environmental Impact Statement and Tier 1 Record of Decision, Contact: John Simkins 804-775-3347. Under MAP-21 section 1319, FHWA has issued a single FEIS and ROD.*

Therefore, the 30-day wait/review period under NEPA does not apply to this action

*EIS No. 20130358, Final EIS, FHWA, VA, Interstate 64 Peninsula, from Interstate 95 in the City of Richmond to Interstate 664, Review Period Ends: 01/27/2014, Contact: John Simkins 804-775-3320*

*EIS No. 20130359, Final EIS, AFS, CA, Kelsey Peak Timber Sale and Fuelbreak Project, Review Period Ends: 01/27/2014, Contact: Jeff Jones 707-441-3553*

*EIS No. 20130360, Final EIS, USFS, AZ, Rosemont Copper Project, Proposed Mining Operation, Review Period Ends: 01/29/2014, Contact: Mindy Vogel 520-388-8300*

*EIS No. 20130361, Draft Supplement, USACE, MN, NorthMet Mining Project and Land Exchange, Comment Period Ends: 03/13/2014, Contact:*

Douglas Bruner 651-290-5378. The U.S. Army Corps of Engineers and the U.S. Department of Agriculture's Forest Service are joint lead agencies for the above project.

*EIS No. 20130362, Final EIS, USFS, MT, Montana Snowbowl Expansion, Review Period Ends: 01/21/2014, Contact: Tami Paulsen 406-329-3731*

*EIS No. 20130363, Draft EIS, DOI, 00, PROGRAMMATIC—Deepwater Horizon Oil Spill Natural Resources Damage Assessment, Phase III Early Restoration Plan, Comment Period Ends: 02/04/2014, Contact: Nanciann Regalado 678-296-6805*

*EIS No. 20130364, Final EIS, USFS, OR, Tollgate Fuels Reduction, Review Period Ends: 01/13/2014, Contact: Kimpton Cooper 509-522-6009*

*EIS No. 20130365, Draft EIS, NMFS, CA, Bay Delta Conservation Plan, Comment Period Ends: 04/14/2014, Contact: Ryan Wulff 916-930-3733*

The U.S. Department of the Interior's Bureau of Reclamation and Fish and Wildlife Service, the U.S. Department of Commerce's National Marine Fisheries Service are joint lead agencies for the above project.

*EIS No. 20130366, Draft EIS, USACE, LA, PROGRAMMATIC—Southwest Coastal Louisiana Project, Comment Period Ends: 01/27/2014, Contact: Nathan Dayan 504-862-2530*

Dated: December 10, 2013.

**Cliff Rader,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2013-29770 Filed 12-12-13; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meetings

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:00 a.m. on Tuesday, December 10, 2013, to consider the following matters:

*Discussion Agenda:* Memorandum and resolution re: The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray

(Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on December 9, 2013, was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: December 11, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013-29765 Filed 12-11-13; 11:15 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meetings

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:34 a.m. on Tuesday, December 10, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: December 11, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013-29766 Filed 12-11-13; 11:15 am]

**BILLING CODE P**

## GOVERNMENT ACCOUNTABILITY OFFICE

### Advisory Council on Government Auditing Standards

**AGENCY:** U.S. Government Accountability Office.

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** This notice informs the public that the Advisory Council on Government Auditing Standards will hold a public meeting by teleconference on December 17, 2013. The public is invited to listen to the Council's discussion. Members of the public will be provided an opportunity to address the Council with a brief (five-minute) presentation following the Council's discussion. The Advisory Council's primary purpose is to provide input and recommendations to the Comptroller General for revisions to the Government Auditing Standards, to provide for timely resolution of auditing issues, and to maintain the relevance of the standards.

**DATES:** The meeting will be held December 17, 2013, from 3:00 p.m. to 4:00 p.m. EST. For information on how to participate, please see **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For information on Government Auditing Standards or the Advisory Council on Government Auditing Standards, please contact Eric Holbrook, Assistant Director, Financial Management and Assurance, telephone 202-512-5232, 441 G Street NW., Washington, DC 20548-0001.

**SUPPLEMENTARY INFORMATION:** This meeting will allow GAO to obtain the Advisory Council's advice as GAO determines the scope and content of interpretative guidance relating to the 2011 Revision of Government Auditing Standards. To participate, call toll free 1-888-469-1606. When prompted, enter the following passcode: 61406. Any interested person who plans to attend the meeting as an observer should contact Cecil Davis, Council Administrator, 202-512-9362. For further information or to obtain a copy of the Council meeting agenda, please contact Ms. Davis.

**Authority:** Pub. L. 67-13, 42 Stat. 20 (June 10, 1921).

**James Dalkin,**

*Director, Financial Management and Assurance, U.S. Government Accountability Office.*

[FR Doc. 2013-29756 Filed 12-12-13; 8:45 am]

**BILLING CODE 1610-02-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-14-0214]

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

### Proposed Project

The National Health Interview Survey (NHIS), (OMB No. 0920-0214, Expiration 03/31/2016)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

### Background and Brief Description

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2014, 2015, and 2016. This voluntary and confidential household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with health related administrative and other records. Each year we collect information from up to 55,000 households, which contain about 137,500 individuals.

Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year that remains largely

unchanged while sponsored supplements vary from year to year. The core set includes sociodemographic characteristics, health status, health care services, health insurance, health conditions, and health behaviors. For 2014, supplemental questions will be cycled on pertaining to hearing and balance, arthritis, and heart disease and stroke. Supplemental topics that continue or are enhanced from previous years will be related to the Affordable Care Act, food security, children's mental health, disability and functioning, smokeless tobacco, hepatitis screening, immunizations, and computer use. In 2015, the primary supplements will be on cancer control and prevention and occupational exposures in addition to continuing topics from 2014. In 2016, topics will include the primary supplement on balance and sensory problems and shorter sets of questions pertaining to

Healthy People 2020 and health disparities. A Web/CATI multimode follow-back survey will be conducted from sample adult respondents from the 2013–2015 NHIS. The follow-back surveys will focus on topics related to the Affordable Care Act including health care access and use, and health insurance coverage and will include Web, telephone, and mail interviews. Questions related to federal and state health insurance marketplaces will be included.

To improve the analytic utility of NHIS data, minority populations are oversampled annually. In 2014, in addition to ongoing sample augmentation procedures, NCHS will introduce a Native Hawaiian and Pacific Islander oversample. Residents in a sample of 4,000 addresses identified from the 2012 American Community Survey will be administered the 2014 NHIS questionnaire. Results will be

released as a separate file from the ongoing NHIS.

In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2020."

There is no cost to the respondent other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
Screener Questionnaire .....	10,000	1	5/60	833
Family Core (adult family member) .....	45,000	1	23/60	17,250
Adult Core (sample adult) .....	36,000	1	15/60	9,000
Child Core (adult family member) .....	14,000	1	10/60	2,333
Child/Teen Record Check (medical provider) .....	8,000	1	5/60	667
Supplements (adult family member) .....	45,000	1	12/60	9,000
Multi-mode study (adult family Member) .....	12,000	1	10/60	2,000
Native Hawaiian/P Pacific Islander Survey (adult family member) .....	4,000	1	60/60	4,000
Reinterview Survey .....	5,000	1	5/60	417
<b>Total Burden Hours .....</b>				<b>45,500</b>

**LeRoy Richardson,**  
 Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.

[FR Doc. 2013–29715 Filed 12–12–13; 8:45 am]  
 BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day–14–0199]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Importation of Etiologic Agents (42 CFR 71.54) (OMB Control No. 0920–0199, exp. 1/31/2014)—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 361 of the Public Health Service Act (42 U.S.C. 264), as amended, authorizes the Secretary of Health and Human Services to make and enforce such regulations as are necessary to prevent the introduction, transmission, or spread of

communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Part 71 of Title 42, Code of Federal Regulations (Foreign Quarantine) sets forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for the importation of infectious biological agents, infectious substances, and vectors (42 CFR 71.54); requiring persons that import these materials to obtain a permit issued by the CDC.

CDC requests Office of Management and Budget approval to collect information for three years using the Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States and Application for a Permit to Import or Transport Live Bats.

We are also requesting a title change to read—*Import Permit Applications (42 CFR 71.54)*.

The Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States form is used by laboratory facilities, such as those operated by government agencies, universities, and research institutions to request a permit for the importation of biological agents, infectious substances, or vectors of human disease. This form currently requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. CDC plans to revise this application to request information on where the imported material will be stored at the recipient facility and who would be responsible for this location; verification that the permittee has implemented biosafety measures commensurate with the hazard posed by the infectious biological agent,

infectious substance, and/or vector to be imported, and the level of risk given its intended use; and a secondary contact information for the permittee to provide in case the permittee is unavailable. These additional data requests will not affect the burden hours.

The Application for Permit to Import or Transport Live Bats form is used by laboratory facilities such as those operated by government agencies, universities, research institutions, and for educational, exhibition or scientific purposes to request a permit for the importation, and any subsequent distribution after importation, of live bats. This form currently requests the applicant and sender contact information; a description and intended use of bats to be imported; and facility isolation and containment information. CDC plans to revise this application to request secondary contact information for the permittee to provide in case the permittee is unavailable. These

additional data requests will not affect the burden hours.

Estimates of burden for the survey are based on information obtained from the CDC import permit database based on the number of permits issued on annual basis since 2010. The total estimated annual burden for the data collection is 545 hours. We estimate a decrease in the number of respondents from 2,000 in 2011 to 1,625 due to recent trends and changes in the regulation. The daily operations have observed a decrease in the number of request for an import permit since 2011. In addition, the changes in 42 CFR 71.54, which became effective April 5, 2013, specify situations where an application for a permit is no longer required. For example, the importation of a select agent that is regulated under 42 CFR Part 73 no longer requires a permit be issued.

There are no costs to respondents except their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Infectious Biological Agents into the United States.	1,625	1	20/60
Applicants Requesting to Import Live Bats ....	Application for a Permit to Import Live Bats ..	10	1	20/60

#### LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013-29742 Filed 12-12-13; 8:45 am]

BILLING CODE 4163-18-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Disease Control and Prevention

#### Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH or Institute)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

##### Times and Dates:

8:00 a.m.–5:00 p.m., February 19, 2014 (Closed)

8:00 a.m.–5:00 p.m., February 20, 2014 (Closed)

8:00 a.m.–5:00 p.m., February 21, 2014 (Closed)

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: (703) 684-5900, Fax: (703) 684-0653.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to Be Discussed: The meeting will convene to address matters related

to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Price Connor, Ph.D., NIOSH Health Scientist, CDC, 2400 Executive Parkway, Mailstop E-20, Atlanta, Georgia 30345, Telephone: (404) 498-2511, Fax: (404) 498-2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013-29745 Filed 12-12-13; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Clinical, Epidemiologic and Ecologic Factors Impacting the Burden and Distribution of Monkeypox in Tshuapa District, Democratic Republic of the Congo, Funding Opportunity Announcement (FOA) CK14-002, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time And Date:* 1:00 p.m.–3:00 p.m., February 18, 2014 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to “Clinical, Epidemiologic and Ecologic Factors Impacting the Burden and Distribution of Monkeypox in Tshuapa District, Democratic Republic of the Congo, FOA CK14-002”.

*Contact Person For More Information:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718-8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013-29750 Filed 12-12-13; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Committee on Breast Cancer in Young Women (ACBCYW)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Time and Date:* 9:00 a.m.–3:00 p.m. EST, January 9, 2014.

*Place:* The meeting will be held via Teleconference.

Limited teleconference access is also available. Teleconference login information is as follows:

For Public:  
TOLL-FREE PHONE #: 888-989-8135  
Participant passcode: BREASTCANCER or 273278226237

For Public:  
Net Conference URL: <https://www.mymeetings.com/nc/join/>  
Conference number: PW3233834  
Audience passcode: BREASTCANCER or  
Public can join the event directly at:  
<https://www.mymeetings.com/nc/join.php?i=PW3233834&p=BREASTCANCER&t=c>.

There is also a toll free number for anyone outside of the USA: TOLL #: 1-203-827-7034.

Participant passcode: BREASTCANCER or 273278226237.

*Status:* Open to the public, limited only by the net conference and audio phone lines available.

*Purpose:* The committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and

dissemination of credible appropriate messages and resource materials.

*Matters To Be Discussed:* The agenda will include discussions on the current and emerging topics related to breast cancer in young women. These may include risk communication and health education, as well as approaches to increase awareness of clinicians/practitioners regarding topics such as breast cancer risk, breast health, symptoms, diagnosis, and treatment of breast cancer in young women.

Agenda items are subject to change as priorities dictate.

*Online Registration Required:* All ACBCYW Meeting participants must register for the meeting online at least 5 days in advance at [http://www.cdc.gov/cancer/breast/what\\_cdc\\_is\\_doing/meetings.htm](http://www.cdc.gov/cancer/breast/what_cdc_is_doing/meetings.htm). Please complete all the required fields before submitting your registration and submit no later than January 5, 2014.

*Contact Person For More Information:* Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE., Mailstop K52, Atlanta, Georgia 30341, Telephone (770) 488-4518, Fax (770) 488-4760 Email: [acbcyw@cdc.gov](mailto:acbcyw@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013-29749 Filed 12-12-13; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

#### Office for State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

*Name:* Tribal Advisory Committee (TAC) Meeting and 10th Biannual Tribal Consultation Session

*Times and Dates:* 8:00 a.m.–5:00 p.m., February 18, 2014 (TAC Meeting); 8:00 a.m.–5:00 p.m., February 19, 2014 (10th Biannual Tribal Consultation Session).

*Place:* The TAC Meeting and Tribal Consultation Session will be held at CDC Headquarters, 1600 Clifton Road NE., Global Communications Center, Auditorium B3, Atlanta, Georgia 30333.

*Status:* The meetings are being hosted by CDC/ATSDR and are open to the public.

*Purpose:* In 2011–2012, CDC began revising its existing Tribal Consultation Policy (issued in 2005) with the primary purpose of providing guidance across the agency to work effectively with American Indian/Alaska Native (AI/AN) tribes, communities, and organizations to enhance AI/AN access to CDC resources and programs. Within the CDC Consultation Policy, it is stated that CDC will conduct government-to-government consultation with elected tribal officials or their authorized representatives before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CDC believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall government-to-government consultation activities rests within the CDC Office of the Director (OD), other CDC Center, Institute, and Office (CIO) leadership shall actively participate in TAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible.

*Matters To Be Discussed:* The TAC and CDC leaders will discuss the following public health issue topics identified by tribal leaders: Native specimens, behavioral risk factors, and disease-specific topics; however, discussion is not limited to these topics.

During the 10th Biannual Tribal Consultation Session, tribes and CDC leaders will engage in a listening session with CDC's director and roundtable discussions with CDC senior leadership, and tribes will have an opportunity to present testimony on tribal health issues.

Tribal Leaders are encouraged to submit written testimony by 12:00 a.m., EST on January 24, 2014, to April R. Taylor, Public Health Analyst for the Tribal Support Unit, or CAPT Craig Wilkins, Acting Director for the Tribal Support Unit, CDC/OSTLTS, via mail to 4770 Buford Highway NE., MS E-70, Atlanta, Georgia 30341 or email to [tribalsupport@cdc.gov](mailto:tribalsupport@cdc.gov). Depending on the time available, it may be necessary to limit the time of each presenter.

The agenda is subject to change as priorities dictate.

Information about the TAC, CDC's Tribal Consultation Policy, and previous meetings may be referenced on the following web link: <http://www.cdc.gov/tribal>.

*Contact Person For More Information:* April R. Taylor, Public Health Analyst, CDC/OSTLTS, via mail to 4770 Buford Highway NE., MS E-70, Atlanta, Georgia 30341 or email to [ARTaylor@cdc.gov](mailto:ARTaylor@cdc.gov).

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–29746 Filed 12–12–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Request for Nominations of Candidates To Serve on the Mine Safety and Health Research Advisory Committee (MSHRAC), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

The CDC is soliciting nominations for possible membership on the Mine Safety and Health Research Advisory Committee (MSHRAC), National Institute for Occupational Safety and Health (NIOSH).

CDC provides subject-matter expertise and assistance for domestic and global surveillance, laboratory, occupational health and epidemiology functions, and health threats including anthrax, smallpox, influenza and other infectious diseases, food-borne illness, and radiation, among others.

The MSHRAC consists of 13 experts in fields related to mining safety and health. The members are selected by the Secretary, HHS. The committee advises the NIOSH Director on mining safety and health research and prevention programs. The committee also provides advice on standards of scientific excellence, current needs in the field of mining safety and health, and the applicability and dissemination of research findings. This advice may take the form of reports or verbal communications to the NIOSH Director during MSHRAC meetings.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of the committee's mission.

Nominees will be selected based on expertise in the field of mining safety and health, such as mining engineering, industrial hygiene, occupational safety and health engineering, chemistry, safety and health education, ergonomics, epidemiology, statistics, and psychology.

Federal employees will not be considered for membership. Members may be invited to serve for terms of up to four years. The U.S. Department of Health and Human Services policy stipulates that committee membership shall be balanced in terms of professional training and background, points of view represented, and the committee's function. In addition to a broad range of expertise, consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current *curriculum vitae*, including complete contact information (name, affiliation, mailing address, telephone number, email address)
- A letter of recommendation stating the qualifications of the candidate.

Nomination materials must be postmarked by January 31, 2014, and sent to: Jeffery L. Kohler, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 626 Cochran Mill Road, P.O. Box 18070, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5301.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–29747 Filed 12–12–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

The CDC is soliciting nominations for possible membership on the Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH).

CDC provides subject-matter expertise and assistance for domestic and global surveillance, laboratory, occupational health and epidemiology functions, and health threats including anthrax, smallpox, influenza and other infectious diseases, food-borne illness, and radiation, among others.

The BSC, NIOSH consists of 15 experts in fields related to occupational safety and health. The members are selected by the Secretary, HHS. The board advises the NIOSH Director on occupational safety and health research and prevention programs. The board also provides advice on standards of scientific excellence, current needs in the field of occupational safety and health, and the applicability and dissemination of research findings. This advice may take the form of reports or verbal communications to the NIOSH Director during BSC meetings.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of the board's mission. More information is available on the BSC, NIOSH Web site: <http://www.cdc.gov/niosh/BSC/default.html>

Nominees will be selected based on expertise in the field occupational safety and health, such as occupational medicine, occupational nursing, industrial hygiene, occupational safety and health engineering, toxicology, chemistry, safety and health education, ergonomics, epidemiology, biostatistics, and psychology.

Federal employees will not be considered for membership. Members may be invited to serve for terms of up to four years. The U.S. Department of Health and Human Services policy stipulates that committee membership shall be balanced in terms of professional training and background, points of view represented, and the committee's function. In addition to a broad range of expertise, consideration

is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current *curriculum vitae*, including complete contact information (name, affiliation, mailing address, telephone number, email address)
- A letter of recommendation stating the qualifications of the candidate.

Nomination materials must be postmarked by January 31, 2014, and sent to: John Decker, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E-20, Atlanta, Georgia 30333, telephone (404) 498-2500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013-29748 Filed 12-12-13; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifiers CMS-116 and CMS-10225]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are

invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by February 11, 2014.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).

3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786-1326

#### SUPPLEMENTARY INFORMATION:

##### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-116 Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations.

CMS-10225 Disclosures Required of Certain Hospitals and Critical Access Hospitals Regarding Physician Ownership.

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collections

##### 1. Type of Information Collection

*Request:* Revision of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations; *Use:* The application must be completed by entities performing laboratory’s testing specimens for diagnostic or treatment purposes. This information is vital to the certification process. *Form Number:* CMS-116 (OCN#: 0938-0581); *Frequency:* Biennially and Occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 242,000; *Total Annual Responses:* 34,200; *Total Annual Hours:* 25,650. (For policy questions regarding this collection contact Sheila Ward at 410-786-3115.)

##### 2. Type of Information Collection

*Request:* Extension of a currently approved collection; *Title of Information Collection:* Disclosures Required of Certain Hospitals and Critical Access Hospitals Regarding Physician Ownership; *Use:* There is no Medicare prohibition against physician investment in a hospital or critical access hospitals (CAH). Likewise, there is no Medicare requirement that a hospital or CAH have a physician on-site at all times, although there is a requirement that they be able to provide basic elements of emergency care to

their patients. Medicare quality and safety standards are designed to provide a national framework that is sufficiently flexible to apply simultaneously to hospitals of varying sizes, offering varying ranges of services in differing settings across the nation. At the same time, however, patients might consider an ownership interest by their referring physician, the presence of a physician on-site or both to be important factors in their decisions about where to seek hospital care. A well-educated consumer is essential to improving the quality and efficiency of the healthcare system. Accordingly, patients should be made aware of the physician ownership of a hospital, whether or not a physician is present in the hospital at all times, and the hospital’s plans to address patients’ emergency medical conditions when a physician is not present. The intent of the disclosures is to increase the transparency of the hospital’s ownership and operations to patients as they make decisions about receiving care at the hospital. *Form Number:* CMS-10225 (OCN: 0938-1034); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 265; *Total Annual Responses:* 57,387,927; *Total Annual Hours:* 1,265,116. (For policy questions regarding this collection contact Teresa Walden at 410-786-3755).

Dated: December 9, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013-29725 Filed 12-12-13; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifiers CMS-10141, CMS-10227, and CMS-R-138]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by January 13, 2014.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974 OR, Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS’ Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).
3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786-1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the

**Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Benefit Program; *Use:* Part D plans use the information to comply with the eligibility and associated Part D participating requirements. We use the information to approve contract applications, monitor compliance with contract requirements, make proper payment to plans, and to ensure that correct information is disclosed to potential and current enrollees. *Form Number:* CMS-10141 (OCN: 0938-0964); *Frequency:* Occasionally; *Affected Public:* Individuals or households, Private sector—Business or other for-profits and Not-for-profit institutions, and State, Local, or Tribal Governments; *Number of Respondents:* 4,100,953; *Total Annual Responses:* 26,301,339; *Total Annual Hours:* 7,572,243. (For policy questions regarding this collection contact Deborah Larwood at 410-786-9500).

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* PACE State Plan Amendment Preprint; *Use:* If a state elects to offer PACE as an optional Medicaid benefit, it must complete a state plan amendment preprint packet described as “Enclosures #3,4,5,6 and 7.” The information, collected from the state on a one-time basis is needed in order to determine if the state has properly elected to cover PACE services as a state plan option. *Form Number:* CMS-10227 (OCN: 0938-1027); *Frequency:* Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 21; *Total Annual Responses:* 7; *Total Annual Hours:* 240. (For policy questions regarding this collection contact Angela Taube at 410-786-2638).

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board (MGCRB) Procedures and Supporting Regulations; *Use:* The information submitted by the hospitals is used to determine the validity of the hospitals' requests and the discretion

used by the Medicare Geographic Classification Review Board (MGCRB) in reviewing and making decisions regarding hospitals' requests for geographic reclassification. *Form Number:* CMS-R-138 (OCN: 0938-0573); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions, and State, Local, or Tribal Governments; *Number of Respondents:* 300; *Total Annual Responses:* 300; *Total Annual Hours:* 300. (For policy questions regarding this collection contact Geri Mondowney at 410-786-1172).

Dated: December 9, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013-29726 Filed 12-12-13; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

*Date:* December 20, 2013.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-435-1137, [guerriej@csr.nih.gov](mailto:guerriej@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: December 9, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29717 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of PAR-11-169 NIAAA U34 applications.

*Date:* January 7, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.

*Contact Person:* Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301-443-8599, [ripper@mail.nih.gov](mailto:ripper@mail.nih.gov). (Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: December 9, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29721 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Center For Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications

*Date:* December 20, 2013.

*Time:* 9:30 a.m. to 11:59 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-435-1775, [rubertm@csr.nih.gov](mailto:rubertm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Urinary and GI Physiology.

*Date:* January 7, 2014.

*Time:* 2:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jonathan K. Ivins, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594-1245, [ivinsj@csr.nih.gov](mailto:ivinsj@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29723 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research.

*Date:* February 11, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892-2542, (301) 594-8898, [barnardm@extra.niddk.nih.gov](mailto:barnardm@extra.niddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: December 9, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29718 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer review meeting.

*Date:* December 20, 2013.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6700-B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-435-2766, [rathored@mail.nih.gov](mailto:rathored@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense (R01).

*Date:* January 7, 2014.

*Time:* 9:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Annie Walker-Abbey, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC-7616, Bethesda, MD 20892-7616, 301-451-2671, [aabbey@niaid.nih.gov](mailto:aabbey@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Tuberculosis Research Units (U19).

*Date:* January 9-10, 2014.

*Time:* January 9, 2014, 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Time:* January 10, 2014, 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3127, MSC 7616, Bethesda, MD 20892, 301-443-8115, [gaol2@niaid.nih.gov](mailto:gaol2@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense (R01).

*Date:* January 9, 2014.

*Time:* 9:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Annie Walker-Abbey, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC-7616, Bethesda, MD 20892-7616, 301-451-2671, [aabbey@niaid.nih.gov](mailto:aabbey@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 9, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29720 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial

Review Group; Neuroscience Review Subcommittee.

*Date:* March 13, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, T508, Rockville, MD 20852.

*Contact Person:* Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2081, Rockville, MD 20852, 301-443-0800, [bbuzas@mail.nih.gov](mailto:bbuzas@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: December 9, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29722 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of NIDCR Institutional Career Development Award K12 applications and Travel grant R13 applications.

*Date:* January 7, 2014.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

*Contact Person:* Victor Henriquez, Ph.D., Scientific Review Officer DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892-4878, 301-451-2405, [henriqv@nidcr.nih.gov](mailto:henriqv@nidcr.nih.gov).

*Name of Committee:* National Institute of Dental and Craniofacial Research Special

Emphasis Panel; Review of R01 & R21 applications (Oral Cancer Initiating Cells).

*Date:* January 31, 2014.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crystal City Marriott at Reagan National Airport, Salon-A, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Raj K. Krishnaraju, Ph.D., MS, Scientific Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Room 674 (Courier MD 20817), Bethesda, MD 20892, 301-594-4864, [kkrishna@nidcr.nih.gov](mailto:kkrishna@nidcr.nih.gov).

*Name of Committee:* NIDCR Special Grants Review Committee; Review of F, K, and R03 Applications.

*Date:* February 20-21, 2014.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Raj K Krishnaraju, Ph.D., MS, Scientific Review Officer, Scientific Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Room 4AN 32J, Bethesda, MD 20892, 301-594-4864, [kkrishna@nidcr.nih.gov](mailto:kkrishna@nidcr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: December 9, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29719 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD R21 Translational Review.

*Date:* January 15, 2014.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301-402-3587, [rayk@nidcd.nih.gov](mailto:rayk@nidcd.nih.gov).

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Review of Affordable Hearing Applications.

*Date:* January 16, 2014.

*Time:* 3:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301-496-8683.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Temporal Bone.

*Date:* January 21, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, Suite 8359, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301-496-8683, [singhs@nidcd.nih.gov](mailto:singhs@nidcd.nih.gov).

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Review of Translational Research Applications in Hearing and Balance.

*Date:* January 22, 2014.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301-496-8683.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD SBIR Review.

*Date:* January 27, 2014.

*Time:* 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301-402-3587, [rayk@nidcd.nih.gov](mailto:rayk@nidcd.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

*Date:* December 9, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-29716 Filed 12-12-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2013-0080]

### DHS Data Privacy and Integrity Advisory Committee

**AGENCY:** Privacy Office, DHS.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The DHS Data Privacy and Integrity Advisory Committee will meet on January 30, 2014, in Washington, DC. The meeting will be open to the public.

**DATES:** The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, January 30, 2014, from 2:00 p.m. to 4:00 p.m. Please note that the meeting may end early if the Committee has completed its business.

**ADDRESSES:** The meeting will be held both in person in Washington, DC (TBC) and via online forum (URL will be posted on the Privacy Office Web site in advance of the meeting at [www.dhs.gov/privacy](http://www.dhs.gov/privacy)).

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public

comment period will be held during the meeting from 3:45 p.m.–4:00 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Shannon Ballard at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by January 23, 2014. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS-2013-0080) and may be submitted by any one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov). Include the Docket Number (DHS-2013-0080) in the subject line of the message.

- Fax: (202) 343-4010.
- Mail: Shannon Ballard, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

*Instructions:* All submissions must include the words “Department of Homeland Security Data Privacy and Integrity Advisory Committee” and the Docket Number (DHS-2013-0080). Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

If you wish to attend the meeting, please bring a government issued photo I.D. and plan to arrive at (TBC) Washington, DC *no later than* 1:45 p.m. so as to allow extra time to be processed through security and to be escorted to the conference room. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov). Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how

you may access or correct information retained by DHS, if any.

*Docket:* For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to <http://www.regulations.gov> and search for docket number DHS-2013-0080.

**FOR FURTHER INFORMATION CONTACT:** Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343-1717, by fax (202) 343-4010, or by email to [PrivacyCommittee@hq.dhs.gov](mailto:PrivacyCommittee@hq.dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

### Agenda

During the meeting, the Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office. DHS subject matter experts plan to brief the Committee on privacy updates regarding DHS federated information sharing policy and technology practices. The Committee will receive a new tasking in this regard. The final agenda will be posted on or before January 23, 2014, on the Committee's Web site at [www.dhs.gov/privacy](http://www.dhs.gov/privacy). Please note that the meeting may end early if all business is completed.

### Privacy Act Statement: DHS's Use of Your Information

**Authority:** DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act*, 44 U.S.C. 3101; the FACA, 5 U.S.C. Appendix; and the *Privacy Act of 1974*, 5 U.S.C. 552a.

**Principal Purposes:** When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to

confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

**Routine Uses and Sharing:** In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL-002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

**Effects of Not Providing Information:** You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

**Accessing and Correcting Information:** If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov). Additional instructions are available at <http://www.dhs.gov/foia> and in the DHS/ALL-002 Mailing and Other Lists System of Records referenced above.

Dated: December 4, 2013.

**Karen Neuman,**  
Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013-29735 Filed 12-12-13; 8:45 am]

BILLING CODE 9110-9L-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning transmission of electronic filings of certain Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) import data to CBP for commodities regulated by these agencies. The test will involve using the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set and the Automated Broker Interface (ABI) to transmit the data. PGA Message Set data may be submitted only for certain entries filed at certain ports.

This test is in furtherance of key CBP International Trade Data System (ITDS) initiatives as provided in the Security and Accountability for Every Port Act (SAFE) of 2006 to achieve the vision of ACE as the "single window" for the Government and trade community by automating and enhancing the interaction between international trade partners, CBP, and PGAs by facilitating electronic collection, processing, sharing, and review of trade data and documents required by Federal agencies during the cargo import and export process. The initiatives will significantly increase efficiency and reduce costs over the manual, paper-based interactions that have been in place. The PGA Message Set will improve communication between agencies and filers regarding imports and when applicable, will allow test participants to submit the required data once rather than submitting data separately to each agency, resulting in quicker processing. During this test, participants will collaborate with CBP, EPA, and FSIS to examine the effectiveness of the "single window" capability.

This notice invites public comment concerning the test program, provides legal authority for the test, explains the purpose of the test and the test participant responsibilities, identifies the regulation that will be waived under the test, provides the eligibility and selection criteria for participation in the test, provides a link to a list of ports that are accepting PGA Message Set data under this test, explains the application process, and determines the duration of the test. This document also explains the repercussions and appeals process for misconduct under the test.

**DATES:** The test will commence January 13, 2014. Comments will be accepted through the duration of the test.

**ADDRESSES:** To submit comments concerning this test program: Send an email to Stephen Hilsen, Director, Business Transformation, ACE Business Office (ABO), Office of International Trade at [stephen.r.hilsen@cbp.dhs.gov](mailto:stephen.r.hilsen@cbp.dhs.gov). In the subject line of an email, please use, “*Comment on PGA Message Set Test FRN*”.

Any party seeking to participate in the PGA Message Set test should contact their client representative. Interested parties without an assigned client representative should submit an email to Susan Maskell at [susan.c.maskell@cbp.dhs.gov](mailto:susan.c.maskell@cbp.dhs.gov) with the subject heading “*PGA Message Set Test FRN-Request to Participate*”.

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set information. At this time, PGA Message Set data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: [http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats\\_new/info\\_notice\\_trade.ctt/info\\_notice\\_trade.pdf](http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf).

**FOR FURTHER INFORMATION CONTACT:** For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Susan Maskell at [susan.c.maskell@cbp.dhs.gov](mailto:susan.c.maskell@cbp.dhs.gov). For PGA related questions, contact Emi Wallace [emi.r.wallace@cbp.dhs.gov](mailto:emi.r.wallace@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

**I. The National Customs Automation Program**

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). See 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster

participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions.

CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts and Revenue (ESAR) is set forth below in *Section XV*, entitled, “*Development of ACE Prototypes*.” The procedures and criteria related to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

The Automated Broker Interface (ABI) allows participants to electronically file required import data with CBP and transfers that data into ACE.

**II. Authorization for the Test**

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95–21.

**III. International Trade Data System (ITDS)**

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, which is statutorily required by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347, 120 Stat. 1884. The purpose of ITDS, as defined by section 4 of the SAFE Port Act of 2006, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by

establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act of 2006. To date, other ITDS key initiatives have included: The test of the Document Image System (see 77 FR 20835, dated April 6, 2012; 78 FR 44142, dated July 23, 2013; and 78 FR 53466, dated August 29, 2013), which allows trade members to electronically supply documentation needed during the cargo release and entry summary processes to CBP and specified Federal agencies; and PGA Interoperability, which enables CBP to share information, documents, and events of interest with PGAs in an automated manner. CBP will publish **Federal Register** notices as the capabilities of the Message Set expand.

**IV. Partner Government Agency Message Set**

The Partner Government Agency (PGA) Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the submission of trade-related data required by the PGAs only once to CBP.

This data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Entry Summary. The data will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents.

At this time, ACE is prepared to accept certain PGA data elements for the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. These data elements are generally those found in the current paper form (EPA Forms 3520–1 and 3520–21; and FSIS Form 9540–1) and also include data submissions related to Ozone Depleting Substances (ODS) imports, which are currently handled via phone, email,

and/or paper communication. These data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for both EPA and FSIS. These technical specifications, including the CATAIR chapters can be found at the following link: [http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace\\_edi\\_messages/catair\\_main/abi\\_catair/catair\\_chapters/future\\_pga\\_set\\_docs/](http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/catair_chapters/future_pga_set_docs/).

At this time, a limited number of ports will be accepting PGA Message Set data. A list of those ports is provided on the following Web site: [http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats\\_new/info\\_notice\\_trade.ctt/info\\_notice\\_trade.pdf](http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf). CBP may expand to additional ports in the future.

#### **V. The Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) Test**

This document announces CBP's plan to conduct a new test concerning certain electronic filings of EPA and FSIS import data with CBP for commodities regulated by these agencies that are imported into the United States. This new PGA Message Set capability will satisfy the EPA (ODS and Vehicle and Engine (V&E) programs only) and FSIS (meat, poultry, and egg products) data requirements for formal and informal consumption entries through electronic filing in ACE as opposed to filing in paper. Submission of the PGA Message Set will enable the Trade to have a CBP-managed "single window" for data submission required by the EPA and FSIS during the cargo importation and review process.

##### *a. U.S. Environmental Protection Agency*

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), generally prohibits importation into the United States of any motor vehicle, motor vehicle engine, nonroad engine and equipment that has not been certified by EPA to conform to EPA emission standards and requirements. U.S. EPA emission standards are in effect for light-duty motor vehicles, motorcycles, heavy-duty on-highway engines, nonroad engines and recreational vehicles (dirt bikes, ATVs, ORUVs, and snowmobiles) and stationary engines. These standards apply regardless of whether the engines are new or used, manufactured domestically or abroad. Currently, a paper EPA importation declaration form (EPA Form 3520-1 for on-road vehicles, or EPA Form 3520-21 for nonroad, off-road, and heavy-duty highway and

stationary engines) must be submitted for most vehicle and engine importations.

The PGA Message Set will eliminate these paperwork filings for participating importers and as a result, reduce the overall paperwork burden on the port associated with these EPA regulated shipments. It will also provide advance electronic information on regulated shipments to allow the system to make electronic checks of mandatory declaration information including certificate numbers which allows EPA to make pre-arrival admissibility decisions, thereby focusing CBP and EPA resources on shipments of interest and using those resources to identify and resolve the health and safety issues discovered by the submission of advance data to EPA.

Under Title VI of the Clean Air Act, EPA also regulates the import of ODS into the United States (*see* 40 CFR Part 82, Subpart A). Importers of virgin ODS are required to have import allowances or meet the criteria for specific EPA exemptions. Allowance holders are able to trade allowances. Importers of used ODS must petition EPA forty (40) days prior to the import, and if approved, EPA will issue a non-objection notice, indicating the agency's approval of the import. Any information exchange related to ODS imports, such as which importers have import allowances or exemptions, are currently handled via phone, email, and/or paper communication.

The electronic data transmitted by the filer using the PGA Message Set allows CBP to electronically share that data with EPA for review. This process will improve the current communication process between CBP, EPA and filers concerning imports of ODS, allowing EPA to perform automatic electronic checks of current allowance holders and importers of exempt ODS, resulting in quicker import processing. The sharing of this electronic data will also provide advance electronic information on regulated shipments to EPA to allow them to make pre-arrival admissibility decisions thereby focusing CBP and EPA resources on shipments of interest and using those resources to identify and resolve the health and safety issues discovered by the submission of advance data to EPA.

At this time, the EPA aspect of the test will include only entries originating in the ocean environment. Land border arrivals, both truck and rail, and air arrivals will be included in later stages of the test. Upon acceptance into this test, participants will be required to transmit electronic EPA data for entries originating in the ocean environment for

the EPA forms specified in this notice as well as for the ODS related data elements.

##### *b. U.S. Department of Agriculture—Food Safety and Inspection Service*

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) prohibit the importation of meat and poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products (21 U.S.C. 466 and 620). The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) prohibits the importation of egg products unless they have been processed under an approved continuous inspection system of the government of the foreign country of origin and comply with all other provisions of the Act and regulations that apply to United States domestic products (21 U.S.C. 1046). FSIS meat, poultry, and egg products import regulations require importers to apply for the inspection of imported products (9 CFR 327.5, 381.198, and 590.920). Applicants complete FSIS Form 9540-1, "Import Inspection Application and Report," for meat, poultry products, and egg products.

On May 29, 2012, FSIS implemented the import component of the Public Health Information System (PHIS), a web-based data analytics system. PHIS provides the capability for a streamlined, electronic alternative to the paper-based import inspection application process. The electronic data transmitted by the filer using the PGA Message Set allows CBP to electronically share that data with PHIS, which electronically links with CBP's ACE system.

The PGA Message Set will provide the additional information that FSIS requires from importers to complete the FSIS import application process. Using the PGA Message Set, ACE will enable U.S. importers and customs brokers to enter FSIS import inspection application information directly into the Automated Broker Interface (ABI). FSIS anticipates that the data transmitted by the filer using the PGA Message Set will help FSIS prepare to completely transition the FSIS Form 9540-1 to an electronic form in PHIS (*see* 78 FR 19182, dated March 29, 2013) for additional information including how to access the FSIS Compliance Guide). The electronic data transmitted to ACE using the PGA Message Set will expedite the delivery of information to FSIS by

providing the data to FSIS before the products arrive for inspection thereby allowing FSIS to more effectively track and control ineligible shipments, efficiently inspect shipments when they arrive and improve the ability to prevent non-compliant products from reaching American consumers.

At this time, the FSIS aspect of the test will include only entries originating in the ocean and truck environments. Air and rail arrivals will be included in later stages of the test. Upon acceptance into this test, participants will be required to transmit electronic FSIS data for entries originating in the ocean and truck environments.

On March 29, 2013, FSIS published a notice in the **Federal Register** (78 FR 19182) announcing a pilot program intended to test the transfer of data from the PGA Message Set in ACE to PHIS. That notice also invited industry participation in the Pilot.

#### VI. Test Participant Responsibilities

PGA Message Set test participants will be required to:

- File the applicable data with the ports that are accepting the ACE PGA Message Set data. A current list of those ports will be posted on the following Web site: [http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats\\_new/info\\_notice\\_trade.ctt/info\\_notice\\_trade.pdf](http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf);

- File, when applicable, the data elements contained in the following forms using the PGA Message Set. This information must be electronically transmitted to ACE using the ACE Entry Summary at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States. The electronic transmission of this data is in lieu of filing the paper forms specified below:

- EPA Form 3520–1 for on-road vehicles (only for entries originating in the ocean environment);

- EPA Form 3520–21 for nonroad, off-road, and heavy-duty highway and stationary engines (only for entries originating in the ocean environment);

- Information exchange related to ODS imports (only for entries originating in the ocean environment); and

- FSIS Form 9540–1 for meat, poultry products, and egg products (only for entries originating in the ocean and truck environments);

- Include PGA Message Set import filings only as part of an ACE Entry Summary certified for cargo release;

- Transmit import filings to CBP via ABI in response to a request for documentation or in response to a

request for release information for certified ACE Entry Summaries;

- Only transmit to CBP information that has been requested by CBP, the EPA, or FSIS; and

- Take part in a CBP evaluation of this test.

Participants are reminded that they should only file documents that CBP can accept electronically. The documents CBP can accept electronically are set forth in the **Federal Register** (77 FR 20835) notice announcing the Document Image System (DIS) Test (*see* Section XV below) and in the Automated Invoice Interface Chapter of the CATAIR. If CBP cannot accept the additional information electronically, the filer must file the additional information by paper.

#### VII. Waiver of Regulation Under the Test

For purposes of this test, 19 CFR 12.74(b) will be waived for test participants only insofar as eliminating the requirement to file the paper version of EPA Form 3520–21 and requiring in its place the electronic submission of the data elements contained in EPA Form 3520–21.

This document does not waive any recordkeeping requirements found in part 163 of title 19 of the CFR (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

#### VIII. Test Participant Eligibility and Selection Criteria

To be eligible to apply for this test, the applicant must:

- Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; and

- File entries for EPA and FSIS commodities that are the subject of this test.

Except for those interested in participating in the ODS portion of the test, CBP will accept an unlimited number of participants for the test. CBP will accept less than ten (10) participants in the ODS portion of the test. For the ODS test applicants, CBP will give consideration to the order in which participation requests are received.

Test applicants must meet the eligibility criteria described in this document to participate in the test program.

#### IX. Application Process

Any party seeking to participate in the PGA Message Set test should email their CBP Client Representative, ACE Business Office (ABO), Office of International Trade. Interested parties without an assigned client representative should submit an email to Susan Maskell at [susan.c.maskell@cbp.dhs.gov](mailto:susan.c.maskell@cbp.dhs.gov). All email communications should include the subject heading “PGA Message Test FRN—Request to Participate in the Vehicles and Engines Portion of the Test”, “PGA Message Test FRN—Request to Participate in the ODS Portion of the Test”, or “PGA Message Test FRN—Request to Participate in the FSIS Form 9540–1 Portion of the Test.”

Parties who have previously responded to the FSIS notice published in the **Federal Register** (78 FR 19182) on March 29, 2013, need not resubmit a request to participate in this test. CBP will obtain the list of interested participants from FSIS and will follow up with them directly.

Emails sent to the CBP client representative or Susan Maskell must include the applicant’s filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set information. Client representatives will work with test participants to provide information regarding the transmission of this data.

CBP will begin to accept applications upon the date of publication of this notice and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by email of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by email and given the opportunity to resubmit their application.

#### X. Test Duration

For both EPA and FSIS, the initial phase of the test will begin on January 13, 2014 and is intended to last approximately two years from the January 13, 2014.

At the conclusion of the test, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of EPA and FSIS importation-related data elements and the processing of EPA and FSIS entries. The final results of the evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

Any future expansion in ACE including but not limited to any additional PGA commodities and eligible environments (i.e., truck, rail, air) will be announced via a separate **Federal Register** notice.

#### XI. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

#### XII. Paperwork Reduction Act

The collections of information for all aspects of this test, except for the collections concerning the ODS portion of the test, are approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, under the following OMB control numbers:

- EPA Form 3520–1: OMB Number 2060–0095
- EPA Form 3520–21: OMB Number 2060–0320
- FSIS Form 9540–1: OMB Number 0583–0094

The ODS portion of the test will be exempt from the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13 because CBP will be accepting less than 10 (ten) participants.

#### XIII. Confidentiality

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

#### XIV. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.
- Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing *BrendaBrockman.Smith@cbp.dhs.gov*. The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing *BrendaBrockman.Smith@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

#### XV. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69

FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).

- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE), 78 FR 44142, published July 23, 2013.
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction; 78 FR 53466, published August 29, 2013.
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039, published November 4, 2013.
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434, published November 19, 2013.

Dated: December 9, 2013.

**Richard F. DiNucci,**

*Acting Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013-29724 Filed 12-12-13; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5681-N-48]

### 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) 402-3970; 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, and 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, Office of Enterprise Support Programs, Program Support Center, HHS, Room 12-07, 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 Ann Marie Oliva 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: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501-0084; (This is not a toll-free number).

Dated: December 5, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

### TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/13/2013

#### Suitable/Available Properties

##### Land

California

Delano Transmitting Station

1105 Melcher Rd.

Delano CA 93215

Landholding Agency: GSA

Property Number: 54201330005

Status: Excess

GSA Number: 9-X-CA-1671

Directions: Landholding Agency:

Broadcasting Board of Governors Disposal

Agency: GSA

Comments: 800 acres; mostly land and some

bldgs.; unavailable due to Federal interest;

transmitting station; vacant since 2007;

access can be gain by appt. only; contact

GSA for more info.

#### Suitable/Unavailable Properties

##### Building

Alabama

Anniston SSA Building

301 E. 13th St.

Anniston AL 36207

Landholding Agency: GSA

Property Number: 54201330002

Status: Excess

GSA Number: 4-G-AL-0790AA

Comments: 12,257 sf.; 11,927 rentable sf.; 59

parking spaces; office; 9+ months vacant;

good conditions; contact GSA for more

info.

Hawaii

Bldg. 133 & Antenna Tower 133A

Kamehaine Dr., Waimanalo Ridge

Hawaii Kai HI 96825

Landholding Agency: GSA

Property Number: 54201320012

Status: Surplus

GSA Number: 9-N-HI-811

Directions: Disposal agency: GSA;

Landholding agency: Navy

Comments: off-site removal only; 735 sf. for

bldg. 133; poor conditions; contamination

present; located w/in secured area; contact

GSA for more info.

Maine

Columbia falls Radar Site

Tibbetstown Road

Columbia Falls ME 04623

Landholding Agency: GSA

Property Number: 54201140001

Status: Excess

GSA Number: 1-D-ME-0687

Directions: Buildings 1, 2, 3, and 4

Comments: Four bldgs. totaling 20,375 sq. ft.; each one-story; current use: varies among properties.

#### Maryland

Appraisers Store  
Baltimore MD 21202  
Landholding Agency: GSA  
Property Number: 54201030016  
Status: Excess  
GSA Number: 4-G-MD-0623  
Comments: Redetermination: 169,801 sq. ft., most recent use—federal offices, listed in the Nat'l Register of Historic Places, use restrictions

Consumer Products Safety Commi  
10901 Darenestown Rd.  
Gaithersburg MD 20878  
Landholding Agency: GSA  
Property Number: 54201220004  
Status: Surplus  
GSA Number: NCR-G-MR-1107-01  
Directions: property includes building and land  
Comments: 37,543 sf.; office/warehouse space; secured area; however, will not interfere w/conveyance; contact GSA for further details.

#### Michigan

Nat'l Weather Svc Ofc  
214 West 14th Ave.  
Sault Ste. Marie MI  
Landholding Agency: GSA  
Property Number: 54200120010  
Status: Excess  
GSA Number: 1-C-MI-802  
Comments: 2230 sq. ft., presence of asbestos, most recent use—office.

#### Minnesota

Noyes Land Port of Entry  
SW Side of US Rte. 75  
Noyes MN 56740  
Landholding Agency: GSA  
Property Number: 54201230007  
Status: Excess  
GSA Number: 1-G-MN-0593  
Directions: one main bldg.; one storage; approx. 16,000 and 900 sf. respectively  
Comments: sits on 2.29 acres; approx. 17,000 sf. total of bldg. space; office/governmental.

#### Montana

James F. Battin & Courthouse  
316 North 26th Street  
Billings MT 59101  
Landholding Agency: GSA  
Property Number: 54201210005  
Status: Excess  
GSA Number: 7-G-MT-0621-AB  
Comments: 116,865 sf.; current use: office; extensive asbestos contamination; needs remediation

#### Nebraska

Former Omaha Qtrs. Depot  
2101 Woolworth Ave.  
Omaha NE 68108  
Landholding Agency: GSA  
Property Number: 54201310005  
Status: Surplus  
GSA Number: 7-D-NE-0530  
Directions: office #1: 14,520 sf.; office #2: 38,870 sf.; office #3: 11,000 sf.; office #4: 986 sf.; storage: 7,488 sf.; office #5: 12,250 sf.; office #6: 3,720 sf.; Two Gatehouses: 507 sf. each

Comments: 9 Bldgs. sits on 7.25 acres; Admin/Office; 12 mons. vacant; to access coordinate w/88th Army Reserve Command out of Ft. McCoy, WI

#### Nevada

Alan Bible Federal Bldg.  
600 S. Las Vegas Blvd.  
Las Vegas NV 89101  
Landholding Agency: GSA  
Property Number: 54201210009  
Status: Excess  
GSA Number: 9-G-NV-565  
Comments: 81,247 sf.; current use: federal bldg.; extensive structural issues; needs major repairs; contact GSA for further details

2 Buildings  
Military Circle  
Tonopah NV  
Landholding Agency: GSA  
Property Number: 54201240012  
Status: Surplus  
GSA Number: 9-I-NV-514-AK  
Directions: bldg. 102: 2,508 sf.; bldg. 103: 2,880 sf.  
Comments: total sf. for both bldgs. 5,388; Admin.; vacant since 1998; sits on 0.747 acres; fair conditions; lead/asbestos present

#### New Jersey

Former SSA Trust Fund Bldg.  
396 Bloomfield Ave.  
Montclair NJ 07042  
Landholding Agency: GSA  
Property Number: 54201310004  
Status: Surplus  
GSA Number: 1-G-NJ-0676  
Comments: 7,183 sf.; office; vacant since March 2012

#### Portion of Former Sievers-Sandberg U.S.

Army Reserves Center—Tract 1  
NW Side of Artillery Ave. at Rte. 130  
Oldmans NJ 08067  
Landholding Agency: GSA  
Property Number: 54201320015  
Status: Surplus  
GSA Number: 1-D-NJ-0662-AA  
Directions: Previously reported under 54200740005 as suitable/available ; 16 bldgs. usage varies: barracks/med./warehouses/garages; property is being parcelized.  
Comments: 87,011 sf.; 10+ yrs. vacant fair/poor conditions; property may be landlocked; transferee may need to request access from Oldmans Township planning & zoning comm.; contact GSA for more info.

#### New York

Building 606  
1 Amsterdam Rd.  
Scotia NY 12301  
Landholding Agency: GSA  
Property Number: 54201310009  
Status: Surplus  
GSA Number: NY-0975  
Directions: previously reported by Navy w/ assigned property number 7720120019  
Comments: 137,409 sf.; Navy Exchange, supermarket, & storage; 24 mons. vacant; mold, asbestos, & lead-based paint, significant renovations needed.

Building 240  
Hill Rd, AFRL Rome Research Site  
Rom NY 13441

Landholding Agency: GSA  
Property Number: 54201320007  
Status: Excess

GSA Number: ny0938  
Comments: 134,855sf; military office & lab bldg.; 10 plus years vacant; significant deterioration; asbestos; access must be coordinated w/local Air Force personnel.

Portion of GSA Binghamton  
"Hillcrest" Depot—Tract 2  
1151 Hoyt Avenue  
Fenton NY 13901  
Landholding Agency: GSA  
Property Number: 54201320008  
Status: Surplus  
GSA Number: 1-G-NY0670-AD  
Directions: Previously report on March 24, 2006 under 5420010016; include 40 acres of land w/5 buildings.  
Comments: warehouses: ranges 129,000–200,249 total; old admin. bldg.: 42,890; pump house: 166.5; fair to very poor conditions; contact GSA for more info.

Portion of GSA Binghamton  
"Hillcrest" Depot—Tract 1  
1151 Hoyt Ave.  
Fenton NY 13901  
Landholding Agency: GSA  
Property Number: 54201320017  
Status: Surplus  
GSA Number: 1-G-NY0670-AC  
Directions: Previously reported on March 24, 2006 under 54200610016; this property includes 40 acres of land w/6 structures; property is being parcelized  
Comments: warehouses range from approx. 16,347 sf.-172,830 sf.; admin. bldg. approx. 5,700; guard house & butler bldg. sf. is unknown; 10 vacant; fair conditions; bldgs. locked; entry by appt. w/GSA

#### North Carolina

Greenville Site  
10000 Cherry Run Rd.  
Greenville NC 27834  
Landholding Agency: GSA  
Property Number: 54201210002  
Status: Surplus  
GSA Number: 4-2-NC-0753  
Comments: 49,300 sq. ft.; current use: transmitter bldg.; possible PCB contamination; not available—existing Federal need

#### Ohio

Oxford USAR Facility  
6557 Todd Road  
Oxford OH 45056  
Landholding Agency: GSA  
Property Number: 54201010007  
Status: Excess  
GSA Number: 1-D-OH-833  
Comments: office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

#### LTC Dwite Schaffner

U.S. Army Reserve Center  
1011 Gorge Blvd.  
Akron OH 44310  
Landholding Agency: GSA  
Property Number: 54201120006  
Status: Excess  
GSA Number: 1-D-OH-836  
Comments: 25,039 sq. ft., most recent use: Office; in good condition

Oregon  
3 Bldgs./Land  
OTHR-B Radar  
Cty Rd 514  
Christmas Valley OR 97641  
Landholding Agency: GSA  
Property Number: 54200840003  
Status: Excess  
GSA Number: 9-D-OR-0768  
Comments: 14000 sq. ft. each/2626 acres,  
most recent use—radar site, right-of-way

Pennsylvania  
Old Marienville Compound  
110 South Forest St.  
Marienville PA 16239  
Landholding Agency: GSA  
Property Number: 54201230001  
Status: Excess  
GSA Number: 4-A-PA-808AD  
Directions: 10 bldgs.; wood farm duplex;  
office/garage; pole bard; shop; (2) wood  
sheds; block shed; trailer; carport; toilet  
bldg.  
Comments: sq. ft. for ea. bldg. on property  
varies; contact GSA for specific sq. ft.;  
Forest Service Admin. complex; mold and  
lead identified; historic property

South Carolina  
Former U.S. Vegetable Lab  
2875 Savannah Hwy  
Charleston SC 29414  
Landholding Agency: GSA  
Property Number: 54201310001  
Status: Excess  
GSA Number: 4-A-SC-0609AA  
Directions: headhouse w/3 greenhouses,  
storage bins  
Comments: 6,400 sf.; lab; 11 yrs. vacant; w/  
in 100 yr. floodplain/floodway; however is  
contained; asbestos & lead based paint

Texas  
Former Navy & Marine Corps Res  
5301 Ave. South  
Galveston TX 77551  
Landholding Agency: GSA  
Property Number: 54201240013  
Status: Surplus  
GSA Number: 7-D-TX-0549-9  
Comments: 17,319 sf.; sits on 2.63 acres;  
Admin. office; fair conditions; eligible for  
Nat'l Register Historic Places; asbestos;  
access by appt. w/USACE

Dallas Social Security  
Admin. Bldg.  
Dallas TX 75201  
Landholding Agency: GSA  
Property Number: 54201330008  
Status: Excess  
GSA Number: 7-G-TX-1149  
Comments: 11,282 sf.; office; 1+ month  
vacant; roof need repairs; property on 1.1  
acres

Washington  
Recreational cabin; Lot 92  
435 S. Shore Rd.  
Quinault WA 98575  
Landholding Agency: GSA  
Property Number: 54201320018  
Status: Excess  
GSA Number: 9-A-WA-1267  
Directions: Disposal Agency: GSA;  
Landholding Agency: Interior (U.S. Forest  
Service)

Comments: 524 sf.; 48 months vacant;  
extensive cleaning & repairs; used only for  
recreational purposes; transferee must  
obtain a 20 yr. license to use property;  
contact GSA for more info.

712 Records Center Printing &  
Repro Plant 712B IRM  
940 Northgate Dr.  
Richland WA 99352  
Landholding Agency: GSA  
Property Number: 54201320025  
Status: Excess  
GSA Number: 9-B-WA-1268  
Directions: Property is improved w/2  
contiguous bldgs., totaling approx. 22, 714  
sf.; Disposal: GSA, Landholding: Energy  
Comments: 22,714 sf.; storage; moderate  
conditions; 60+ months vacant; asbestos &  
lead

Wisconsin  
Wausau Army Reserve Ctr.  
1300 Sherman St.  
Wausau WI 54401  
Landholding Agency: GSA  
Property Number: 54201210004  
Status: Excess  
GSA Number: 1-D-WI-610  
Comments: bldg. 12,680 sq. ft.; garage 2,676  
sq. ft.; current use: vacant; possible  
asbestos; remediation may be required;  
subjected to existing easements; Contact  
GSA for more detail

**Suitable/Unavailable Properties**

*Land*

California  
Seal Beach RR Right of Way  
East 17th Street  
Seal Beach CA 90740  
Landholding Agency: GSA  
Property Number: 54201140016  
Status: Surplus  
GSA Number: 9-N-CA-1508-AB  
Comments: 9,713.88 sq. ft.; current use:  
private home

Seal Beach RR Right of Way  
East of 16th Street  
Seal Beach CA 90740  
Landholding Agency: GSA  
Property Number: 54201140017  
Status: Surplus  
GSA Number: 9-N-CA-1508-AG  
Comments: 6,834.56 sq. ft.; current use:  
vacant

Seal Beach RR Right of Way  
West of Seal Beach Blvd.  
Seal Beach CA 90740  
Landholding Agency: GSA  
Property Number: 54201140018  
Status: Surplus  
GSA Number: 9-N-CA-1508-AA  
Comments: 10,493.60 sq. ft.; current use:  
vacant lot

Seal Beach RR Right of Way  
Seal Beach  
Seal Beach CA 90740  
Landholding Agency: GSA  
Property Number: 54201210006  
Status: Surplus  
GSA Number: 9-N-CA-1508-AH  
Comments: 4,721.90 sf.; current use: vacant  
lot between residential bldg.

Seal Beach RR Right of Way  
Seal Beach

Seal Beach CA 90740  
Landholding Agency: GSA  
Property Number: 54201210007  
Status: Surplus  
GSA Number: 9-N-CA-1508-AJ  
Comments: 6,028.70 sq. ft.; current ft.;  
current lot between residential bldgs.

Florida  
RCLT Transmitter Site  
7439 SW 39th St.  
Davie FL  
Landholding Agency: GSA  
Property Number: 54201320009  
Status: Surplus  
GSA Number: 4-U-FL-1258AA  
Directions: Note: landholding agency is FAA;  
disposal agency is GSA  
Comments: 1.75 acres; equipment storage;  
contact GSA for more information

Georgia  
Former GNK Outer Marker  
Hunt Rd.  
LaGrange GA 31909  
Landholding Agency: GSA  
Property Number: 54201310008  
Status: Excess  
GSA Number: 4-U-GU-88AA  
Comments: 0.918 acres

Illinois  
Three Contiguous Vacant Lots  
5139 S. Mason Ave.  
Chicago IL  
Landholding Agency: GSA  
Property Number: 54201320021  
Status: Surplus  
GSA Number: 1-U-IL-803  
Directions: Disposal Agency: GSA;  
Landholding Agency: FAA  
Comments: 0.65 acres; lots located w/in  
locked fence; contact GSA for more info.

Kansas  
1.64 Acres  
Wichita Automated Flight Service  
Anthony KS 67003  
Landholding Agency: GSA  
Property Number: 54201230002  
Status: Excess  
GSA Number: 7-U-KS-0526  
Comments: Agricultural surroundings;  
remedial action has been taken for asbestos  
removal

Kentucky  
Little Hurricane Island Access  
Tract No. 819 & 816E, Newburgh  
Locks & Dams  
Owensboro KY 42301  
Landholding Agency: GSA  
Property Number: 54201320024  
Status: Excess  
GSA Number: 4-D-KY-0629  
Directions: Disposal: GSA; Landholding: COE  
Comments: 20.87 acres; boat ramp

Massachusetts  
FAA Site  
Massasoit Bridge Rd.  
Nantucket MA 02554  
Landholding Agency: GSA  
Property Number: 54200830026  
Status: Surplus  
GSA Number: MA-0895  
Comments: approx. 92 acres, entire parcel  
within MA Division of Fisheries & Wildlife

Natural Heritage & Endangered Species Program

Mississippi

Harrison County Farm  
John Clark Rd.  
Gulfport MS 39503  
Landholding Agency: GSA  
Property Number: 54201320022  
Status: Excess  
GSA Number: 4-A-MS-0572

Directions: Disposal Agency: GSA;  
Landholding Agency: Agriculture  
Comments: 14.14 acres; fire ant. investigations/grazing; contact GSA for more info.

Nevada

RBG Water Project Site  
Bureau of Reclamation  
Henderson NV 89011  
Landholding Agency: GSA  
Property Number: 54201140004  
Status: Surplus  
GSA Number: 9-I-AZ-0562

Comments: water easement (will not impact conveyance); 22±acres; current use: water sludge disposal site; lead from shotgun shells on <1 acre.

New York

FAA Radio Communication Link  
Adjacent to Babcock Road  
Coleville NY 13787  
Landholding Agency: GSA  
Property Number: 54201330001  
Status: Excess

GSA Number: 1-NY-0977-AA  
Comments: 6.03 acres; contact GSA for more info.

South Dakota

Gettysburg Radio Tower Site  
Potter County  
Gettysburg SD 57442  
Landholding Agency: GSA  
Property Number: 54201310007  
Status: Surplus

GSA Number: 7-D-SD-0537  
Directions: one antenna tower & 144 sf. bldg. located on property  
Comments: 2.21 acres; 144 sf. bldg. is used for storage

Texas

Fort Worth Federal Center  
501 W. Felix  
Ft. Worth TX 76115  
Landholding Agency: GSA  
Property Number: 54201320023  
Status: Surplus

GSA Number: 7-G-TX-0767-6  
Comments: 0.38 acres; perpetual use easement over 100% of property; secured area; approval to access granted by City of Ft. Worth

Washington

1.8 Ac. of the Richland FB N.  
Parking Lot  
825 Jadwin Ave.  
Richland WA 99723  
Landholding Agency: GSA  
Property Number: 54201310002  
Status: Excess  
GSA Number: 9-G-WA-1263

Comments: 1.8; parking lot  
[FR Doc. 2013-29447 Filed 12-12-13; 8:45 am]  
**BILLING CODE 4210-67-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD003

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Fish and Wildlife Service

[FWS-R8-ES-2013-N252]

#### Bay Delta Habitat Conservation Plan and Natural Community Conservation Plan, Sacramento, CA; Draft Environmental Impact Report/ Environmental Impact Statement, Receipt of Applications, and Announcement of Public Meetings

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service and Bureau of Reclamation, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces the availability of the Draft Bay Delta Conservation Plan and Natural Community Conservation Plan (BDCP, or the Plan) and Draft BDCP Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for public review and comment. In response to receipt of an application from the California Department of Water Resources and certain State and Federal water contractors (the Applicants), the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), are considering the proposed action of issuing 50-year incidental take permits (ITPs) under the Endangered Species Act (ESA) of 1973, as amended. The proposed ITPs would authorize the take of individual species listed under the ESA. The permits are needed because take of species could occur as a result of implementation of activities, including those associated with water operations of the California State Water Project by the California Department of Water Resources. Covered activities in the Plan include the construction, operation, monitoring, and maintenance associated with water conveyance, ecosystem restoration, and other activities in the Sacramento-San Joaquin

Delta (Delta) and vicinity as described in the BDCP.

The Bureau of Reclamation's (Reclamation's) proposed Federal action is to change operation of Central Valley Project (CVP) facilities in the Delta consistent with the BDCP; this operations change would support implementation of coordinated operation of the CVP with the California State Water Project. Reclamation may also make decisions regarding wheeling CVP water through new Delta conveyance facilities, and implementing habitat restoration and monitoring actions proposed by the BDCP that are consistent with Reclamation's regulatory requirements, programs, authorities, and appropriations. These three Federal co-lead agencies have not selected a preferred alternative at this time.

**DATES:** Comments on the Draft BDCP and Draft EIR/EIS must be received or postmarked by 5 p.m. Pacific Time on April 14, 2014.

Twelve public meetings will be held to receive comments on the Draft BDCP and Draft EIR/EIS. See **SUPPLEMENTARY INFORMATION** section for meeting dates and times.

**ADDRESSES:** To view or download the Draft BDCP and Draft EIR/EIS, or for a list of locations to view hard-bound copies, go to [www.baydeltaconservationplan.com](http://www.baydeltaconservationplan.com).

You may submit written comments by one of the following methods:

1. By email: Submit comments to [bdcpc.comments@noaa.gov](mailto:bdcpc.comments@noaa.gov).
2. By hard-copy: Submit comments by U.S. mail, or by hand-delivery, to Ryan Wulff, National Marine Fisheries Service, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.

Please see **SUPPLEMENTARY INFORMATION** section for meeting locations.

**FOR FURTHER INFORMATION CONTACT:** Ryan Wulff, National Marine Fisheries Service, 916-930-3733; Lori Rinek, Fish and Wildlife Service, 916-930-5652; or Theresa Olson, Bureau of Reclamation, 916-414-2433.

#### SUPPLEMENTARY INFORMATION:

##### Special Accommodation

The public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ryan Wulff, National Marine Fisheries Service, at 916-930-3733 at least 5 working days prior to the meeting date.

## Background

Section 9 of the ESA prohibits the “take” of individuals of an endangered species and, by regulation, a threatened species, 16 U.S.C. 1538(a) (endangered species); 1533(d) (threatened species). The ESA defines the term “take” as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). NMFS defines “harm” to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). Pursuant to section 10(a)(1)(B) of the ESA, FWS and NMFS may issue ITPs authorizing the take of listed species if, among other things, such taking is incidental to, and not the purpose of, otherwise lawful activities. Although take of listed plant species is not prohibited under the ESA, and therefore authorization under an ITP is not necessary, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan.

The Applicants have prepared and submitted the BDCP with their permit applications to the FWS, NMFS, and the California Department of Fish and Wildlife, pursuant to the regulatory requirements for a section 10(a)(1)(B) permit under the ESA, and a section 2835 permit under the California Natural Community Conservation Planning Act of 2003 (California Fish and Game Code, Section 2800 *et seq.*).

The Applicants seek 50-year incidental take permits for covered activities within the proposed Plan Area. The Plan Area encompasses the Delta and additional areas in which conservation measures may be implemented pursuant to the Plan. Incidental take permits issued for the BDCP will extend to covered activities in the Plan Area.

The conservation strategy in the Plan is primarily focused on the statutory Delta, as defined in California Water Code Section 12220. However, certain areas outside the statutory Delta contain desirable locations for actions that advance the goals and objectives of the Plan. Suisun Marsh, Suisun Bay, and the Yolo Bypass have been included in the Plan Area to provide important sites for habitat restoration that directly

supports goals and objectives for natural communities and covered species. In addition, the conservation strategy includes measures that will be implemented outside of the statutory Delta to complement regional conservation planning efforts underway in Yolo, Solano, Contra Costa, San Joaquin, and Sacramento Counties.

Because the California State Water Project and CVP water infrastructure is operated in coordination, the effects of implementing the BDCP may extend to aquatic systems beyond the Delta, both upstream and downstream. Therefore, the BDCP effects analysis considers these potential upstream and downstream aquatic effects, both positive and negative, to ensure that the overall effects of the BDCP are sufficiently described, analyzed, and addressed.

The Applicants have requested permits that will authorize take of 19 animals listed as threatened or endangered under the ESA, and 19 animals that are not currently listed under the Act. The following four listed species are proposed for coverage under the NMFS permit: Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU); Central Valley spring-run chinook salmon (*O. tshawytscha*) ESU; Central Valley steelhead (*O. mykiss*) ESU; and the Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*). The following 15 listed species are proposed for coverage under the FWS permit: Delta smelt (*Hypomesus transpacificus*); riparian brush rabbit (*Sylvilagus bachmani riparius*); riparian woodrat (*Neotoma fuscipes riparia*); salt marsh harvest mouse (*Reithrodontomys raviventris*); San Joaquin kit fox (*Vulpes macrotis mutica*); California clapper rail (*Rallus longirostris obsoletus*); least Bell's vireo (*Vireo bellii pusillus*); giant garter snake (*Thamnophis gigas*); California red-legged frog (*Rana draytonii*); California tiger salamander, Central Valley DPS (*Ambystoma californiense*); conservancy fairy shrimp (*Branchinecta conservatio*); longhorn fairy shrimp (*Branchinecta longiantenna*); Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); vernal pool fairy shrimp (*Branchinecta lynchi*); and vernal pool tadpole shrimp (*Lepidurus packardii*).

The proposed Plan and FWS and NMFS permits would also cover 19 animal species that are not currently listed under the ESA: Chinook salmon, Central Valley fall and late fall run ESU (*Oncorhynchus tshawytscha*); longfin

smelt (*Spirinchus thaleichthys*); Sacramento splittail (*Pogonichthys macrolepidotus*); white sturgeon (*Acipenser transmontanus*); Pacific lamprey (*Entosphenus tridentatus*); river lamprey (*Lampetra ayresii*); Suisun shrew (*Sorex ornatus sinuosus*); California black rail (*Laterallus jamaicensis coturniculus*); greater sandhill crane (*Grus canadensis tabida*); Suisun song sparrow (*Melospiza melodia maxillaries*); Swainson's hawk (*Buteo swainsoni*); tricolored blackbird (*Agelaius tricolor*); western burrowing owl (*Athene cunicularia hypugaea*); western yellow-billed cuckoo (*Coccyzus americanus occidentalis*); white-tailed kite (*Elanus leucurus*); yellow-breasted chat (*Icteria virens*); western pond turtle (*Actinemys marmorata*); California linderiella (*Linderiella occidentalis*); and midvalley fairy shrimp (*Branchinecta mesovallensis*). The proposed permit also would include the following two federally listed plant species: Soft bird's-beak (*Cordylanthus mollis ssp. mollis*); and Suisun thistle (*Cirsium hydrophilum var. hydrophilum*).

If the proposed applications are approved and the permits are issued, take authorization of covered listed species would be effective at the time of permit issuance. Take of the currently non-listed covered species would be authorized concurrent with the species' listing under the ESA, should they be listed during the permit period. The proposed Plan is intended to be a comprehensive document that would provide for projects that protect and restore ecosystem health and water supply reliability, to proceed within a stable regulatory environment.

In order to comply with the requirements of the Federal ESA, the proposed Plan addresses a number of elements, including: Species and habitat goals and objectives; an evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed animal species.

Activities proposed for incidental take coverage include all Plan activities related to the development and operation of water conveyance infrastructure; habitat protection, restoration, creation, and enhancement; and other conservation measures to address important stressors in the aquatic environment. The conservation measures were developed to achieve a

package of landscape-scale, natural community, and species biological goals and objectives. The conservation measures fall into the following categories:

- Construction and operation of new water conveyance infrastructure.
- Operation of both existing and new water conveyance facilities in the Delta consistent with operational criteria in the Plan.
- Protection of existing functioning natural communities that are not currently protected.
- Restoration of specific natural communities in areas that do not currently support those communities.
- Improvement of existing habitat functions within existing natural communities.
- Ongoing management of natural communities and habitat for covered species to maximize the ecological function in the lands conserved by the Plan over the long term.
- Reduction of the adverse effects on covered fish species that result from specific stressors such as predation, toxic constituents in water or sediment, and illegal harvest.

The biological goals of this habitat conservation plan are: (1) To minimize and mitigate, to the maximum extent practicable, the effects on covered species of the activities proposed in this Plan; and (2) to provide for the conservation and management of covered species in the Plan Area. Restoration, protection, or enhancement of the following natural community types would be undertaken under the proposed Plan: Tidal freshwater and brackish emergent wetland; tidal perennial aquatic; transitional upland areas; seasonally inundated floodplain; channel margin; valley foothill riparian; grassland; vernal pool complex; alkali seasonal wetland complex; managed seasonal wetland; nontidal perennial emergent wetland and nontidal perennial aquatic; and cultivated lands. The Plan also intends to provide public benefits, including helping to prevent species from becoming threatened or endangered, improving ecosystem health, improving the reliability of water supplies, and reducing future risks to the Delta from earthquakes, levee failure, and climate change.

National Environmental Policy Act Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of proposed major Federal actions significantly affecting the quality of the human environment. The Federal actions for NMFS and FWS are the proposed

issuance of ESA section 10(a)(1)(B) take permits to the Applicants. Reclamation's proposed Federal action is to change operation of CVP facilities in the Delta consistent with the BDCP that would support implementation of coordinated operation of the CVP with the California State Water Project. Reclamation may also make decisions regarding wheeling CVP water through new Delta conveyance facilities, and implementing habitat restoration and monitoring actions proposed by the BDCP that are consistent with Reclamation's regulatory requirements, programs, authorities, and appropriations. A joint Draft EIR/EIS has been prepared to satisfy NEPA and the California Environmental Quality Act (California Public Resources Code, Section 21000 *et seq.*). NMFS, FWS, and Reclamation are Federal co-lead agencies under NEPA, and the California Department of Water Resources is the State lead agency under the California Environmental Quality Act.

The Draft EIR/EIS analyzes 16 alternatives, including the issuance of ITPs/authorizations and implementation of the proposed Plan, which is described above. In addition, as required by NEPA, the EIR/EIS identifies direct, indirect, and cumulative effects, and possible mitigation for those effects, on biological resources, land use, air quality, water quality, water resources, socioeconomic, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives.

No Action Alternative: Under the No Action Alternative, FWS and NMFS would not issue ITPs or incidental take authorizations for implementation of the BDCP, and Reclamation would continue to operate the CVP consistent with current management direction. As a result, the Applicants would likely seek individual incidental take authorization as needed for new projects and ongoing operations that would result in the take of federally listed species.

Action alternatives: Four main variables define each of the 15 action alternatives analyzed in the Draft EIR/EIS:

- Alignment and design of water conveyance (delivery) facilities.
- Operational guidelines.
- Water delivery capacity (from 3,000 to 15,000 cubic feet per second).
- Acreage of proposed habitat restoration and enhancement.

#### Public Meeting Information

Twelve public meetings will be held to provide an overview of the project and allow public comment and discussion:

1. Wednesday, January 15, 2014, 3 p.m. to 7 p.m., Fresno Convention and Entertainment Center, 848 M Street, Fresno, CA 93721.
2. Thursday, January 16, 2014, 3 p.m. to 7 p.m., Four Points by Sheraton, 5101 California Avenue, Bakersfield, CA 93309.
3. Tuesday, January 21, 2014, 3 p.m. to 7 p.m., University Plaza Waterfront Hotel, 110 W Fremont Street, Stockton, CA 95202.
4. Wednesday, January 22, 2014, 3 p.m. to 7 p.m., San Jose Marriott, 301 S. Market Street, San Jose, CA 95113.
5. Thursday, January 23, 2014, 3 p.m. to 7 p.m., Red Lion Hotel, 1830 Hilltop Drive, Redding, CA 96002.
6. Tuesday, January 28, 2014, 5 p.m. to 9 p.m., Hilton Garden Inn, 2200 Gateway Court, Fairfield, CA 94533.
7. Wednesday, January 29, 2014, 5 p.m. to 9 p.m., Jean Harvie Community Center, 14273 River Road, Walnut Grove, CA 95690.
8. Thursday, January 30, 2014, 3 p.m. to 7 p.m., Sheraton Grand Sacramento Hotel, 1230 J Street, Sacramento, CA 95814.
9. Tuesday, February 4, 2014, 3 p.m. to 7 p.m., Los Angeles Convention Center, 1201 S. Figueroa Street, Los Angeles, CA 90015.
10. Wednesday, February 5, 2014, 3 p.m. to 7 p.m., Ontario Convention Center, 2000 E. Convention Center Way, Ontario, CA 91764.
11. Thursday, February 6, 2014, 3 p.m. to 7 p.m., San Diego Convention Center, 111 West Harbor Drive, San Diego, CA 92101.
12. Wednesday, February 12, 2014, 3 p.m. to 7 p.m., Clarksburg Middle School, 52870 Netherlands Road, Clarksburg, CA 95612.

#### Public Comments

This notice is provided pursuant to ESA and NEPA, as amended. Submitting comments to the email and hard-copy addresses identified in the ADDRESSES section of this notice will constitute effective filing of the California Environmental Quality Act comments on the EIR portion of the EIR/EIS. NMFS, FWS, and Reclamation are furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record for this action. Comments on the Draft BDCP and/or Draft EIR/EIS should be

submitted to the address listed in the **ADDRESSES** section of this document. 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted to the above address will be reviewed and considered by all of the lead agencies.

#### Next Steps

The lead agencies will compile and review all public comments on the Draft BDCP and Draft EIR/EIS submitted to them prior to preparation of a final EIR/EIS. A permit decision by NMFS and FWS and a decision by Reclamation on CVP operations consistent with the BDCP, habitat restoration, and monitoring actions in the Delta will be made no sooner than 30 days after the publication of the final EIR/EIS and completion of the Record of Decision. A draft Implementing Agreement is still under preparation and will be made available to the public for review and comment in early 2014. It will be posted at [www.baydeltaconservationplan.com](http://www.baydeltaconservationplan.com) as soon as it is available.

Dated: December 9, 2013.

#### Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: December 4, 2013.

#### Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Fish and Wildlife Service.

Dated: December 2, 2013.

#### Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2013-29779 Filed 12-11-13; 4:15 pm]

**BILLING CODE 3510-22-P; 4310-MN-P; 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

#### Notice of Proposed Information Collection; Request for Comments for 1029-0114

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority to collect information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act (GPRA). The Office of Management and Budget (OMB) previously approved the collection and assigned it clearance number 1029-0114.

**DATES:** Comments on the proposed information collection must be received by February 11, 2014, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203-SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208-2783 or electronically at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), 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)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. 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 number for this collection of information is 1029-0114 and is on the forms along with the expiration date. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany

OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* Technical Evaluations Series.

*OMB Control Number:* 1029-0114.

*Summary:* The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

*Total Annual Responses:* 550.

*Total Annual Burden Hours:* 46.

Dated: December 5, 2013.

#### Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013-29737 Filed 12-12-13; 8:45 am]

**BILLING CODE 4310-05-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-847]

### Certain Mobile Phones and Tablet Computers, and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Briefing on the Issues Under Review and on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

**FOR FURTHER INFORMATION CONTACT:**

Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-5468. 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 June 8, 2012, based on a complaint filed by Nokia Corp., Nokia Inc., and Intellisync Corp. (collectively, “Nokia”). 77 FR 34063-64. The Commission’s notice of investigation named as respondents HTC Corporation; HTC America, Inc. (together, “HTC”); and Exedeia, Inc. (“Exedeia”). *Id.* Prior to receiving the complaint and notice of investigation, counsel for Exedeia announced that Exedeia had dissolved as a legal entity. The complaint and notice of investigation sent to Exedeia were returned as undeliverable, and no further action was taken to serve Exedeia. The Office of Unfair Import Investigations did not participate in this investigation.

Originally, Nokia asserted numerous claims from nine patents against HTC. Throughout the course of the investigation, several IDs terminated the investigation with respect to various patents and claims. *See* Order No. 9 (Feb. 7, 2013) (terminating the investigation with respect to U.S. Patent No. 7,366,529 because the patent was covered by an arbitration agreement), *not reviewed* (Mar. 11, 2013); Order No. 10 (Apr. 12, 2013) (terminating the investigation with respect to U.S. Patent

Nos. 7,106,293; 6,141,664; and 7,209,911 patents based on Nokia’s motion to withdraw the patents), *not reviewed* (Apr. 30, 2013); Order No. 14 (May 14, 2013) (terminating the investigation with respect to U.S. Patent No. 6,728,530 based on Nokia’s motion to withdraw the patent), *not reviewed* (May 29, 2013); Order No. 33 (June 13, 2013) (terminating the investigation with respect to U.S. Patent No. 5,570,369 based on Nokia’s motion to withdraw the patent), *not reviewed* (July 12, 2013). By the time of the final ID, Nokia asserted only claim 1 of U.S. Patent No. 5,884,190 (“the ‘190 patent”); claims 6, 8, 10, and 11 of U.S. Patent No. 6,393,260 (“the ‘260 patent”); and claims 2, 18, 19, 21, and 23 of U.S. Patent No. 7,415,247 (“the ‘247 patent”).

On May 2, 2013, the ALJ issued an initial determination (Order 13) finding that HTC could not establish its defense of patent exhaustion. Nokia and HTC both petitioned for review of Order 13. On June 4, 2013, the Commission determined to review Order 13, and stated that it would render its final disposition on Order 13 in conjunction with the final disposition of the final initial determination in this investigation. Accordingly, Order 13 remains under review.

On September 23, 2013, the presiding ALJ issued his final ID, finding a violation of section 337 with respect to claims 6, 8, 10, and 11 of the ‘260 patent and claims 18, 19, 21, and 23 of the ‘247 patent, and finding no violation with respect to the ‘190 patent and claim 2 of the ‘247 patent. The ALJ recommended that a limited exclusion order issue against all infringing articles imported, sold for importation, or sold after importation by HTC. The ALJ also recommended that a cease-and-desist order issue against HTC.

On October 23, 2013, HTC filed a petition for review challenging several grounds for the ALJ’s determination that HTC violated section 337. On October 31, 2013, Nokia filed a response in opposition to HTC’s petition.

Having examined the record of this investigation, including the ALJ’s final ID, the petition for review, and the response thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ’s findings on claim construction, infringement, and the technical prong of the domestic industry requirement for the limitations “balance adjustment means” of the ‘260 patent and “different radio interfaces”/ “different radio communications systems” of the ‘247 patent. The Commission has determined to review the ALJ’s remaining findings on

infringement and the technical prong of the domestic industry requirement for the ‘247 patent. The Commission has also determined to review the striking of the testimony and witness statements of Dr. Colyannides. The Commission has determined not to review the remaining findings in the ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in briefing on the following issues:

1. Whether the phrase “comprising transistors, or implemented using a variable voltage source” is an appropriate modifier of the corresponding structure for the phrase “balance adjustment means” in the ‘260 patent.

2. Whether Nokia’s evidence with regards to the use of transistors in calibration is sufficient to establish HTC’s infringement of the “balance adjustment means” limitation in the ‘260 patent.

3. Whether Nokia abandoned its contentions with respect to claims 18 and 19 of the ‘247 patent by failing to set forth with particularity HTC’s infringement of the claim limitation “an input for receiving a digital baseband quadrature signal representing an information signal to be transmitted” in Nokia’s pre-hearing brief.

4. Whether a person of ordinary skill in the art, reading the phrase “different radio communications systems” in the context of the limitation “wherein said mixer is common for processing signals for transmission in at least two different radio communication systems, and wherein said transmitter amplifier is common for amplifying carrier frequency signals for transmission to at least two different radio communications systems . . .” in light of the specification and prosecution history of the ‘247 patent, would have understood that the disclosed common mixer and common transmitter amplifier could be utilized with radio communications systems that differed in ways other than by frequency band.

5. Whether the Federal Circuit’s decision in *Lifescan Scotland, Ltd. v. Shasta Techs., LLC*, 734 F.3d 1361 (Fed. Cir. 2013), or any other relevant court decisions, affects HTC’s defense of patent exhaustion based on the transfer of rights under the Nokia-Qualcomm agreement.

The parties have been invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which

are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. The Commission is particularly interested in briefing on the following issues:

1. HTC's statement on the public interest contends that the Qualcomm Magellan and Odyssey transceiver chips have become a *de facto* standard in the mobile devices industry. What evidence exists to support or refute HTC's contention? If HTC is correct, please discuss any evidence regarding whether the exclusion of HTC devices containing the Qualcomm Magellan and Odyssey chips raise any concerns similar to those raised by some commentators regarding patent hold-up in the FRAND-encumbered standards-essential patent context?

2. Several entities submitted statements on the public interest asserting that the Commission should consider in its public interest analysis the fact that HTC's accused products are

complex devices comprising numerous components, whereas Nokia's infringement allegations are directed to a single component of the accused devices. How (if at all) should the Commission consider such a factor in determining whether to issue such a remedy or in fashioning an appropriate remedy in this investigation?

3. How (if at all) should Nokia's covenant not to sue Qualcomm over the asserted patents affect the Commission's consideration of the public interest in determining whether to issue a remedy against HTC based on the functionality of Qualcomm components or in fashioning an appropriate remedy in this investigation?

4. Several entities submitted statements on the public interest asserting that there should be a transition period for any remedy issued against HTC. Please explain and provide evidence regarding whether such a transition period is warranted in this investigation. Additionally, please explain and provide evidence regarding the appropriate duration for any such transition period.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The entirety of the parties' written submissions must not exceed 75 pages, and must be filed no later than close of business on December 23, 2013. Reply submissions must not exceed 50 pages, and must be filed no later than the close of business on January 6, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-847") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46).

By order of the Commission.

Issued: December 9, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013-29738 Filed 12-12-13; 8:45 am]

**BILLING CODE 7020-02-P**

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## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

#### Commencement of Claims Program

**AGENCY:** Foreign Claims Settlement Commission of the United States, Department of Justice.

**ACTION:** Notice

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**SUMMARY:** This notice announces the commencement by the Foreign Claims Settlement Commission ("Commission") of a program for adjudication of certain categories of

claims of United States nationals against the Government of Libya, as defined below, which were settled under the "Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya" ("Claims Settlement Agreement") effective August 14, 2008.

**DATES:** These claims can now be filed with the Commission and the deadline for filing will be June 13, 2014.

**FOR FURTHER INFORMATION CONTACT:** Brian M. Simkin, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street NW., Room 6002, Washington, DC 20579, Tel. (202) 616-6975, FAX (202) 616-6993.

### Notice of Commencement of Claims Adjudication Program

Pursuant to the authority conferred upon the Secretary of State and the Commission under subsection 4(a)(1)(C) of Title I of the International Claims Settlement Act of 1949 (Pub. L. 455, 81st Cong., approved March 10, 1950, as amended by Pub. L. 105-277, approved October 21, 1998 (22 U.S.C.

1623(a)(1)(C))), the Foreign Claims Settlement Commission hereby gives notice of the commencement of a program for adjudication of certain categories of claims of United States nationals against the Government of Libya. These claims, which have been referred to the Commission by the Department of State by letter dated November 27, 2013, are defined as follows:

**Category A:** This category shall consist of claims of U.S. nationals for physical injury who had claims in the Pending Litigation, but whose claims for physical injury were previously denied by the Commission for failure to plead for injury other than emotional injury alone in the Pending Litigation, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claimant was a named party in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement and does not qualify for any other category of compensation in this referral except Category D.

**Category B:** This category shall consist of claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant in the Pending Litigation; (2) the claim meets the standard adopted by the Commission for mental pain and anguish; (3) the claimant is not eligible for compensation as part of the associated wrongful death claim; and (4) the claimant has not received any compensation under any other

distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

**Category C:** This category shall consist of claims of U.S. nationals who were held hostage or unlawfully detained in violation of international law during one of the terrorist incidents listed in Attachment 2 ("Covered Incidents"), provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claim meets the standard for such claims adopted by the Commission; and (3) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

**Category D:** This category shall consist of claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by the Department of State's January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to the Department of State's January 15, 2009 referral or this referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the claimant did not make a claim or receive any compensation under Category D of the Department of State's January 15, 2009 referral.

**Category E:** This category shall consist of claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claim meets the standard adopted by the Commission for mental pain and anguish; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

**Category F:** This category shall consist of commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.

The "Pending Litigation" referenced above is composed of the following cases:

*Baker v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 03-cv-749;

*Pflug v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-505.

*Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-731.

*Clay v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-707.

*Collett v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 01-cv-2103.

*Cummock v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2134.

*Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727;

*Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.

*Fisher v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-2055.

*Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.

*Hagerman v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2147.

*Harris v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-732.

*Hartford Fire Insurance Company v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 98-cv-3096.

*Kilburn v. Islamic Republic of Iran, et al.* (D.D.C.) 01-cv-1301.

*Knowland v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-1309.

*La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 05-cv-1932.

*McDonald v. Socialist People's Arab Jamahiriya* (D.D.C.) 06-cv-729.

*MacQuarrie v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-176.

*Patel v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-626.

*Pugh v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2026.

*Simpson v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 00-cv-1722.

*Beecham, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al.* (D.D.C.) 01-cv-2243.

The "Covered Incidents" referenced above for purposes of Category C are composed of the following:

May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.

December 17, 1983 vehicle bomb explosion near Harrods Department Store in Knightsbridge, London, England, as alleged in *McDonald v. Socialist People's Arab Jamahiriya* (D.D.C.) 06-cv-729.

November 30, 1984 (approximate) kidnapping and subsequent death of Peter C. Kilburn, as alleged in *Kilburn v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 01-cv-1301.

March 25, 1985 (approximate) kidnapping and subsequent death of Alec L. Collett, as alleged in *Collett v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 01-cv-2103.

November 23, 1985 hijacking of Egypt Air flight 648, as alleged in *Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-731 and *Baker v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 03-cv-749/Pflug v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-505.

December 27, 1985 attack at the Leonardo da Vinci Airport in Rome, Italy, as alleged in *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727/*Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.

December 27, 1985 attack at the Schwechat Airport in Vienna, Austria, as alleged in *Knowland v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-1309.

April 5, 1986 bombing of the La Belle Discotheque in Berlin, Germany, as alleged in *Clay v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-707 and *Harris v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-732.

September 5, 1986 hijacking of Pan Am flight 73, as alleged in *Patel v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-626.

Detention beginning February 10, 1987 of the passengers and crew of the private yacht "Carin 11," as alleged in *Simpson v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 00-cv-1722.

December 21, 1988 bombing of Pan Am flight 103, as alleged in *Cummock v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2134, *Fisher v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-2055, *Hagerman v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2147, *Hartford Fire Insurance Company v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 98-cv-3096, and *MacQuarrie v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-176.

September 19, 1989 bombing of UTA flight 772, as alleged in *La Reunion Aerienn v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 05-cv-1932 and *Pugh v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2026.

In conformity with the terms of the referral, the Commission will determine the claims in accordance with the provisions of 22 U.S.C. 1621 *et seq.*, which comprises Title I of the International Claims Settlement Act of 1949, as amended. The Commission will then certify to the Secretary of the Treasury those claims that it finds to be valid, for payment out of the claims fund established under the Claims Settlement Agreement.

The Commission will administer this claims adjudication program in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR part 500 *et seq.*). In particular, attention is directed to subsection 500.3(a) of these regulations which, based on 22 U.S.C. 1623(f), limits the amount of attorney's fees that may be charged for legal representation before the Commission. These regulations are also available over the Internet at <http://www.gpoaccess.gov/cfr/index.html>.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105-0100, expiration date 11/30/2016.

**Brian M. Simkin,**  
Chief Counsel.

[FR Doc. 2013-29710 Filed 12-12-13; 8:45 am]

BILLING CODE 4410-01-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan Regulation

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Loans to Plan Participants and Beneficiaries Who Are Parties In Interest With Respect to the Plan Regulation," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Submit comments on or before January 13, 2014.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201311-1210-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-1210-001) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-6881 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** The ICR seeks to maintain PRA authority to conduct information collections contained in the regulation related to plan participants and beneficiaries who are parties in interest with respect to the plan, 29 CFR 2550.408b-1. The Employee Retirement Income Security Act (ERISA) prohibits a plan fiduciary from causing the plan to engage in a transaction, if the fiduciary knows or should know the transaction constitutes a direct or indirect loan or extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts from this prohibition a loan from a plan to a party in interest who is also a plan participant or beneficiary, provided satisfaction of certain requirements. DOL regulations implementing the statutory provision provide additional guidance. Specifically, regulations 29 CFR 2550.408b-1(d) prescribes eight specific provisions that must be included in the plan documents, including: (1) An explicit authorization for the plan fiduciary responsible for investing plan assets to establish such a loan program, (2) the identity of the person or position authorized to administer the program, (3) a procedure for applying for loans, (4) the basis on which loans will be approved or denied, (5) limitations, if any, on the types and amounts of loans offered, (6) the procedure for determining a reasonable interest rate, (7) types of collateral that may secure a participant loan, and (8) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0076.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that

existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2013.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0076. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Loans to Plan Participants and Beneficiaries Who Are Parties In Interest With Respect to the Plan Regulation.

*OMB Control Number:* 1210–0076.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 2,500.

*Total Estimated Number of Responses:* 2,500.

*Total Estimated Annual Burden Hours:* 0.

*Total Estimated Annual Other Costs Burden:* \$946,000.

Dated: December 6, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–29728 Filed 12–12–13; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Welding, Cutting, and Brazing Standard

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, “Welding, Cutting, and Brazing Standard,” to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Submit comments on or before January 13, 2014.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201310-1218-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201310-1218-002) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to maintain PRA authorization for the information collection requirements

contained in the Welding, Cutting, and Brazing Standard, regulations 29 CFR part 1910, subpart Q. More specifically, regulations 29 CFR 1910.255(e) requires that a periodic inspection of resistance welding equipment be made by qualified maintenance personnel and a certification record generated and maintained. The certification shall include the date of the inspection, the signature of the person who performed the inspection and the serial number, or other identifier, for the equipment inspected. The maintenance inspection ensures that welding equipment is in safe operating condition, while the maintenance record provides evidence that employers performed the required inspections. The Occupational Safety and Health Act authorizes this information collection. *See* 29 U.S.C. 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0207.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 28, 2013.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0207. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
  - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - Enhance the quality, utility, and clarity of the information to be collected; and
  - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- Agency:* DOL-OSHA.  
*Title of Collection:* Welding, Cutting, and Brazing Standard.  
*OMB Control Number:* 1218-0207.  
*Affected Public:* Private Sector—businesses or other for-profits.  
*Total Estimated Number of Respondents:* 20,094.  
*Total Estimated Number of Responses:* 80,657.  
*Total Estimated Annual Burden Hours:* 5,635.  
*Total Estimated Annual Other Costs Burden:* \$0.

Dated: December 6, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013-29727 Filed 12-12-13; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

#### Permanent Membership

Chair—Deputy Secretary—Seth D. Harris

Vice-Chair—Assistant Secretary for Administration and Management—T. Michael Kerr

Alternate Vice-Chair—Director, Human Resources Center—Sydney T. Rose

Executive Secretary—Director,  
 Executive Resources—Kim L.H. Green  
 Performance Officer—Director,  
 Performance Management Center—  
 Holly A. Donnelly

#### Rotating Membership

ASP James H. Moore, Deputy Assistant Secretary for Operations and Analysis—*appointment expires on 09/30/16*

BLS Jay A. Mousa, Associate Commissioner for Office of Field Operations—*appointment expires 09/30/2016*

EBSA Jonathan Kay, Regional Administrator, (New York)—*appointment expires 09/30/14*

MSHA Patricia W. Silvey, Deputy Assistant Secretary for Operations—*appointment expires on 09/30/16*

OASAM Charlotte A. Hayes, Deputy Assistant Secretary for Policy—*appointment expires on 09/30/16*

OASAM Naomi M. Barry-Perez, Director, Civil Rights Center—*appointment expires on 09/30/16*

OCFO Karen Tekleberhan, Deputy Chief Financial Officer—*appointment expires 09/30/14*

OFCCP Debra A. Carr, Division of Policy, Planning and Program Development—*appointment expires on 09/30/16*

OFCCP Diana S. Sen, Regional Director, New York—*appointment expires on 09/30/16*

OLMS Stephen J. Willertz, Director, Office of Enforcement and International Union Audits—*appointment expires on 09/30/2016*

OWCP Antonio A. Rios, Director, Longshore and Harbor Workers' Compensation Program—*appointment expires on 09/30/2016*

SOL Michael D. Felsen, Regional Solicitor, Boston—*appointment expires on 09/30/16*

SOL Jeffrey L. Nesvet, Associate Solicitor for Division of Federal Employees' and Energy Workers' Compensation—*appointment expires on 09/30/16*

WB Joan Y. Harrigan-Farrelly, Deputy Director—*appointment expires on 09/30/16*

WHD Patricia J. Davidson, Deputy Administrator, Office of Program Operations—*appointment expires on 09/30/16*

WHD Cynthia C. Watson, Regional Administrator (Dallas)—*appointment expires 9/30/14*

**FOR FURTHER INFORMATION CONTACT:** Ms. Kim L.H. Green, Director, Office of Executive Resources, Room N2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW., Washington, DC 20210, telephone: (202) 693-7642.

Signed at Washington, DC, on 25th day of November.

**Thomas E. Perez,**

*Secretary of Labor.*

[FR Doc. 2013-29535 Filed 12-12-13; 8:45 am]

**BILLING CODE 4510-23-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Comment Request for Information Collection for the ETA 586, Interstate Arrangement for Combining Employment and Wages; Extension Without Change

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the proposed extension, without change, of the report for the Interstate Arrangement for Combining Employment and Wages, Form ETA 586.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before February 11, 2014.

**ADDRESSES:** Submit written comments to John Schuettinger, Office of Unemployment Insurance, Room S-4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202-693-2680 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). A copy of the proposed information collection request (ICR) can be obtained by contacting the person listed above.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Background: Section 3304(a)(9)(B), of the Internal Revenue Code (IRC) of 1986, requires states to participate in an arrangement for combining employment and wages covered under the different state laws for the purpose of determining unemployed workers' entitlement to unemployment compensation. The Interstate Arrangement for Combining Employment and Wages for combined wage claims (CWC), promulgated at 20 CFR 616, requires the prompt transfer of all relevant and available employment and wage data between states upon request. The Benefit Payment Promptness Standard, 20 CFR 640, requires the prompt payment of unemployment compensation including benefits paid under the CWC arrangement. The ETA 586 report provides the ETA/Office of Unemployment Insurance with information necessary to measure the scope and effect of the CWC program and to monitor the performance of each state in responding to wage transfer data requests and the payment of benefits.

## II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## III. Current Actions

This information is necessary in order for ETA to analyze program performance, know when corrective action plans are needed, and to target technical assistance resources. Without this report, it would be impossible for the ETA to identify claims and benefit activity under the CWC program and carry out the Secretary's responsibility for program oversight.

*Type of Review:* Extension Without Revisions.

*Title:* Interstate Arrangement for Combining Employment and Wages.

*OMB Number:* 1205-0029.

*Affected Public:* State Workforce Agencies.

*Estimated Total Annual Respondents:* 53.

*Estimated Total Annual Responses:* 212.

*Estimated Total Annual Burden Hours:* 848.

*Total Estimated Annual Other Costs Burden:* \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC, this 5th day of December, 2013.

**Eric M. Seleznow,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2013-29743 Filed 12-12-13; 8:45 am]

**BILLING CODE 4510-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71028; File No. SR-NASDAQ-2013-149]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NOM Penny and Non-Penny Pilot Options

December 9, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2 governing pricing for NASDAQ members using the NASDAQ

Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the NOM Market Maker<sup>3</sup> Non-Penny Pilot Options<sup>4</sup> Fee for Removing Liquidity and the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options.<sup>5</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on December 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of

<sup>3</sup> The term "NOM Market Maker" means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

<sup>4</sup> This would include options on Nasdaq-100 Index ("NDX"). For transactions in NDX, a surcharge of \$0.10 per contract will be added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

<sup>5</sup> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2013. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); and 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082). See also NOM Rules, Chapter VI, Section 5.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM.

The Exchange proposes to increase the NOM Market Maker Fee for Removing Liquidity in Non-Penny Pilot

Options from \$0.85 to \$0.86 per contract. The Exchange believes that despite the increase to the Fee for Removing Liquidity the Exchange continues to offer competitive rates to NOM Market Makers.

The Exchange proposes to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tiers. Today, the Exchange offers a four-tiered Rebate to Add Liquidity in Penny Pilot Options to NOM Market Makers as follows:

Monthly volume		Rebate to add liquidity
Tier 1 .....	Participant adds NOM Market Maker liquidity in Penny Pilot Options of up to 29,999 contracts per day in a month.	\$0.25.
Tier 2 .....	Participant adds NOM Market Maker liquidity in Penny Pilot Options of 30,000 to 59,999 contracts per day in a month.	\$0.30.
Tier 3 .....	Participant adds NOM Market Maker liquidity in Penny Pilot Options of 60,000 to 79,999 contracts per day in a month.	\$0.32.
Tier 4 .....	Participant adds NOM Market Maker liquidity in Penny Pilot Options of 80,000 or more contracts per day in a month.	\$0.32 or \$0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY.

The Exchange is proposing to amend the qualification for NOM Market Maker Penny Pilot rebate Tiers 1 through 4 to provide that Participants may qualify for each tier by adding NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options. The Exchange would continue to pay the rebates for each volume tier on transactions in Penny Pilot Options. This amendment would only impact a Participant's ability to qualify for a certain rebate tier. The Exchange anticipates that this amendment would provide an opportunity for Participants to qualify for higher rebate tiers for their NOM Market Maker liquidity.

The Exchange is also proposing to add a new Tier 5 rebate to the Penny Pilot Rebates to Add Liquidity. The Exchange proposes to pay \$0.40 per contract to a Participant that adds NOM Market Maker liquidity of 40,000 or more contracts per day in a month in Penny Pilot Options and/or Non-Penny Pilot Options and also qualifies for Tier 7 or 8 of the Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange believes the opportunity to earn a higher rebate will encourage Participants to direct a greater amount of NOM Market Maker liquidity to NOM.

The Exchange also proposes to relocate certain text in the fee schedule. The Exchange proposes to relocate the following text: "# The NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below." The Exchange would place the text above the NOM Market Maker tiers in the fee schedule for ease of reference.

2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>7</sup> 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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to increase the NOM Market Maker Fee for Removing Liquidity from \$0.85 to \$0.86 per contract is reasonable because the rate remains competitive with other Non-Penny Pilot Fees for Removing Liquidity. The increase also permits the Exchange to support providing liquidity rebates to Participants executing NOM Market Maker orders.

The Exchange's proposal to increase the NOM Market Maker Fee for Removing Liquidity from \$0.85 to \$0.86 per contract is equitable and not unfairly discriminatory because the rate remains competitive with other Non-Penny Pilot Fees for Removing Liquidity. NOM Market Makers would continue to be assessed a lower fee as compared to other non-Customer Participants.<sup>8</sup> NOM Market Makers have obligations to the market and regulatory

requirements,<sup>9</sup> which normally do not apply to other market participants. A NOM Market Maker has an obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. Customers would continue to be assessed the lowest fee of \$0.82 per contract. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity.

The Exchange's proposal to amend the qualifications for the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options is reasonable because by providing Participants the opportunity to add NOM Market Maker Penny and/or Non-Penny Pilot Option liquidity to qualify for a rebate tier provides a greater opportunity to qualify for higher rebate tiers. The Exchange would continue to only pay rebates on Penny Pilot volume. By incentivizing Participants to select the Exchange as a venue to post NOM Market Maker liquidity will benefit market

<sup>9</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>8</sup> All other non-Customer market participants (Professionals, Firms, Non-NOM Market Makers and Broker-Dealers) would continue to be assessed \$0.89 per contract.

participants through increased order interaction.

The Exchange's proposal to amend the qualifications for the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because this amendment will be applied to all Participants in a uniform manner. In addition, Participants should continue to qualify for the rebates that they currently receive and may earn increased rebates by qualifying for a higher volume tier as a result of combining Penny and Non-Penny Pilot NOM Market Maker liquidity to qualify for the rebate. The proposal does not misalign the current rebate structure. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting<sup>10</sup> and the commitment of capital. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange also believes that including Non-Penny volume in calculating on the various NOM Market Maker rebate tiers is equitable and not unfairly discriminatory because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals.<sup>11</sup>

The Exchange believes that continuing to offer NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all Participants may qualify for the NOM Market Maker

rebate tiers and every Participant is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive the same rebate in Tier 1 as compared to Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations<sup>12</sup> borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction.

The Exchange's proposal to offer a new Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity is reasonable because the new rebate should incentivize Participants to select the Exchange as a venue to post NOM Market Maker liquidity. This added liquidity will benefit market participants through increased order interaction.

The Exchange's proposal to offer a new Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because this amendment will be applied to all Participants in a uniform manner.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ 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. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction. Also, NOM Market Makers have obligations<sup>13</sup> to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to such higher rebates. Permitting Participants to add either Penny or Non-Penny Pilot Market Maker liquidity should further encourage NOM Market Makers to post liquidity on NOM.

The proposed amendments do not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals. The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed

pricing incentives contributes to the overall health of the market place for the benefit of all Participants that willing choose to transact options on NOM. In addition, NOM Market Makers will have the opportunity to earn even higher rebates. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition.

Additionally, NOM Market Maker would continue to be assessed a lower Non-Penny Pilot Fee for Removing Liquidity as compared to other non-Customer Participants.<sup>14</sup> Customers would continue to be assessed the lowest Non-Penny Pilot Fee for Removing Liquidity fee because of the benefits that Customer order flow brings to other market participants through increased liquidity.

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

#### *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.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

<sup>14</sup> All other non-Customer market participants (Professionals, Firms, Non-NOM Market Makers and Broker-Dealers) would continue to be assessed \$0.89 per contract.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> See note 9.

<sup>11</sup> The Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options is the same rebate as the Tier 1 Customer and Professional rebate in Penny Pilot Options. The Exchange pays the highest Tier 1 Rebates to Add Liquidity in Penny Pilot Options of \$0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants. Firms, Non-NOM Market Makers and Broker-Dealers receive a \$0.10 per contract Penny Pilot Option Rebate to Add Liquidity. In addition, Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of \$0.20 per contract.

<sup>12</sup> See note 9.

<sup>13</sup> See note 9.

whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-149 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-149. 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-NASDAQ-2013-149, and should be submitted on or before January 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-29740 Filed 12-12-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71029; File No. SR-NYSE-2013-67]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change to Amend the Quantitative Continued Listing Standards Applicable to Companies Listed Under Sections 102.01C and 103.01B of the Listed Company Manual

December 9, 2013.

#### I. Introduction

On October 8, 2013, the New York Stock Exchange, LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the quantitative continued listing standards applicable to companies listed under one of the financial standards of Sections 102.01C and 103.01B of the Exchange's Listed Company Manual ("Manual"). The proposed rule change was published for comment in the **Federal Register** on October 25, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend the continued listing standards in Section 802.01B of the Manual. Under current Exchange initial listing rules, companies applying to list equity securities on the NYSE must meet one of the specific financial standards,<sup>4</sup> in addition to the other listing requirements set out in Section 102.00 for domestic companies and Section 103.00 for non-U.S. companies. Once listed, companies have to meet the Exchanges continued listing criteria set out in Section 802.01 of the

Manual. In addition to the other minimum continued listing requirements that apply to capital or common stock,<sup>5</sup> companies with such securities listed on the Exchange must also meet certain quantitative financial continued listing standards which correspond to the standard under which the securities were initially listed.<sup>6</sup> There are currently four different financial continued listing standards which apply to the capital or common stock of a listed company, depending under which standard it was originally listed.<sup>7</sup>

A company that qualified to list under the Earnings Test or Assets and Equity Test, would be considered to be below compliance if over a consecutive 30 trading-day period, the average global market capitalization of its securities is less than \$50,000,000 and the total stockholders' equity is less than \$50,000,000.<sup>8</sup>

A company qualifying to list under the Valuation/Revenue with Cash Flow Test, would be considered to be below compliance if (A) over a consecutive 30 trading-day period, the average global market capitalization of its securities is less than \$250,000,000 and the total revenues are less than \$20,000,000 over the last 12 months (unless the listed company qualifies as an original listing under one of the other original listing standards) or (B) the average global market capitalization over a consecutive 30 trading-day period is less than \$75,000,000.

A company that qualified to list under the Pure Valuation/Revenue Test would be considered to be below compliance if (A) over a consecutive 30 trading-day period, the average global market capitalization of the company's securities is less than \$375,000,000 and

<sup>5</sup> See Section 802.01A of the Manual (distribution criteria for capital or common stock); Section 802.01C of the Manual (maintaining a stock price on a 30-day average basis of \$1.00 per share); and Section 802.01B (stating that "the Exchange will promptly initiate suspension and delisting procedures with respect to a company that is listed under any financial standard set out in Sections 102.01C or 103.01B if a company is determined to have average global market capitalization over a consecutive 30 trading-day period of less than \$15,000,000, regardless of the original standard under which it listed"). See also Section 802.01D of the Manual (listing other additional criteria for continued listing). The Commission notes that the Exchange has represented that the continued listing standards would apply to American Depositary Receipts.

<sup>6</sup> See Section 802.01B of the Manual.

<sup>7</sup> See Sections 802.01B(I), (II), (III) and (IV) of the Manual. The filing states that these continued listing standards apply to operating companies, however, the Commission notes that the Manual does not specifically refer to the term operating companies.

<sup>8</sup> See Section 802.01B(I) of the Manual.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 70728 (October 25, 2013), 78 FR 64043.

<sup>4</sup> See Section 102.01C of the Manual (for domestic issuers) and Section 103.01B (for non-U.S. issuers). See also note 7, *infra*.

the total revenues are less than \$15,000,000 over the last 12 months (unless the listed company qualifies as an original listing under one of the other original listing standards<sup>9</sup> or (B) the average global market capitalization over a consecutive 30 trading-day period is less than \$100,000,000.<sup>10</sup>

Finally, listed companies that originally listed under the Affiliated Company Test would be considered to be below compliance if (A) the parent or affiliated company ceases to control the listed company, or the listed company's parent or affiliated company falls below the applicable continued listing standards and (B) over a consecutive 30 trading-day period, the average global market capitalization of the company's securities is less than \$75,000,000 and the total stockholders' equity is less than \$75,000,000.<sup>11</sup>

The Exchange proposes to delete these four current continued listing standards, and to use one continued listing standard, which is identical to the one currently applicable to companies listing under the Earnings Test and Assets and Equity Test. Under the proposal, a listed company will be considered to be below compliance if its average global market capitalization over a consecutive 30 trading-day period is less than \$50,000,000 and, at the same time, the stockholders' equity is less than \$50,000,000.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Act,<sup>12</sup> which among other things, requires 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair

discrimination between customers, issuers, brokers or dealers.<sup>13</sup>

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Exchange proposes to delete the current four separate tracks of continued listing standards and replace them with one continued listing standard applicable to all operating companies listing their capital or common stock, regardless of the initial listing standard that the company originally qualified for listing under. Listed companies would still be required to meet, and comply with, other standards, such as the distribution criteria,<sup>14</sup> price criteria,<sup>15</sup> and the minimum market capitalization requirement.<sup>16</sup> The Exchange stated its belief that it would be fairer to use a single continued listing standard that would apply to all operating companies (for the listing of their capital or common stock), since under the current rules a listed security may be below its applicable continued listing standards and deemed non-compliant or delisted notwithstanding that it would have remained compliant if another continued listing standard applied. The Exchange noted that this creates the anomalous result that two companies that have identical quantitative characteristics would be treated differently based on how it originally qualified to list, which could have been

many years ago. According to the Exchange, the approach of assigning different quantitative continued listing requirements to companies that originally listed under different listing standards was adopted in 2004<sup>17</sup> and the quality of listed companies has not been enhanced by this approach. The Exchange represented that a review of data over a period of five years indicates that all of the securities that were delisted under the current applicable standard would have been delisted under the proposed standard, or the other applicable minimum listing criteria.<sup>18</sup> We note that under the Exchange's proposal, the additional minimum listing criteria is remaining unchanged and will continue to apply.<sup>19</sup>

After careful consideration, the Commission finds that the proposal is consistent with the requirements of the Act. The Commission believes that the proposal is not designed to permit unfair discrimination between issuers since under the proposal, all operating companies listing common or capital stock on the Exchange will be subject to the same financial continued listing standards. To the extent other types of listed securities, such as debt, and other types of issuers, such as trusts and partnerships, have different continued listing standards, these differences are based on the different type, and characteristics of those securities and issuers, and those differences currently exist and have been previously approved by the Commission consistent with the requirements of the Act.

The Commission has also considered whether the proposed changes will continue to ensure that only those companies with adequate market depth and liquidity can continue to trade on the Exchange so that fair and orderly markets can be maintained, consistent with investor protection and the public interest under Section 6(b)(5) of the Act. In this regard, we note that the Exchange represented that 87% of the operating companies currently listed on the Exchange are already subject to a continued listing standard which is identical to the proposed continued listing standard. As a result, for these listed companies the proposed continued listing standard will have no change as to their continued listing

<sup>17</sup> The Commission notes that prior to the 2004 change in continued listing standards, the Exchange's continued listing requirements generally applied to all companies, except for a separate standard for companies qualifying for the global market capitalization standard.

<sup>18</sup> See note 5, *supra*. In particular, the Exchange was referring to the \$1 per share price requirement and the \$15 million minimum global market capitalization requirement.

<sup>19</sup> See note 5, *supra*.

<sup>13</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Section 802.01A of the Manual.

<sup>15</sup> See Section 802.01C of the Manual.

<sup>16</sup> See Section 802.01B of the Manual (requiring average global market capitalization over a consecutive 30 trading-day period of \$15,000,000).

<sup>9</sup> See Section 802.01B(II) of the Manual.

<sup>10</sup> See Section 802.01B(III) of the Manual.

<sup>11</sup> See Section 802.01B(IV) of the Manual.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

requirements. In addition, because the vast majority of listed companies have to comply with the proposed continued listing standard, the Exchange should have sufficient experience monitoring for compliance with the proposed standard. As noted above, the Exchange also found, based on a review of data of companies below compliance under the NYSE's financial standards from 2006 to 2012, that all of the securities that were delisted under the current applicable standard would have been delisted under the proposed standard, or the other applicable minimum listing criteria.<sup>20</sup> Based on the Exchange's review and experience in administering the proposed standard, the Exchange concluded that the proposed continued listing standard, in combination with the other minimum continued listing criteria, is a rigorous measure to ensure companies and their securities remain suitable for listing.<sup>21</sup> Based on the above, the Commission believes that that proposal is consistent with the requirements of the Act. We, however, would expect the Exchange to monitor its continued listing standards to ensure that they remain adequate and make adjustments to its rules where necessary.

Finally, in approving the proposal, we recognize that some of the current continued listing standards have substantially higher market capitalization requirements than under the new standard.<sup>22</sup> We understand some of the rationale for the higher standards was related to the higher market capitalization requirements in the initial listing standards. For the reasons, however, noted above,

<sup>20</sup> See Notice at *supra* note 3 and note 18, *supra*. The Exchange further noted that the minority of companies that would not have fallen below the proposed standard or other minimum continued listing standards, have all regained compliance with the quantitative continued listing standards.

<sup>21</sup> As to companies listed under the Affiliated Company Test, the Commission notes that although the current quantitative market capitalization and stockholder equity continued listing standards applicable to such listings are higher than the proposed standards, these standards only applied if the parent or affiliated company ceased control of the listed company or the parent or affiliate also fell below continued listing standards. Under the new standards, however, companies listed under the Affiliated Company Test will be subject to the new continued listing requirement irrespective of whether the parent or affiliated company ceases to control the listed company or the parent or affiliate falls below continued listing standards, which arguably may be a stronger standard despite the lower numerical criteria.

<sup>22</sup> For example, under the current Pure Valuation/Revenue Test, companies would need to meet average global market capitalization over a consecutive 30 trading-day period of \$100,000,000. The Commission notes, however, that the proposed standard includes an additional requirement on stockholders equity.

including the Exchange's representation that the proposed standard, along with the additional minimum standards, should adequately ensure the quality of companies that continue to list on the exchange based on its experience with monitoring companies for compliance, and the fact that the proposed standard had previously been approved as one of several continued financial listing standards, and thus already applies to a large majority of currently listed companies, we are approving the proposal.<sup>23</sup> We also note that the adoption of the proposed continued listing standard does not appear to set a new low when comparing the continued listing standards of other named markets under Section 18 of the Securities Act of 1933, both currently and at the time Section 18 was adopted in 1996.<sup>24</sup> Taken as a whole, the Exchange's continued listing standards appear to be as high as NYSE MKT's continued listing standards for common stock of operating companies.<sup>25</sup>

#### IV. Conclusion

For the foregoing reasons, 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, and, in particular, with Section 6(b)(5) of the Act.<sup>26</sup>

*It is therefore ordered*, pursuant the Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2013-67), is hereby approved.

<sup>23</sup> The Commission notes that the Exchange rules give it the flexibility to commence delisting proceedings should any event or condition makes further dealings or listing of the securities on the Exchange inadvisable or unwarranted. Accordingly, we would expect the Exchange to continue to monitor a listed company that has lost a significant percentage of its market capitalization when compared to the original standard it was listed under, especially if the substantial loss in value indicates issues with the company that would raise whether further dealings on the Exchange are warranted. See Section 802.01D of the Manual.

<sup>24</sup> 15 U.S.C. 77r (Section 102 of the National Securities Markets Improvement Act ("NSMIA") of 1996 amended Section 18 of the Securities Act of 1933).

<sup>25</sup> See email from Patrick Troy, Chief Counsel, NYSE, to Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, on November 25, 2013. The Commission notes that the a direct comparison of NYSE MKT's continued listing standards with the proposed NYSE continued listing standards is not possible, since some of the standards use different criteria. For example, NYSE MKT uses a public stockholder requirement, while NYSE uses a total stockholders requirement. Taken as a whole, however, the Commission believes that the proposed NYSE standards appear to be as high as NYSE MKT's standards.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2013-29741 Filed 12-12-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71027; File No. SR-FINRA-2013-051]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Uniform Branch Office Registration Form (Form BR)

December 9, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 25, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Uniform Branch Office Registration Form ("Form BR") to (1) eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional question to identify a branch office as an "Office of Municipal Supervisory Jurisdiction," as defined under the rules of the Municipal Securities Rulemaking Board (MSRB); and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions (collectively, the proposed amendments to Form BR are hereinafter referred to as the "Updated Form BR").

<sup>27</sup> See 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to amend Form BR, which is used by firms to register their branch offices with FINRA, the New York Stock Exchange ("NYSE"), and participating states via the Central Registration Depository ("CRD®"). Form BR enables a firm to register a branch office<sup>3</sup> (either by notice filing or approval) as required by the relevant jurisdiction or self-regulatory organization ("SRO"), amend a registration, close or terminate a registration, or withdraw a filing in the appropriate participating jurisdiction and SRO.

In concert with a committee of regulatory and industry representatives, FINRA recently undertook a review of Form BR. As a result of this review, FINRA is proposing to amend Form BR to (1) eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional question to identify a branch office as an "Office of Municipal Supervisory Jurisdiction," as defined

<sup>3</sup> See NASD Rule 3010(g)(2) for a definition of the term "branch office." Certain states participating in the use of Form BR via CRD have adopted a similar definition. See also Securities Exchange Act Release No. 69902 (July 1, 2013), 78 FR 40792 (July 8, 2013) (Notice of Filing File No. SR-FINRA-2013-025).

under MSRB rules; and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions.

FINRA believes the proposed Updated Form BR will provide a more comprehensive profile of each firm's registered branch offices, which will allow regulators and firms to better understand the activities occurring at each registered branch office. This understanding should enable firms to strengthen their own compliance and regulators to conduct more focused and effective examinations.

FINRA further believes that the proposal will have a minimal impact on firms based principally upon FINRA's experience with Form BR, discussions with industry representatives who participated in the working group that developed the proposed amendments, and the approach to implementation that FINRA is proposing for the Updated Form BR.

In that regard, and as discussed in more detail below, firms with existing registered branch offices will not be required to complete the proposed new information items on the Updated Form BR by a date certain after implementation, but rather when the firm is otherwise required, in the ordinary course, to amend the form to update existing information items that have become inaccurate or incomplete.<sup>4</sup> FINRA believes that this more flexible approach accomplishes the important regulatory objective of collecting the proposed new information items from those members that have not previously reported it,<sup>5</sup> while limiting the associated burden on firms.

#### Background

Form BR was developed jointly in 2005 by a working group consisting of representatives of FINRA (then the National Association of Securities Dealers, Inc. ("NASD")), the NYSE, the North American Securities Administrators Association ("NASAA") and states to establish a uniform electronic process via the CRD system for registering branch offices with various jurisdictions. Form BR replaced

<sup>4</sup> Member firms have a continuing obligation to promptly update Form BR whenever the information becomes inaccurate or incomplete. Amendments require updating only the appropriate section of Form BR. FINRA and most participating jurisdictions require that an amendment be filed not later than 30 days after the firm learns of facts and circumstances giving rise to the amendment.

<sup>5</sup> FINRA notes that members that also are registered with the NYSE currently report information related to space sharing arrangements and the location of books and records for each registered branch office on Section 6 (NYSE Branch Information) on Form BR.

Schedule E of the SEC's Form BD (Broker-Dealer Registration Form), the NYSE Branch Office Application Form and state branch office forms, and enabled firms to register branch offices electronically with FINRA, the NYSE and participating states via a single filing through the CRD system.<sup>6</sup> Form BR enables firms to file, for notice or approval, Form BR as required by the applicable jurisdiction or SRO.

Since its implementation in 2005, Form BR has not been substantively updated.<sup>7</sup> Based on a recent review of the form and experience with the form to date, FINRA and a committee of representatives from industry, NASAA and participating states (the "Form BR Working Group") believe that the proposed changes are appropriate and will result in efficiencies for firms and regulators. In particular, FINRA believes the proposed amendments to Form BR will make the branch office registration process more efficient by eliminating duplicative provisions, eliciting certain information items from all filers, and clarifying existing questions so that regulators and firms can better understand the activities of each registered branch office.

#### Proposed Amendments

Current Form BR consists of the following nine sections: (1) General Information; (2) Registration/Notice Filing/Type of Office; (3) Types of Activities/Other Business Names/Web sites; (4) Branch Office Arrangements; (5) Associated Individuals; (6) NYSE Branch Information; (7) Branch Closing; (8) Branch Withdrawal (Pending Application); and (9) Signature.

FINRA is proposing to amend Form BR to consist of eight sections with the following section titles: (1) General Information; (2) Registration/Notice Filing/Type of Office/Activities; (3) Other Business Activities/Names/Web sites; (4) Branch Office Arrangements; (5) Associated Individuals; (6) Branch Office Closing; (7) Branch Office Withdrawal (Pending Application); and (8) Signature. In addition to this reorganization of sections, FINRA is proposing the amendments to Form BR described below.

*Delete Section 6 (NYSE Branch Information).* Currently only NYSE-registered firms can view Section 6

<sup>6</sup> Currently, 24 states utilize Form BR; of those, 16 states have a notice-filing requirement and eight have a pre-approval process.

<sup>7</sup> In 2007, Form BR was amended to change references of "NASD" to "FINRA" and to make other technical amendments. See Securities Exchange Act Release No. 57033 (December 21, 2007), 72 FR 74382 (December 31, 2007) (Notice of Filing File No. SR-FINRA-2007-036).

(NYSE Branch Information) on the CRD system and only NYSE-registered firms are required to complete and update Section 6. Section 6 of Form BR allowed NYSE to administer a pre-approval process for registration of certain branch offices that was in place at the time Form BR was implemented.<sup>8</sup> However, following the NASD/NYSE regulatory consolidation, the NYSE amended NYSE Rule 342 to change its branch office registration requirement from a pre-approval process to a notice-filing requirement in an effort to eliminate disparate regulatory standards.<sup>9</sup> As a result, FINRA and the Form BR Working Group believe this separate NYSE-registered firm section of Form BR is no longer necessary and should be deleted in the Updated Form BR. The proposed revisions also will remove references to the NYSE-specific terms from the form such as “regular branch” and “small branch.” FINRA believes the proposed changes will create efficiencies for firms that are members of both FINRA and the NYSE by eliminating nine questions from the current Form BR and for regulators by eliminating those questions deemed redundant or of limited regulatory value. In addition, FINRA believes that all members will benefit from having one, uniform form.

*Add Questions on Space Sharing Arrangements and Location of Books and Records.* As described above, FINRA is proposing to eliminate Section 6 (NYSE Branch Information) from the current Form BR because pre-approval of certain branch offices of NYSE-registered firms is no longer required. However, FINRA is proposing to retain questions from that section relating to space sharing arrangements and the location of books and records and add them to proposed Section 4 (Branch Office Arrangements) of the Updated Form BR. FINRA and the Form BR Working Group determined to retain these questions because they provide valuable regulatory information and also will allow continued monitoring for compliance with Incorporated NYSE Rule 343.<sup>10</sup>

<sup>8</sup> In 2005 when Form BR was initially launched, NYSE Rule 342 (Offices—Approval, Supervision and Control) required approval of new branch office registrations, and NYSE Rule 343 (Offices—Sole Tenancy, Hours, Display of Membership Certificates) required approval of space sharing arrangements, before the branch office was able to conduct business.

<sup>9</sup> See Securities Exchange Act Release No. 56143 (July 26, 2007), 72 FR 42453 (August 2, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2007-59).

<sup>10</sup> Incorporated NYSE Rule 343 (Supervision) is still in effect and applicable to NYSE-registered firms. As part of the effort to develop the consolidated FINRA rulebook, FINRA is proposing to adopt FINRA Rule 3110 (Supervision) and delete

Specifically, FINRA is proposing to add a new question to proposed Section 4 (Branch Office Arrangements) of the Updated Form BR that will ask members to disclose if the branch office occupies, shares space with or jointly markets with any other investment-related entity, and if the answer is yes, to provide the name of such entity.<sup>11</sup> FINRA believes applying the space sharing arrangement question to all members will allow regulators to better understand the specific activities occurring at each registered branch office and monitor that such arrangements are structured in a manner that allow [sic] public customers to identify the entity with which they are conducting business.

FINRA also is proposing to add a question to proposed Section 4 (Branch Office Arrangements) that will ask members if books and records pertaining to the registered branch office are maintained at any location other than that branch office, the main office or office of supervisory jurisdiction (OSJ) (if applicable). If the answer is yes, a member will need to provide the address of such location and the name and telephone number of a contact person. FINRA believes many firms elect to keep books and records in a centralized office rather than at the branch office; therefore, eliciting whether books and records are maintained offsite will enable regulators to conduct more effective and efficient branch office examinations.

*Modify Existing Question on “Types of Activities”.* FINRA is proposing to relocate questions relating to “Types of Activities” occurring at the branch office from Section 3 (Other Business/Names/Web sites) to proposed Section 2 (Registration/Notice Filing/Type of Office/Activities) of the Updated Form BR and to expand the list of activity types that may be selected to (1) include Retail and Institutional (as types of Sales Activity), Public Finance, and

NYSE Rule 343. In 2007, the NYSE amended its branch office registration process from a prior consent requirement to a notice requirement (but retained the approval standard for space sharing arrangements). Under NYSE Rule 343, space sharing arrangements must be evaluated by the NYSE and FINRA (who has assumed by contract regulatory responsibility to review for NYSE member firm compliance). See SR-NYSE-2007-59 and NYSE Information Memo 07-81 (August 1, 2007). See also Securities Exchange Act Release No. 69902 (July 1, 2013), 78 FR 40792 (July 8, 2013) (Notice of Filing File No. SR-FINRA-2013-025).

<sup>11</sup> The term “investment-related” is defined in Form BR as “[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a Broker-Dealer, issuer, investment company, Investment Adviser, futures sponsor, bank, or savings association).”

Other; (2) add “Trading” to the existing Market Making activity; and (3) combine Investment Banking and Underwriting, which are now listed separately. FINRA and the Form BR Working Group believe that clarifying and expanding the list of activity types will enhance regulators’ understanding of the types of activities that occur at each registered branch office and assist regulators and members in conducting risk-based branch office reviews. For example, a member that selects “Sales” can then identify if that activity relates to “Retail” or “Institutional” customers. In addition, based on feedback from firms, FINRA is proposing to add “Public Finance” as an option to enable members and regulators to identify via the Form BR office locations that require a principal to be registered as a Series 53 (Municipal Securities Principal).

*Modify Supervisor/Person-in-Charge Details.* FINRA is proposing to expand the supervisor and person-in-charge details provided by firms in Section 2 (Registration/Notice Filing/Type of Office/Activities) of the Updated Form BR, to enable firms (at their option) to provide the “type of activity” associated with each on-site supervisor or person-in-charge listed. FINRA is proposing to add this option based on feedback from firms to date. Firms have requested the ability to link each supervisor or person-in-charge listed for a registered branch office to identified lines of business to better reflect their supervisory structures.

*Add Optional MSRB Branch Office of Municipal Supervisory Jurisdiction Question.* The MSRB regulates brokers, dealers and municipal securities dealers that engage in municipal securities activities. Under MSRB rules, certain of these participants are required to identify whether a branch is designated as an Office of Municipal Supervisory Jurisdiction (“OMSJ”), as defined under MSRB rules.<sup>12</sup> To assist those participants that use Form BR in complying with that MSRB requirement, FINRA is proposing to add an optional question to Section 2 (Registration/Notice Filing/Type of Office/Activities) to the Updated Form BR to provide FINRA members that also are registered with the MSRB a means to track their OMSJs through a standard CRD report that FINRA expects to develop following the deployment of the Updated Form BR.

*Technical and Clarifying Changes.* Based on feedback from the Form BR Working Group, FINRA is proposing technical and clarifying changes to General and Specific Instructions,

<sup>12</sup> See MSRB Rule G-27 (Supervision).

Explanation of Terms and Sections of the Updated Form BR. These include global changes to adopt uniform terminology for terms such as “CRD number” and “branch office,” to capitalize “Broker-Dealer” and “Investment Adviser,” and to replace “person” with “individual” when referring to associated individuals. The use of the word “individual” is intended to make the terminology in the Updated Form BR consistent with terminology currently used in Section 5 of the Form BR, which elicits information with respect to all registered individuals who are associated with the branch office. In addition, the Instructions of the Updated Form BR will be amended to clarify that checking the “Private Residence Check Box” when providing the address of the branch office does not act to prevent public disclosure of the branch address.<sup>13</sup> FINRA will continue to disclose the full address of registered branch offices through BrokerCheck even if the registered branch is a private residence, consistent with its existing policy.<sup>14</sup>

*No Requirement to Submit Amended Forms BR by a Date Certain.* Members with existing registered branch offices will not be required to file an Updated Form BR for such existing offices immediately upon deployment of the amended form, but will be required to provide the proposed new information items on the Updated Form BR when the member is otherwise required, in the ordinary course, to amend the form to update existing information items that have become inaccurate or incomplete.<sup>15</sup> FINRA expects to evaluate the number of registered branch offices of FINRA members for which an Updated Form BR has not been filed (and, therefore, for which FINRA and other regulators do not have the proposed new information items) one year after deployment of the Form. Based on that evaluation, FINRA may consider imposing a future deadline for providing that proposed new information items [sic] in the Updated Form BR if a significant number of registered branch offices have not filed

<sup>13</sup> Some states elect to withhold disclosing to the public, in whole or in part, the address for a branch office of an investment adviser if the branch office also is a private residence.

<sup>14</sup> FINRA believes that disclosure of the full address is appropriate where a member has registered the home office as a registered branch office and not relied on the primary residence exemption from branch office registration.

<sup>15</sup> Member firms have a continuing obligation to promptly update Form BR whenever the information becomes inaccurate or incomplete. See *supra* note 4.

the information through an amendment in the ordinary course.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>16</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the Updated Form BR is necessary at this time to ensure that the form remains current and accurate by reflecting changes to applicable rules and regulations of the relevant participating jurisdictions, including specifically the regulatory consolidation of the NYSE and NASD (e.g., deletion of current Section 6 (NYSE Branch Information)). Further, the Updated Form BR will provide a more comprehensive profile of each firm’s registered branch offices and thereby allow regulators to better prioritize and plan examinations.

### (B) Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed changes to Form BR will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA is proposing to amend Form BR to reflect changes to applicable rules and regulations of the relevant participating jurisdictions, including specifically the regulatory consolidation of the NYSE and NASD, making the form more current and accurate. FINRA believes the operational burden associated with completion of the proposed Updated Form BR will be minimal for NYSE-registered firms because such firms already report space sharing arrangements and the location of books and records for each registered branch office on Form BR.<sup>17</sup> FINRA

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

<sup>17</sup> To the extent possible, FINRA will identify information relating to space sharing arrangements and the location of books and records previously reported by NYSE-registered firms on Form BR that will be responsive to the questions being retained on the Updated Form BR (i.e., in proposed new Section 4—Branch Office Arrangements) and will transfer that information to the appropriate data

believes all other firms should have this information readily available, as the questions are consistent with the types of information that members typically track for purposes of conducting their supervisory reviews and inspections of branch offices.

Further, FINRA believes the proposed Updated Form BR will provide a more comprehensive profile of each firm’s registered branch offices, which will create efficiencies by allowing regulators and firms to better understand the activities occurring at each registered branch office and conduct more focused and effective examinations.

In addition, FINRA believes that the proposed rule change presents a modest burden upon firms because the proposed Updated Form BR does not impose an affirmative duty for members to immediately submit the amended form upon deployment, but only requires members to provide the proposed new information items on the Updated Form BR at the time the member otherwise is required, in the ordinary course, to update existing information items that have become inaccurate or incomplete on the Form BR.

Therefore, FINRA believes the incremental compliance costs of providing the proposed new information items on the Updated Form BR should not impose a burden on competition not necessary or appropriate in furtherance of the Act and in light of the benefits described above.

### (C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

fields. However, firms will be required to verify the accuracy of the information that has been transferred to the Updated Form BR.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or

Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-051 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-051 and should be submitted on or before January 3, 2014.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-29739 Filed 12-12-13; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 55 (Sub-No. 729X)]

#### **CSX Transportation, Inc.— Abandonment Exemption—in Washington County, Md**

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.90 miles of rail line on its Northern Region, Baltimore Division, Lurgan Subdivision, between milepost BBT 3.9 at the connection to CSXT's main line and the end of track at milepost BBT 3.0 at Alternate Route US 40, south of Eastern Boulevard South in Hagerstown, in Washington County, Md. The line traverses United States Postal Service Zip Code 21740.

CSXT has certified that: (1) No local traffic has moved over the line for at least two years; (2) any overhead traffic on the line can be, and has been rerouted; (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 two-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 January 14, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 23, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 2014, 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 CSXT's representative: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT 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 December 20, 2013. 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 (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), CSXT 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 CSXT's filing of a notice of consummation by December 13, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

<sup>1</sup> 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.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

Board decisions and notices are available on our Web site at “[www.stb.dot.gov](http://www.stb.dot.gov).”

Decided: December 9, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–29754 Filed 12–12–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35786]

#### CaterParrott Railnet, LLC—Change in Operators Exemption—Rail Lines of Central of Georgia Railroad Company

CaterParrott Railnet, LLC (CPR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to change operators from Squaw Creek Southern Railroad, Inc. (SCS), to CPR on the following rail lines located in Georgia and owned by Central of Georgia Railroad Company (CGR), a wholly owned subsidiary of Norfolk Southern Railway Company: (1) Approximately 21.75 miles of rail line between milepost F–53.75 at Machen, Jasper County, and milepost F–75.5 at Madison, Morgan County;<sup>1</sup> and (2) approximately 12.5 miles of rail line between milepost E–53.3 at Machen, Jasper County, and milepost E–65.8 at Newborn, Newton County.<sup>2</sup>

According to CPR, an agreement has been reached between the parties under which CPR will lease and operate the lines. CPR will accept transfer and/or assignment of SCS’s common carrier obligation. SCS has agreed to terminate its lease with CGR. CPR states that its proposed lease of the lines does not contain a provision that prohibits, restricts, or would otherwise limit future interchange of traffic with any third-party rail carrier. This change in operators is exempt under 49 CFR 1150.41(c).<sup>3</sup>

<sup>1</sup> SCS obtained Board authority to lease and operate this line in 2008. *Squaw Creek S. R.R.—Lease & Operation Exemption—Cent. of Ga. R.R.*, FD 35134 (STB served May 16, 2008).

<sup>2</sup> SCS obtained Board authority to lease and operate this line in 2009. *Squaw Creek S. R.R.—Lease & Operation Exemption—Cent. of Ga. R.R.*, FD 35294 (STB served Sept. 17, 2009).

<sup>3</sup> Under 49 CFR 1150.42(b), a change in operators requires that notice be given to shippers. CPR certifies that notice has been given to all known shippers on the lines.

The transaction may be consummated on or after December 29, 2013 (30 days after the notice of exemption was filed).

CPR certifies that its projected annual revenues as a result of this transaction will not result in CPR’s becoming a Class I or Class II rail carrier and will not exceed \$5 million.

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. Petitions for stay must be filed no later than December 20, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35786, 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 Chris Parrott, CaterParrott Railnet, LLC, 700 East Marion Avenue, Nashville, GA 31639.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: December 9, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–29753 Filed 12–12–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0709]

#### Agency Information Collection (Regulation on Reduction of Nursing Shortages in State Homes; Application for Assistance for Hiring and Retaining Nurses at State Homes) Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The

PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 13, 2014.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St NW., Washington, DC 20503 or sent through electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please refer to “OMB Control No. 2900–0709” in any correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email [crystal.rennie@va.gov](mailto:crystal.rennie@va.gov). Please refer to “OMB Control No. 2900–0709.”

#### SUPPLEMENTARY INFORMATION:

**Title:** Regulation on Reduction of Nursing Shortages in State Homes; Application for Assistance for Hiring and Retaining Nurses at State Homes, VA Form 10–0430.

**Type of Review:** Revision of currently approved collection.

**Abstract:** State Veterans’ Homes complete VA Form 10–0430 to request funding to assist in the hiring and retention of nurses at their facility. VA will use the data collected to determine State homes eligibility and the appropriate amount of funding.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on Vol. 78 No. 176, at pages 55788.

**Affected Public:** State, Local or Tribal Government.

**Estimated Annual Burden:** 30.

**Estimated Average Burden per Respondent:** 2 hours.

**Frequency of Response:** One time.

**Estimated Number of Respondents:** 15 per year.

Dated: December 9, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–29732 Filed 12–12–13; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

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Part II

Department of Energy

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10 CFR Part 431

Energy Conservation Program: Test Procedures for Electric Motors;  
Final Rule

**DEPARTMENT OF ENERGY****10 CFR Part 431****[Docket No. EERE-2012-BT-TP-0043]****RIN 1904-AC89****Energy Conservation Program: Test Procedures for Electric Motors****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) is amending the energy efficiency test procedures for electric motors to allow currently unregulated motors to be tested by clarifying the test setup requirements that are needed to facilitate testing of these types of electric motors. In addition, DOE is adopting definitions, which will determine the applicability of DOE's regulations to various types of electric motors. The amendments would clarify the scope of coverage for electric motors and not otherwise affect the test procedure.

**DATES:** The effective date of this rule is January 13, 2014.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on January 13, 2014. The incorporation by reference of other publications listed in this rule were approved by the Director of the Federal Register on May 4, 2012.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx/ruleid/74](http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/74). This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-8654. Email: [medium\\_electric\\_motors@ee.doe.gov](mailto:medium_electric_motors@ee.doe.gov).

Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-5709. Email: [Ami.Grace-Tardy@hq.doe.gov](mailto:Ami.Grace-Tardy@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into subpart B of 10 CFR part 431, the following industry standards:

NEMA Standards Publication MG 1-2009 ("NEMA MG 1-2009"), Motors and Generators, 2009, Paragraphs 12.62 and 12.63.

Copies of NEMA MG 1-2009 can be obtained from the National Electrical Manufacturers Association, 1300 17th St. N., Suite 900, Arlington, VA 22209, (703) 841-3200, or <http://www.nema.org>.

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**I. Authority and Background**

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; "EPCA") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112-210 (December 18, 2012)). Part C of title III, which for editorial reasons was redesignated as Part A-1 upon incorporation into the U.S. Code, establishes an energy conservation program for certain industrial equipment, which includes electric motors, the subject of today's notice. (42 U.S.C. 6311(1)(A), 6313(b)).

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to the Department of Energy (DOE) that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the energy or water consumption of those products. Similarly, DOE must use these test procedures when testing products to determine whether they comply with the applicable standards promulgated pursuant to EPCA.

In the Energy Policy Act of 1992, Public Law 102-486 (October 24, 1992)

(EPACT 1992), Congress amended EPCA to establish energy conservation standards, test procedures, compliance certification, and labeling requirements for certain electric motors. (When used in context, the term “motor” refers to “electric motor” in this document.) On October 5, 1999, DOE published a final rule to implement these requirements. 64 FR 54114. In 2007, section 313 of the Energy Independence and Security Act (EISA 2007) amended EPCA by: (1) Striking the definition of “electric motor,” (2) setting forth definitions for “general purpose electric motor (subtype I)” and “general purpose electric motor (subtype II),” and (3) prescribing energy conservation standards for “general purpose electric motors (subtype I),” “general purpose electric motors (subtype II),” “fire pump electric motors,” and “NEMA Design B general purpose electric motors” with a power rating of more than 200 horsepower but not greater than 500 horsepower. See 42 U.S.C. 6311(13) and 6313(b). Consequently, on March 23, 2009, DOE updated the corresponding regulations at 10 CFR part 431 consistent with these changes. 74 FR 12058. On December 22, 2008, DOE proposed to update the test procedures under Title 10 of the Code of Federal Regulations, part 431 (10 CFR part 431) for both electric motors and small electric motors. 73 FR 78220. After considering comments from interested parties, DOE finalized key provisions related to small electric motor testing in a 2009 final rule (see 74 FR 32059 (July 7, 2009)) and further updated the test procedures for electric motors and small electric motors. See 77 FR 26608 (May 4, 2012).

On June 26, 2013, DOE published a notice of proposed rulemaking (NPR) focused on electric motors that proposed adding certain definitions along with specific testing set-up instructions and clarifications to the current test procedures under subpart B of 10 CFR part 431 that would address a wider variety of electric motor categories (or types) than what DOE currently regulates. 78 FR 38456. DOE proposed these amendments because the additional testing set-up instructions and clarifications were designed to permit manufacturers of these “unregulated” motors to test these motors using one of the prescribed test methods listed in 10 CFR part 431. The addition of these set-up instructions will more readily enable a manufacturer to consistently measure the losses and determine the efficiency of a wider variety of motor categories than what is regulated under the current energy

conservation standards laid out in 10 CFR 431.25.<sup>1</sup> Related to today’s rulemaking, DOE is also considering prescribing standards for some electric motor categories addressed in this notice through a parallel energy conservation standards-related activity. See 78 FR 73590 (Dec. 6, 2013). See also 76 FR 17577 (March 30, 2011) (detailing DOE’s request for information regarding electric motor coverage) and 77 FR 43015 (July 23, 2012) (announcing DOE’s preliminary analysis for potential standards related to electric motors).

By way of background, DOE notes that section 343(a)(5)(A) of EPCA, 42 U.S.C. 6314(a)(5)(A), initially required that the test procedures to determine electric motor efficiency shall be those procedures specified in two documents: National Electrical Manufacturers Association (NEMA) Standards Publication MG 1–1987<sup>2</sup> and Institute of Electrical and Electronics Engineers (IEEE) Standard 112 (Test Method B) for motor efficiency, as in effect on the date of enactment of EPACT 1992. Section 343(a)(5)(B)–(C) of EPCA, 42 U.S.C. 6314(a)(5)(B)–(C), provides in part that if the NEMA- and IEEE-developed test procedures are amended, the Secretary of Energy (the Secretary) shall so amend the test procedures under 10 CFR part 431, unless the Secretary determines, by rule, that the amended industry procedures would not meet the requirements for test procedures to produce results that reflect energy efficiency, energy use, and estimated operating costs of the tested motor, or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(3), (a)(5)(B)) DOE has updated 10 CFR part 431 consistent with this requirement as newer versions of the NEMA and IEEE test procedures for electric motors were published and used by industry. See, e.g. 64 FR 54114 (October 5, 1999) (reflecting changes introduced by MG 1–1993 and IEEE Standard 112–1996). DOE also added Canadian Standards Association (CSA) CAN/CSA C390–93,

<sup>1</sup> 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 made by EISA 2007, Congress removed this definition and added language denoting two new subtypes of general purpose electric motors. (See 42 U.S.C. 6311(13)(A)–(B) (2012)).

<sup>2</sup> NEMA MG1 does not contain the actual methods and calculations needed to perform an energy efficiency test but, rather, refers the reader to the proper industry methodologies in IEEE Standard 112 and CSA C390–10.

“Energy Efficiency Test Methods for Three-Phase Induction Motors” as an equivalent and acceptable test method, which aligns with industry practices. Id.

Further, on May 4, 2012, DOE incorporated by reference the updated versions of NEMA MG 1–2009, IEEE 112–2004, and CAN/CSA C390–10. 77 FR 26608, 26638 (the “2012 final test procedure”). DOE made the updates to ensure consistency between 10 CFR part 431 and current industry procedures and related practices. Since publication of the 2012 final test procedure, NEMA Standards Publication MG 1 has been updated to MG 1–2011. The updates, however, did not affect the sections that DOE had proposed to incorporate by reference from MG 1–2009 and, subsequently, declines to adopt MG 1–2011.

## II. Summary of the Final Rule

In this final rule, DOE:

(1) Defines a variety of electric motor configurations (i.e., types) that are currently regulated under 10 CFR 431.25, but are not currently defined under 10 CFR part 431.12;

(2) Defines a variety of electric motor configurations (i.e., types) that are not currently regulated under 10 CFR 431.25 and are not currently defined under 10 CFR 431.12; and

(3) Clarifies the necessary testing “set-up” procedures to facilitate the testing of certain motor types that are not currently regulated for energy efficiency by DOE.

This final rule was precipitated by DOE’s ongoing electric motors standards rulemaking. DOE published its “Framework Document for Commercial and Industrial Electric Motors” (the “2010 framework document”) (75 FR 59657) on September 28, 2010. Public comments filed in response urged DOE to consider regulating the efficiency of certain definite and special purpose motors. DOE, in turn, published an Request for Information (RFI) seeking information regarding definite and special purpose motors (the “March 2011 RFI”). See 76 FR 17577 (March 30, 2011). In its December 6, 2013 energy conservation standards NPR, DOE proposed expanding the scope of its regulatory program to include all continuous duty, single speed, squirrel-cage, polyphase alternating-current, induction motors, with some narrowly defined exceptions. See 78 FR 73589. Today’s final rule addresses test procedure issues potentially arising from the proposed scope of DOE’s energy efficiency requirements to include certain motor types that are not currently required to meet energy conservation standards. In particular,

today’s final rule includes, among other things, definitions for those motor types that DOE may consider regulating. DOE has coordinated today’s test procedure final rule with its parallel efforts to examine proposed energy conservation standards for electric motors. To the extent possible, DOE has considered all relevant comments pertaining to these activities.<sup>3</sup>

In addition to including new definitions, today’s final rule adds set-

up procedures for the applicable test procedures contained in appendix B to subpart B of 10 CFR part 431, to accommodate certain electric motors that DOE has proposed to regulate. Because the amendments are limited to those steps necessary to facilitate testing under the currently incorporated test procedures found at 10 CFR 431.16, DOE does not anticipate that this rule would affect the actual measurement of losses and the subsequent determination

of efficiency for any of the electric motors within the scope of the conservation standards rulemaking.

The revisions are summarized in the table below and addressed in detail in the following sections. Note that all citations to various sections of 10 CFR part 431 throughout this preamble refer to the current version of 10 CFR part 431. The regulatory text follows the preamble to this final rule.

TABLE II–1—SUMMARY OF CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 431

Existing section in 10 CFR part 431	Summary of proposed modifications
Section 431.12—Definitions .....	<ul style="list-style-type: none"> <li>• Adds new definitions for:                             <ul style="list-style-type: none"> <li>○ Air-over electric motor.</li> <li>○ Brake electric motor.</li> <li>○ Component set.</li> <li>○ Electric motor with moisture resistant, sealed or encapsulated windings.</li> <li>○ IEC Design H motor.</li> <li>○ IEC Design N motor.</li> <li>○ Immersible electric motor.</li> <li>○ Inverter-capable electric motor.</li> <li>○ Inverter-only electric motor.</li> <li>○ Liquid-cooled electric motor.</li> <li>○ NEMA Design A motor.</li> <li>○ NEMA Design C motor.</li> <li>○ Partial electric motor.</li> <li>○ Submersible electric motor.</li> <li>○ Totally enclosed non-ventilated (TENV) electric motor.</li> </ul> </li> </ul>
Appendix B to Subpart B—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors.	<ul style="list-style-type: none"> <li>• Updates test procedure set-up methods for:                             <ul style="list-style-type: none"> <li>○ Brake Electric motors.</li> <li>○ Close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or design.</li> <li>○ Electric motors with non-standard endshields or flanges.</li> <li>○ Electric motors with non-standard bases, feet or mounting configurations.</li> <li>○ Electric motors with separately powered blowers.</li> <li>○ Immersible electric motors.</li> <li>○ Partial electric motors.</li> <li>○ Vertical electric motors and electric motors with bearings incapable of horizontal operation.</li> </ul> </li> </ul>

DOE developed today’s final rule after considering public input, including written comments, from a wide variety

of interested parties. All commenters, along with their corresponding abbreviations and affiliation, are listed

in Table II.2 below. The issues raised by these commenters are addressed in the discussions that follow.

TABLE II–2—SUMMARY OF FINAL RULE COMMENTERS

Company or organization	Abbreviation	Affiliation
Advanced Energy .....	AE .....	Testing Laboratory.
Appliance Standards Awareness Project .....	ASAP .....	Energy Efficiency Advocate.
American Council for an Energy-Efficient Economy ...	ACEEE .....	Energy Efficiency Advocate.
Alliance to Save Energy .....	ASE .....	Energy Efficiency Advocate.
Baldor Electric Co. ....	Baldor .....	Manufacturer.
Bluffton Motor Works .....	Bluffton .....	Manufacturer.
California Investor Owned Utilities .....	CA IOUs .....	Utilities.
Copper Development Association .....	CDA .....	Trade Association.
Motor Coalition * .....	MC .....	Energy Efficiency Advocates, Manufacturer Trade Association.
National Electrical Manufacturers Association .....	NEMA .....	Trade Association.
Natural Resource Defense Council .....	NRDC .....	Energy Efficiency Advocate.
Nidec Motor Corporation .....	Nidec .....	Manufacturer.
Northwest Energy Efficiency Alliance .....	NEEA .....	Energy Efficiency Advocate.
Regal Beloit .....	Regal Beloit .....	Manufacturer.
SEW–EURODRIVE, Inc. ....	SEWEUR .....	Manufacturer.
Siemens .....	Siemens .....	Manufacturer.

<sup>3</sup> See dockets at: <http://www.regulations.gov/#!docketDetail;D=EERE-2010-BT-STD-0027> and

<http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-TP-0043>.

TABLE II-2—SUMMARY OF FINAL RULE COMMENTERS—Continued

Company or organization	Abbreviation	Affiliation
Underwriters Laboratories, Inc. ....	UL .....	Testing Laboratory.
WEG Electric Corp. ....	WEG .....	Manufacturer.

\*The members of the Motor Coalition include: National Electrical Manufacturers Association, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Alliance to Save Energy, Earthjustice, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, Northeast Energy Efficiency Partnerships, and Northwest Power and Conservation Council.

**III. Discussion**

*A. Expanding the Scope of Coverage of Energy Conservation Standards*

As noted in DOE’s recent energy conservation standards rulemaking proposal, changes brought about by the Energy Independence and Security Act of 2007 (Pub. L. 110–140 (Dec. 19, 2007) and the American Energy Manufacturing Technical Corrections Act. Public Law 112–210, Sec. 10 (Dec. 18, 2012) have enabled the Agency to consider an expanded scope of motors for regulatory coverage. See 78 FR at 73603.

Based on its analysis of this discrete group of “expanded-scope” motors, DOE believes that the existing IEEE Standard 112 (Test Method B) and CSA C390–10 test procedures can be used to accurately measure their losses and determine their energy efficiency because all of the motor types under consideration are single-speed, polyphase induction motors with electromechanical characteristics similar to those currently subject to energy conservation standards. While some of these motor types require additional testing set-up instructions prior to testing, all can be tested using the same methodology provided in those industry-based procedures DOE has already incorporated into its regulations.

Testing an electric motor using IEEE Standard 112 (Test Method B) or CSA C390–10 requires some basic electrical connections and physical

configurations. To test an electric motor under either procedure, the electric motor is first mounted on a test bench, generally in a horizontal position. In this orientation, this means that the motor shaft is horizontal to the test bench and the motor is equipped with antifriction bearings that can withstand operation while in a horizontal position.<sup>4</sup> Instruments are then connected to the power leads of the motor to measure input power, voltage, current, speed, torque, temperature, and other input, output, and performance characteristics. Thermocouples are attached to the motor to facilitate temperature measurement. Stator winding resistance is measured while the motor is at ambient, or room, temperature. No-load measurements are recorded while the motor is operating, both temperature and input power have stabilized, and the shaft extension is free from any attachments. After ambient temperature and no-load measurements are taken, a dynamometer is attached to the motor shaft to take “loaded” measurements. A dynamometer is a device that simultaneously applies and measures torque for a motor. The dynamometer applies incremental loads to the shaft, typically at 25, 50, 75, 100, 125, and 150 percent of the motor’s total rated output horsepower. This allows the testing laboratory to record motor performance criteria, such as power output and torque, at each incremental load point. Additional stator winding resistance

measurements are taken to record the temperature at the different load points.

In this final rule, DOE has added clarifying instructions it believes are necessary to test some of the expanded-scope motors should DOE decide at some point to set standards for these motors. Some motors will require modifications before they can operate continuously and be tested on a dynamometer in a manner consistent with the current DOE test procedure. For example, a partial electric motor may be engineered for use without one or both endshields, including bearings, because it relies on mechanical support from another piece of equipment. Without these components, the motor would be unable to operate as a stand-alone piece of equipment. To address this issue, DOE has added instructions to facilitate consistent and repeatable procedures for motors such as these. These additions are based on testing and research conducted by DOE along with technical consultations with subject matter experts (SMEs), manufacturers, testing laboratories, various trade associations, and comments from stakeholders in response to the June 2013 NOPR. Table III–7 lists those electric motors that are covered under current energy conservation standards or that DOE is analyzing for potential new energy conservation standards. In each case, the table identifies whether DOE is addressing a given motor through the use of new definitions, test procedure instructions, or both.

TABLE III-1—MOTOR TYPES CONSIDERED FOR REGULATION IN DOE PROPOSED STANDARDS RULEMAKING

Motor type	Currently subject to standards?	Under consideration for potential standards?	New definition established?	Additional set-up instructions established?
NEMA Design A Motors .....	Yes .....	Yes .....	Yes .....	No.
NEMA Design C Motors .....	Yes .....	Yes .....	Yes .....	No.
IEC Design N Motors .....	Yes .....	Yes .....	Yes .....	No.
IEC Design H Motors .....	Yes .....	Yes .....	Yes .....	No.
Electric Motors with Moisture-resistant, Sealed, or Encapsulated Windings.	No .....	Yes .....	Yes .....	No.
Inverter-Capable Electric Motors .....	Yes .....	Yes .....	Yes .....	No.
Totally Enclosed Non-Ventilated Electric Motors .....	No .....	Yes .....	Yes .....	No.
Immersible Electric Motors .....	No .....	Yes .....	Yes .....	Yes.
Electric Motors with Contact Seals .....	Yes .....	Yes .....	No .....	No.

<sup>4</sup>DOE is aware of some types of bearings that cannot operate while the motor is in a horizontal

position. DOE addresses such bearings in later sections of this notice.

TABLE III-1—MOTOR TYPES CONSIDERED FOR REGULATION IN DOE PROPOSED STANDARDS RULEMAKING—Continued

Motor type	Currently subject to standards?	Under consideration for potential standards?	New definition established?	Additional set-up instructions established?
Brake Electric Motors	Yes <sup>5</sup>	Yes	Yes	Yes.
Partial Electric Motors	No	Yes	Yes	Yes.
Electric Motors with Non-Standard Endshields or Flanges	No	Yes	No	Yes.
Close-Coupled Pump Electric Motors	Yes	Yes	No	Yes.
Electric Motors with Special Shafts	No	Yes	No	Yes.
Vertical Solid Shaft Motors	Yes	Yes	No	Yes.
Vertical Hollow-Shaft Motors	No	Yes	No	Yes.
Electric Motors with Thrust Bearings	No	Yes	No	Yes.
Electric Motors with Sealed Bearings	Yes	Yes	No	Yes.
Electric Motors with Roller Bearings	No	Yes	No	Yes.
Electric Motors with Sleeve Bearings	Yes	Yes	No	Yes.
Electric Motors with Non-Standard Bases	No	Yes	No	No.
Air-Over Electric Motors	No	No	Yes	No.
Component Sets	No	No	Yes	No.
Liquid-cooled Electric Motors	No	No	Yes	No.
Submersible Electric Motors	No	No	Yes	No.
Inverter-Only Electric Motors	No	No	Yes	No.
Electric Motors with Separately Powered Blowers	No	Yes	No	Yes.

On the scope of coverage, the advocates commented that the NOPR shows that DOE takes the August 2012 Motor Coalition “Joint Petition to Adopt Joint Stakeholder Proposal As it Relates to the Rulemaking on Energy Conservation Standards for Electric Motors” (the “Petition”),<sup>6</sup> seriously and contemplates proposing standards based on the Petition. (ASAP et al., No. 12 at p. 1) CDA strongly supported DOE’s intention to expand the scope of covered electric motors described in the written Joint Petition and proposed in the NOPR. However, CDA urged DOE to consider including electric motors greater than 500 hp in the future standards rulemaking since they account for 27% of total power consumption in the U.S. (CDA, No. 9 at p. 3) Conversely, Regal Beloit suggested that the definitions and test procedures in this rulemaking be extended to include small electric motors. (Pub. Mtg. Tr., No. 7 at pp. 166–168).

DOE notes that its final rule simply provides a standardized means to test certain other types of electric motors that DOE does not currently regulate. The applicability of the proposed energy conservation standards was discussed in the NOPR and will be determined as part of that rulemaking. Any basic model of electric motors distributed in commerce that is subject to DOE’s current or amended energy conservation standards will need to be tested in

accordance with the test methods being adopted in this final rule. See the effective date discussion below regarding the timing requirements for representations and compliance.

*B. Electric Motor Types for Which DOE Is Not Amending Existing Definitions*

Prior to EISA 2007, section 340(13)(A) of EPCA, as amended, defined the term “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 MG 1–1987. (42 U.S.C. 6311(13) (2006)) EISA 2007, section 313(a)(2) struck out that definition, replacing it with an “electric motor” heading, and adding two subtypes of electric motors: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)). Additionally, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of electric motors: General purpose electric motor (subtype I) with a power rating of 1 to 200 horsepower; fire pump motors<sup>7</sup>; general purpose electric motor (subtype II) 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)) The term “electric motor” was left undefined at this point.

On May 4, 2012 DOE published a final rule test procedure for electric motors that further updated the definitional structure for electric motors. 77 FR 26608. DOE noted that while EISA 2007 struck the definition for electric motor, EPCA, as amended by EISA, continued to reference “electric motors,” causing confusion and ambiguity. As DOE has the statutory authority to regulate motors beyond the subtypes of motors for which Congress had established energy conservation standards in EISA 2007, DOE chose to define “electric motor” broadly, eliminating the process of having to continually update the definition each time the Department set energy conservation standards for a new subset of motors. The 2012 final test procedure defined “electric motor” as “a machine that converts electrical power into rotational mechanical power.” 77 FR 26633.

EISA 2007 also established definitions for “general purpose electric motor (subtype I)” and “general purpose electric motor (subtype II).” (42 U.S.C. 6311(13)) During the last test procedure rulemaking process, DOE made some clarifying changes to these definitions, noting that electric motors built according to International Electrotechnical Commission (IEC) standards and that otherwise meet the proposed definition of “general purpose electric motor (subtype I),” are covered

<sup>5</sup> Some motors (i.e., “non-integral”) that fall under the new definition for “brake electric motors” are currently required to meet standards and others (i.e., “integral”) are not.

<sup>6</sup> Motor Coalition, EERE–2010–BT–STD–0027–0035.

<sup>7</sup> For the most part, DOE understands that a fire pump electric motor is a NEMA Design B motor, except it does not have a thermal limit switch that would otherwise preclude multiple starts. In other words, a NEMA Design B electric motor has a thermal limit switch that protects the motor, whereas a fire pump electric motor does not have such a thermal limit switch to ensure that the motor will start and operate to pump water to extinguish a fire.

motors under EPCA, as amended by EISA 2007, even though the NEMA-equivalent frame size was discontinued. Outside of these small changes, the definitions for subtype I and subtype II motors have remained largely unchanged.

In the 2012 final test procedure, DOE also amended the definition of “general purpose motor” in 10 CFR part 431 by adding the word “electric” to clarify that a general purpose motor is a type of electric motor. 77 FR 26633.

In the June 2013 NOPR, DOE proposed a number of new definitions for types of motors that it is considering regulating in its concurrent standards rulemaking. While many of these motors are “special purpose” or “definite purpose” motors, DOE did not alter these definitions in its regulations. Furthermore, DOE did not update its definitions for “electric motor,” “general purpose electric motor,” “general purpose electric motor (subtype I),” or “general purpose electric motor (subtype II).” Rather, it laid out the nine criteria mentioned earlier in this rulemaking (i.e., single-speed, polyphase, etc.), that a motor must meet to be considered for coverage in DOE’s concurrent standards rulemaking process, regardless of whether a given motor is special purpose, definite purpose, etc. 78 FR 38460.

DOE chose the definition structure that it chose because the now proposed standards rulemaking develops a coverage structure based on a motor meeting both the simple “electric motors” definition and the nine referenced criteria. Because the standards NOPR was under initial development at the time of the final test procedure development, DOE could not share this now proposed coverage structure. Therefore, many of NEMA’s comments on electric motor definitions are made irrelevant by the recent standards NOPR. Nevertheless, NEMA’s definitional concerns are listed here as they were provided as comments on the test procedure rulemaking.

In response to the NOPR, NEMA urged DOE to add clarity to the definition of “electric motor” and “general purpose electric motor subtype I,” and add new definitions for “motor,” “definite purpose electric motor,” and “special purpose electric motor.” NEMA pointed out that the term “motor” has not been defined in the NOPR. (Pub. Mtg. Tr., No. 7 at pp. 76–77). NEMA recommended defining “motor” as “a machine that converts electrical power into rotational mechanical power.” (NEMA, No. 10 at p. 7) Further, NEMA noted that the definition of “electric

motor” needs to be clearer and more complete for regulatory purposes and suggested that the proposed definition of electric motor should include the nine characteristics describing construction and performance of the motor. (Pub. Mtg. Tr., No. 7 at pp. 15–22; Pub. Mtg. Tr., No. 7 at p. 76; NEMA, No. 10 at pp. 2,3,6,7) NEMA stated that if these characteristics are not included in the definition of “electric motor”, then these would need to be included in the definitions of all electric motor types such as “special purpose electric motor with moisture resistant windings,” “special purpose electric motor with encapsulated windings,” and “special purpose electric motor with sealed windings.” (NEMA, No. 10 at p. 15). With that in mind, NEMA suggested that an electric motor be defined as a motor that:

- (1) Is a single-speed, induction motor;
- (2) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);
- (3) Contains a squirrel-cage (MG 1) or cage (IEC) rotor;
- (4)(i) Is built in accordance with NEMA T-frame dimensions or their IEC metric equivalents, including a NEMA frame size that is between two consecutive NEMA T-frames or their IEC metric equivalents; or
- (ii) Is built in an enclosed 56 NEMA frame size (or IEC metric equivalent);
- (5) Has performance in accordance with NEMA Design A (MG 1) or B (MG 1) characteristics or equivalent designs such as IEC Design N (IEC); and
- (6) Operates on polyphase alternating current 60-hertz sinusoidal power. (NEMA, No. 10 at pp. 2, 3, 6, 7)

NEMA recommended changing the definition of “general purpose electric motor (subtype I)” as a general purpose electric motor that:

- (1) Has foot-mounting that may include foot-mounting with flanges or detachable feet;
- (2)(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
- (3) Includes, but is not limited to, explosion-proof construction.” (NEMA, No. 10 at p. 7)

DOE understands the intention of NEMA’s proposal was to establish a definitional structure that would clearly delineate which motors were covered and which motors were excluded from coverage. By essentially using pulling the nine criteria DOE laid out in the June 2013 NOPR for the definition for “electric motor,” NEMA is proposing that any motor that falls under the definition of “electric motor” would be

a covered motor. But following the approach suggested by NEMA would undercut the long-term stability that DOE had sought to provide when it developed a broad definition for the term “electric motor” by requiring DOE to continually update the definition each time DOE updates its scope of coverage. In addition, as is evident in the standards NOPR, the nine criteria that NEMA is suggesting for the “electric motor” definition are the same criteria that DOE proposes using to define the scope of coverage in its proposed standards rulemaking so, in effect, DOE’s proposal has the same effect as NEMA’s “electric motor” definition as far as defining broadly the motor types that DOE is considering for coverage (as well as those that are already covered.)

Retaining the definition for “electric motor” renders unnecessary NEMA’s suggestion to add a definition for “motor;” this suggestion would simply reclassify what are currently defined as “electric motors” to be “motors.”

NEMA’s recommended that DOE retain the definitions for “general purpose electric motor” and “general purpose electric motor (subtype II).” DOE agrees that changes to these definitions are unnecessary and has made no changes to these definitions for the final rule.

NEMA recommended that the definition for “general purpose electric motor (subtype I)” be modified by removing clauses from that definition that would overlap with the criteria that DOE listed earlier in this rule,<sup>8</sup> and which NEMA proposed be added to the definition of “electric motor.” However, as DOE is choosing not to change the definition of “electric motor” at this time, DOE believes it is essential to leave these clauses in the definition for “general purpose electric motor (subtype I)” to fully define this type of motor. Therefore, DOE has elected to not update the definition for “general purpose electric motor (subtype I)” at this time.

NEMA also suggested editing the existing definitions of special and definite purpose motors. NEMA suggested that DOE define a “definite purpose electric motor” as any electric motor that:

- (1) Is rated at 600 volts or less; and
- (2) Cannot be used in most general purpose applications and is designed either:

(i) To standard ratings with standard operating characteristics or standard mechanical construction for use under

<sup>8</sup> E.g., single-speed, induction, continuous-duty, squirrel-cage rotor, etc.

service conditions other than usual, such as those specified in NEMA MG 1–2009, paragraph 14.3, “Unusual Service Conditions,” (incorporated by reference, see 431.15); or

(ii) For use on a particular type of application.” (NEMA, No. 10 at p. 8)

NEMA suggested defining a “special purpose electric motor” as any electric motor, other than a general purpose electric motor or definite purpose electric motor, that:

(1) Is rated at 600 volts or less; and

(2) Has special operating characteristics or special mechanical construction, or both, designed for a particular application.” (NEMA, No. 10 at p. 8)

DOE had opted not to update the definitions for “special purpose motor” and “definite purpose motor” in the NOPR because these definitions would apply broadly to cover a group of motors, irrespective of whether each motor category within that group is required to meet energy conservation standards. However, DOE does agree with NEMA that “special purpose motors” and “definite purpose motors” should be defined within the context of the broader term “electric motors.” In the 2012 final rule test procedure for electric motors DOE made a similar decision to update the term “fire pump motor” to “fire pump electric motor.” 77 FR 26616. For this final rule, DOE has therefore revised the terms “special purpose motor” and “definite purpose motor” to be “special purpose electric motor” and “definite purpose electric motor”<sup>9</sup> while retaining the previously established definitions.

### C. International Electrotechnical Commission IP and IC Codes

As discussed in section III.A.2, International Electrotechnical Commission (IEC), similar to NEMA, produces industry standards that contain performance requirements for electric motors. In the NOPR, DOE incorporated the term ‘IEC motor equivalents’ in the proposed definitions of NEMA-based electric motor types included in 10 CFR part 431 to ensure that IEC motors equivalents would be treated in a similar and consistent manner as NEMA-based electric motors.

In response to the NOPR, NEMA raised concerns that the IEC does not

<sup>9</sup>In the recent standards NOPR, the special or definite purpose distinctions evaporate based on the proposed regulatory structure. Therefore, at some point in the future, DOE intends to remove these definitions from DOE regulations. DOE is retaining the definitions for now to help manufacturer’s meet the current energy conservation standards and delineating between general purpose versus definite or special purpose electric motors.

use the same identifiers as NEMA to characterize the motor types. Instead, IEC generally uses specific “IP” (protection provided by enclosure) and “IC” codes (method of cooling) to identify the motor types. Therefore, NEMA requested that DOE include appropriate IP and IC codes to properly include IEC-equivalent electric motors within the proposed definitions (NEMA, No. 10 at p. 9)

DOE will consider issuing separate guidance regarding these codes and their interplay with those motors built in accordance with NEMA specifications. As part of that process, the agency will afford the public with an opportunity to comment on any proposed guidance that the agency decides to issue.

### D. Motor Type Definitions and Testing Set-Up Instructions

In the course of the 2012 final test procedure rulemaking, some interested parties questioned why DOE defined the term “NEMA Design B motor” but not “NEMA Design A motor” or “NEMA Design C motor.” DOE explained at the time that a definition for “NEMA Design B motor” was necessary because the application section in MG 1 (paragraph 1.19.1.2 in both MG 1–2009 and MG 1–2011) contained a typographical error that required correcting for purposes of DOE’s regulations, which exactly implemented a standard for NEMA Design B motors that are general purpose electric motors with a power rating of more than 200 horsepower, but less than or equal to 500 horsepower. See 10 CFR 431.25(d). At that time, DOE also noted that it may incorporate a corrected version of the “NEMA Design C motor” definition in a future rulemaking because that definition, which is found in NEMA MG 1–2009, paragraph 1.19.1.3, also contains a typographical error. DOE did not, however, intend to add definitions for NEMA Design A and IEC Design N, as the existing definitions found in MG 1 are correct as published. 77 FR at 26616 and 26634 (May 4, 2012).

Given DOE’s current intention to consider establishing energy conservation standards for an expanded scope of motors, however, DOE now believes it is necessary to clarify the terms and definitions pertaining to Design A and Design N motors as well. DOE understands that many terms and definitions applicable to motors are used in common industry parlance for voluntary standards and day-to-day business communication but are not necessarily defined with sufficient clarity for regulatory purposes. At this time, DOE is making changes designed

to provide more precise definitions for these terms to sufficiently capture the particular characteristics attributable to each definition. Both DOE and manufacturers should use these definitions to determine whether a particular basic model is covered by DOE’s regulations for electric motors. DOE notes, however, that the presence of a given definition in this document does not obligate DOE to establish energy conservation standards for the motor type defined.

### 1. National Electrical Manufacturers Association Design A and Design C Motors

NEMA MG 1–2009’s definitions include the following three types of polyphase, alternating current, induction motors: NEMA Designs A, B, and C. NEMA MG 1–2009 establishes the same pull-up, breakdown, and locked-rotor torque requirements for both NEMA Design A and NEMA Design B motors.<sup>10</sup> However, a NEMA Design A motor must be designed such that its locked-rotor current exceeds the maximum locked-rotor current established for a NEMA Design B motor. Unless the application specifically requires the higher locked-rotor current capability offered by a NEMA Design A motor, a NEMA Design B motor (which has the same specified minimum torque characteristics as the NEMA Design A motor) is often used instead because of the additional convenience offered by these motors when compared to Design A motors. (See NEMA, EERE–2010–BT–STD–0027–0054 at 36 (noting the additional convenience offered by Design B motors over Design A motors with respect to selecting disconnecting methods and in satisfying National Electrical Code and UL requirements.)) In addition, DOE understands that NEMA Design B motors are frequently preferred because the user can easily select the motor control and protection

<sup>10</sup>Locked-rotor torque is the torque that a motor produces when it is at rest or zero speed and initially turned on. A higher locked-rotor torque is important for hard-to-start applications, such as positive displacement pumps or compressors. A lower locked-rotor torque can be accepted in applications such as centrifugal fans or pumps where the start load is low or close to zero. Pull-up torque is the torque needed to cause a load to reach its full rated speed. If a motor’s pull-up torque is less than that required by its application load, the motor will overheat and eventually stall. Breakdown torque is the maximum torque a motor can produce without abruptly losing motor speed. High breakdown torque is necessary for applications that may undergo frequent overloading, such as a conveyor belt. Often, conveyor belts have more product or materials placed upon them than their rating allows. High breakdown torque enables the conveyor to continue operating under these conditions without causing heat damage to the motor.

equipment that meets the applicable requirements of the National Fire Protection Association (NFPA) National Electrical Code (NFPA 70). These motors are also listed by private testing, safety, or certification organizations, such as CSA International or UL. (NEMA, EERE-2010-BT-STD-0027-0054 at p. 36)

Unlike NEMA Design A and B motors, a NEMA Design C motor requires a minimum locked-rotor torque per NEMA MG 1-2009, Table 12-3, which is higher than either the NEMA Design A or Design B minimum locked-rotor torque required per NEMA MG 1-2009, Table 12-2.

In view of the above, DOE proposed to incorporate a definition for both “NEMA Design A motor” and “NEMA Design C motor” to improve the clarity between these two terms. As DOE had already adopted a definition for “NEMA Design B motor” at 10 CFR 431.12, it believed that providing definitions for other motor types would provide consistency in the treatment of all considered motors. 78 FR 38462. The proposed definitions for NEMA Design A and Design C motors were based on the definitions in NEMA MG 1-2009, paragraphs 1.19.1.1 and 1.19.1.3, respectively. DOE proposed to define a “NEMA Design A motor” as “a squirrel-cage motor designed to withstand full-voltage starting and that develops locked-rotor torque, pull-up torque, breakdown torque, and locked-rotor current as specified in NEMA MG 1-2009—and with a slip at rated load of less than 5 percent for motors with fewer than 10 poles.” DOE also proposed to define a “NEMA Design C motor” as “a squirrel-cage motor designed to withstand full-voltage starting and that develops locked-rotor torque for high-torque applications, pull-up torque, breakdown torque, and locked-rotor current as specified in NEMA MG 1-2009—and with a slip at rated load of less than 5 percent.”

NEMA requested that DOE modify its proposed definitions of NEMA Design A and Design C motors and urged that the definitions be consistent when referencing to the NEMA MG 1-2009 tables. (Pub. Mtg. Tr., No. 7 at p. 41, 44, 45)<sup>11</sup> NEMA acknowledged an error in the definition of NEMA Design C in NEMA MG 1-2009, paragraph 1.19.1.3 and suggested that the phrase “up to the values” in reference to the level of

locked rotor torque and breakdown torque should be replaced with “not less than the values” because the limits in the referenced tables are the minimum values. NEMA suggested that the proper statements can be found in the actual standards in the referenced clauses of NEMA MG 1-2009 paragraph 12.37 and NEMA MG 1-2009 paragraph 12.39. (NEMA, No.10 at p. 13) WEG asserted that since DOE’s procedure would apply only to 60 Hertz (Hz) motors, DOE should omit references to 50 Hz motors in the definitions. (Pub. Mtg. Tr., No. 7 at p. 43)

DOE has re-evaluated its proposed definitions for NEMA Design A motors and NEMA Design C motors after receiving the comments above. Regarding the NEMA Design C definition, DOE recognizes the error in its proposed definition and is modifying the definition to read “not less than the values” instead of “up to the values.” The remainder of the proposed Design C definition is being adopted. DOE did not receive any other specific comments regarding the definition of NEMA Design A motors, so DOE is adopting the definition proposed in the NOPR without modifications. Regarding the clause for “50 Hz” motors, DOE notes that the definition for NEMA Design B motors already present in 10 CFR part 431 contains this phrase, and to maintain consistency between the three definitions, DOE has retained it for the NEMA Design A and NEMA Design C definitions. DOE also notes that NEMA’s MG 1-2009 includes both 60 Hz and 50 Hz in its Design A, B and C definitions. Under the regulatory scheme outlined in the standards NOPR, however, DOE’s proposed standards would only apply to 60 Hz motors because of the nine criteria that define the scope of coverage.

## 2. International Electrotechnical Commission Designs N and H Motors

The European International Electrotechnical Commission (IEC), produces industry standards that contain performance requirements for electric motors similar to those produced by NEMA. Analogous to NEMA Designs B and C are IEC Designs N and H. IEC Design N motors have similar performance characteristics to NEMA Design B motors, while IEC Design H motors are similar to NEMA Design C motors. Because many motors imported into the U.S. are built to IEC specifications instead of NEMA specifications, DOE proposed to include a definition for IEC Design N and IEC Design H motor types to ensure that these functionally similar motors were treated in a manner consistent with

equivalent NEMA-based electric motors and to retain overall consistency with the existing definitional framework.

DOE’s proposed definition for “IEC Design N motor” incorporated language from IEC Standard 60034-12 (2007 Ed. 2.1) (IEC 60034) with some modifications that would make the definition more comprehensive. IEC 60034 defines IEC Design N motors as being “normal starting torque three-phase cage induction motors intended for direct-across the line starting, having 2, 4, 6 or 8 poles and rated from 0.4 kW to 1600 kW,” with torque characteristics and locked-rotor characteristics detailed in subsequent tables of the standard.<sup>12</sup> A similar approach for IEC Design H motors is taken in IEC 60034, but with references to different sections and slightly different wording. DOE proposed including all references to tables for torque characteristics and locked-rotor characteristics as part of these definitions to improve their comprehensiveness. As detailed in the NOPR, DOE proposed to define an “IEC Design N motor” as “an induction motor designed for use with three-phase power with the following characteristics: A cage rotor, intended for direct-on-line starting, having 2, 4, 6, or 8 poles, rated from 0.4 kW to 1600 kW at a frequency of 60 Hz, and conforming to IEC specifications for torque characteristics, locked rotor apparent power, and starting.” DOE proposed to define a “IEC Design H motor” as “an induction motor designed for use with three-phase power with the following characteristics: A cage rotor, intended for direct-on-line starting, with 4, 6, or 8 poles, rated from 0.4 kW to 1600 kW, and conforming to IEC specifications for starting torque, locked rotor apparent power, and starting.”

In response to these proposed definitions, interested parties made several suggestions. NEMA requested removal of the parenthetical statement “(as demonstrated by the motor’s ability to operate without an inverter)” because, in its view, it is unnecessary and not included in the present definition of NEMA Design B motor nor in the proposed definitions of NEMA Designs A and C motors. (Pub. Mtg. Tr., No. 7 at p. 45, 46) NEMA further suggested that the rating range of 0.4 kW to 1600 kW be replaced with 0.75 kW to 373 kW as applicable to all defined electric motors and as given in the

<sup>11</sup> (In this and subsequent citations, the document number refers to the number of the comment in the Docket for the DOE rulemaking on test procedures for electric motors, Docket No. EERE-2012-BT-TP-0043; and the page references refer to the place in the document where the statement preceding appears.)

<sup>12</sup> Across-the-line (or direct-on-line) starting is the ability of a motor to start directly when connected to a polyphase sinusoidal power source without the need for an inverter.

present 10 CFR 431.25.<sup>13</sup> Baldor commented that the 1 to 500 horsepower range should be included in the definition, which presumably would align with the scope of coverage proposed in DOE's standards NOPR. (Pub. Mtg. Tr., No. 7 at p. 52) SEW pointed out that the definition for IEC Design H includes "at a frequency of 60 Hz" while the definition for IEC design N does not include it. (Pub. Mtg. Tr., No. 7 at p. 52)

NEMA commented that, depending on the level of apparent locked rotor power, an IEC Design N electric motor may be equivalent to a NEMA Design B or NEMA Design A electric motor. Moreover, the marking requirements in IEC 60034-1 do not require that a design type or locked rotor apparent power be marked on IEC design motors. Therefore, NEMA requested that DOE consider these factors (but made no specific suggestions on how) while including IEC standards in terms of the level of equivalency to the NEMA MG 1 standard in the proposed definitions. (NEMA, No. 10 at p. 13) Regal Beloit requested that DOE address the scope and design of IEC Design N motors with high inrush locked rotor current. (Pub. Mtg. Tr., No. 7 at pp. 166-168).

DOE notes that its objective in defining IEC Design H and IEC Design N motors is to define what characteristics and features comprise these types of motors, so that manufacturers designing to the IEC standards can easily tell whether their motor is subject to DOE's regulatory requirements. While DOE currently regulates motors that have a power rating between 0.75 kW to 373 kW, DOE does not believe it needs to limit the definitions to this power range to describe whether a given motor falls under Design H or Design N. DOE agrees with NEMA regarding the need to provide additional clarity about how to determine NEMA and IEC equivalent motors to determine the applicability of DOE's regulations to IEC-rated motors. Consequently, DOE intends to issue a separate guidance document that will help describe the process that both DOE and manufacturers should use to determine whether IEC-rated motors are subject to DOE's regulations.

As Baldor noted, DOE also acknowledges that its inclusion of the clause "at a frequency of 60 Hz" in the definition for IEC Design H motor and not for IEC Design N may create some ambiguity. For the final rule, DOE is modifying the definition of an IEC Design N motor and maintaining the

definition of an IEC Design H motors, both to specify applicability to motors at a frequency of 60 Hz.

DOE generally agrees that removing the parenthetical statement "(as demonstrated by the motor's ability to operate without an inverter)" from the definition of IEC Design H and IEC Design N motors is unnecessary, and has rewritten the definition such that it is not needed. DOE understands that the coverage of IEC motors and NEMA motors should comport with one another to help ensure that manufacturers follow a consistent set of requirements. It does not make sense to have a clause for the definitions of IEC Design H and IEC Design N motors and not have it for definitions of NEMA Design A and B. In an effort to maintain consistency with DOE's existing, NEMA-based definitions, DOE has removed the clause "as demonstrated by the motor's ability to operate without an inverter" from the two IEC definitions DOE has also replaced the term "intended" with "capable" because the former does not definitively establish the capability of motor for direct online starting.

Electric motors that meet the IEC Design N or Design H requirements and otherwise meet the definitions of general purpose electric motor (subtype I) or (subtype II) are already required to satisfy DOE's energy conservation standards at the specified horsepower ranges prescribed in 10 CFR 431.25. Because these IEC definitions stipulate a set of performance parameters that do not inhibit an electric motor's ability to be tested, DOE did not propose any additional test procedure amendments in the NOPR.

At the NOPR public meeting, Regal Beloit suggested that DOE add an alternate test plan per the IEC 60034-2-1 because even though there are slight differences relative to IEEE 112 (Test Method B), industry accepts it as equivalent. It pointed out that this test plan would be the IEC equivalent of IEEE 112 (Test Method B) and, because DOE was opting to define IEC motor types, it would seem pertinent to include an IEC test method. (Pub. Mtg. Tr., No. 7 at p. 166-168). While DOE understands Regal Beloit's view, the inclusion of IEC motors that are equivalent to motors built in accordance with NEMA specifications is not a new concept. These "IEC-equivalent" motors are already subject to regulation are currently subject to standards. To date, DOE is unaware of any difficulties in testing IEC-equivalent motors but will consider any appropriate changes to its procedures if any such problems arise.

### 3. Electric Motors With Moisture-resistant, Sealed or Encapsulated Windings

All electric motors have "insulation systems" that surround the various copper winding components in the stator. The insulation, such as a resin coating or plastic sheets, serves two purposes. First, it helps separate the three electrical phases of the windings from each other and, second, it separates the copper windings from the stator lamination steel. Electric motors with encapsulated windings have additional insulation that completely encases the stator windings, which protects them from condensation, moisture, dirt, and debris. This insulation typically consists of a special material coating, such as epoxy or resin that completely seals the stator's windings. Encapsulation is generally found on open-frame motors, where the possibility of contaminants getting inside the motor is higher than for an enclosed-frame motor.

In the electric motors preliminary analysis TSD,<sup>14</sup> DOE set forth a possible definition for the term "encapsulated electric motor" that was based on a NEMA's definition for the term "Machine with Sealed Windings." DOE intended to address those motors containing special windings that could withstand exposure to contaminants and moisture—and whose efficiency is currently unregulated. Commenting on this approach, NEMA and Baldor noted that NEMA MG 1-2009 does not specify a single term that encompasses a motor with encapsulated windings. Instead, NEMA MG 1-2009 provides two terms: one for a "Machine with Sealed Windings" and one for a "Machine with Moisture Resistant Windings." A definition for the term "Machine with Encapsulated Windings" has not appeared in MG 1 since the 1967 edition.

After reviewing the two pertinent definitions, the comments from Baldor and NEMA, and DOE's own research on these types of motors, DOE proposed that motors meeting either definition would be addressed by the expanded scope of the test procedure and accompanying definitions under consideration. The ability for a motor's windings to continue to function properly when the motor is in the presence of moisture, water, or contaminants, as is the case when a motor meets one of these two definitions, does not affect its ability to

<sup>13</sup> These are the metric figures for 1 and 500 horsepower, respectively.

<sup>14</sup> The preliminary TSD published in July 2012 is available at: <http://www.regulations.gov/#/documentDetail;D=EERE-2010-BT-STD-0027-0023>.

be connected to a dynamometer and be tested for efficiency. Additionally, this ability does not preclude a motor from meeting the nine criteria that DOE preliminarily used to characterize those electric motors whose energy efficiency are not currently regulated but that fall within the scope of DOE's regulatory authority. Therefore, in the NOPR, DOE proposed two definitions based on the NEMA MG 1–2009 definitions of a "Machine with Moisture Resistant Windings" and a "Machine with Sealed Windings."

DOE's proposed definitions were based on modified versions of the NEMA MG 1–2009 definitions in order to eliminate potential confusion and ambiguities. The proposed definitions emphasized the ability of motors to pass the conformance tests for moisture and water resistance, thereby identifying them as having special or definite purpose characteristics. As detailed in the NOPR analysis, DOE proposed to define "electric motor with moisture resistant windings" as "an electric motor engineered to pass the conformance test for moisture resistance as specified in NEMA MG 1–2009." DOE proposed to define an "electric motor with sealed windings" as "an electric motor engineered to pass the conformance test for water resistance as specified in NEMA MG 1–2009." 78 FR 38455.

In response to the June 2013 NOPR, NEMA pointed out that the proposed definitions refer to NEMA MG 1–2009, paragraphs 12.62 and 12.63 as incorporated by reference in 10 CFR 431.15. DOE's regulations currently do not include references to these paragraphs and DOE did not propose to add them. (Pub. Mtg. Tr., No. 7 at p. 54; NEMA, No. 10 at p. 13) As suggested by NEMA, however, DOE is incorporating these two paragraphs into 10 CFR 431.15, since both paragraphs are necessary to these definitions. DOE notes that no interested parties at either the public meeting or in written comments opposed this suggested approach.

In the proposed definitions of electric motor with moisture resistant windings and electric motor with sealed windings, NEMA commented that the phrase "engineered for passing," should be replaced with "capable of passing" as stated in the NEMA MG 1–2009 standard. Finally NEMA suggested that DOE define an "electric motor with moisture resistant windings" based on paragraph 1.27.1 of NEMA MG 1–2009: "Special purpose electric motor with moisture resistant windings means a special purpose electric motor that has motor windings that have been treated

such that exposure to a moist atmosphere will not readily cause malfunction. This type of machine is intended for exposure to moisture conditions that are more excessive than the usual insulation system can withstand. A motor with moisture resistant windings is capable of passing the conformance test for moisture resistance described in NEMA MG 1–2009, paragraph 12.63, (incorporated by reference, see 431.15) as demonstrated on a representative sample or prototype."

Based on paragraph 1.27.2 of NEMA MG 1–2009, NEMA proposed that the definition for special purpose electric motor with sealed windings be:

"Special purpose electric motor with sealed windings means a special purpose electric motor that has an insulation system which, through the use of materials, processes, or a combination of materials and processes, results in windings and connections that are sealed against contaminants. This type of machine is intended for environmental conditions that are more severe than the usual insulation system can withstand. A motor with sealed windings is capable of passing the conformance test for water resistance described in NEMA MG 1–2009, paragraph 12.62, (incorporated by reference, see 431.15) as demonstrated on a representative sample or prototype." (NEMA, No. 10 at p. 13–14)

NEMA and Baldor requested that DOE consider an additional third type of motors—"special purpose electric motor with encapsulated windings." These motors are included in NEMA MG 1–2009, paragraph 12.62 and also identified in DOE's 1997 policy statement. NEMA proposed that the following definition of this type be considered for 10 CFR 431.12: "Special purpose electric motor with encapsulated windings means a special purpose electric motor that has motor windings that are fully enclosed in an insulating material that protects the windings from detrimental operating environments (moisture, dust, dirt, contamination, etc.). The encapsulate material may fully enclose not only the motor windings but the wound stator core. A motor with encapsulated windings is capable of passing the conformance test for water resistance described in NEMA MG 1–2009, paragraph 12.62, (incorporated by reference, see 10 CFR Part 431.15) as demonstrated on a representative sample or prototype." (NEMA, No. 10 at p. 14, Pub. Mtg. Tr., No. 7 at p. 55)

DOE has evaluated the suggestions made on these definitions. DOE notes that while a motor may be engineered to

comply with a parameter, the final product may not meet the standards. To address this issue, DOE has adjusted these two definitions to read as "capable of passing" rather than "engineered for passing." DOE prefers to leave the definition broad, incorporating all motors that pass the conformance tests in NEMA MG 1–2009 paragraphs 12.62 and 12.63, rather than further specifying, as NEMA suggested in its definition. However, DOE has decided to avoid any confusion regarding these motor types and, therefore, has adopted three definitions.

For the final rule, DOE is adopting the following definition: "Electric motor with moisture-resistant windings means an electric motor that is capable of passing the conformance test for moisture resistance generally described in NEMA MG 1–2009, paragraph 12.63 (incorporated by reference, see 431.15)." DOE is also adopting the following definition for "Electric motor with sealed windings" and for "Electric motor with encapsulated windings": ". . . an electric motor capable of passing the conformance test for water resistance described in NEMA MG 1–2009, paragraph 12.62 (incorporated by reference, see 431.15)."

In addition to proposing a definition for these motor types, DOE also considered difficulties that may arise during testing when following IEEE Standard 112 (Test Method B) or CSA C390–10 or any potential impacts on efficiency caused by encapsulation of the windings. Prior to the NOPR, DOE conducted its own research and found no evidence that electric motors with specially insulated windings could not be tested using the existing DOE test procedures without further modification. Therefore, DOE did not propose any test procedure amendments tailored for electric motors with moisture resistant windings or electric motors with sealed windings in the NOPR.

Bluffton Motors highlighted the challenges associated with testing encapsulated windings motors in its comments. Bluffton commented that the thermocouples cannot be used to measure winding temperature and that measuring the temperature through winding resistance is a difficult process, thus consistent, repeatable results may not be obtained. (Bluffton, No. 11 at p. 1)

Advanced Energy agreed with DOE's decision not to propose additional test procedures for electric motors with moisture resistant windings and electric motors with sealed windings. Advanced Energy commented that they could be fully tested using existing standard

procedures. (Advanced Energy, No. 8 at p. 2)

DOE understands the comments made regarding testing motors with encapsulated windings. As a result of discussions with subject matter experts (SMEs) prior to the NOPR, and research performed after, DOE does not believe that the presence of specially insulated stator windings in an electric motor would interfere with DOE-prescribed test procedures. Because temperature measurements are taken by measuring the stator winding resistance, DOE does not believe that the insulation on the stator windings themselves will

interfere with carrying out any part of IEEE Standard 112 (Test Method B) or CSA C390-10, both of which require temperature measurements to be taken during testing. The modifications made to stator windings have no impact on a motor's ability to be connected to a dynamometer because they are modifications to the internal portions of the motor. Therefore, DOE has retained the approach proposed in the NOPR and is not adopting an alternative test plan for these motor types.

#### 4. Inverter-Capable Electric Motors

Current standards for electric motors apply to single speed motors with a

2-, 4-, 6-, or 8-pole configuration. 10 CFR 431.25. Each of these motors operates at a constant rotational speed, which is predicated by its pole configuration. This means that the motor shaft is engineered to rotate at the same speed, regardless of its application or required power. In addition to its pole configuration, a motor's rotational speed is partially determined by the frequency of its power source. The equation determining a motor's theoretical maximum speed (or synchronous speed) is:

$$\text{Synchronous Speed of Motor} = \frac{120 * (\text{Frequency of Power Source})}{\text{Number of Motor Poles}}$$

Inverter drives (also called variable-frequency drives (VFDs), variable-speed drives, adjustable frequency drives, alternating-current drives, microdrives, or vector drives) operate by changing the frequency and voltage of the power source that feeds into an electric motor. The inverter is connected between the power source and the motor and provides a variable frequency power source to the motor. The benefit of the inverter is that it can control the frequency of the power source fed to the motor, which in turn controls the rotational speed of the motor. This allows the motor to operate at a reduced speed when the full, nameplate-rated speed is not needed. This practice can save energy, particularly for fan and pump applications that frequently operate at reduced loading points. Inverters can also control the start-up characteristics of the motor, such as locked-rotor current or locked-rotor torque, which allows a motor to employ higher-efficiency designs while still attaining locked-rotor current or locked-rotor torque limits standardized in NEMA MG 1-2009.<sup>15</sup>

DOE did not propose to exempt a motor suitable for use on an inverter from any applicable energy conservation standards because this type of motor operates like a typical, general purpose electric motor when not connected to an inverter. As detailed in the NOPR, DOE proposed to define an "inverter-capable electric motor" as an electric motor designed to be directly connected to polyphase, sinusoidal line power, but that is also capable of continuous operation on an inverter drive over a

limited speed range and associated load. Because this motor type operates like a typical, general purpose electric motor when not connected to an inverter, DOE did not believe any test procedure amendments were needed. Under DOE's proposed approach, an inverter-capable electric motor would be tested without the use of an inverter and rely on the set-ups used when testing a general purpose electric motor.

In response to the NOPR, interested parties raised concerns regarding the proposed definition for inverter-capable electric motors. NEMA commented that the current definition is neither complete nor clear, noting that the definition is fairly wide open as far as the type of three-phase motors that could be connected to an inverter (Pub. Mtg. Tr., No. 7 at p. 58-59; NEMA, No. 10 at p. 15). CA IOUs requested that the definition for inverter-capable electric motor be specifically constrained to polyphase motors, but NEMA noted that if the definition for electric motor refers to polyphase, as it recommended in its comments, then the term "polyphase" need not be included in the definition of inverter-capable electric motors. (Pub. Mtg. Tr., No. 7 at p. 58; Pub. Mtg. Tr., No. 7 at p. 59). Finally, NEMA proposed that the following definition be adopted instead: "Inverter-capable electric motor means a general purpose electric motor (subtype I) or general purpose electric motor (subtype II) that is also capable of continuous operation on an inverter control over a limited speed range and associated load." (NEMA, No. 10 at p. 15)

DOE does not agree with NEMA's suggestion to further limit the definition proposed in the NOPR. Specifically, DOE's intent with the proposed

definition was to include all types of electric motors that were capable of working with an inverter, which encompass a wide variety of three-phase electric motors. These definitions should help manufacturers determine if a given basic model is covered and subject to DOE's regulations. DOE believes that NEMA is primarily concerned as to whether certain types of inverter capable motors will ultimately be subject to amended energy conservation standards. Whether a motor meets one of the definitions finalized today, however, does not necessarily mean that the motor type's efficiency will be regulated by DOE. For these reasons, DOE has maintained the proposed definition for "inverter-capable electric motor" in the final rule and NEMA should provide further comment in the standards rulemaking about the applicability of the proposed standards to these types of motors.

#### 5. Totally Enclosed Non-Ventilated Electric Motors

Most enclosed electric motors are constructed with a fan attached to the shaft, typically on the end opposite the driven load, as a means of pushing air over the surface of the motor enclosure, which helps dissipate heat and reduce the motor's operating temperature. Totally enclosed non-ventilated (TENV) motors, however, have no fan blowing air over the surface of the motor. These motors rely, instead, on the conduction and convection of the motor heat into the surrounding environment for heat removal, which results in a motor that operates at higher temperatures than motors with attached cooling fans. TENV motors may be used in environments where an external fan

<sup>15</sup> Li, Harry. *Impact of VFD, Starting Method and Driven Load on Motor Efficiency*. 2011. Siemens Industry, Inc.

could clog with dirt or dust, or applications where the shaft operates at too low of a speed to provide sufficient cooling (i.e., a motor controlled by an inverter to operate at very low revolutions per minute). TENV motors may employ additional frame material as well as improved stator winding insulation so that the motor may withstand the increased operating temperatures. Extra frame material allows for more surface area and mass to dissipate heat, whereas higher-grade stator winding insulation may be rated to withstand the higher operating temperatures.

In view of the statutory definitional changes created by EISA 2007, and the support expressed by both industry and energy efficiency advocates in the Joint Petition submitted by the Motor Coalition, DOE is addressing TENV motors in the energy conservation standards rulemaking. (Motor Coalition, EERE-2010-BT-STD-0027-0035 at p. 19) As part of this effort, in the June 2013 NOPR, DOE proposed to add a definition for this motor type based on the definition of a “totally enclosed nonventilated machine” in paragraph 1.26.1 of NEMA MG 1-2009. DOE tentatively concluded that this definition is accurate and sufficiently clear and concise and proposed that the definition be adopted with minor alterations. The NOPR proposed to define a “TENV electric motor” as an electric motor built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection.

In addition to proposing a definition for these motors, DOE considered whether any test procedure set-up instructions would be necessary to test TENV motors. In response to the framework document,<sup>16</sup> ASAP and NEMA submitted comments suggesting that manufacturers could demonstrate compliance with the applicable energy conservation standards by testing similar models. (ASAP and NEMA, EERE-2010-BT-STD-0027-0012 at p. 7) Although NEMA and ASAP suggested this was a possible way to test these motors to demonstrate compliance, they did not state that this was necessary method because of difficulties testing these types of motors. Subsequently, after DOE published its electric motors preliminary analysis, NEMA stated that it was not aware of any changes that were required to use IEEE Standard 112 (Test Method B) when testing TENV motors. (NEMA, EERE-2010-BT-STD-

0027-0054 at p. 16) Also, in response to the preliminary analysis, the Copper Development Association (CDA) commented that DOE may need to develop new test procedures for these motor types but did not explain why such a change would be necessary. (CDA, EERE-2010-BT-STD-0027-0018 at p. 2) CDA did not indicate whether the current procedures could be modified to test these motors or what specific steps would need to be included to test these types of motors. Additionally, DOE knew of no technical reason why a TENV motor could not be tested using either IEEE Standard 112 (Test Method B) or the CSA C390-10 procedure without modification. In view of NEMA’s most recent comments suggesting that IEEE Standard 112 (Test Method B) was an appropriate means to determine the efficiency of these motors, and the fact that the CDA did not provide an explanation of why changes would be necessary, DOE did not propose any test procedure amendments for TENV electric motors in the NOPR.

In response to the June 2013 NOPR, Advanced Energy agreed with the proposed definition for TENV electric motors and with DOE’s decision not to propose any clarifying set-up procedure. (Advanced Energy, No. 8 at p. 2) However, NEMA asserted that the proposed definition is inadequate. NEMA suggested that if DOE accepts NEMA’s earlier recommendations on modifying the definition for “motor” and “electric motor,” the definition of TENV would be a “totally enclosed non-ventilated (TENV) definite purpose electric motor means a definite purpose electric motor that is built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection.” (NEMA, No. 10 at p. 15). NEMA further requested that DOE consider including IEC equivalents along with relevant IC and IP codes. (Pub. Mtg. Tr., No. 7 at p. 79; NEMA, No. 10 at p. 15-16)

During the NOPR public meeting, the CA IOUs noted that DOE’s proposed definition for TENVs would overlap with the State of California’s regulations pertaining to pool pump motors. Those regulations, in relevant part, prescribe an energy conservation standard for pool pump motors. (Pub. Mtg. Tr., No. 7 at p. 61-64). Regal Beloit indicated in response during the public meeting that the proposed test procedures may not apply to pool pump motors since the majority of those motors are single-phase motors; in contrast, TENV motors operate on polyphase power. (Pub. Mtg. Tr., No. 7 at p. 61-65)

DOE has addressed the addition of phrases such as “definite purpose electric motor” to the individual motor definitions in section G, and for the reasons discussed there, will not be adding this phrase to the definition for TENV motors. Outside of this change, NEMA’s proposal matches that which was proposed by DOE in the NOPR. Based on this, DOE has maintained the NOPR proposed definition for this final rule. Having received no negative feedback on its proposal to not require set-up procedures for the testing of TENV motors, DOE is maintaining this approach in the final rule.

DOE understands NEMA’s concerns about IEC equivalency and recognizes that including IP and IC codes for IEC-equivalent motors may help eliminate any ambiguity in the proposed definitions. As noted earlier in the section H, DOE conducted its own independent research and consulted with SMEs to identify proper IP and IC codes for IEC motors equivalents to the motor types that were proposed to be defined in 10 CFR part 431 in the NOPR and intends to develop guidance regarding the appropriate codes.

Regarding pool pump motors, DOE notes that, by statute, any electric motor could be regulated by DOE for energy efficiency. DOE is considering setting energy conservation standards as part of its ongoing standards rulemaking effort for a wider variety of motors than are currently covered. To the extent that those efforts lead to the promulgation of standards that would affect an electric motor used in a pool pump, those standards would preempt any State standards that are currently in effect.

## 6. Air-Over Electric Motor

Most enclosed electric motors are constructed with a fan attached to the shaft, typically on the end opposite the drive, as a means of providing cooling airflow over the surface of the motor frame. This airflow helps remove heat, which reduces the motor’s operating temperature. The reduction in operating temperature prevents the motor from overheating during continuous duty operation and increases the life expectancy of the motor.<sup>17</sup> On the other hand, air-over electric motors do not have a factory-attached fan and, therefore, require a separate, external means of forcing air over the frame of the motor. Without an external means of cooling, an air-over electric motor could

<sup>17</sup> The temperature at which a motor operates is correlated to the motor’s efficiency. Generally, as the operating temperature increases the efficiency decreases. Additionally, motor components wear out more slowly when operated at lower temperatures.

<sup>16</sup> <http://www.regulations.gov/#/documentDetail;D=EERE-2010-BT-STD-0027-0002>.

overheat during continuous operation and potentially degrade the motor's life. To prevent overheating, an air-over electric motor may, for example, operate in the airflow of an industrial fan it is driving, or it may operate in a ventilation shaft that provides constant airflow. The manufacturer typically specifies the required volume of air that must flow over the motor housing for the motor to operate at the proper temperature.

After the enactment of the EISA 2007 amendments, DOE performed independent research and consultation with manufacturers and SMEs. Through this work, DOE found that testing air-over electric motors would be complex. IEEE Standard 112 (Test Method B) and CSA C390-10 do not provide standardized procedures for preparing an air-over electric motor for testing, which would otherwise require an external cooling apparatus. Additionally, DOE was not aware of any standard test procedures that provide guidance on how to test such motors. Test procedure guidance that would produce a consistent, repeatable test method would likely require testing laboratories to be capable of measuring the cubic airflow of an external cooling fan used to cool the motor during testing. At the time of the NOPR publication, DOE believed that this is a capability that most testing laboratories do not have. Without the ability to measure airflow, one testing laboratory may provide more airflow to the motor than a different testing laboratory. Increasing or decreasing airflow between tests could impact the tested efficiency of the motor, which would provide inconsistent test results. Because of this difficulty, DOE stated that it has no plans to require energy conservation standards for air-over electric motors, making further test procedure changes unnecessary. 78 FR 38461.

Although DOE did not plan to apply energy conservation standards to air-over electric motors, it proposed to define them for clarity. DOE's proposed "air-over electric motor" definition was based on the NEMA MG 1-2009 definition of a "totally enclosed air-over machine," with some modification to that definition to include air-over electric motors with open frames. DOE believed that air-over electric motors with either totally enclosed or open frame construction use the same methods for heat dissipation and, therefore, should be included in the

same definition. As detailed in the NOPR, DOE proposed to define "air-over electric motor" as "an electric motor designed to be cooled by a ventilating means external to, and not supplied with, the motor." 78 FR 38481.

In response to the NOPR, NEMA and ASAP commented that the proposed definition of air-over electric motor is inadequate. (Pub. Mtg. Tr., No. 7 at p. 70; NEMA, No. 10 at p. 33) NEMA commented that DOE's definition for air-over electric motor does not distinguish between air-over machines and pipe-ventilated machines, in which the ventilating means is external to the machine, but the air is ducted to and from and circulated through the machine. NEMA stated that the proposed definition should refer to the air as being free-flowing, which could be over an enclosed electric motor or through an open electric motor. Therefore, NEMA suggested that DOE define these motors as: "[a]ir-over definite purpose motor means a definite purpose motor that is designed to be cooled by a free flow of air provided by a ventilating means external to, and not supplied with, the motor." (NEMA, No. 10 at p. 33) NEMA further commented that there is no need for any definition of "air-over definite purpose motor" or "air-over definite purpose electric motor" if efficiency standards are not established. (NEMA, No. 10 at p. 34)

DOE believes that NEMA's suggestion provides a useful conceptual starting point, but has concern that without more specificity, the suggestion could create an incentive to sell motors intended for general purpose use but labeled as air-over. DOE understands that most, or all, air-over motors are used in applications where they drive a fan or blower that provides airflow to a certain application. Rather than having traditional cooling fans, air-over motors depend on the larger airstream to stabilize temperature. Maintaining NEMA's suggestion to specify that the source of the cooling air not be supplied with the motor, DOE adopts the following definition for today's rule: "An air-over motor is an electric motor rated to operate in and be cooled by the airstream of a fan or blower that is not supplied with the motor and whose primary purpose is providing airflow to an application other than the motor driving it."

Regarding NEMA's contention that DOE does not need to define this motor type, as noted earlier, DOE does not intend to define only motors that it

intends to regulate via the standards rulemaking.

DOE believed that the difficulties associated with testing air-over electric motors such as providing a standard flow of cooling air from an external source that provides a constant velocity under defined ambient temperature and barometric conditions over the motor were insurmountable at this time of the NOPR, and therefore, did not propose a test plan for these motors and did not plan to subject this motor type to standards in the standards rulemaking.

In response to the June 2013 test procedure NOPR, NEMA agreed with DOE's proposal to not require air-over electric motors to meet energy conservation standards, noting that the difficulties of testing to determine the efficiency of an air-over motor make the establishment of efficiency standards impractical. (NEMA, No. 10 at p. 34)

On the other hand, Advanced Energy urged DOE to consider implementing standards for air over electric motors. Advanced Energy expressed concern that if TENV motors are regulated and TEAO motors are not regulated, TENV motors that did not meet standards could be labeled and sold as TEAO motors. (Advanced Energy, No. 8 at p. 5)

In its NOPR comments, Advanced Energy recognized the following challenges with the testing of air-over motors: (1) Unstable temperature due to heat run,<sup>18</sup> (2) requirement of additional equipment to test airflow to motor, and (3) inconsistency in test results by different labs due to variation in the airflow. Advanced Energy suggested testing air-over motors by making modifications in the instructions for CSA 747-2009 and IEEE 114-2010. Both standards require test measurements at temperature within 70 °C-80 °C. (Advanced Energy, No. 8 at p. 6)

In an effort to substantiate its claims, Advanced Energy tested a 5hp, 4-pole TEFC motor following the IEEE 112 (Test Method B) procedure. The following six tests were conducted: Test A: With fan; Test B: Without fan and without blower; Test F: Without fan and with blower; Test E: With fan and a 1.25 service factor; Test D: Without fan, without blower and with a 1.25 service factor; and Test C: Without fan, with blower and with a 1.25 service factor. Advanced Energy observed the following results, shown in table Table III-2. (Advanced Energy, No. 8 at pp. 6-7)

<sup>18</sup>In other words, the winding temperature does not stabilize without a cooling, external airflow in which air-over motors are designed to operate.

TABLE III-2—TEST RESULTS OF TEFC MOTOR TESTING

Test	Rated load	Efficiency @ rated load (%)
Baseline (Test A) .....	5	89.3
Without Fan, Without Blower (Test B) .....	5	89.9
Without Fan, With Blower (Test F) .....	5	90.2
Baseline (Test E) .....	6.25	88.1
Without Fan, Without Blower (Test D) .....	6.25	89.0
Without Fan, With Blower (Test C) .....	6.25	88.6

Advanced Energy observed that the efficiency of the motor in tests B, C, D, and F increased compared to the respective baseline tests—tests A and E. It believes that the tests show that the standard test procedures can be modified to test air-over electric motors, especially when comparing tests D to C, or test B to F. Advanced Energy noted that the test without a fan (Test B), in which the thermal run was stopped to test between 70 degrees and 80 degrees Celsius, resulted in a measured efficiency comparable to the test where a blower was used to provide cooling airflow (Test F). (Advanced Energy, No. 8 at pp. 6–7)

Advanced Energy requested that DOE further investigate the test instructions for air-over electric motors and proposed test instructions stating: “Air-over motors shall be tested at their rated conditions (horsepower, speed, voltage) by providing air from external means such that the motor winding temperature shall be between 70 °C–80 °C.” (Advanced Energy, No. 8 at p. 8)

While DOE has considered the test data, DOE does not believe it has sufficient information at this time to support establishment of a test method for measuring air-over motor efficiency for regulatory purposes. DOE intends, however, to research other test procedure options for air-over electric motors to determine whether, in a future, separate rulemaking, DOE might propose a test procedure set-up for air-over electric motors and, possibly, an energy conservation standard for such motors.

#### *E. Electric Motor Types Requiring Definitions and Test Procedure Instructions*

In the June 2013 NOPR, DOE proposed define a number of electric motor types that were already, apparently, commonly understood, but not necessarily clearly defined, by the industry. DOE also proposed clarifying language for testing each of these motor types.

#### 1. Immersible Electric Motors

Most electric motors are not engineered to withstand immersion in liquid (e.g., water, including wastewater). If liquid enters an electric motor’s stator frame, it could create electrical faults between the different electrical phases or electrical steel and could impede rotor operation or corrode internal components. Immersible motors are electric motors that are capable of withstanding immersion in a liquid without causing damage to the motor. Immersible motors can withstand temporary operation in liquid, sometimes up to two weeks, but also run continuously outside of a liquid environment because they do not rely on the liquid to cool the motor. According to test 7 in Table 5–4 of NEMA MG 1–2009, for a motor to be marked as protected against the effects of immersion, a motor must prevent the ingress of water into the motor while being completely submerged in water for a continuous period of at least 30 minutes. Therefore, DOE has interpreted “temporary” to mean a period of time of no less than 30 minutes. Immersible motors can operate while temporarily submerged because they have contact seals that keep liquid and other contaminants out of the motor. Additionally, some immersible motors may have pressurized oil inside the motor enclosure, which is used in conjunction with contact seals to prevent the ingress of liquid during immersion. Finally, immersible motors are occasionally constructed in a package that includes another, smaller (e.g., ½ horsepower) motor that is used to improve cooling when the immersible motor is not submerged in water. In these cases, the two motors are constructed in a totally enclosed blower-cooled (TEBC) frame and sold together. The electric motors with separately powered blowers are discussed in a separate section III.F.6.

In responding to the October 15, 2010 framework document, NEMA and ASAP commented that greater clarification is needed with regard to immersible motors and how to differentiate them

from liquid-cooled or submersible motors. (NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 9) DOE understands the general differences to be as follows:

1. Submersible motors are engineered to operate only while completely surrounded by liquid because they require liquid for cooling purposes;
2. liquid-cooled motors use liquid (or liquid-filled components) to facilitate heat dissipation but are not submerged in liquid during operation; and
3. immersible motors are capable of operating temporarily while surrounded by liquid, but are engineered to work primarily out of liquid.

In the June 2013 NOPR, DOE proposed to define an immersible electric motor as an electric motor primarily designed to operate continuously in free-air, but that is also capable of withstanding complete immersion in liquid for a continuous period of no less than 30 minutes.

In response to the definition for immersible electric motor proposed in NOPR, interested parties expressed several concerns. Advanced Energy commented that the phrase “capable of withstanding complete immersion in a liquid for a continuous period of no less than 30 minutes” implies that the motor can be put in the liquid indefinitely, stating that this phrase is more appropriate for test instruction but not for definition. Thus, Advanced Energy suggested that this phrase be modified with the word “temporarily” or an upper limit (e.g., two weeks) be provided for immersion. (Pub. Mtg. Tr., No. 7 at p. 135; Advanced Energy, No. 8 at p. 2). ASAP responded that since immersible electric motor is a covered motor, the temporal upper limit is not needed. (Pub. Mtg. Tr., No. 7 at pp. 135–136). WEG commented that the definition of immersible motors needs further addition, such as “no less than 14 days,” to differentiate it from the submersible motors. (Pub. Mtg. Tr., No. 7 at p. 137) NEMA commented that the proposed definition is inadequate as it is neither sufficiently complete nor clear. (NEMA, No. 10 at p. 20)

Finally, Advanced Energy proposed that the definition be modified to describe these motors as those that are “primarily designed to operate continuously in free-air” but that can “temporarily withstand complete immersion in liquid for a continuous period of no less than 30 minutes.” (Advanced Energy, No. 8 at p. 2) On the other hand, NEMA proposed to define this term as “a definite purpose electric motor that is primarily designed to operate continuously in free-air, but is also capable of withstanding complete immersion in liquid for a continuous period of no less than 30 minutes, during which time any operation may or may not be inhibited.” (NEMA, No. 10 at p. 20)

DOE’s intention in the NOPR was to fully differentiate between three types of motors: Submersible, immersible, and liquid-cooled. DOE recognizes that without an upper limit on the submersion in liquid, the definition for immersible motors is very similar to that of submersible motors. However, as it noted in the proposal, immersible motors are “primarily designed to operate continuously in free-air,” while submersible motors are “designed for operation only while submerged in liquid.” DOE believes that these clauses should sufficiently differentiate between the two types of motors, but in an effort to further eliminate any confusion, DOE

has added the word “temporary” to the definition, as suggested by Advanced Energy and defining an “immersible electric motor” as an electric motor “primarily designed to operate continuously in free-air, but that is also capable of temporarily withstanding complete immersion in liquid for a continuous period of no less than 30 minutes.”

Regarding immersible motor testing, the contact seals used by immersible motors to prevent the ingress of water or other contaminants have an effect on tested efficiency that generally changes over time. New seals are stiff, and provide higher levels of friction than seals that have been used and undergone an initial break-in period.<sup>19</sup> DOE understands that as the seals wear-in, they will loosen and become more flexible, which will somewhat reduce friction losses. In its comments on the electric motors preliminary analysis, NEMA stated that immersible motors should be tested with their contact seals removed. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 18)

DOE had previously discussed testing immersible electric motors with industry experts, SMEs, and testing laboratories, all of whom suggested that the seals should be removed prior to testing to eliminate any impacts on the tested efficiency. DOE sought to confirm the effects of contact seals by

conducting its own testing. DOE procured a five-horsepower, two-pole, TENV motor for this purpose.<sup>20</sup> Upon receipt of the motor, DOE’s testing laboratory followed IEEE Standard 112 (Test Method B) and tested the motor in the same condition as it was received, with the contact seals in place (test 1). After completing that initial test, the laboratory removed the contact seals and tested the motor again (test 2). Finally, the testing laboratory reinstalled the seals, ran the motor for an additional period of time such that the motor had run for a total of 10 hours with the contact seals installed (including time from the initial test) and then performed IEEE Standard 112 (Test Method B) again (test 3).

DOE’s testing showed the potential impact that contact seals can have on demonstrated efficiency. In the case of the five-horsepower, two-pole, TENV motor, the motor performed with a higher efficiency with the contact seals removed, demonstrating a reduction in motor losses of nearly 20 percent. DOE’s testing also demonstrated a decaying effect of the contact seals on motor losses as they break-in over time. In this instance, the effect of the contact seals on motor losses was reduced, but not eliminated, after 10 hours of running the motor. The results of DOE’s immersible motor testing are shown below.

TABLE III–3—RESULTS OF IMMERSIBLE MOTOR TESTING

Motor type	Nameplate efficiency	Test 1	Test 2	Test 3
Immersible Motor (also TENV and a vertical solid-shaft motor) .....	89.5%	88.9%	91.0%	89.2%

Based on the limited testing conducted by DOE which showed that seals may have an impact on the tested efficiency of a given motor, DOE proposed that these motors be tested with the contact seals in place. In addition, DOE proposed an allowance of a maximum run-in period of 10 hours prior to performing IEEE Standard 112 (Test Method B). This run-in period was intended to allow the contact seals a sufficient amount of time to break-in such that test conditions were equal or very similar to normal operating conditions that would be experienced by a user. DOE’s proposed 10-hour maximum was a preliminary estimate obtained through discussions with electric motors testing experts.

In response to the NOPR, several interested parties expressed concern with the proposed test procedure. Advanced Energy noted that the effect of a seal on motor efficiency, as well as its “run-in” time, would vary by motor, depending on the motor and type of seal used. Advanced Energy commented that there is no guarantee that a given motor will break-in within a specified time period of 10 hours, which is small compared to the lifetime of a motor. Based on these conditions, it continued to recommend that seals be removed during initial testing to verify the efficiency of the motor. (Advanced Energy, No. 8 at p. 3)

NEMA noted that DOE’s tests on a sample immersible motor as received for

testing, after an extended time of operation, and with the seals removed, illustrate the difficulty of determining the efficiency of electric motors relative to operating time with various types of seals. Therefore, NEMA continued to recommend that contact seals be removed prior to testing. In the alternative, NEMA asserted that efficiency standards for electric motors with contact seals or sealed bearings would need to be lower than those for the motors without contact seals or sealed bearings. It added that different standard levels may also be needed based on the different types of contact seals and sealed bearings used in a given motor. (NEMA, No. 10 at pp. 21–23)

<sup>19</sup> *Guide for the Use of Electric Motor Testing Methods Based on IEC 60034–2–1*, May 2011. Version 1.1. 4E, Electric Motors Systems, EMSA, available at: [http://www.motorsystems.org/files/otherfiles/0000/0113/guide\\_to\\_iec60034-2-1\\_](http://www.motorsystems.org/files/otherfiles/0000/0113/guide_to_iec60034-2-1_)

*may2011.pdf* and Neal, Michael J. *The Tribology Handbook Second Edition*. Page C26.5.

<sup>20</sup> The immersible motor tested by DOE was also a vertical, solid-shaft motor. The testing laboratory

was able to orient the motor horizontally without any issues, enabling the lab to test the motor per IEEE 112 Test Method B.

NEMA noted that the NOPR refers to 200 hours as the possible time during which the efficiency losses from seals will continue to decrease. NEMA commented that the run-in time depends on the type of contact seals used. However, it commented that 200 hours would seem to be a short run-in estimate for a continuous duty electric motor that DOE assumed in its testing has an average mechanical lifetime of up to 108,398 hours. NEMA expressed concern with the proposed requirement of a 10-hour run-in period to represent the efficiency level of the electric motor with seals when averaged over the total period of use. It also pointed out that for labs that operate on a standard eight-hour workday, a 10-hour run-in period could place undue hardship on the lab, or require unmonitored conditions. NEMA further pointed out that DOE does not indicate if the run-in testing is to be performed with the motor unloaded or at its rated load. NEMA continued to recommend that the contact seals be removed prior to testing. (NEMA, No. 10 at pp. 22–23; Pub. Mtg. Tr., No. 7 at pp. 138–139)

Bluffton commented that motors with seals in them should be tested without the seals because of the inability to obtain consistent results from motor to motor because of the difference in mechanical pressure on the seal from one motor to the next. It noted that if the goal is to reduce power consumption on an overall basis, the differential will be the same regardless of whether the starting point is with or without seals. Moreover, the friction of the seal may change over the entire life of the motor. Thus, testing with seals may not give consistent and repeatable measurements. (Bluffton, No. 11 at p. 1)

WEG and Nidec also recommended that the seals be removed for testing (Pub. Mtg. Tr., No. 7 at pp. 139–140; Pub. Mtg. Tr., No. 7 at p. 143) CDA acknowledged that there are valid arguments for both the inclusion and the exclusion of seals during testing. It suggested an additional allowance for these seal losses be included within the allowable testing results in these specific categories. (CDA, No. 9 at p. 2)

Based on the responses to the NOPR, and additional investigation following publication, DOE has reconsidered its NOPR proposal. At this time, DOE does not believe it has enough information to determine the extent of the impact seals may have on a motor's efficiency when installed in the field over time. Seals can be made of rubber (with varying degrees of hardness and pliability), ceramic material, or metal. Each of these materials has a different impact on an electric motor's performance and may or

may not “break in” over time to reduce the overall level of friction that a motor may encounter while operating. Due to the variety of designs and materials offered and used by motor manufacturers, and the variety of impacts that these differences may have, DOE is unable at this time to quantify a specific break-in period to help determine the point in time where the losses contributed by the seals would be considered “representative.” Furthermore, DOE understands that each motor type, size, and configuration will be affected differently by seals, and various types of seals can be used. Without additional data, applying a particular break-in period or adjustment factor to account for the additional friction added by seals would be premature. Therefore, in light of this uncertainty, DOE is, at this time, requiring that test labs remove seals when testing immersible motors but make no other modifications. This approach is also consistent with the suggestions made by NEMA and the energy efficiency advocates. DOE may continue to explore the effect of seals on motor performance and may revise this requirement in the future.

NEMA also noted that even though the title of the proposed 4.3 in Appendix B to Subpart B is “Immersible Electric Motors and Electric Motors with Contact Seals,” the actual test procedure appears to apply to immersible electric motors only. (NEMA, No. 10 at p. 23)

In response to NEMA's comment DOE has adjusted the heading of this section to read “Immersible Electric Motors” for clarification purposes.

## 2. Brake Electric Motors

In most applications, electric motors are not required to stop immediately; instead, electric motors typically slow down and gradually stop after power is removed from the motor, due to a buildup of friction and windage from the internal components of the motor. However, some applications require electric motors to stop quickly. Such motors may employ a brake component that, when engaged, abruptly slows or stops shaft rotation. The brake component attaches to one end of the motor and surrounds a section of the motor's shaft. During normal operation of the motor, the brake is disengaged from the motor's shaft—it neither touches nor interferes with the motor's operation. However, under these conditions, the brake is drawing power from the electric motor's power source and may be contributing to windage losses, because the brake is an additional rotating component on the motor's shaft. When power is removed

from the electric motor (and brake component), the brake component de-energizes and engages the motor shaft, quickly slowing or stopping rotation of the rotor and shaft components.

In its Joint Petition, the Motor Coalition proposed to define the term “integral brake electric motor” as “an electric motor containing a brake mechanism either inside of the motor endshield or between the motor fan and endshield such that removal of the brake component would require extensive disassembly of the motor or motor parts.” (Motor Coalition, EERE–2010–BT–STD–0027–0035 at p. 19) After receiving the petition, DOE spoke with some of the Motor Coalition's manufacturers and its own SMEs. Based on these conversations, DOE believed that the Motor Coalition's definition is consistent with DOE's understanding of the term. In the electric motors preliminary analysis, DOE presented a definition of the term “integral brake motor” consistent with the definition proposed by the Motor Coalition. (For additional details, see Chapter 3 of the electric motors preliminary analysis Technical Support Document). However, upon further consideration, DOE believed that there may be uncertainty regarding certain aspects of the definition, particularly, what constitutes “extensive disassembly of the motor or motor parts.” Therefore, in the NOPR, DOE proposed a new definition that would remove this ambiguity. The proposed rule defined an “integral brake electric motor” as an electric motor containing a brake mechanism either inside of the motor endshield or between the motor fan and endshield.

Conversely, the brake component of a non-integral brake motor is usually external to the motor and can be easily detached without disassembly or adversely affecting the motor's performance. DOE proposed a new definition for “non-integral brake electric motor” that paralleled its proposed definition for “integral brake electric motor.” DOE believed that the new definition was clearer because it relied solely on the placement of the brake and not what level of effort is needed to remove it. Additionally, DOE believed that the structure of its two definitions encompassed all brake motors by requiring them to meet one definition or the other. As detailed in the NOPR, DOE's proposed definition for a “non-integral brake electric motor” was an electric motor containing a brake mechanism outside of the endshield, but not between the motor fan and endshield.

As discussed in the NOPR, DOE conducted its own testing on both integral and non-integral brake motors. DOE described the details of this testing in the NOPR along with the results. DOE generally found that testing the brake component attached, but powered by a source separate from the motor, resulted in demonstrated efficiencies equivalent to testing a motor with the brake component completely removed. As a result of its testing of integral and non-integral brake electric motors, DOE proposed the same test instructions for both motor types. DOE proposed to include instructions that would require manufacturers to keep the brake mechanism attached to the motor, but to power it externally while performing IEEE Standard 112 (Test Method B). DOE believed that this was the best approach because it allows the test laboratory to isolate the motor losses, which includes the friction and windage produced by the rotating brake mechanism. DOE believed that powering the motor and the brake mechanism separately during testing would ensure that the power consumed to keep the brake mechanism disengaged is not counted against the motor's tested efficiency. The power consumed to keep the brake mechanism disengaged represents useful work performed by the motor and should not be construed as losses, but it should be measured and reported. DOE believed this information is pertinent for brake motor consumers who wish to understand the energy consumption of their motor. Furthermore, when conducting the testing, DOE's test laboratory was able to splice connections and externally power the brake on multiple integral and non-integral brake motors, so DOE preliminarily believed that this process would not be unduly burdensome. 78 FR 38468.

In response to the June 2013 NOPR, NEMA noted in its comments that as DOE is proposing the same test plan for both types of motors, the location of the brake assembly is not important in determining the efficiency of the motor. NEMA suggested that DOE use a single definition of "special purpose electric motor with brake" that would refer to "a special purpose electric motor that contains a brake mechanism either within the motor enclosure or external to the motor enclosure." NEMA stated that it understood that defining both types of brake motors into a single definition would include integral brake electric motors as covered products, whereas the Joint Petition suggested that these motors continue to be exempted

from any testing or efficiency requirements. (NEMA, No. 10 at p. 16).

In the alternative, NEMA suggested that if DOE used two separate definitions, the two proposed definitions should be modified. (Pub. Mtg. Tr., No. 7 at p. 144 ; NEMA, No. 10 at p. 16) NEMA suggested that DOE re-classify and define integral brake electric motor as an "integral brake special purpose electric motor" and define it as "a special purpose electric motor that contains a brake mechanism either within the motor enclosure or between a motor fan, when present, and the nearest endshield." (NEMA, No. 10 at p. 17; Pub. Mtg. Tr., No. 7 at p.149) NEMA suggested that a non-integral brake motor be classified as a "non-integral brake special purpose electric motor" which would be defined as "a special purpose electric motor that contains a brake mechanism outside of the endshield, but not between the motor fan and endshield." (NEMA, No. 10 at p. 17)

As addressed previously, the facts available to DOE indicate that it is unnecessary to note that these motors are special purpose because whether a motor is special or definite purpose does not exclude it from consideration under DOE's standards rulemaking. However, DOE does agree that two separate definitions are unnecessary because DOE is adopting the same test procedure for both motors. The test results include mechanical losses of the brake components which are not impacted by the location of the brake. A single definition for brake motors will avoid any confusion. Therefore, for the final rule DOE is adopting the following definition: "Brake electric motor means a motor that contains a dedicated mechanism for speed reduction, such as a brake, either within or external to the motor enclosure."

Regarding the proposed test procedure, Advanced Energy agreed with DOE's proposed approach for both motors. (Pub. Mtg. Tr., No. 7 at p. 147; Advanced Energy, No. 8 at p. 2) Advanced Energy commented that by powering the brake through external means, the brake will have no impact on the power consumption and avoid the potential difficulties during no-load testing and the risk associated with improper re-assembly of the motor. (Advanced Energy, No. 8 at p. 2) Highlighting that this proposed method for testing brake motors deviated from the earlier Joint Petition, the advocates agreed with DOE's proposal that integral and non-integral brake motors be tested in the same manner. The advocates stated that this approach will enable the coverage of integral brake motors,

further increasing the scope of covered motors. (ASAP et al., No. 12 at pp. 1–2)

However, NEMA expressed concern with the proposed test procedure for integral and non-integral brake electric motors. It commented that the test procedure needs to clearly state that the efficiency determined for the electric motor is not to include any power that may be required to disengage the brake. The test procedure should also provide for manually releasing the brake when such an option is available. NEMA commented that when developing the energy conservation standards for electric motors, any testing DOE conducts with the brakes in place as proposed, should take into account the mechanical losses of the brake components which are significant relative to the losses of the motor components. (NEMA, No. 10 at p. 16)

If NEMA's earlier proposal to have a single definition for "integral brake special purpose electric motor" and "non-integral brake special purpose electric motor" is accepted, then NEMA suggested a single test procedure for a "special purpose electric motor with brake." NEMA commented that DOE should not require that the testing lab measure electrical power to the brake in 10-minute intervals. It suggested that the determination of efficiency of the electric motor should be based on measurements of the electrical input power to just the electric motor and should not include any power which may be supplied to the brake. NEMA suggested that the connections need to be separated in those cases where the power leads for the brake are interconnected with the stator winding or electric motor leads. The brake should be disengaged during testing by either supplying electrical power to the brake at its rated voltage or through the use of a mechanical release, when available. The required power should be measured and recorded when electrical power is supplied to the brake for the purpose of disengaging the brake. (NEMA, No. 10 at pp. 17–18)

DOE's own testing showed that during normal operation the brake will not be engaged—and will not significantly impact energy consumption. Under the approach laid out in the final rule, testing must be performed with the brake powered separately from the motor such that it does not activate during testing. Only power used to drive the motor is included in the efficiency calculation; power supplied to prevent the brake from engaging is not used. The rule provides that if the brake may be disengaged mechanically, if such a mechanism exists and if the use of this

mechanism does not yield a different efficiency value than when separately powering the brake electrically.

3. Partial Electric Motors

Most general purpose electric motors have two endshields,<sup>21</sup> which support the bearings and shaft while also allowing the shaft to rotate during operation. DOE understands that “partial electric motors,” also called “partial ¾ motors,” or “¾ motors,” are motors that are sold without one or both endshields and the accompanying bearings. When partial electric motors are installed in the field, they are attached to another piece of equipment, such as a pump or gearbox. The equipment to which the motor is mated usually provides support for the shaft, allowing the shaft to rotate and drive its intended equipment. The equipment may also provide support for a shaft. When a partial electric motor is mated to another piece of equipment it is often referred to as an “integral” motor.<sup>22</sup> For example, an “integral gearmotor” is the combination of a partial electric motor mated to a gearbox. The gearbox provides a bearing or support structure that allows the shaft to rotate.

DOE is aware that there are many different industry terms used to describe a partial electric motor. DOE proposed to define the term “partial electric motor” in the NOPR to distinguish them from component sets, which, alone, do not comprise an operable electric motor. See Section III.D.1. Additionally, because DOE considered integral gearmotors to be a subset of partial electric motors, this definition also applied to integral gearmotors. Therefore, the NOPR defined “partial electric motor” as an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an operable motor. The term “operable motor” means an electric motor engineered for performing in accordance with the applicable nameplate ratings.

In response to the NOPR, NEMA suggested that DOE include the concept of “partial” as a design element within other definitions rather than as a separate type of electric motor. NEMA commented that the definition should be for “partial motor,” rather than a “partial electric motor.” NEMA commented that the phrase “engineered for performing” in the proposed definition should be replaced with “capable of operation” because the engineering of a motor does not imply that a motor can operate. Therefore, NEMA suggested that partial motor means an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an operable motor. For the purpose of this definition, the term “operable motor” means a motor capable of operation in accordance with the applicable nameplate ratings. (NEMA, No. 10 at pp. 18–19)

DOE explains in section III.B of this document why it will not change the definition of “electric motor” and DOE is declining to adopt NEMA’s suggestion. Furthermore, while it recognizes that adding this clause would, as NEMA pointed out, cover partial motors of all types of motors that are a part of NEMA’s proposal, the proposed definition would permit a “partial motor” to be any type of electric motor. Consequently, a partial motor, by definition, could be any type of electric motor (e.g. multispeed, single speed, polyphase, etc.). While DOE’s approach is a broad one, it does not signal DOE’s intention to regulate the efficiency of all types of partial motors. The types of electric motors whose efficiency DOE intends to regulate will be addressed in the energy conservation standards rulemaking.

DOE has, however, adjusted the phrase “engineered for performing” as it understands the ambiguity related with this phrase; it is difficult to establish conclusively what, exactly, a motor is

engineered for and is clearer to discuss what a motor is “capable of” or its rating. For this final rule, DOE is adopting the following definition: “partial electric motor means an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an electric motor capable of operation in accordance with the applicable nameplate ratings.”

DOE is aware that partial electric motors require modifications before they can be attached to a dynamometer for testing. Prior to the NOPR, DOE discussed stakeholder comments and additional testing options with SMEs, testing laboratories, and motor industry representatives. Some interested parties suggested that the motor manufacturer could supply generic or “dummy” endplates equipped with standard ball bearings, which would allow for testing when connected to the partial electric motor. Alternatively, testing laboratories had considered machining the “dummy” endplates themselves, and supplying the properly sized deep-groove, ball bearings for the testing. Various testing laboratories indicated they had the ability to perform this operation, but some added that they would require design criteria for the endplates from the original manufacturer of the motor. These laboratories noted that machining their own endplates could create motor performance variation between laboratories because it may impact airflow characteristics (and therefore thermal characteristics) of the motor.

DOE procured an integral gearmotor to determine the feasibility of testing partial electric motors. For this investigation, DOE purchased and tested one five-horsepower, four-pole, TEFC electric motor. DOE tested the motor twice, first with an endplate obtained from the manufacturer and second with an endplate machined in-house by the testing laboratory. The results of these tests are shown below.

TABLE III–4—RESULTS OF PARTIAL ELECTRIC MOTOR TESTING

Motor type	Nameplate efficiency	Test 1	Test 2
Partial Electric Motor .....	81.0%	83.5%	82.9%

DOE found a variation in efficiency because of the endplate used during testing. DOE believes that the variation seen in tested efficiency was likely the

result of varying the material used for the endplate. The endplate provided by the manufacturer was made of cast iron, while the endplate provided by the

testing laboratory was machined from steel. The testing laboratory was not equipped to cast an iron endshield and thus was not able to replace the

<sup>21</sup> Endshields are metal plates on each end of the motor that house the motor’s bearings and close off

the internal components of the motor from the surrounding environment.

<sup>22</sup> DOE notes that integral brake motors are not considered integral or partial motors.

manufacturer's endshield with one of the original material. Additionally, DOE knows of no testing laboratory (other than a motor manufacturer), with such capability. DOE believes that the variance in the magnetic properties of steel likely produced small eddy currents in the endshield which resulted in added losses within the motor.<sup>23</sup> Consequently, DOE believes that frame material consistency is needed in order to prevent such variances in future testing.

At the time of the NOPR, because of the possible variance that DOE found through its testing, DOE proposed that an endplate be provided by the manufacturer of the motor and that the motor be tested with that endplate in place. If bearings are also needed, the test laboratory would use what DOE views as a "standard bearing," a 6000-series, open, single-row, deep groove, radial ball bearing. DOE selected this set of specifications because it is a common bearing type capable of horizontal operation.

In response to DOE's proposal on endshields required for testing, NEMA suggested that the manufacturer should not be required to provide endshields that they may not normally produce, use, nor easily obtain, especially if the manufacturer is an importer. See 42 U.S.C. 6311(5), (7) and 6291(10) (treating importers as manufacturers for purposes of EPCA). Instead, the manufacturer should be given the option to provide the endshields, if possible. If the manufacturer declined to do so and instead agreed to let the test laboratory provide the endshields, then the test laboratory should provide the endshields for testing and consult with the manufacturer to determine the critical characteristics of the endshields. (NEMA, No. 10 at pp. 19–20)

DOE has considered NEMA's suggestion and has decided to allow the manufacturer to authorize the lab to machine endplates for testing of partial motors if the manufacturer chooses not to provide the endplate. The lab should consult with the manufacturer before constructing the endshields to determine the endshields' critical characteristics. Manufacturers should of course realize that the use of any lab machined endplate is likely to result in more losses than one machined by the manufacturer given the limited availability of certain materials (e.g. cast iron) at labs that a manufacturer may have more readily available on-hand. DOE notes that endshield specifications

are found in NEMA MG–1 (2009) Section I, Part 4—see paragraphs 4.1, 4.2.1, 4.2.2, 4.3, 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, 4–5, and 4–6; and Table 4–2—and in IEC 60072–1 (1991).

#### *F. Electric Motor Types Requiring Only Test Procedure Instructions*

DOE proposed to add additional instructions to its test procedure that would affect a number of motor types for which DOE is considering new energy conservation standards. DOE did not propose any definitions for these terms because DOE believed the terms were self-explanatory or already readily understood in the industry. These motor types are discussed below.

##### 1. Electric Motors With Non-Standard Endshields or Flanges

Most electric motors are attached to a mounting surface by "mounting feet" or other hardware attached to the motor's housing, oftentimes on the bottom of the motor. However, some motors are mounted by directly attaching the motor's endshield, also called a faceplate, to a piece of driven equipment. If a motor's endshield protrudes forward to create a smooth mounting surface it may also be referred to as a flange, such as a Type D-flange or Type P-flange motor, as described in NEMA MG 1–2009. Attaching a motor to the shaft of the driven equipment in this manner generally involves bolting the motor to the equipment through mounting holes in the flange or faceplate of the motor.

NEMA MG 1–2009, paragraphs 1.63.1, 1.63.2, and 1.63.3 define Type C face-mounting, Type D flange-mounting, and Type P flange-mounting motors, respectively. These definitions provide reference figures in NEMA MG 1–2009, section I, part 4 ("Dimensions, Tolerances, and Mounting") that contain specifications for the standard mounting configurations and dimensions for these three motor types. The dimensions designate standard locations and dimensions for mounting holes on the faceplates or flanges of the motors. DOE is aware that some electric motors may have special or customer-defined endshields, faceplates, or flanges with mounting-hole locations or other specifications that do not necessarily conform to NEMA MG 1–2009, Figure 4–3, "Letter Symbols for Type C Face-Mounting Foot or Footless Machines," Figure 4–4, "Letter Symbols for Type D Flange-Mounting Foot or Footless Machines," or Figure 4–5, "Letter Symbols for Vertical Machines."

As previously explained, DOE is considering setting energy conservation

standards for electric motors with non-standard endshields. This potential change to the scope of energy conservation standards for electric motors would mean that the dimensions of a motor's endshields or flanges—neither of which impacts the efficiency or the ability to measure the efficiency of the motor—would no longer dictate whether a given motor would be required to meet energy conservation standards. Hence, DOE believed that an actual definition for such motors would be unnecessary.

In evaluating the possibility of requiring these motor types to meet potential energy conservation standards, DOE assessed whether these motors could be tested using non-standard flanges or endshields. DOE had received comments concerning the testing of these motor types. In response to the March 2011 RFI (76 FR 17577), ASAP and NEMA commented that motors with customer-defined endshields and flanged special motors should have their efficiency verified by testing a motor with an equivalent electrical design that could more easily be attached to a dynamometer. (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4) NEMA added that testing motors with non-standard endshields may require a substitution of the special endshields with more conventional endshields. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 15)

In the NOPR, DOE recognized that it may not be possible to attach motors with non-standard endshields to a testing laboratory's dynamometer. If such occurs and a test laboratory is unable to reconfigure the motor without removal of the endplate such that attachment to a dynamometer is possible, DOE proposed that the custom endshield be replaced with one that has standard (i.e., in compliance with NEMA MG–1) dimensions and mounting configurations. DOE proposed that, as with partial electric motors, such a replacement would be required to be obtained through the manufacturer and be constructed of the same material as the original endplate.

In response to the NOPR, several interested parties raised concerns that requiring a manufacturer to provide a "standard endshield in compliance with NEMA MG 1," of the same material as the "original end-plate" may place an undue burden on the manufacturer. (Pub. Mtg. Tr., No. 7 at p. 105–107, 111, 116–118; Advanced Energy, No. 8 at p. 4; NEMA, No. 10 at pp. 24–25) NEMA noted that the proposed test plan may have several difficulties: (1) A manufacturer may not have (or be unable to make available) end shields of

<sup>23</sup> Eddy currents are circulating currents induced in conductors (e.g., steel) by changing magnetic fields.

the appropriate design; (2) in the case of imported motors, it is unlikely that the importer could provide the required endshield or flange; (3) it may not be possible to obtain an endshield or flange of the same material, especially if the motor is made of a special material; and (4) replacing the original endshield with a standard dimension endshield may require different shaft construction, resulting in a completely new assembly of shaft and rotor. For situations where an electric motor with a non-standard endshield or flange cannot be connected to the dynamometer, NEMA recommended that DOE permit a testing lab to use an endshield or flange that meets the NEMA or the IEC specifications. NEMA further suggested that the manufacturer should be contacted to determine the appropriateness of replacement endshield or flange. If the replacement endshield or flange is not available then the testing laboratory may construct the same in consultation with the manufacturer. NEMA also argued that the test procedure should also allow testing of a general purpose electric motor of equivalent electrical design and enclosure, as an alternative. (NEMA, No. 10 at pp. 24–25)

Advanced Energy agreed with DOE that non-standard endshields and flanges be replaced with standard ones for testing purposes. However, Advanced Energy noted that the term “original” in the proposed test procedure is ambiguous because it indicated that the motor was initially designed with an endshield, which may not be the case. It suggested that the term “original” be replaced with “conventional.” Advanced Energy also expressed concern that requiring a manufacturer to provide a “standard endshield in compliance with NEMA MG 1” of the same material as “original endplate” is too strict. It suggested that manufacturers be allowed to use an alternative material for the endshield that will not impact the airflow and energy performance. It also commented that a provision should be included that allows test labs the option of fabricating suitable endshields if the need arises. (Advanced Energy, No. 8 at p. 4). UL requested that DOE consider modifying the proposed language to permit the endshield to be modified or fabricated as necessary to facilitate coupling to the dynamometer without affecting the results.” (Pub. Mtg. Tr., No. 7 at pp. 105–107; Pub. Mtg. Tr., No. 7 at p. 111) WEG suggested that in situations where the motor cannot be tested at all, an equivalent motor with similar electrical design and a standard endshield can be

tested. (Pub. Mtg. Tr., No. 7 at pp. 114–115) CDA opined that the customers can provide end covers for testing to match actual use conditions and that allowance for additional friction should be allowed for accuracy in test results. (CDA, No. 9 at p. 2)

DOE has considered these comments and decided to take slightly differing approaches for testing conducted on behalf of manufacturers (for purposes of representations and certification of compliance) and for DOE-initiated testing (for purposes of determining compliance). In both instances, if it is not possible to connect the electric motor to a dynamometer with the non-standard endshield or flange in place, the testing laboratory shall replace the non-standard endshield or flange with an endshield or flange that meets the NEMA or IEC endshield specifications. DOE notes that endshield specifications are found in NEMA MG–1 (2009) Section I, Part 4—see paragraphs 4.1, 4.2.1, 4.2.2, 4.3, 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, 4–5, and 4–6; and Table 4–2—and in IEC 60072–1 (1991). If possible, the manufacturer should provide the endshield or flange. The manufacturer may authorize the lab to machine replacement endplates or flanges for testing if the manufacturer chooses not to provide it. The lab should consult with the manufacturer before constructing these components to determine their critical characteristics.

## 2. Close-Coupled Pump Electric Motors and Electric Motors With Single or Double Shaft Extensions of Non-Standard Dimensions or Design

Close-coupled pump motors are electric motors used in pump applications where the impeller is mounted directly on the motor shaft. Such motors are typically built with different shafts (usually longer) than generic general-purpose electric motors. Section I, part 4 of NEMA MG 1–2009 and IEC Standard 60072–1 (1991) specify standard tolerances for shaft extensions, diameters, and keyseats that relate to the fit between the shaft and the device mounted to the shaft. However, sometimes manufacturers provide shafts with a special diameter, length, or design because of a customer’s application.<sup>24</sup> In 2011, DOE considered clarifying its treatment of these types of motors and included a table with allowable shaft variations. 76 FR 648, 671–72 (January 5, 2011) This guidance table was intended to

enumerate the deviations from standard shaft dimensions that DOE would allow while still considering the motor to be a general purpose motor subject to energy conservation standards.

However, in view of the EISA 2007 and AEMTCA 2012 amendments, DOE’s scope of regulatory coverage extends beyond the initial scope set by EPCA prior to these two amendments. DOE believes that a motor’s shaft alone, no matter what its dimensions or type, does not exclude a motor from having to satisfy any applicable energy conservation standards. Further, DOE believes that it is not necessary to explicitly define a close-coupled pump electric motor or an electric motor with a single or double shaft extension of non-standard dimensions or additions because whether a shaft is built within the shaft tolerances defined by NEMA and IEC is unambiguous.

In considering applying standards to these types of motors, DOE assessed whether motors with non-standard shaft dimensions or additions can be tested using accepted and established procedures. DOE received feedback concerning the testing of these motor types during and after the October 18, 2010, framework document public meeting. NEMA and ASAP submitted a joint comment noting that DOE could allow testing of a “similar model” motor with a standard shaft to enable the motor to be more easily tested on a dynamometer. (NEMA and ASAP, EERE–2010–BT–STD–0027–0012 at p. 8) In its comments about the electric motors preliminary analysis, NEMA added that special couplings or adapters may be needed to test motors with special shaft extensions, but noted that a motor’s shaft extension has little to no effect on its efficiency. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 14)

DOE investigated the feasibility of using coupling adapters for motors with extended shafts or shafts of unique design. To do this, DOE procured a close-coupled pump motor with an extended shaft. When this motor was received, DOE’s testing laboratory had no problems attaching the motor to its dynamometer. The use of an adapter was not needed in this case. However, DOE also conferred with experts at its testing laboratory and learned that coupling adapters were needed for motors with extended shafts or shafts of unique design, which it had tested in the past. As such, DOE is not aware of any motor shaft design that has prevented DOE’s test laboratory from performing a proper test according to IEEE 112 (Test Method B). Therefore, DOE proposed to include instructions for special couplings or adapters. In

<sup>24</sup> For example, see Baldor’s marketing materials at: <http://www.baldor.com/support/Literature/Load.ashx/BR401?LitNumber=BR401>.

other words, if a testing facility cannot attach a motor to its dynamometer because of the motor's shaft extension, that facility should use a coupling or adapter to mount and test the motor. DOE understood that a motor's shaft configuration has minimal, if any, impact on overall motor efficiency, and believed that this approach was technologically feasible and would not result in any distortion of a motor's inherent efficiency when tested.

In response to the NOPR, the interested parties agreed with DOE's decision to not define motors with non-standard shaft dimensions or additions. However, NEMA suggested replacing the term "additions" with "non-standard designs" to provide better clarity. (NEMA, No. 10 at p. 26)

To avoid any ambiguity regarding this motor type, DOE has modified the term to be "Electric Motors with Single or Double Shaft Extensions of Non-Standard Dimensions or Design." DOE believes that this change to the description of this motor type is broad enough to characterize all electric motors with non-standard shafts without unintentionally limiting this motor type to those with shaft additions. In view of its own research and consensus among interested parties, DOE is continuing to not define these electric motor types.

### 3. Vertical Electric Motors

Although most electric motors are engineered to run while oriented horizontally, some operate in applications that require a vertical orientation. A horizontally oriented motor has a shaft parallel to the floor (or perpendicular to the force of gravity), while a vertically oriented motor has a shaft perpendicular to the floor (or parallel to the force of gravity). Relative to horizontal motors, vertical motors have different designs made with different construction techniques so that the electric motor can be operated in a vertical position. These different designs can include modifications to the mounting configuration, bearing design, and bearing lubrication (a discussion regarding bearings can be found in the following section, III.F.4). Additionally, vertical motors can come with various shaft configurations, including with a solid or hollow shaft. An example of a typical application requiring a vertical motor is a pump used in a well or a pit.

DOE did not propose a definition for any terms related to vertical electric motors. DOE believed definitions were not needed because there is no industry confusion or ambiguity in whether an electric motor is a vertical electric motor. Furthermore, whether an electric

motor has a solid shaft or a hollow shaft is also unambiguous and unnecessary to clarify. Although defining a vertically mounted electric motor did not appear necessary, DOE believed instructions detailing how to configure and mount a vertical motor for testing in a horizontal position, including the motor's orientation and shaft characteristics, would be helpful in ensuring a proper and consistent testing set-up.

EISA 2007 classified vertical solid-shaft motors as subtype II motors and required them to be tested in a "horizontal configuration." (42 U.S.C. 6311(13)(B)(v)) Prior to the NOPR, NEMA, ASAP, and the Motor Coalition submitted comments, noting that vertical motors cannot be tested on a standard dynamometer because most dynamometers are designed to test electric motors in horizontal orientation. (NEMA, EERE-2010-BT-STD-0027-0013 at p. 5; NEMA and ASAP, EERE-2010-BT-STD-0027-0012 at p. 3; Motor Coalition, EERE-2010-BT-STD-0027-0035 at pp. 18 and 30) DOE confirmed this assertion with its test laboratory and SMEs. In view of the statutory requirement and current dynamometer testing configuration limits, DOE proposed in the NOPR to test motors, which are otherwise engineered to operate vertically, in a horizontal position when determining efficiency.

Another consideration was the shaft of a vertical motor and whether it was solid or hollow. If a vertical motor has a solid shaft, DOE proposed no further adjustments after considering orientation, unless the motor contained a special shaft. For vertical motors with a hollow shaft, (i.e., an empty cylinder that runs through the rotor and typically attaches internally to the end opposite the drive of the motor with a special coupling) additional instructions were proposed.

DOE conducted testing prior to the NOPR publication to gauge the feasibility of testing a vertical, hollow-shaft motor. For its investigation, DOE purchased a five-horsepower, two-pole, TEFC vertical motor with a hollow shaft. Upon receipt of the motor, the testing laboratory found that the motor's bearing construction was sufficient for horizontal operation and no replacement would be needed. However, the motor did require a shaft extension to be machined. After a solid shaft was constructed, it was inserted into the hollow shaft and attached via welding to the lip of the hollow shaft. The testing laboratory encountered no further problems and was able to properly test the motor according to IEEE Standard 112 (Test Method B).

After conducting this testing, DOE believed that, as long as the attached solid-shaft maintained sufficient clearance through the drive end of the motor to enable the motor to be attached to the dynamometer, this approach would be feasible to test vertical hollow-shaft motors. Aside from the addition of a shaft extension, DOE did not believe that testing a vertical hollow-shaft motor in a horizontal configuration would add undue testing burden when compared to testing a solid-shaft vertical motor.

In response to the March 2011 RFI, NEMA suggested that vertical motors rated 1–500 horsepower be tested according to section 6.4 of IEEE Standard 112 (Test Method B—*Input-output with segregation of losses and indirect measurement of stray-load loss*), if bearing construction permits; otherwise, it suggested testing vertical motors according to section 6.6 of IEEE Standard 112 (Test Method E—*Electric power measurement under load with segregation of losses and direct measurement of stray-load loss*), as specified in NEMA MG 1–2009 paragraph 12.58.1 "Determination of Motor Efficiency and Losses."<sup>25</sup> (NEMA, EERE-2010-BT-STD-0027-0019 at p. 4)

DOE consulted with testing laboratories about whether IEEE Standard 112 (Test Method E) would be an appropriate procedure to use when testing vertical motors. DOE understood that the primary difference between IEEE Standard 112's Test Method B and Test Method E is that Test Method E uses a different method to calculate stray-load loss relative to Test Method B. Test Method B measures motor output power and uses this number as part of the calculation for stray-load loss. However, Test Method E does not require the measurement of output power, and, therefore, uses a different method to find the stray-load loss. By not requiring the measurement of output power, Test Method E can be conducted on motors installed in an area or in

<sup>25</sup> "Efficiency and losses shall be determined in accordance with IEEE Std 112 or Canadian Standards Association Standard C390. The efficiency shall be determined at rated output, voltage, and frequency. Unless otherwise specified, horizontal polyphase, squirrel-cage medium motors rated 1 to 500 horsepower shall be tested by dynamometer (Method B) (or CSA Std C390 Method 1) as described in Section 6.4 of IEEE Std 112. Motor efficiency shall be calculated using form B of IEEE Std 112 or the equivalent C390 calculation procedure. Vertical motors of this horsepower range shall also be tested by Method B if bearing construction permits; otherwise they shall be tested by segregated losses (Method E) (or CSA Std Method 2) as described in Section 6.6 of IEEE Std 112, including direct measurement of stray-load loss." NEMA Standards Publication MG1—2009, *Motors and Generators*, paragraph 12.58.1.

equipment that cannot be attached to a dynamometer. Although Test Method E may reduce some testing burden for manufacturers of vertical motors, DOE was concerned that Test Method E could produce results that were inconsistent and inaccurate relative to testing comparable motors under Test Method B. Therefore, DOE declined to propose the use of Test Method E for vertical motors.

In response to the NOPR, there were several comments regarding the definitions and test setups for vertical motors. Assuming that DOE intended to set standards eventually for vertical motors generally (beyond those already applicable to general purpose subtype II motors), NEMA suggested that newly-covered vertical motors be considered as either definite purpose electric motors or special purpose electric motors and their features be incorporated in a definition for vertical motors to clearly identify the type included in the covered electric motors. (NEMA, No. 10 at p. 29)

As described earlier, in the NOPR, DOE did not intend to define "covered motors." Rather, it was DOE's intention to define subsets of motors that would have the potential to be covered in a standards rulemaking. In the case of vertical motors, DOE did not believe that a definition was necessary because it is always obvious whether a motor is intended for vertical operation. Being defined as a vertical motor would not, then, necessarily mean a vertical motor was subject to energy conservation standards. The current energy conservation standards rulemaking is intended to determine coverage parameters for defined motor types. Based on these facts, DOE does not believe it is necessary to state whether a vertical motor is special or definite purpose (as neither distinction would change the fact that the motor is vertical), and has not updated its decision from the NOPR to leave vertical motors undefined.

In regard to testing, NEMA commented that IEEE 112 (Test Method E) is a standard method for testing vertical motors when the vertical motor cannot be tested in horizontal position due to bearing construction (which may require that vertical load be exerted on the bearings). NEMA suggested that because vertical electric motors other than vertical solid shaft normal thrust general purpose electric motors (subtype II) would be included in the scope of covered products (and which may require testing in vertical orientation), IEEE 112 (Test Method E) be added as a valid test procedure in paragraph 2 of Appendix B to Subpart B and all other

paragraphs in Subparts B and U where it is necessary to identify the applicable test standards for vertical motors. (NEMA, No. 10 at p. 32) NEMA noted that there will be a difference in efficiency when a vertical motor is tested in vertical position with no modification as compared to the vertical motor tested in horizontal position after changing the bearings. NEMA suggested that this difference in efficiency levels should be considered while establishing standards for vertical motors. (NEMA, No. 10 at pp. 31–32)

Based on the present definitions in 10 CFR 431.12, and those proposed in the NOPR, and assuming that vertical motors of various types are to be included, NEMA recommended that the proposed test procedure be revised to permit the testing of vertical electric motors in a horizontal or vertical configuration according to the equipment available at the testing facility and the construction of the motor. If the vertical motor cannot operate in a horizontal position due to its bearing construction or due to the requirement that a vertical load be applied to the shaft, then the bearings should be replaced with the standard bearings during testing. NEMA further suggested that a coupling or other adapter may be required to connect the vertical electric motor to the test equipment to provide sufficient clearance. (NEMA, No. 10 at p. 32)

DOE has reevaluated its test instructions for vertical electric motors following the comments received in response to the NOPR. It understands that there was confusion prior to the NOPR regarding which types of vertical motors were being defined, and earlier comments were based on this misunderstanding. After the NOPR, DOE verified the claims in the comments with SMEs and determined that testing vertically and testing horizontally would result in similar efficiencies. However, for reasons stated earlier, DOE continues to decline the use of IEEE 112 (Test Method E). For this final rule, while vertical solid shaft normal thrust general purpose electric motors (subtype II) shall be tested in a horizontal configuration in accordance with IEEE 112 (Test Method B), the test instructions for other types of vertical electric motors are amended to allow test labs to choose between vertical and horizontal orientation for testing, as provided for by the lab's equipment, with preference given to testing in the motor's native orientation when either is possible.

#### 4. Electric Motor Bearings

Electric motors usually employ anti-friction bearings that are housed within the endshields to support the motor's shaft and provide a low-friction means for shaft rotation. Anti-friction bearings contain rolling elements, which are the components inside the bearings that "roll" around the bearing housing and provide the reduced-friction means of rotation. Rolling elements can be spherical, cylindrical, conical, or other shapes. The design of the rolling element is selected based on the type and amount of force the shaft must be capable of withstanding. The two primary types of loads imposed on motor bearings are radial and thrust. Radial loads are so named because the load is applied along the radius of the shaft (i.e., perpendicular to the shaft's axis of rotation). Bearings may be subject to radial loads if the motor's shaft is horizontal to the floor (i.e., horizontally oriented). These bearings are called "radial bearings." "Thrust bearings" are bearings capable of withstanding thrust loads, which are loads with forces parallel to the "axis" of the shaft (i.e., parallel to the shaft's axis of rotation) and may be encountered when the shaft is vertical to the floor (i.e., vertically oriented). However, either radial or axial shaft loads can be encountered in any orientation.

In addition to the type of force, bearings are also chosen based on the magnitude of the force they can withstand. While most applications use spherical rolling-elements, some motors employ cylindrical-shaped rolling-elements inside the bearings. These cylindrical-shaped rolling elements are called "rollers," and this bearing type is referred to as a "roller bearing." Roller bearings can withstand higher loads than spherical ball bearings because the cylindrically shaped rolling-element provides a larger contact area for transmitting forces. However, the larger contact area of the rolling element with the bearing housing also creates more friction and, therefore, may cause more losses during motor operation.

Regardless of the rolling element used, bearings must be lubricated with either grease or oil to further reduce friction and prevent wear on the bearings. Open or shielded bearing construction allows for the exchange of grease or oil during motor operation. Sealed bearings, unlike shielded or open bearings, do not allow the free exchange of grease or oil during operation. Sealed bearings incorporate close-fitting seals that prevent the exchange of oil or grease during the bearing's operational

lifetime. Such bearings may be referred to as “lubed-for-life” bearings because the user purchases the bearings with the intention of replacing the bearing before it requires re-lubrication. Shielded bearings differ from open bearings in that shielded bearings contain a cover, called a “shield,” which allows the flow of oil or grease into the inner portions of the bearing casing, but restricts dirt or debris from contacting the rolling elements. Preventing dirt and debris from contacting the bearing prevents wear and increases the life of the bearing.

Certain vertical motors use oil-lubricated bearings rather than the grease-lubricated bearings that are typically found in horizontal motors. If a vertical motor contains an oil-lubricated system, problems can occur when the motor is reoriented into a horizontal position and attached to a dynamometer for testing. Because oil has a lower viscosity than grease, it could pool in the bottom of the now horizontally oriented (vertical motor) bearing.<sup>26</sup> Such pooling, or loss of proper lubrication to the bearings, could adversely affect the motor’s performance, damage the motor, and distort the results of testing.

Because of the various construction and lubrication types, DOE understands that motors may contain bearings only capable of horizontal operation, vertical operation, or, in some limited cases, both horizontal and vertical operation. For those motors equipped with thrust bearings only capable of vertical orientation, DOE stated in the NOPR that reorienting the motor could cause physical damage to the motor. For motors equipped with such bearings, DOE proposed to add testing instructions that would require the testing laboratory to replace the thrust bearing with a “standard bearing,” which DOE defined as a 6000 series, open, single-row, deep groove, radial ball bearing, because that is the most common type of bearing employed on horizontally oriented motors. For any electric motor equipped with bearings that are capable of operating properly (i.e., without damaging the motor) when the motor is oriented horizontally, DOE proposed that the motor should be tested as is, without replacing the bearings. DOE believed that this was the most appropriate approach because it would provide the truest representation of the energy use that will be experienced by the user.

<sup>26</sup> Viscosity is the measure of a liquid’s resistivity to being deformed. An example of a material with high viscosity is molasses and an example of a material with low viscosity is water.

NEMA agreed that thrust bearings should be replaced with standard bearings if the motor is tested in an orientation different from the normal one. However, NEMA stated that the motor manufacturer should be consulted before any modification is made. This is because some bearings may require oil or other lubricants for normal use. (NEMA, No. 10 at pp. 28, 32–33)

Advanced Energy agreed with the proposed approach of testing electric motors with bearings capable of horizontal orientation. However, for motors with bearings not capable of horizontal orientation, Advanced Energy proposed that thrust bearings be replaced with shielded bearings with already packed grease to prevent over-filling of grease and to reduce lead time of installation of bearings. (Advanced Energy, No. 8 at p. 5) Advanced Energy requested that DOE replace “should” with “may,” in the proposed testing instruction for “electric motors with bearings incapable of horizontal operation” so that the testing instruction for states: “may replace the thrust bearing” and “may be tested as is”. (Pub. Mtg. Tr., No. 7 at p. 130)

DOE notes NEMA’s and Advanced Energy’s comment that different bearings may require different lubricants (e.g., oil, grease), which should be considered when the bearings of a motor are replaced with standard bearings for testing. Considering NEMA’s and Advanced Energy’s comments, DOE has modified the definition of standard bearings to include a grease lubricated double shielded bearing. Furthermore, while DOE understands Advanced Energy’s suggestions regarding the language, the language is written such that only motors whose bearings cannot be operated horizontally “shall be” replaced for testing. DOE believes that this renders this suggested wording change unnecessary. Motors whose bearings do not permit horizontal operation but which must be tested horizontally due to test equipment availability must have their bearings replaced in order to yield accurate results.

In response to the preliminary analysis, DOE received comment specifically about testing electric motors with sleeve bearings. Sleeve bearings are another type of bearing that do not use typical rolling elements, but rather consist of a lubricated bushing, or “sleeve,” inside of which the motor shaft rotates. The shaft rotates on a film of oil or grease, which reduces friction during rotation. Sleeve bearings generally have a longer life than anti-

friction ball bearings, but they are more expensive than anti-friction ball bearings for most horsepower ratings.<sup>27</sup> Both ASAP and NEMA asserted that a motor with sleeve bearings should have its efficiency verified by testing a motor of equivalent electrical design and that employs standard bearings.<sup>28</sup> (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4) However, NEMA later revised its position in separately submitted comments to the electric motors preliminary analysis public meeting. NEMA stated that further review of pertinent test data indicated that sleeve bearings do not significantly impact the efficiency of a motor, and that a motor having sleeve bearings is not sufficient reason to exclude it from meeting energy conservation standards. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 17) NEMA also commented that it is not aware of any reason that a motor cannot be tested with sleeve bearings, but that DOE should also provide the option to test sleeve bearing motors with the sleeve bearing swapped out for anti-friction ball bearings. (NEMA, EERE–2010–BT–STD–0027–0054 at p. 17)

DOE separately consulted with testing laboratories, SMEs, and manufacturers and reviewed a pertinent technical paper.<sup>29</sup> As a result of this collective research, at the time of the NOPR, DOE tentatively determined that sleeve bearings do not significantly degrade efficiency when compared to spherical, radial ball bearings. DOE also did not believe that it was more difficult to attach a motor with sleeve bearings to a dynamometer than a standard, general purpose electric motor equipped with radial ball bearings. Additionally, DOE believed that swapping sleeve bearings with spherical, radial ball bearings may be time consuming and otherwise present unforeseen or undue difficulties because of the overall design of the motor that operates with the sleeve bearings. Motors that employ sleeve bearings have significantly different bearing-support configurations than motors that employ spherical, radial ball bearings, and DOE was not certain that sleeve bearings could be readily

<sup>27</sup> William R. Finley and Mark M. Hodowanec. *Sleeve Vs. Anti-Friction Bearings: Selection of the Optimal Bearing for Induction Motors*. 2001. IEEE. USA.

<sup>28</sup> Neither NEMA nor ASAP elaborated on what “standard” bearings are. DOE is interpreting “standard” bearings to mean spherical, radial ball bearings, because this is the most common type of bearing used for general purpose, horizontally oriented motors.

<sup>29</sup> William R. Finley and Mark M. Hodowanec. *Sleeve Vs. Anti-Friction Bearings: Selection of the Optimal Bearing for Induction Motors*. 2001. IEEE. USA.

swapped with standard ball bearings without significant, costly motor alterations. Therefore, because it may be impracticable to swap them out with other bearings, DOE proposed that motors with sleeve bearings be tested as-is and with the sleeve bearings installed.

In response to the NOPR, NEMA agreed with DOE's proposal to test motors with sleeve bearings intact. NEMA stated that testing the motor with sleeve bearings in place will result in a decrease of efficiency due to losses associated with sleeve bearings. In its view, the efficiency measure will thus represent normal consumer operation. NEMA further added that the normal IEEE 112 (Test Method B) or (Test Method E), where applicable, is sufficient for testing electric motors with sleeve bearings. (NEMA, No. 10 at pp. 27–28, 32–33)

As no stakeholders presented reasons why motors with sleeve bearings should not be tested with the bearings in place, and the available facts indicate that the presence of sleeve bearings does not affect efficiency testing, DOE has retained this approach for this final rule.<sup>30</sup> As these sleeve bearings will already be in place when the motor arrives for testing, and the bearings will not be replaced, if the shield bearings are not already have packed grease in place, it will not be used for testing.

##### 5. Electric Motors With Non-Standard Bases, Feet or Mounting Configurations

DOE has not yet regulated special or definite purpose motors, or general purpose motors with “special bases or mounting feet,” because of the limits prescribed by the previous statutory definition of “electric motor.” That definition included a variety of criteria such as “foot-mounting” and being built in accordance with NEMA “T-frame” dimensions, which all narrowed the scope of what comprised an electric motor under the statute. (See 42 U.S.C. 6311(13)(A) (1992)) As a result of EISA 2007 and related amendments that established energy conservation standards for two subtypes of general purpose electric motors (subtype I and subtype II), among other motor types, the statutory meaning of the term “general purpose motor” was broadened to include, for example, “footless motors.” Similarly, because definite and special purpose motors now fall under the broad statutory heading of “electric motors,” DOE is now considering whether to set standards for electric

motors with non-standard bases, feet, or mounting configurations in the standards rulemaking.

Part 4 of section I in NEMA MG 1–2009 provides general standards for dimensions, tolerances, and mounting for all types of electric motors. In that section, figures 4–1 through 4–5 identify the letter symbols associated with specific dimensions of electric motors with various bases, feet, and mounting configurations. Accompanying these figures are tables throughout part 4 of section I that specify dimensions, explain how a particular dimension is measured and detail the applicable measurement tolerances. This collective information is used to standardize the dimensions associated with specific frame sizes, given a certain base, feet, or mounting configuration. The IEC provides similar information in its standard, IEC Standard 60072–1, “Dimensions and output series for rotating electrical machines.” Although the majority of motors are built within these specifications, DOE is aware that some motors may have feet, bases, or mounting configurations that do not necessarily conform to the industry standards. These are the motors—i.e. those not conforming to NEMA or IEC standards for bases, feet, or mounting configurations—that DOE is considering regulating under the standards NOPR.

DOE believed that a definition was not needed for this particular type of electric motor because whether a motor has a mounting base, feet, or configuration that is built in compliance with the standard dimensions laid out in NEMA MG 1–2009 or IEC Standard 60072–1 was unambiguous. Also, DOE believed that additional testing set-up instructions for these types of electric motors were not necessary because such mounting characteristics are not explicitly addressed either in IEEE Standard 112 (Test Method B) or CSA C390–10, other than how mounting conditions will affect the vibration of a motor under IEEE Standard 112, paragraph 9.6.2, “Mounting configurations.”

In response to the March 2011 RFI, ASAP and NEMA asserted that a motor with a special base or mounting feet, as well as a motor of any mounting configuration, should have its efficiency verified by testing a model motor with an equivalent electrical design that could more easily be attached to a dynamometer. (ASAP and NEMA, EERE–2010–BT–STD–0027–0020 at p. 4)

DOE believed testing a “similar model” to show compliance would likely create difficulties in ensuring the accuracy and equivalence of claimed

efficiency ratings. Additionally, DOE believed that testing motors with non-standard bases or mounting feet would not present an undue burden or insurmountable obstacle to testing. The test benches used for testing electric motors can have, for example, adjustable heights to accommodate the wide variety of motor sizes and mechanical configurations that commonly exist. Therefore, because the mounting feet will not necessarily affect how a motor is mounted to a dynamometer, but simply the positioning of the shaft extension, DOE believed non-standard mounting feet would present no additional testing burdens. As was done for the vertical electric motor that DOE had tested and which did not have a standard horizontal mounting configuration, a testing laboratory would likely treat these motors as a typical general purpose electric motor and adjust the test bench as applicable for the unit under test.

Finally, DOE understood that an electric motor's mounting base, feet, or configuration would have no impact on its demonstrated efficiency. An electric motor's mounting base, feet, or configuration does not affect a motor's operating characteristics because this is a feature external to the core components of the motor. It is also a feature that will not impact friction and windage losses because this feature does not involve any rotating elements of the motor. An electric motor's mounting base, feet, or mounting configuration only affects how a motor is physically installed in a piece of equipment. DOE's approach was premised on these facts.

While NEMA agreed with DOE's proposed approach not to define electric motors with non-standard base, feet or mounting configurations, it suggested that additional test instructions for these electric motor types were needed in view of testing difficulties. (NEMA, No. 10 at p. 26) In the case of special mounting configurations or footless motors, particularly TENV types, NEMA stated that mounting configuration may affect the free convection cooling of the motor. For instance, some testing facilities may use a V-shape or U-shape block with straps to hold the movement of a footless motor. The design of the block(s) can inhibit free convection over TENV motor and can cover ventilation openings in case of open motors. Thus, NEMA recommended that DOE consider adding language for testing of an electric motor with non-standard bases, feet, or mounting configurations to ensure that the method of mounting “does not have an adverse effect on the performance of the electric motor” particularly on

<sup>30</sup> William R. Finley and Mark M. Hodowanec. *Sleeve Vs. Anti-Friction Bearings: Selection of the Optimal Bearing for Induction Motors*. 2001. IEEE. USA.

cooling of the motor due to use of adaptive mounting fixtures. (NEMA, No. 10 at p. 27).

DOE notes NEMA's concern and understands that the current procedures to test electric motors with a non-standard base, feet, or mounting configuration, as described by NEMA, may affect the cooling of the motor and impact the efficiency ratings of the motor. In order to achieve accuracy in the efficiency measures, because bases, feet, and mounting arrangements can alter tested efficiency, DOE has adopted the following test procedure for electric motors with a non-standard base, feet, or mounting configuration: "Some adaptive fixtures may be required to mount a motor on the test equipment when testing an electric motor with a non-standard base, feet, or mounting configuration. The method of mounting or use of adaptive mounting fixtures should not have an adverse impact on the performance of the electric motor, particularly on the cooling of the motor."

#### 6. Electric Motors With Separately-Powered Blowers

In the NOPR, DOE addressed a subset of immersible motors it referred to as being built in a "TEBC" (totally enclosed blower cooled—i.e., with cooling airflow provided by a separate blower driven by a separate, auxiliary motor) configuration. These motors were not only immersible, but had a separately powered blower as part of their assembly. For these motors, DOE proposed requiring the testing laboratory to power the smaller blower motor from a power source separate from the one used for the electric motor being tested for efficiency. Following this approach would allow the testing laboratory to isolate the performance of the motor under test while continuing to provide the necessary cooling from the blower motor.

Advanced Energy concurred with separately powering the blower motor of an immersible motor configured in a TEBC configuration. (Advanced Energy, No. 8 at p. 3) However, NEMA requested that DOE reconsider the requirement of "separate power source" in the proposed definition because a test facility may have only one power source. NEMA also stated that this requirement is not necessary because all that matters is that the test equipment used to measure the electrical power flowing into the motor is connected only to the motor leads and not to both the motor leads and blower leads. Also, in its view, the proper voltage should be applied to the blower when the voltage to the motor is to be reduced as a part

of the IEEE 112 Method B or Method E test procedure. NEMA commented that it was unclear why the requirement to exclude the input power to the blower in the measurement of the motor power would apply only to blower cooled "immersible" motors if the test procedure is intended to apply to any electric motor with contact seals. The test procedure should also clearly state that the input power to the separately powered blower is not to be included in the determination of the efficiency of the immersible definite purpose electric motor, or, in general, for any electric motor with a separately powered blower furnished as a part of the total assembly. (NEMA, No. 10 at pp. 23–24)

Following the NOPR, DOE raised this issue with stakeholders and SMEs. From those discussions, DOE acknowledges that at least some non-immersible motors that were furnished with separately-powered blowers exist would also meet the nine criteria that DOE is considering applying with respect to its standards rulemaking efforts. It was not DOE's intention to omit guidance on testing these motors; DOE agrees with NEMA that a test plan for "blower-cooled" electric motors should not be limited only to those motors that are also immersible. Therefore, in this final rule, DOE is adding separate test set-up instructions for an "electric motor with a separately-powered blower." This set-up will be applicable to any electric motor that has this particular design element, regardless of whether this electric motor is also immersible. As DOE did not receive comments in the NOPR asking DOE to define this motor type, the Department believes that stakeholders understand what motor types were covered by this test set-up, and DOE has opted not to define this motor type at this time.

Regarding the use of the term "separate power source," DOE recognizes that test labs may use a variety of power supplies to facilitate testing. DOE believes that NEMA's suggested plan of measuring the two sources of power separately (rather than powering them separately) can work, provided it is done such that it accurately characterizes the power going into the tested motor. In either arrangement, the objective is to exclude the power to the blower's motor from any calculations of efficiency for the tested motor. For these reasons and based on the comments received, DOE has added instructions to the procedure to exclude the losses attributable to the motor powering a separately-powered blower. Under this change, the blower's motor can be powered by a source separate from the source powering the

electric motor under test or by connecting leads such that they only measure the power of the motor under test. This instruction follows from DOE's proposal "to isolate the performance of the motor under test while continuing to provide the necessary cooling from the blower motor." 78 FR 38466. In this final rule, DOE extends those instructions to all motors with separately-powered blowers rather than limiting it to immersible motors in recognition of the fact that the qualities of being immersible and having a separately-powered blower are technologically independent and should be treated as such.

#### G. Electric Motor Types Requiring Only Definitions

There are several electric motor types whose energy efficiency DOE is not proposing to regulate as part of the recently published energy conservation standards proposal but that DOE is defining in today's rule to provide manufacturers regulatory clarity when the final standards rule is published. More details regarding the specific motor types are discussed below.

##### 1. Component Set of an Electric Motor

Electric motors are comprised of several primary components that include: A rotor, stator, stator windings, stator frame, two endshields, two bearings, and a shaft. As described in the NOPR, a component set of an electric motor comprises any combination of these motor parts that does not form an operable motor. 78 FR 38466. For example, a component set may consist of a wound stator and rotor component sold without a stator housing, endshields, or shaft. These components may be sold with the intention of having the motor parts mounted inside other equipment, with the equipment providing the necessary mounting and rotor attachments for the components to operate in a manner similar to a stand-alone electric motor. Component sets may also be sold with the intention of a third party using the components to construct a complete, stand-alone motor. In such cases, the end manufacturer that "completes" the motor's construction must certify that the motor meets any pertinent standards. (See 42 U.S.C. 6291(1)(10) (defining "manufacture" to include manufacture, produce, assemble, or import.)) This approach was supported by NEMA in its comments on the electric motors preliminary analysis. (NEMA, EERE-2010-BT-STD-0027-0054 at pp. 15–16)

DOE understands that a component set does not constitute a complete, or near-complete, motor that could be tested under IEEE Standard 112 (Test Method B) or CSA C390-10, because it would require major modifications before it can operate as a motor. In view of its examination of motor component sets, DOE understands that some of them would require the addition of costly and fundamental parts for the motor to be capable of continuous-duty operation, as would be required under either test procedure. The parts that would need to be added to the component set, such as a wound stator or rotor, are complex components that directly affect the performance of a motor and can only be provided by a motor manufacturer. Without the fundamental components, there is no motor. Therefore, DOE believes that a single testing laboratory would have insurmountable difficulty machining motor parts, assembling the parts into an operable machine, and testing the motor in a way that would be manageable, consistent, and repeatable by other testing laboratories. Because DOE is not aware of any test procedures or additional test procedure instructions that would accommodate the testing of a component set in a manageable, consistent, and repeatable manner, it declined to consider component sets for energy conservation standards in the NOPR.

In terms of defining a "component set," DOE was aware of some confusion regarding what constitutes a "component set" of a motor, especially about the difference between a "component set" and a "partial" motor. No technical standard currently defines these terms. To bring a common definition for these generally understood, but undefined, concepts, DOE proposed to define a "component set" as a "combination of motor parts that require the addition of more than two endshields to create an operable motor." 78 FR 38469. Under the proposed definition, these parts may consist of any combination of a stator frame, wound stator, rotor, shaft, or endshields and the term "operable motor" would refer to an electric motor engineered for performing in accordance with nameplate ratings. 78 FR 38469.

In response to the NOPR, Nidec suggested that the definition of component set be clearer so that it can be differentiated from a partial motor. It criticized the proposed definition for not being clear enough to distinguish a component set from a partial motor. (Pub. Mtg. Tr., No. 7 at p. 31) NEMA, on the other hand, recommended that DOE not define this term, noting that

the clearer definition of partial motor should be sufficient to distinguish it from a component set. (NEMA, No. 10 at p. 34)

In DOE's view, defining what a "component set" is, and distinguishing it from a "partial electric motor" is critical. Furthermore, as explained earlier, DOE does not intend to define only those motors for which it is proposing energy conservation standards in the parallel rulemaking. Rather, motors that need to be defined in order to clearly outline coverage in the standards rulemaking will be defined. By defining a "component set," DOE can clearly state whether a given motor would be affected in a particular standards rulemaking.

Nidec also raised concerns regarding where bearings fit into the definition (i.e. whether the presence or absence of bearings factored into the classification of equipment as a component set or partial electric motor). In recognition of the fact that bearings are often specifically designed to match endplates, DOE is modifying its proposed definition by adding the phrase "and their associated bearings" to the "component set" definition, to better distinguish it from a partial motor. To mitigate the risk of confusion, DOE is defining a component set as referring to "a combination of motor parts that require the addition of critical componentry in excess of two endshields (and their associated bearings) to create an operable motor." In view of its own research and consensus among interested parties, DOE is maintaining its NOPR proposal.

## 2. Liquid-Cooled Electric Motor

While most electric motors are air-cooled and many use a fan attached to the shaft on the end opposite the drive to blow air over the surface of the motor to dissipate heat during the motor's operation, liquid-cooled electric motors rely on a special cooling apparatus that pumps liquid into and around the motor housing. The liquid is circulated around the motor frame to dissipate heat and prevent the motor from overheating during continuous-duty operation. A liquid-cooled electric motor may use different liquids or liquids at different temperatures, which could affect the operating temperature of the motor and, therefore, the efficiency of the motor. This variability could present testing consistency and reliability problems.

Neither IEEE Standard 112 (Test Method B) nor CSA C390-10 provide a standardized methodology for testing the energy efficiency of a liquid-cooled electric motor. Additionally, as NEMA noted in its comments, these motors are

typically used in space-constrained applications, such as mining applications, and require a high power density, which somewhat limits their efficiency potential. (NEMA, NEMA, EERE-2010-BT-STD-0027-0054 at p. 42) In view of these likely testing consistency problems, DOE noted its intent to not propose energy conservation standards for these motors at this time. 78 FR 38475.

At least two key issues were raised in the context of these motors: First, how to test them while accounting for temperature differences and second, how to differentiate these motors from certain other motor types.

### a. Temperature Conditions

In response to the NOPR, NEMA commented that it is very difficult to simulate the various environments in a testing facility where the tested motor is required to be connected to a dynamometer. In order to maintain acceptable temperature levels, some motors operating in an open environment may rely on both free convection and liquid cooling, motors operating in a confined space may rely only on liquid cooling and other motors may be operated in an area with externally supplied ventilating air and liquid cooling. (NEMA, No. 10 at p. 36). Thus, NEMA argued that energy conservation standards should not be established for liquid-cooled electric motors. As noted earlier, NEMA commented that the liquid-cooled electric motors are used in specialized applications that require high power density within a limited size. Different physical sizes may be used for the same power rating for different applications for different speed-torque performance, as needed. This fact also makes it difficult to establish any particular energy conservation standard for a rating. (NEMA, No. 10 at pp. 35-36).

No standardized methodology for testing the energy efficiency of a liquid-cooled electric motor, the consensus among stakeholders on how to treat these motors, and liquid-cooled electric motors are likely to be used in specialized applications with high power density requirements. Because of that, it is difficult to establish a procedure that can be confidently said to be representative of energy use experienced by consumers. For that reason, DOE is not establishing energy conservation standards for liquid-cooled electric motors at this time.

### b. Differentiating From Other Motor Types

In response to the October 15, 2010 energy conservation standards

framework document, NEMA and ASAP commented that greater clarification is needed with regard to liquid-cooled electric motors and how to differentiate them from immersible or submersible electric motors. (NEMA and ASAP, EERE-2010-BT-STD-0027-0012 at p. 9) DOE proposed to define “liquid-cooled electric motor” to clarify DOE’s view of which motors would be covered by this term but did not indicate it planned to set standards for them. DOE’s proposed definition was based on the definition of a “totally enclosed water-cooled machine” found in paragraph 1.26.5 of NEMA MG 1-2009. Further, DOE proposed to remove “totally enclosed” from the definition to prevent any unintentional limitations of the definition due to frame construction; liquid-cooling may exist independently of degree of frame enclosure. DOE also planned to replace the term “water” with “liquid” to cover the use of any type of liquid as a coolant. Finally, per comments from NEMA, DOE proposed to modify the term “water conductors” to “liquid-filled conductors” to clarify that the conductors, themselves, are not made of liquid. (NEMA, EERE-2010-BT-STD-0027-0054 at p. 35) Consequently, DOE proposed to define “liquid-cooled electric motor” as “a motor that is cooled by circulating liquid with the liquid or liquid-filled conductors coming into direct contact with the machine parts.”

In response to the NOPR, NEMA commented that it does not see a need for a definition of “liquid-cooled electric motor” because these motor types are not covered under regulation. However, if DOE still decided there was a need to include a definition, NEMA suggested using and defining the term “liquid-cooled definite purpose motor” rather than “liquid-cooled definite purpose electric motor”. In order to remove any confusion related to “liquid filled conductors”, NEMA recommended the definition, if needed, be modified as: “Liquid-cooled definite purpose motor means a motor that is cooled by circulating liquid with the liquid coming into direct contact with machine parts, typically the enclosure.” (NEMA, No. 10 at p. 35)

As stated earlier, even if these motor types are not currently regulated, DOE intends to define these motor types for clarity. This decision is further described in section G. DOE has also considered NEMA’s proposed addition to the definition of “typically the enclosure” and removal of the term “liquid-filled conductors.” For the final rule, DOE is maintaining the term “liquid-filled conductors” to maintain the broadness of the original definition

and not limit the definition to only circulating liquid. Furthermore, DOE is opting not to add the term “typically the enclosure” as it does not believe that this phrase adds to the content of the definition and may only add confusion. DOE is including the term “designated cooling apparatus” to bring more clarity. For this final rule, DOE adopts the definition of “liquid-cooled electric motor” as “a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor.”

### 3. Submersible Electric Motor

As previously addressed, most motors are not engineered to operate while under water. Any liquid inside a stator frame could impede rotor operation and corrode components of the motor. However, a submersible electric motor is capable of complete submersion in liquid without damaging the motor. A submersible electric motor uses special seals to prevent the ingress of liquid into its enclosure. Additionally, DOE understands that a submersible electric motor relies on the properties of the surrounding liquid to cool the motor during continuous-duty operation. That is, submersible electric motors are only capable of continuous duty operation while completely submerged in liquid, as NEMA clarified in its comments on the energy conservation standards preliminary analysis. (NEMA, EERE-2010-BT-STD-0027-0054 at p. 37) Consequently, as detailed in the NOPR, DOE defined “submersible electric motor” as an electric motor designed for continuous operation only while submerged in liquid.

In response to the NOPR, NEMA commented that no definition of “submersible electric motor” is needed because these motor types are not covered under DOE’s regulations. However, if DOE still decided there was a need to include a definition, in NEMA’s view, the definition should be for that of a “submersible definite purpose motor” and not a “submersible definite purpose electric motor.” NEMA claimed that the term “continuous” was unnecessary as part of the definition since the motor is not intended to be operated outside of the liquid for any period of time. NEMA suggested that the term be defined as referring to a motor “designed for operation only while submerged in liquid.” (NEMA, No. 10 at p. 36)

As explained above, DOE is not adding the term “definite purpose” to any individual motor definitions at this time. However, DOE recognizes that it is

necessary to distinguish submersible electric motors from electric motors with moisture-resistant, sealed or encapsulated windings. To clarify this distinction, in this final rule, DOE is defining “submersible electric motor” as an “electric motor that (1) is intended to operate continuously only while submerged in liquid, (2) is capable of operation while submerged in liquid for an indefinite period of time, and (3) has been sealed to prevent ingress of liquid from contacting the motor’s internal parts.”

At the time of the NOPR, DOE believed that testing submersible electric motors would be difficult because the motor must be submerged in a liquid to properly operate. After discussions with manufacturers and testing laboratories, DOE confirmed that no industry test procedures or potential modifications to the procedures currently under 10 CFR 431.16 could be used to consistently test (and reliably measure) a motor that relies on submersion in liquid for continuous-duty operation. Additionally, DOE was not aware of any testing facilities that are capable of testing a submerged motor. Consequently, DOE decided not to propose specific preparatory instructions for testing submersible electric motors in the NOPR. DOE requested stakeholder comment on whether there are facilities capable of conducting energy efficiency tests on submersible motors, along with any specific procedures that these facilities follow when attempting to rate the energy efficiency of this equipment. In its written comments, NEMA affirmed that they were unaware of any test facilities available for conducting an IEEE 112 (Method B) test on a motor while submerged in liquid. (NEMA, No. 10 at p. 37)

Therefore, DOE is only adopting a definition in today’s final rule, which is consistent with DOE’s continuing intention to exclude these motors from the proposed energy conservation standards.

### 4. Inverter-Only Electric Motor

DOE considered two types of electric motors related to the use of inverters, those that are engineered to work only with an inverter and those that are capable of working with an inverter, but also capable of general, continuous-duty operation without an inverter. This section addresses the former. Inverter-capable electric motors are addressed in section III.A.4.

In its electric motors preliminary analysis TSD, DOE sought to clarify that, in its view, inverter-only motors were motors that can operate

continuously only by means of an inverter drive. DOE also explained that it preliminarily planned to continue to exclude these motors from energy conservation standards requirements, in large part because of the difficulties that were likely to arise from testing them. One such difficulty is the fact that they can be operated at a continuum of speeds with no established speed testing profile. Another is that motors may be optimized for different waveforms, which also have no established testing standards. It would be difficult to generate meaningful test results for products which may be designed for a wide variety of operating inputs. The breadth of specifications resists treatment with a single test procedure without extensive study. Additionally, the high frequency power signals may be difficult to measure accurately without specialized equipment that testing laboratories may not possess.

NEMA agreed with DOE's preliminary approach to define such motors but not require them, for the time being, to meet energy conservation standards. It suggested a more specific definition of an "inverter-only motor," based on NEMA MG 1 part 31, "Definite-Purpose Inverter-Fed Polyphase Motors," in place of the one previously considered by DOE. (NEMA, EERE-2010-BT-STD-0027-0054 at p. 35) DOE examined the suggested definition and proposed to adopt it, with minor modifications. DOE proposed not to require that a motor be marked as a "definite-purpose, inverter-fed electric motor," but stated that it may consider such a requirement in the future. DOE also noted NEMA's concern with the characterization of these motors and changed the term to read as an "inverter-only electric motor." DOE proposed to define an "inverter-only electric motor" as "an electric motor that is designed for operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power."

In response to the NOPR, NEMA contended that no definition is needed for "definite purpose inverter fed electric motor" because, in its view, a definition would be needed only if there was a clear indication that a motor designed for operation on inverter power appears to meet the definition of "electric motor" as recommended by NEMA. If DOE still needed to include a definition, NEMA asserted that the definition should be for an "inverter-fed definite purpose motor" and not a "definite purpose inverter-fed electric motor." If, upon further consideration, DOE did decide that a definition was needed, NEMA recommended that DOE use the term "inverter-fed definite-

purpose motor", which would refer to "a definite purpose motor that is designed for operation solely with an inverter, and is not defined for across-the-line starting when directly connected to polyphase, sinusoidal line power." (NEMA, No. 10 at p. 37)

As noted earlier, DOE intends to define these motor types to clarify these terms. DOE has also explained that it is not including the terms definite purpose or special purpose in its individual motors definitions, even though "definite-purpose" was initially used in the definition of these motors, because "definite-purpose" is a term that has meaning in the context of many other motor types which DOE does not wish to be confused with those requiring inverters. DOE also wishes to define these motors in terms of their actual capabilities instead of design intent. Therefore, to clear up any confusion surrounding the use of the phrase "definite-purpose", DOE is changing the name of this motor type to be "inverter-only electric motor." As a result, DOE is adopting the definition of "inverter-only electric motor" as "an electric motor that is capable of rated operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power."

As for testing an inverter-only electric motor, NEMA asserted that the industry-based procedures, which have already been incorporated by reference in DOE's regulations, require that a tested motor be capable of across-the-line starting. Inverter-only motors are incapable of meeting this requirement without the inverter. (See NEMA, at EERE-2010-BT-STD-0027-0054 at p. 35 and NEMA MG 1-2009, part 31 at paragraph 31.4.3.1, which elaborates that an "inverter-only electric motor" cannot perform across-the-line starting unless the motor is attached to the inverter.) In the NOPR, DOE noted it was not aware of an industry accepted test procedure specifying the speed or torque characteristics to use when testing an inverter-only motor. Furthermore, DOE was unable to develop a standardized test procedure for inverter-only electric motors at this time. Because inverters allow a motor to operate at a wide array of speeds for many different applications, there would be considerable difficulties in developing a single test procedure that produced a fair representation of the actual energy used by all electric motors connected to an inverter in the field.

Additionally, a single motor design may be paired with a wide variety of inverters, so properly selecting an inverter to use for the test such that an

accurate representation of efficiency is obtained would prove extremely difficult. Inverters may also operate at frequencies that make accurate measurement of power difficult with the type of equipment used for conventional motors. Even if DOE intended to regulate such motors, testing them could be extremely challenging using the currently accepted industry test procedures. Therefore, DOE proposed to exclude these motors from consideration for energy conservation standards.

In response to the NOPR, NEMA and Regal Beloit agreed with DOE's decision not to establish energy conservation standards for motors intended for operation solely with an inverter. (NEMA, No. 10 at p. 38; Pub. Mtg. Tr., No. 7 at p. 78).

As noted earlier, one difficulty in testing inverter-only motors is the fact that they can be operated at a continuum of speeds with no established speed testing profile. Another is that motors may be optimized for different waveforms, which also have no established testing standards. It would be difficult to generate meaningful test results for products which may be designed for a wide variety of operating inputs. The breadth of specifications resists treatment with a single test procedure without extensive study. Additionally, the high frequency power signals may be difficult to measure accurately without specialized equipment that testing laboratories may not possess. In view of this consensus and DOE's own conclusions regarding test procedure difficulties, DOE has maintained this approach for the final rule and is not adopting a test procedure set-up for these motors, nor will these motors be considered for energy conservation standards at this time.

#### *H. Effective Dates for the Amended Test Procedures and Other Issues*

In the June 26, 2013 NOPR (78 FR 38455), DOE proposed that the amendments described in the sections below become effective 30 days after the publication of the final rule. Furthermore, at 180 days after publication, the NOPR stated that the manufacturers of those motors that would be affected by the proposal would need to make representations regarding energy efficiency based on results obtained through testing in accordance with the proposed amendments. Calculations based on a substantiated alternative efficiency determination method (AEDM) would also need to need reflect the same approach, as would any certifications of

compliance with the applicable energy conservation standards.<sup>31</sup>

Responding to the proposal, NEMA commented that the effective date of any change in test procedures should coincide with the effective date of any remedial change in the standards provided to rectify the effect of the changes in the test procedures on the tested efficiency. (NEMA, No. 10 at pp. 11–13)<sup>32</sup> DOE understands NEMA's concern. Per DOE's "Process Rule" at appendix A to subpart C of 10 CFR part 430 and the requirements at 42 U.S.C. 6295(o)(3) and (r), DOE usually tries to finalize its test procedures before its energy conservation standards. This timeframe allows stakeholders to understand how the proposed standard will be calculated to apply to the covered equipment.

NEMA was also concerned that the test procedure effective date would mean that the test procedure applies to motor types that are to be covered under the parallel standards rulemaking over a year before standards are finalized for such motor types. (NEMA, No. 10 at pp. 11–13). It also made a number of miscellaneous comments related to clarifying the proposed requirements.

As described in the "Note" to Appendix B to Subpart B and consistent with 42 U.S.C. 6314(d), any representations of energy efficiency or energy consumption of motors for which energy conservation standards are currently provided at 10 CFR 431.25 must be based on any final amended procedures in appendix B to subpart B of part 431 starting 180 days after the publication of any final amended test procedures. Until that time, manufacturers of motors for which energy conservation standards are currently provided at 10 CFR 431.25 may make such representations based either on the final amended test procedures or on the previous test procedures, set forth at 10 CFR part 431, subpart B, appendix B as contained in the 10 CFR parts 200 to 499 edition revised as of January 1, 2013.

For any other electric motor type that is not currently covered by the energy conservation standards at 10 CFR 431.25

but may become covered by standards under the standards rulemaking for which a proposed rule is currently open for comment (see 78 FR 73589 (Dec. 6, 2013), manufacturers of this equipment would need to use Appendix B 180 days after the effective date of the final rule adopting energy conservation standards for these motors. DOE would publish a notice upon publication of a final rule in that standards rulemaking announcing the specific date and amending the Note regarding compliance with test procedures that the today's final rule codifies in Appendix B.

NEMA also suggested that the test procedures should be applicable only to those general purpose, definite purpose and special purpose electric motors for which energy conservation standards apply. (NEMA, No. 10 at p. 10) DOE disagrees. For the motor types defined in 10 CFR part 431, and to the extent to which any representations of energy efficiency are made, manufacturers must follow the given test procedures even if they are currently exempt from energy conservation standards. This approach follows from DOE's intention to standardize the way the motors are tested and energy efficiency is reported.

NEMA asserted that the proposed "note" limits the use of Appendix B to Subpart B for purposes related to representation of efficiency and demonstration of compliance and would not apply to the test procedures for the enforcement process. (NEMA, No. 10 at p. 11) Again, DOE disagrees. The note lays out the test procedures that a manufacturer would use to determine that any applicable energy conservation requirements are met. Those procedures would be followed by DOE as part of any enforcement action against a given manufacturer.

NEMA suggested that any provisional requirements included in the final rule should be within the appropriate requirements in 10 CFR 431.16 or 10 CFR 431.17. (NEMA, No. 10 at pp. 10–13). DOE takes note of NEMA's suggestions and has ensured that today's final rule meets the requirements in 10 CFR 431.16 or 10 CFR 431.17.

NEMA suggested replacing the term "open bearing" with "grease lubricated double shielded bearing" in the proposed definition of standard bearing in paragraph 4 of Appendix B to Subpart B because, in its view, bearings require lubrication during operation and not all endshields have the ability to contain lubricating material. (NEMA, No. 10 at p. 38) DOE notes NEMA's concern that some endshields may not be able to contain grease or lubricating material and thus would require grease-

lubricated bearings instead of open bearings. Therefore, DOE has amended the definition to allow the use of grease-lubricated double shielded bearing.

As for other concerns raised by NEMA suggesting that the test procedures be structured to limit their application to special and definite purpose electric motors, DOE notes that the procedures are to apply to electric motors as a whole. There is no need to insert limiting language that would narrow the application of the procedure. DOE further notes that it chose the proposed (and now final) definitional structure because the now-proposed standards rulemaking develops a coverage structure based on a motor satisfying both the broad "electric motors" definition and the nine referenced criteria. With the release of this standards proposal, many, if not all, of NEMA's comments on electric motor definitions are resolved. Any further comments that interested parties may have on this structure can be submitted for consideration as part of the ongoing energy conservation standards rulemaking.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in 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 an initial regulatory flexibility analysis (IFRA) 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

<sup>31</sup> DOE acknowledged that, at the time, there are were no current energy conservation standards for the majority of the motor types covered in the NPR. DOE stated that if it establishes standards for these motor types, manufacturers will be required to use the proposed test procedure to certify compliance with these standards.

<sup>32</sup> In this and subsequent citations, the document number refers to the number of the comment in the Docket for the DOE rulemaking on test procedures for electric motors, Docket No. EERE-2012-BT-TP-0043; and the page references refer to the place in the document where the statement preceding appears.

Counsel's Web site: <http://energy.gov/gc/office-general-counsel>.

As described in the preamble, today's final rule presents additional test procedure set-up clarifications for motors currently subject to Federal energy conservation standards, new test procedure set-up and test procedures for motors not currently subject to Federal energy conservation standards, and additional clarifications of definitions for certain key terms to aid manufacturers in better understanding DOE's regulations. All of the additions are consistent with current industry practices and, once compliance is required, should be used for making representations of energy-efficiency of those covered electric motors and for certifying compliance with any applicable Federal energy conservation standards. DOE certified to the Office of Advocacy of the Small Business Administration (SBA) that the additional test procedures and definitions for electric motors would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification 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 and its affiliates may employ a maximum of 1,000 employees. DOE estimates that there are approximately 30 domestic motor manufacturers that manufacture electric motors covered by EPCA, and no more than 13 of these manufacturers are small businesses employing a maximum of 1,000 employees. The number of motor manufacturers, including the number of manufacturers qualifying as small businesses, was estimated based on interviews with motor manufacturers and publicly available data.

To determine the anticipated economic impact of the testing requirements on small manufacturers, DOE compared this final rule to current industry practices regarding testing procedures and representations for energy efficiency along with those steps DOE has taken in the design of the rule to minimize the testing burden on manufacturers. For motors that are currently subject to Federal standards, today's procedures are largely clarifications and will not change the underlying DOE test procedure and methodologies currently being employed by industry to rate and certify

to the Department compliance with Federal standards.

For motors that are not currently subject to Federal standards, manufacturers of such unregulated electric motors would only need to use the testing set-up instructions, testing procedures, and rating procedures provided in today's rule 180 days after the effective date of any relevant energy conservation standards final rule if a manufacturer elected to make voluntary representations of energy-efficiency of its basic models. To better understand how this rule will impact small manufacturers of electric motors, DOE reviewed current industry practice regarding the representations of energy efficiency made for motors not subject to energy conservation standards and how the rulemaking will impact current industry practice. Specifically, DOE's test procedures require that those manufacturers of regulated motors not currently subject to standards who choose to make public representations of efficiency to follow the methods prescribed in this rule. DOE's rule does not require manufacturers who do not currently make voluntary representations to then begin making public representations of efficiency.

DOE researched the catalogs and Web sites of the 13 identified small manufacturers and found that only four of these manufacturers clearly list efficiency ratings for their equipment in public disclosures. The remaining manufacturers either build custom equipment, which are not subject to the changes made in this rule, or do not list energy efficiency in their motor specifications, in part because it is not required. For the manufacturers that currently do not voluntarily make any public representations of energy efficiency for their motors, DOE does not believe this rule will impact their current practice. DOE does not anticipate any burden accruing to these manufacturers unless the agency considered and set energy conservation standards for those additional electric motor types. Of the four manufacturers that currently elect to make voluntary representations of the electric motor efficiency, DOE believes those manufacturers will be minimally impacted because they are already basing those representations on commonly used industry standards, which are the same testing procedures incorporated by this rule. DOE does not have any reason to believe that the test set-up clarifications adopted in today's rule would have any significant impact on the current practice of these four manufacturers.

In view of the foregoing, DOE certifies that today's final rule will 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).

In response to the regulatory flexibility analysis in the NOPR, Bluffton stated that while it agrees that the test procedure being proposed would not have a significant impact on small electric motor manufacturers, if energy conservation standards are applied to newly-defined electric motor types and special and definite purpose electric motors, as extended to 56-frame motors, there would be a major impact to small electric motor manufacturers. Bringing these electric motor types into compliance using the proposed test procedure could put a small electric motor manufacturer's existence in jeopardy. (Bluffton, No. 11 at pp. 1–2)

DOE acknowledges that expanding the scope of the existing energy conservation standards to include additional electric motor types, such as special and definite purpose electric motors and 56-frame motors, could disproportionately impact small electric motor manufacturers that specialize in producing these types of motors. DOE further notes that in the final test procedure rule that manufacturers of electric motors whose energy efficiency is not currently regulated will not need to use the test procedure until energy conservation standards are set for those electric motor types. Bluffton also commented that since a number of suppliers would also be considered small businesses, they could also be adversely affected by an expanded scope for standards since they could potentially lose customers of their products. Bluffton also stated that expanding the scope of standards could also prove to be a significant impact on the many small businesses that are customers of small electric motor manufacturers because their customers would have to redesign and re-tool their units to accommodate potentially larger new designs. (Bluffton, No. 11 at pp. 1–2) For purposes of the Regulatory Flexibility Act, DOE notes that it is required to focus its analysis on the direct impact of the current rule on those small businesses that manufacture electric motors as part of the regulatory flexibility analysis. DOE will address the impacts of any proposed standards on small manufacturers of electric

motors in the Review Under the Regulatory Flexibility Act of the related electric motor standards' rulemaking.

#### *C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of electric motors must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for electric motors, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including electric motors. (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated 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*

In this final rule, DOE amends its test procedure for 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 energy conservation regulations for the equipment subject to 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://energy.gov/gc/office-general-counsel>. 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 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 modifications DOE addressed in this action incorporate testing methods followed by industry when evaluating the energy efficiency of electric motors. DOE's rule establishes the necessary testing set-up to facilitate consistency and repeatability when conducting a test in accordance with one of the prescribed test procedures incorporated into DOE's regulations. These methods, as described earlier in the preamble discussion above, would be used in instances where an electric motor manufacturer makes representations of energy efficiency regarding its motors. DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting 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 final rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *N. 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 practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 6, 2013.

**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. Amend § 431.12 by:

- a. Removing the reserved terms "Fire pump motor" and "NEMA design B general purpose electric motor;" and
- b. Adding in alphabetical order, definitions for: "air-over electric motor," "brake electric motor," "component set," "definite purpose electric motor," "electric motor with encapsulated windings," "electric motor with moisture resistant windings," "electric motor with sealed windings," "IEC Design H motor," "IEC Design N motor," "immersion electric motor," "inverter-capable electric motor," "inverter-only electric motor," "liquid-cooled electric motor," "NEMA Design A motor," "NEMA Design C motor," "partial electric motor," "special purpose electric motor," "submersible electric motor," "totally enclosed non-ventilated (TENV) electric motor."

The additions read as follows:

#### **§ 431.12 Definitions.**

\* \* \* \* \*

*Air-over electric motor* means an electric motor rated to operate in and be cooled by the airstream of a fan or blower that is not supplied with the motor and whose primary purpose is providing airflow to an application other than the motor driving it.

\* \* \* \* \*

*Brake electric motor* means a motor that contains a dedicated mechanism for speed reduction, such as a brake, either within or external to the motor enclosure

\* \* \* \* \*

*Component set* means a combination of motor parts that require the addition

of more than two endshields (and their associated bearings) to create an operable motor. These parts may consist of any combination of a stator frame, wound stator, rotor, shaft, or endshields. For the purpose of this definition, the term "operable motor" means an electric motor engineered for performing in accordance with nameplate ratings.

\* \* \* \* \*

*Definite purpose electric motor* means any electric 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 with encapsulated windings* means an electric motor capable of passing the conformance test for water resistance described in NEMA MG 1-2009, paragraph 12.62 (incorporated by reference, see § 431.15).

\* \* \* \* \*

*Electric motor with moisture resistant windings* means an electric motor that is capable of passing the conformance test for moisture resistance generally described in NEMA MG 1-2009, paragraph 12.63 (incorporated by reference, see § 431.15).

\* \* \* \* \*

*Electric motor with sealed windings* means an electric motor capable of passing the conformance test for water resistance described in NEMA MG 1-2009, paragraph 12.62 (incorporated by reference, see § 431.15).

\* \* \* \* \*

*IEC Design H motor* means an electric motor that

- (1) Is an induction motor designed for use with three-phase power;
- (2) Contains a cage rotor;
- (3) Is capable of direct-on-line starting
- (4) Has 4, 6, or 8 poles;
- (5) Is rated from 0.4 kW to 1600 kW at a frequency of 60 Hz; and
- (6) Conforms to sections 8.1, 8.2, and 8.3 of the IEC 60034-12 edition 2.1 (incorporated by reference, see § 431.15) requirements for starting torque, locked rotor apparent power, and starting.

\* \* \* \* \*

*IEC Design N motor* means an electric motor that:

- (1) Is an induction motor designed for use with three-phase power;

- (2) Contains a cage rotor;
- (3) Is capable of direct-on-line starting;
- (4) Has 2, 4, 6, or 8 poles;
- (5) Is rated from 0.4 kW to 1600 kW at a frequency of 60 Hz; and
- (6) Conforms to sections 6.1, 6.2, and 6.3 of the IEC 60034-12 edition 2.1 (incorporated by reference, see § 431.15) requirements for torque characteristics, locked rotor apparent power, and starting.

\* \* \* \* \*

*Immersible electric motor* means an electric motor primarily designed to operate continuously in free-air, but is also capable of temporarily withstanding complete immersion in liquid for a continuous period of no less than 30 minutes.

\* \* \* \* \*

*Inverter-capable electric motor* means an electric motor designed to be directly connected to polyphase, sinusoidal line power, but that is also capable of continuous operation on an inverter drive over a limited speed range and associated load.

\* \* \* \* \*

*Inverter-only electric motor* means an electric motor that is capable of rated operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power.

\* \* \* \* \*

*Liquid-cooled electric motor* means a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor.

\* \* \* \* \*

*NEMA Design A motor* means a squirrel-cage motor that:

- (1) Is Designed to withstand full-voltage starting and developing locked-rotor torque as shown in NEMA MG1-2009, paragraph 12.38.1 (incorporated by reference, see § 431.15);
- (2) Has pull-up torque not less than the values shown in NEMA MG1-2009, paragraph 12.40.1;
- (3) Has breakdown torque not less than the values shown in NEMA MG1-2009, paragraph 12.39.1;
- (4) Has a locked-rotor current not to exceed the values shown in NEMA MG1-2009, paragraph 12.35.1 for 60 hertz and NEMA MG1-2009, paragraph 12.35.2 for 50 hertz; and
- (5) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

\* \* \* \* \*

*NEMA Design C motor* means a squirrel-cage motor that:

- (1) Is Designed to withstand full-voltage starting and developing locked-rotor torque for high-torque applications up to the values shown in NEMA MG1-2009, paragraph 12.38.2 (incorporated by reference, see § 431.15);

(2) Has pull-up torque not less than the values shown in NEMA MG1-2009, paragraph 12.40.2;

(3) Has breakdown torque not less than the values shown in NEMA MG1-2009, paragraph 12.39.2;

(4) Has a locked-rotor current not to exceed the values shown in NEMA MG1-2009, paragraphs 12.35.1 for 60 hertz and 12.35.2 for 50 hertz; and

(5) Has a slip at rated load of less than 5 percent.

\* \* \* \* \*

*Partial electric motor* means an assembly of motor components necessitating the addition of no more than two endshields, including bearings, to create an an electric motor capable of operation in accordance with the applicable nameplate ratings.

\* \* \* \* \*

*Special purpose electric motor* means any electric motor, other than a general purpose motor or definite electric purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

\* \* \* \* \*

*Submersible electric motor* means an electric motor that:

(1) Is intended to operate continuously only while submerged in liquid;

(2) Is capable of operation while submerged in liquid for an indefinite period of time; and

(3) Has been sealed to prevent ingress of liquid from contacting the motor's internal parts.

\* \* \* \* \*

*Totally enclosed non-ventilated (TENV) electric motor* means an electric motor that is built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection.

■ 3. Amend § 431.15 by adding paragraph (e)(1)(iii)(D) to read as follows:

**§ 431.15 Materials incorporated by reference.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(D) Paragraphs 12.62 and 12.63, IBR approved for § 431.12.

\* \* \* \* \*

■ 4. Appendix B to Subpart B of Part 431 is amended by adding an

introductory note and section 4 to read as follows:

**Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full-Load Efficiency of Electric Motors**

**Note:** After June 11, 2014, any representations made with respect to the energy use or efficiency of electric motors for which energy conservation standards are currently provided at 10 CFR 431.25 must be made in accordance with the results of testing pursuant to this appendix.

For manufacturers conducting tests of motors for which energy conservation standards are provided at 10 CFR 431.25, after January 13, 2014 and prior to June 11, 2014, manufacturers must conduct such test in accordance with either this appendix or appendix B as it appeared at 10 CFR Part 431, subpart B, appendix B, in the 10 CFR Parts 200 to 499 edition revised as of January 1, 2013. Any representations made with respect to the energy use or efficiency of such electric motors must be in accordance with whichever version is selected. Given that after June 11, 2014 representations with respect to the energy use or efficiency of electric motors must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

For any other electric motor type that is not currently covered by the energy conservation standards at 10 CFR 431.25, manufacturers of this equipment will need to use Appendix B 180 days after the effective date of the final rule adopting energy conservation standards for these motors.

\* \* \* \* \*

**4. Procedures for the Testing of Certain Electric Motor Types.**

Prior to testing according to IEEE Std 112–2004 (Test Method B) or CSA C390–10 (incorporated by reference, see § 431.15), each basic model of the electric motor types listed below must be set up in accordance with the instructions of this section to ensure consistent test results. These steps are designed to enable a motor to be attached to a dynamometer and run continuously for testing purposes. For the purposes of this appendix, a “standard bearing” is a 6000 series, either open or grease-lubricated double-shielded, single-row, deep groove, radial ball bearing.

**4.1 Brake Electric Motors:**

Brake electric motors shall be tested with the brake component powered separately from the motor such that it does not activate during testing. Additionally, for any 10-minute period during the test and while the brake is being powered such that it remains disengaged from the motor shaft, record the power consumed (i.e., watts). Only power

used to drive the motor is to be included in the efficiency calculation; power supplied to prevent the brake from engaging is not included in this calculation. In lieu of powering the brake separately, the brake may be disengaged mechanically, if such a mechanism exists and if the use of this mechanism does not yield a different efficiency value than separately powering the brake electrically.

**4.2 Close-Coupled Pump Electric Motors and Electric Motors with Single or Double Shaft Extensions of Non-Standard Dimensions or Design:**

To attach the unit under test to a dynamometer, close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or design must be tested using a special coupling adapter.

**4.3 Electric Motors with Non-Standard Endshields or Flanges:**

If it is not possible to connect the electric motor to a dynamometer with the non-standard endshield or flange in place, the testing laboratory shall replace the non-standard endshield or flange with an endshield or flange meeting NEMA or IEC specifications. The replacement component should be obtained from the manufacturer or, if the manufacturer chooses, machined by the testing laboratory after consulting with the manufacturer regarding the critical characteristics of the endshield.

**4.4 Electric Motors with Non-Standard Bases, Feet or Mounting Configurations**

An electric motor with a non-standard base, feet, or mounting configuration may be mounted on the test equipment using adaptive fixtures for testing as long as the mounting or use of adaptive mounting fixtures does not have an adverse impact on the performance of the electric motor, particularly on the cooling of the motor.

**4.5 Electric Motors with a Separately-powered Blower:**

For electric motors furnished with a separately-powered blower, the losses from the blower's motor should not be included in any efficiency calculation. This can be done either by powering the blower's motor by a source separate from the source powering the electric motor under test or by connecting leads such that they only measure the power of the motor under test.

**4.6 Immersible Electric Motors**

Immersible electric motors shall be tested with all contact seals removed but be otherwise unmodified.

**4.7 Partial Electric Motors:**

Partial electric motors shall be disconnected from their mated piece of equipment. After disconnection from the equipment, standard bearings and/or endshields shall be added to the motor, such that it is capable of operation. If an endshield is necessary, an endshield meeting NEMA or

IEC specifications should be obtained from the manufacturer or, if the manufacturer chooses, machined by the testing laboratory after consulting with the manufacturer regarding the critical characteristics of the endshield.

**4.8 Vertical Electric Motors and Electric Motors with Bearings Incapable of Horizontal Operation:**

Vertical electric motors and electric motors with thrust bearings shall be tested in a horizontal or vertical configuration in accordance with IEEE 112 (Test Method B), depending on the testing facility's capabilities and construction of the motor, except if the motor is a vertical solid shaft normal thrust general purpose electric motor (subtype II), in which case it shall be tested in a horizontal configuration in accordance with IEEE 112 (Test Method B). Preference shall be given to testing a motor in its native orientation. If the unit under test cannot be reoriented horizontally due to its bearing construction, the electric motor's bearing(s) shall be removed and replaced with standard bearings. If the unit under test contains oil-lubricated bearings, its bearings shall be removed and replaced with standard bearings. Finally, if the unit under test contains a hollow shaft, a solid shaft shall be inserted, bolted to the non-drive end of the motor and welded on the drive end. Enough clearance shall be maintained such that attachment to a dynamometer is possible.

■ 5. Amend § 431.383 by adding paragraph (e)(4) to read as follows:

**§ 431.383 Enforcement process for electric motors.**

\* \* \* \* \*

(e) \* \* \*

(4)(i) *Non-standard endshields or flanges.* For purposes of DOE-initiated testing of electric motors with non-standard endshields or flanges, the Department will have the discretion to determine whether the lab should test a general purpose electric motor of equivalent electrical design and enclosure rather than replacing the nonstandard flange or endshield.

(ii) *Partial electric motors.* For purposes of DOE-initiated testing, the Department has the discretion to determine whether the lab should test a general purpose electric motor of equivalent electrical design and enclosure rather than machining and attaching an endshield.

\* \* \* \* \*

[FR Doc. 2013–29677 Filed 12–12–13; 8:45 am]

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Part III

## Department of Defense

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Office of the Secretary

32 CFR Part 57

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents; Proposed Rule

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 57**

[Docket ID: DOD-2011-OS-0095]

RIN 0790-A177

**Provision of Early Intervention and Special Education Services to Eligible DoD Dependents****AGENCY:** Office of the Secretary, Department of Defense (DoD).**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule reissues the current regulations and establishes policy, assigns responsibilities, and implements the non-funding and non-reporting provisions of chapter 33 of 20 U.S.C., “The Individuals with Disabilities Education Act (IDEA),” in DoD for: provision of early intervention services (EIS) to infants and toddlers with disabilities and their families, as well as special education and related services to children with disabilities entitled under this part to receive education services from the DoD; implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their families who, but for age, are eligible to be enrolled in DoD schools; provision of a free appropriate public education (FAPE), including special education and related services, for children with disabilities, as specified in their individualized education programs (IEP), who are eligible to enroll in DoD schools; and monitoring of DoD programs providing EIS, and special education and related services for compliance with this part; and establishes a DoD Coordinating Committee to recommend policies and provide compliance oversight for early intervention and special education.

**DATES:** Comments must be received by February 11, 2014.**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other

submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:**

Lorie A. Sebestyen, 703-588-0254.

**SUPPLEMENTARY INFORMATION:****I. Purpose of the Regulatory Action**

a. This proposed rule would revise the current regulations in 32 CFR part 57 to incorporate the 2004 amendments to the IDEA and would establish other policy and assign responsibilities to implement the non-funding and non-reporting provisions of Parts B and C of the IDEA. Under 10 U.S.C. 2164(f) and 20 U.S.C. 927(c), DoD implements, within the DoD school system, the Department of Defense Education Activity (DoDEA), the applicable statutory provisions of Parts B and C of the IDEA, other than the funding and reporting provisions. This proposed rule brings the DoD into compliance with the requirements of the non-funding and non-reporting provisions of IDEA by updating and amending the DoD implementation of the IDEA within the DoD school system. The revisions will ensure that eligible children with disabilities are afforded the services and safeguards as required by applicable statutory provisions of IDEA. The IDEA regulations in 34 CFR parts 300 and 303, which apply to States that receive funds from the U.S. Department of Education under IDEA Parts B and C, do not apply to the DoD school systems as DoD does not receive funds under the IDEA. Nothing in the proposed regulations in 32 CFR part 57 would affect the applicability of the U.S. Department of Education’s regulations implementing IDEA in 34 CFR parts 300 and 303.

b. The authority for the proposed regulatory changes to 32 CFR part 57 is 10 U.S.C. 2164, 20 U.S.C. 921-932 and chapter 33, which is codified at 20 U.S.C. 1400 et seq.

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

This proposed rule identifies the services and procedural safeguards afforded to DoD dependent infants and toddlers and their families who are eligible for early intervention services under the IDEA and this part; identifies the services and procedural safeguards afforded to DoD dependent children with disabilities age 3-21 (inclusive) who are eligible for a free and appropriate public education under the IDEA and this part; outlines procedures

and timelines for the transition of young children from early intervention services to school-based preschool services; identifies the procedures available for resolution of disputes regarding the provision of early intervention services, or special education and related services; establishes early intervention and special education monitoring and reporting requirements; and establishes procedures within the DoD for implementing the applicable statutory provisions of the IDEA and this part.

**III. Costs and Benefits**

The provision of early intervention and special education, and related services is funded through Congressional appropriations to the DoD. The Department of Defense Education Activity (DoDEA) and the medical elements of the Military Departments, which are responsible for providing services to children with special needs, receive their funding from DoD. DoDEA funding is in Defense-wide, Operation and Maintenance funds. The cost of the special education program is included in the combined DoDEA/Military Departments cost that is used to operate all parts of the educational program. The approximate cost for the special education program for FY2011 was \$107,851,606.94. Total includes cost for personnel (salaries/benefits), contracts, travel, and equipment/supplies.

The approximate cost for the provision of early intervention and related services by the Military Departments is \$32,000,000 annually. Total includes cost for personnel, travel, professional development, and materials/supplies.

This rule updates DoD guidance to reflect the current version of the requirements resulting from the non-funding and non-reporting provisions of the IDEA, thereby ensuring that eligible infants and toddlers and children with disabilities, including those of military families, are aware of and provided the services and safeguards required by federal statute. The non-funding and non-reporting provisions of the IDEA are the substantive rights, protections, and procedural safeguards that apply to DoD. These are applicable as opposed to the “funding” and ‘reporting’ provisions because DoD schools and child development centers do not receive funding from the US Department of Education and therefore, the IDEA statutory reporting and related funding provisions do not apply to DoD.

### Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been certified that 32 CFR part 57 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, 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 set forth in these Executive Orders.

Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”

It has been certified that 32 CFR part 57 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

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

It has been certified that 32 CFR part 57 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that 32 CFR part 57 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB and assigned OMB Control Number 0704–0411.

Executive Order 13132, “Federalism”

It has been certified that 32 CFR part 57 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

### List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is proposed to be revised to read as follows:

#### **PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS**

Sec.

- 57.1 Purpose.
- 57.2 Applicability.
- 57.3 Definitions.
- 57.4 Policy.
- 57.5 Responsibilities.
- 57.6 Procedures.

**Authority:** 10 U.S.C. 2164, 20 U.S.C. 921–932 and chapter 33.

#### **§ 57.1 Purpose.**

(a) This part:  
 (1) Establishes policy and assigns responsibilities to implement, other than the funding and reporting provisions, chapter 33 of 20 U.S.C. (also known and hereinafter referred to in this Part as “Individuals with Disabilities Education Act (IDEA)”) in DoD, including DoD schools, pursuant to 20 U.S.C. 927(c) and 10 U.S.C. 2164 (f);

(i) Provision of early intervention services (EIS) to infants and toddlers with disabilities and their families, as well as special education and related services to children with disabilities entitled under this part to receive education services from the DoD in accordance with 20 U.S.C. 921–932, 10 U.S.C. 2164, and DoD Directive 1342.20 (see <http://www.dtic.mil/whs/directives/corres/pdf/134220p.pdf>), and the IDEA.

(ii) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their DoD civilian-employed and military families.

(iii) Provision of a free appropriate public education (FAPE), including special education and related services for children with disabilities who are eligible to enroll in DoDEA schools, as specified in their respective individualized education programs (IEP).

(iv) Monitoring of DoD programs providing EIS, or special education and related services for compliance with this part.

(2) Establishes a DoD Coordinating Committee to recommend policies and provide compliance oversight for early intervention and special education.

(3) Authorizes the issuance of other guidance as necessary.

(b) Reserved.

#### **§ 57.2 Applicability.**

This part applies to:

(a) Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (hereinafter referred to collectively as the “DoD Components”).

(b) Eligible infants, toddlers, and children receiving or entitled to receive early intervention services (EIS) or special education and related services from the DoD, whose parents have not elected voluntary enrollment in a non-Department of Defense Education Activity (DoDEA) school.

(c) All schools operated under the oversight of the DoDEA, including:

(1) Domestic Dependent Elementary and Secondary Schools (DDESS) operated by the DoD pursuant to 10 U.S.C. 2164.

(2) Department of Defense Dependents Schools (DoDDS) operated by the DoD pursuant to 20 U.S.C. 921–932 (hereinafter referred to as “overseas” schools).

(d) Does not create any substantive rights or remedies not otherwise authorized by the IDEA or other relevant law; and may not be relied upon by any person, organization, or other entity to allege a denial of substantive rights or remedies not otherwise authorized by the IDEA or other relevant law.

#### **§ 57.3 Definitions.**

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*Age of majority.* The age when a person acquires the rights and responsibilities of being an adult. For purposes of this part, a child attains majority at age 18, unless the child has been determined by a court of competent jurisdiction to be incompetent, or if the child has not been determined to be incompetent, he or she is incapable of providing informed consent with respect to his or her educational program.

*Alternate assessment.* A process that measures the performance of students with disabilities unable to participate, even with appropriate accommodations provided as necessary and as determined by their respective CSC, in a system-wide assessment.

*Alternative educational setting (AES).* A temporary setting in or out of the school, other than the setting normally

attended by the student (e.g., alternative classroom, home setting, installation library) determined by school authorities as the appropriate learning environment for a student because of learning or behavioral issues.

**Assessment for early intervention.** The ongoing procedures used by appropriately qualified personnel throughout the period of a child's eligibility determination to identify the child's unique needs; the family's strengths and needs related to development of the child; and the nature and extent of early intervention services (EIS) that are needed by the child and the child's family to meet their unique needs. Also may include reviewing pertinent records and conducting observations.

**Assistive technology device.** Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities. This term does not include a medical device that is surgically implanted or the replacement of that device.

**Assistive technology service.** Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: evaluating the needs of an individual with a disability, including a functional evaluation in the individual's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs; training or technical assistance for an individual with disabilities or the family of an individual with disabilities; and training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

**Case study committee (CSC).** A school-level multidisciplinary team, including the child's parents, responsible for making educational decisions concerning a child with a disability.

**Child-find.** An outreach program used by DoDEA, the Military Departments, and the other DoD Components to locate, identify, and evaluate children from birth to age 21, inclusive, who may require EIS or special education and related services. All children who are eligible to attend a DoD school under 20 U.S.C. 921–932 or 10 U.S.C. 2164 fall within the scope of the DoD child-find responsibilities. Child-find activities include the dissemination of information to Service members, DoD employees, and parents of students eligible to enroll in DoDEA schools; the identification and screening of children; and the use of referral procedures.

**Children with disabilities.** Children, ages 3 through 21, inclusive, who are entitled to enroll, or are enrolled, in a DoD school in accordance with 20 U.S.C. 921–932 and 10 U.S.C. 2164, have not graduated from high school or completed the General Education Degree, have one or more disabilities in accordance with section 1401(3) of the IDEA, and need and qualify for special education and related services.

**Complainant.** Person making an administrative complaint.

**Comprehensive system of personnel development (CSPD).** A system of personnel development that is developed in coordination with the Military Departments and the Director, DoDEA. CSPD is the training of professionals, paraprofessionals, and primary referral source personnel with respect to the basic components of early intervention, special education, and related services. CSPD may also include implementing innovative strategies and activities for the recruitment and retention of personnel providing special education and related services, ensuring that personnel requirements are established and maintaining qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared to provide special education and related services. Training of personnel may include working within the military and with military families, the emotional and social development of children, and transition services from early intervention to preschool and transitions within educational settings and to post-secondary environments.

**Consent.** The permission obtained from the parent ensuring they are fully informed of all information about the activity for which consent is sought, in his or her native language or in another mode of communication if necessary, and that the parent understands and agrees in writing to the implementation

of the activity for which permission is sought.

**Continuum of alternative placements.** Instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; includes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

**Controlled substance.** As defined in Sections 801–971 of title 21, United States Code (also known as the “Controlled Substances Act, as amended”).

**Day.** A calendar day, unless otherwise indicated as a business day or a school day.

(1) **Business day.** Monday through Friday except for Federal and State holidays.

(2) **School day.** Any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

**Department of Defense Education Activity (DoDEA).** The Department of Defense Education Activity is a DoD Field Activity under the direction, operation, and control of the Under Secretary of Defense for Personnel & Readiness (USD)(P&R) and Assistant Secretary of Defense for Readiness & Force Management (ASD)(R&FM). The mission of DoDEA is to provide an exemplary education by effectively and efficiently planning, directing, and overseeing the management, operation, and administration of the DoD Domestic Dependent Elementary and Secondary Schools (DDESS) and the DoD Dependents Schools (DoDDS), which provide instruction from kindergarten through grade 12 to eligible dependents.

**Department of Defense Dependents Schools (DoDDS).** The overseas schools (kindergarten through grade 12) established in accordance with 20 U.S.C. 921–932.

**Department of Defense Education Activity School.** A DDESS or DoDDS school operated under the oversight of DoDEA.

**Developmental delay.** A significant discrepancy, as defined and measured by implementing guidance authorized by this part and confirmed by clinical observation and judgment, in the actual functioning of an infant, toddler, or child, birth through age 7, when compared with the functioning of a non-disabled infant, toddler, or child of the same chronological age in any of the following developmental areas: Physical, cognitive, communication,

social or emotional, or adaptive. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.

**DoD school systems.** The school systems established under the authorities of 20 U.S.C. 921–932 and 10 U.S.C. 2164.

**Domestic Dependent Elementary and Secondary Schools (DDESS).** The schools (pre-kindergarten through grade 12) established in accordance with 10 U.S.C. 2164.

**Early intervention service provider.** An individual that provides early intervention services in accordance with this part.

**Educational and Developmental Intervention Services (EDIS).** Programs operated by the Military Departments to provide EIS to eligible infants and toddlers with disabilities, and related services to eligible children with disabilities in accordance with this part.

**EIS.** Developmental services for infants and toddlers with disabilities, as defined in this part, that are provided under the supervision of a Military Department, including evaluation, individualized family service plan (IFSP) development and revision, and service coordination, provided at no cost to the child's parents (except for incidental fees also charged to children without disabilities).

**Extended school year (ESY) services.** Special education and related services that are provided to a child with a disability beyond the normal DoDEA school year, in accordance with the child's IEP, are at no cost to the parents, and meet the standards of the DoDEA school system.

**Evaluation:** The method used by a multidisciplinary team to conduct and review the assessments of the child and other relevant input to determine whether a child has a disability and a child's initial and continuing need to receive EIS or special education and related services.

**FAPE.** Special education and related services that are provided under the general supervision and direction of DoDEA at no cost to parents of a child with a disability, in conformity with an IEP in accordance with the requirements of the IDEA and DoD guidance.

**Functional behavioral assessment.** A process for identifying the events that predict and maintain patterns of problem behavior.

**General education curriculum.** The curriculum adopted by the DoDEA school systems for all children from preschool through secondary school. To the extent applicable to an individual child with a disability, the general education curriculum can be used in

any educational environment along a continuum of alternative placements.

**IDEA.** The Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, is the federal law that governs the provision of early intervention and special education and related services to eligible children with disabilities.

**IEP.** A written document that is developed, reviewed, and revised at a meeting of the CSC, identifying the required components of the individualized education program for a child with a disability.

**Individualized Family Service Plan (IFSP).** A written document identifying the specially designed services for an infant or toddler with a disability and the family of such infant or toddler.

**Independent educational evaluation (IEE).** An evaluation conducted by a qualified examiner who is not an EDIS examiner or an examiner funded by the DoDEA school who conducted the evaluation with which the parent is in disagreement.

**Infants and toddlers with disabilities.** Children from birth up to 3 years of age, inclusive, who need EIS because

(1) They are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, adaptive development; or

(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

**Inter-component.** Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities, and their families.

**Manifestation determination.** The process in which the CSC reviews all relevant information and the relationship between the child's disability and the child's behavior to determine whether the behavior is a manifestation of the child's disability and to identify what disciplinary proceedings will be permissible under IDEA and this part." **Mediation.** A confidential, voluntary, informal dispute resolution process that is provided at no charge to the parents, whether or not a due process petition has been filed, in which the disagreeing parties engage in a discussion of issues related to the provision of the child's EIS or special education and related services in accordance with the requirements of IDEA and this part, in the presence of, or through, a qualified

and impartial mediator who is trained in effective mediation techniques.

**Medical services.** Those evaluative, diagnostic, and therapeutic, services provided by a licensed and credentialed medical provider to assist providers of EIS, regular and special education teachers, and providers of related services to develop and implement IFSPs and IEPs.

**Multidisciplinary.** The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities and development of an IFSP or an IEP.

**Native language.** When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

**Natural environment.** A setting, including home and community, in which children without disabilities participate.

**Non-academic and extracurricular services and activities.** Services and activities including counseling services; athletics, transportation, health services; recreational activities; special interest groups or clubs sponsored by the DoDEA school system; and referrals to agencies that provide assistance to individuals with disabilities and employment of students, including employment by a public agency and assistance in making outside employment available.

**Non-DoD placement.** An assignment by the DoDEA school system of a child with a disability to a non-DoDEA school or facility.

**Non-DoD school or facility.** A public or private school or other educational program not operated by DoD.

**Parent.** The natural, adoptive, or foster parent of a child, a guardian, an individual acting in the place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the child's welfare if that person contributes at least one-half of the child's support.

**Personally identifiable information.** Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Information includes: the name of the child, the child's parent or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

*Primary referral source.* Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and bring the child to the attention of the EDIS.

*Psychological services.* Psychological services include: Administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

*Public awareness program.* Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of EIS. Procedures to determine the availability of information on EIS to parents are also included in that program.

*Qualified.* A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides evaluation or assessment, EIS, special education or related services to an infant, toddler, or child with a disability.

*Rehabilitation counseling.* Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded in accordance with the Rehabilitation Act of 1973, 29 U.S.C. chapter 16.

*Related services.* Transportation and such developmental, corrective, and other supportive services, as required, to assist a child with a disability to benefit from special education under the child's IEP. The term includes speech-language pathology and audiology; interpreting services; psychological services;

physical and occupational therapy; recreation including therapeutic recreation; social work services; and school nurse services designed to enable a child with a disability to receive a FAPE as described in the child's IEP; early identification and assessment of disabilities in children; counseling services including rehabilitation counseling; orientation and mobility services; and psychological and medical services for diagnostic, evaluative, and consultative purposes. The term does not include a medical device that is surgically implanted or the replacement of such.

*Related services assigned to the Military Departments.* Medical and psychological services, audiology, and optometry for diagnostic or evaluative purposes to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive special services. In the overseas and domestic areas, transportation is provided as a related service by the Military Department when transportation is prescribed in an IFSP for an infant or toddler, under 3 years of age, with disabilities.

*Resolution meeting.* The meeting between parents and relevant school personnel, which must be convened within a specified number of days after receiving notice of a due process complaint and prior to the initiation of a due process hearing, in accordance with the IDEA and this part. The purpose of the meeting is for the parent to discuss the due process complaint and the facts giving rise to the complaint so that the school has the opportunity to resolve the complaint.

*Resolution period.* That period of time following a resolution meeting, the length of which is defined in this part, during which the school is afforded an opportunity to resolve the parent's concerns before the dispute can proceed to a due process hearing.

*Separate facility.* A school or a portion of a school, regardless of whether it is operated by DoD, attended exclusively by children with disabilities.

*Serious bodily injury.* A cut, abrasion, bruise, burn, illness, or any other injury to the body, which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

*Service coordination.* Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural

safeguards, and services that are authorized to be provided.

*Special education.* Specially designed instruction, which is provided at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

*Specially designed instruction.* An instruction whose content, methodology, or delivery has been adapted to address the unique needs of an eligible child in accordance with this part; and that ensures access of the child to the general curriculum, so that she or he can meet the educational standards within the DoDEA school systems.

*Supplementary aids and services.* Include aids, services, and other supports that are provided in regular education classes, other educational-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

*Transition services.* A coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

*Transportation.* A service that includes transportation and related costs, including the cost of mileage or travel by taxi, common carrier, tolls, and parking expenses, that are necessary to: enable an eligible child with a disability and the family to receive EIS, when prescribed in a child's IFSP; enable an eligible child with a disability to receive special education and related services, when prescribed as a related service by the child's IEP; and enable a child to obtain an evaluation to determine eligibility for special education and related services, if necessary. It also includes specialized equipment, including special or adapted buses, lifts, and ramps needed to transport children with disabilities.

*Weapon.* Defined in Department of Defense Education Activity Regulation 2051.1 (see [http://www.dodea.edu/foia/iod/pdf/2051\\_1a.pdf](http://www.dodea.edu/foia/iod/pdf/2051_1a.pdf)).

**§ 57.4 Policy.**

It is DoD policy that:

(a) Infants and toddlers with disabilities and their families who (but for the children's age) would be entitled to enroll in a DoDEA school in accordance with 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be provided EIS.

(b) The DoD shall engage in child-find activities for all children age birth to 21, inclusive, who are entitled by 20 U.S.C. 921–932 or 10 U.S.C. 2164 to enroll or are enrolled in a DoDEA school.

(c) Children with disabilities who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be provided a FAPE in the least restrictive environment, including if appropriate to the needs of the individual child, placement in a residential program for children with disabilities in accordance with the child's IEP and at no cost to the parents.

(d) The Military Departments and DoDEA shall cooperate in the delivery of related services prescribed by section 1401(26) of the IDEA and this part as may be required to assist eligible children with disabilities to benefit from special education.

(e) Children with disabilities who are eligible to enroll in a DoDEA school in accordance with 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall not be entitled to provision of a FAPE by DoDEA, or to the procedural safeguards prescribed by this part in accordance with the IDEA, if:

(1) The sponsor is assigned to an overseas area where a DoDEA school is available within the commuting area of the sponsor's overseas assignment, but the sponsor does not elect to enroll the child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE; or

(2) The sponsor is assigned in the United States or in a U.S. territory, commonwealth, or possession and the sponsor's child meets the eligibility requirements for enrollment in a DoDEA school, but the sponsor does not elect to enroll the child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE.

**§ 57.5 Responsibilities.**

(a) The Assistant Secretary of Defense for Readiness and Force Management (ASD(R&FM)) under the authority, direction, and control of the (USD(P&R)) shall:

(1) Establish, in accordance with DoD Instruction 5105.18 (see <http://www.dtic.mil/whs/directives/corres/pdf/510518p.pdf>), a DoD Coordinating Committee to recommend policies regarding the provision of early intervention and special education services.

(2) Ensure the development, implementation and administration of a system of services for infants and toddlers with disabilities and their families and children with disabilities; and provide compliance oversight for early intervention and special education in accordance with DoD Directive 5124.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf>); 20 U.S.C. 921–932; the applicable statutory provision of the IDEA; 10 U.S.C. 2164; DoD Directive 1342.20 and implementing guidance authorized by this part.

(3) Oversee DoD Component collaboration on the provision of services and transition support to infants, toddlers, and school-aged children.

(4) Develop a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth through 21 years, inclusive, who may require early intervention or special education services, in accordance with the IDEA.

(5) Develop and provide guidance as necessary for the delivery of services for children with disabilities and for the protection of procedural rights consistent with the IDEA and implementing guidance authorized by this part.

(6) Coordinate with the Secretaries of the Military Departments to ensure that their responsibilities, as detailed in paragraph (f) of this section, are completed.

(7) Direct the development and implementation of a comprehensive system of personnel development (CSPD) for personnel serving infants and toddlers with disabilities and their families, and children with disabilities.

(8) Develop requirements and procedures for compiling and reporting data on the number of eligible infants and toddlers with disabilities and their families in need of EIS and children in need of special education and related services.

(9) Require DoDEA schools provide educational information for assignment coordination and enrollment in the Services' Exceptional Family Member Program or Special Needs Program consistent with DoD Instruction 1315.19 (see <http://www.dtic.mil/whs/directives/corres/pdf/131519p.pdf>).

(10) Identify representatives to serve on the Department of Defense Coordinating Committee on Early Intervention, Special Education, and Related Services (DoD–CC).

(11) Ensure delivery of appropriate early intervention and educational services to eligible infants, toddlers, and children, and their families as

appropriate pursuant to the IDEA and this part through onsite monitoring of special needs programs and submission of an annual compliance report.

(b) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall:

(1) Advise the USD(P&R) and consult with the General Counsel of the Department of Defense (GC, DoD) regarding the provision of EIS and related services.

(2) Oversee development of provider workload standards and performance levels to determine staffing requirements for EIS and related services. The standards shall take into account the provider training needs, the requirements of this part, and the additional time required to provide EIS and related services in schools and the natural environments, and for the coordination with other DoD Components.

(3) Establish and maintain an automated data system to support the operation and oversight of the Military Departments' delivery of EIS and related services.

(4) Assign geographical areas of responsibility for providing EIS and related services under the purview of healthcare providers to the Military Departments. Periodically review the alignment of geographic areas to ensure that resource issues (e.g., base closures) are considered in the cost-effective delivery of services.

(5) Establish a system for measuring EIS program outcomes for children and their families.

(6) Resolve disputes among the DoD Components providing EIS.

(c) The Director, Tricare Management Activity, under the authority, direction, and control of the ASD(HA), shall identify representatives to serve on the DoD–CC.

(d) The Director, DoD Education Activity (DoDEA), under the authority, direction, and control of the USD(P&R), and through the ASD(R&FM), in accordance with DoD Directive 5124.02, shall ensure that:

(1) Children who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 are identified and referred for evaluation if they are suspected of having disabilities, and are afforded appropriate procedural safeguards in accordance with the IDEA and implementing guidance authorized by this part.

(2) Children who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be evaluated in accordance with the IDEA and implementing guidance authorized by

this part, as needed. If found eligible for special education and related services, they shall be provided a FAPE in accordance with an IEP, with services delivered in the least restrictive environment and procedural safeguards in accordance with the requirements of the IDEA and implementing guidance authorized by this part.

(3) Records are maintained on the special education and related services provided to children in accordance with this part, pursuant to 32 CFR part 310.

(4) Related services as prescribed in an IEP for a child with disabilities enrolled in a DoDEA school in the United States, its territories, commonwealths, or possessions are provided by DoDEA.

(5) Transportation is provided by DoDEA in overseas and domestic areas as a related service to children with disabilities when transportation is prescribed in a child's IEP. The related service of transportation includes necessary accommodations to access and leave the bus and to ride safely on the bus and transportation between the child's home, the DoDEA school, or another location, as specified in the child's IEP.

(6) Appropriate personnel participate in the development and implementation of a CSPD.

(7) Appropriate written guidance is issued to implement the requirements pertaining to special education and related services under 20 U.S.C. 921–932, 10 U.S.C. 2164, and the IDEA.

(8) Activities to identify and train personnel to monitor the provision of services to eligible children with disabilities are funded.

(9) DoDEA schools that operate pursuant to 20 U.S.C. 921–932 and 10 U.S.C. 2164 conduct child find activities for all eligible children;

(10) A free appropriate public education (FAPE) is made available to children who are entitled to enroll in DoDEA schools under the enrollment eligibility criteria of 10 U.S.C. 2164 or 20 U.S.C. 921–932. However, a FAPE, or the procedural safeguards prescribed by the IDEA and this part, shall NOT be available to such children, if:

(i) The sponsor who is assigned to an overseas area elects not to enroll his or her child in a DoDEA school overseas where a DoDEA school is available within the commuting area of the sponsor's overseas assignment; or

(ii) The sponsor is assigned in the United States or in a U.S. territory, commonwealth, or possession and the sponsor's child meets the eligibility requirements for enrollment in a DoDEA school, but the sponsor does not elect to enroll the child in a DoDEA school for

reasons other than DoDEA's alleged failure to provide a FAPE.

(11) The educational needs of children with and without disabilities are met comparably, in accordance with § 57.6 (b) of this part.

(12) Educational facilities and services (including the start of the school day and the length of the school year) operated by DoDEA for children with and without disabilities are comparable.

(13) All programs providing special education and related services are monitored for compliance with this part and with the substantive rights, protections, and procedural safeguards of the IDEA and this part at least once every 3 years.

(14) A report to the USD(P&R) is submitted not later than September 30 of each year certifying whether all schools are in compliance with the IDEA and this part, and are affording children with disabilities the substantive rights, protections, and procedural safeguards of the IDEA and this part.

(15) Transition assistance is provided in accordance with IDEA and this part to promote movement from early intervention or preschool into the school setting.

(16) Transition services are provided in accordance with IDEA and this part to facilitate the child's movement into different educational settings and post-secondary environments.

(e) The GC, DoD shall identify representatives to serve on the DoD–CC.

(f) The Secretaries of the Military Departments shall:

(1) Establish educational and developmental intervention services (EDIS) to ensure infants and toddlers with disabilities are identified and provided EIS where appropriate, and are afforded appropriate procedural safeguards in accordance with the requirements of the IDEA and implementing guidance authorized by this part.

(2) Staff EDIS with appropriate professional staff, based on the services required to serve children with disabilities.

(3) Provide related services required to be provided by a Military Department in accordance with the mandates of this part for children with disabilities. In the overseas areas served by DoDEA schools, the related services required to be provided by a Military Department under an IEP necessary for the student to benefit from special education include medical services for diagnostic or evaluative purposes; social work; community health nursing; dietary, audiological, optometric, and

psychological testing and therapy; occupational therapy; and physical therapy. Transportation is provided as a related service by the Military Department when it is prescribed in a child's IFSP for an infant or toddler birth up to 3 years of age, inclusive, with disabilities. Related services shall be administered in accordance with guidance issued pursuant to this part, including guidance from the ASD(HA) on staffing and personnel standards.

(4) Issue implementing guidance and forms necessary for the operation of EDIS in accordance with this part.

(5) Provide EIS to infants and toddlers with disabilities and their families, and related services to children with disabilities as required by this part at the same priority that medical care is provided to active duty military members.

(6) Provide counsel from the Military Department concerned or request counsel from the Defense Office of Hearings and Appeals (DOHA) to represent the Military Department in impartial due process hearings and administrative appeals conducted in accordance with this part for infants and toddlers birth up to 3 years of age (inclusive) with disabilities who are eligible for EIS.

(7) Execute Departmental responsibilities under the Exceptional Family Member program (EFMP) prescribed by DoD Instruction 1315.19.

(8) Train command personnel to fully understand their legal obligations to ensure compliance with and provide the services required by this part.

(9) Fund activities to identify and train personnel to monitor the provision of services to eligible children with disabilities.

(10) Require the development of policies and procedures for providing, documenting, and evaluating EDIS, including EIS and related services provided to children receiving special education in a DoDEA school.

(11) Maintain EDIS to provide necessary EIS to eligible infants and toddlers with disabilities and related services to eligible children with disabilities in accordance with this part and the substantive rights, protections, and procedural safeguards of the IDEA, § 57.6(a) and § 57.6(c) of this part.

(12) Implement a comprehensive, coordinated, inter-component, community-based system of EIS for eligible infants and toddlers with disabilities and their families using the procedures established in § 57.6 (a) of this part and guidelines from the ASD(HA) on staffing and personnel standards.

(13) Provide transportation for EIS pursuant to the IDEA and this part.

(14) Provide transportation for children with disabilities pursuant to the IDEA and this part. The Military Departments are to provide transportation for a child to receive medical or psychological evaluations at a medical facility in the event that the local servicing military treatment facility (MTF) is unable to provide such services and must transport the child to another facility.

(15) Require that EDIS programs maintain the components of an EIS as required by the IDEA and this part, to include:

(i) A comprehensive child-find system, including a system for making referrals for services that includes timelines and provides for participation by primary referral sources, and that establishes rigorous standards for appropriately identifying infants and toddlers with disabilities for services.

(ii) A public awareness program focusing on early identification of infants and toddlers with disabilities to include:

(A) Preparation of information materials for parents regarding the availability of EIS, especially to inform parents with premature infants or infants with other physical risk factors associated with learning or developmental complications.

(B) Dissemination of those materials to all primary referral sources, especially hospitals and physicians, for distribution to parents.

(C) A definition of developmental delay, consistent with § 57.6(g) of this part, to be used in the identification of infants and toddlers with disabilities who are in need of services.

(D) Availability of appropriate EIS.

(iii) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler and identification of the needs of the child's family to assist appropriately in the development of the infant or toddler.

(iv) Procedures for development of an Individualized Family Service Plan (IFSP) and coordination of EIS for families of eligible infants and toddlers with disabilities.

(v) A system of EIS designed to support infants and toddlers and their families in the acquisition of skills needed to become functionally independent and to reduce the need for additional support services as toddlers enter school.

(vi) A central directory of information on EIS resources and experts available to military families.

(16) Implement a comprehensive system of personnel development consistent with the requirements of the IDEA and this part.

(17) Require that EDIS participate in the existing MTF quality assurance program, which monitors and evaluates the medical services for children receiving such services as described by this part. Generally accepted standards of practice for the relevant medical services shall be followed, to the extent consistent with the requirements of the IDEA and this part including provision of EIS in a natural environment, to ensure accessibility, acceptability, and adequacy of the medical portion of the program provided by EDIS.

(18) Require transition services to promote movement from early intervention, preschool, and other educational programs into different educational settings and post-secondary environments.

(19) Direct that each program providing EIS is monitored for compliance with this part, and with the substantive rights, protections, and procedural safeguards of the IDEA, at least once every 3 years.

(20) Submit a report to the USD(P&R) not later than September 30 of each year stating whether all EDIS programs are in compliance with this part and are affording infants and toddlers the substantive rights, protections, and procedural safeguards of the IDEA, as stated in § 57.6(f) of this part.

(21) Compile and report EDIS workload and compliance data using the system established by the ASD(HA) as stated in § 57.6(f).

(g) The Director, DOHA, under the authority, direction, and control of the GC, DoD/Director, Defense Legal Services Agency, shall:

(1) Ensure impartial due process hearings are provided in accordance with the IDEA and implementing guidance authorized by this part with respect to complaints related to special education and related services arising under the IDEA.

(2) Ensure DOHA Department Counsel represents DoDEA in all due process proceedings arising under the IDEA for children age 3 through 21 who are eligible for special education and related services.

(3) Ensure DOHA Department Counsel, upon request by a Military Department, represents the Military Department in due process proceedings arising under the IDEA for infants and toddlers birth up to 3 years of age with disabilities who are eligible for EIS.

(4) Ensure the DOHA Center for Alternative Dispute Resolution (CADR) maintains a roster of mediators qualified

in special education disputes and, when requested, provides a mediator for complaints related to special education and related services arising under the IDEA.

#### § 57.6 Procedures.

(a) *Procedures for the Provision of EIS for Infants and Toddlers with Disabilities.*

(1) *General.* (i) There is an urgent and substantial need to:

(A) Enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay and to recognize the significant brain development that occurs during a child's first 3 years of life.

(B) Reduce educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age.

(C) Maximize the potential for individuals with disabilities to live independently.

(D) Enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

(ii) All procedures and services within EIS must be in accordance with the IDEA and the provisions of this part.

(2) *Identification and Screening.* (i) Each Military Department shall develop and implement in its assigned geographic area a comprehensive child-find and public awareness program, pursuant to the IDEA and this part, that focuses on the early identification of infants and toddlers who are eligible to receive EIS pursuant to this part.

(ii) The military treatment facility (MTF) and Family Advocacy Program must be informed that EDIS will accept direct referrals for infants and toddlers from birth up to 3 years of age who are:

(A) Involved in a substantiated case of child abuse or neglect; or

(B) Identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(iii) All other DoD Components will refer infants and toddlers with suspected disabilities to EDIS in collaboration with the parents.

(iv) Upon receipt of a referral, EDIS shall appoint a service coordinator.

(v) All infants and toddlers referred to the EDIS for EIS shall be screened to determine the appropriateness of the referral and to guide the assessment process.

(A) Screening does not constitute a full evaluation. At a minimum, screening shall include a review of the medical and developmental history of the referred infant or toddler through a

parent interview and a review of medical records.

(B) If screening is conducted prior to the referral, or if there is a substantial or obvious biological risk, a screening following the referral may not be necessary.

(C) If EDIS determines that an evaluation is not necessary based on screening results, EDIS will provide written notice to the parents in accordance with paragraph (a)(9) of this section.

(3) *Assessment and Evaluation.*

(i) *Assessments and Evaluations.* The assessment and evaluation of each infant and toddler must:

(A) Be conducted by a multidisciplinary team.

(B) Include:

(1) A review of records related to the infant's or toddler's current health status and medical history.

(2) An assessment of the infant's or toddler's needs for EIS based on personal observation of the child by qualified personnel.

(3) An evaluation of the infant's or toddler's level of functioning in each of the following developmental areas, including a multidisciplinary assessment of the unique strengths and needs of the child and the identification of services appropriate to meet those needs.

(i) Cognitive development.

(ii) Physical development, including functional vision and hearing.

(iii) Communication development.

(iv) Social or emotional development.

(v) Adaptive development.

(4) Informed clinical opinion of qualified personnel if the infant or toddler does not qualify based on standardized testing and there is probable need for services.

(ii) *Family Assessments*

(A) Family assessments must include consultation with the family members.

(B) If EDIS conducts an assessment of the family, the assessment must:

(1) Be voluntary on the part of the family.

(2) Be conducted by personnel trained to utilize appropriate methods and procedures.

(3) Be based on information provided by the family through a personal interview.

(4) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the infant's or toddler's development.

(iii) *Standards for Assessment Selection and Procedures.* EDIS shall ensure, at a minimum, that:

(A) Evaluators administer tests and other evaluations in the native language of the infant or toddler, or the family's

native language, or other mode of communication, unless it is clearly not feasible to do so.

(B) Assessment, evaluation procedures, and materials are selected and administered so as not to be racially or culturally discriminatory.

(C) No single procedure is used as the sole criterion for determining an infant's or toddler's eligibility under this part.

(D) Qualified personnel conduct evaluations and assessments.

(iv) *Delivery of Intervention Services.* With parental consent, the delivery of intervention services may begin before the completion of the assessment and evaluation when it has been determined by a multidisciplinary team that the infant or toddler or the infant's or toddler's family needs the service immediately. Although EDIS has not completed all assessments, EDIS must develop an IFSP before the start of services and complete the remaining assessments in a timely manner.

(4) *Eligibility.* (i) The EIS team shall meet with the parents and determine eligibility. The EIS team shall document the basis for eligibility in an eligibility report and provide a copy to the parents.

(ii) Infants and toddlers from birth up to 3 years of age with disabilities are eligible for EIS if they meet one of the following criteria:

(A) The infant or toddler is experiencing a developmental delay.

(B) The infant or toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(5) *Timelines.* (i) EIS shall complete the initial evaluation and assessment of each infant and toddler (including the family assessment) in a timely manner ensuring that the timeline in paragraph (a)(6)(ii) of this section is met.

(ii) The Military Department responsible for providing EIS shall develop procedures requiring that, if circumstances make it impossible to complete the evaluation and assessment within a timely manner (e.g., if an infant or toddler is ill), EDIS shall:

(A) Document those circumstances.

(B) Develop and implement an appropriate interim IFSP in accordance with this part.

(6) *IFSP.* (i) The EDIS shall develop and implement an IFSP for each infant and toddler with a disability, from birth up to 3 years of age, who meets the eligibility criteria for EIS.

(ii) EDIS shall convene a meeting to develop the IFSP of an infant or toddler with a disability. The meeting shall be scheduled as soon as possible following its determination that the infant or toddler is eligible for EIS, but not later

than 45 days from the date of the referral for services.

(iii) Meetings to develop and review the IFSP must include:

(A) The parent or parents of the infant or toddler.

(B) Other family members, as requested by the parent, if feasible.

(C) An advocate or person outside of the family if the parent requests that person's participation.

(D) The service coordinator who has worked with the family since the initial referral of the infant or toddler or who is responsible for the implementation of the IFSP.

(E) The persons directly involved in conducting the evaluations and assessments.

(F) As appropriate, persons who shall provide services to the infant or toddler or the family.

(iv) If a participant listed in paragraph (a)(6)(iii) of this part is unable to attend a meeting, arrangements must be made for the person's involvement through other means, which may include:

(A) A telephone conference call or other electronic means of communication.

(B) Providing knowledgeable, authorized representation.

(C) Providing pertinent records for use at the meeting.

(v) The IFSP shall contain:

(A) A statement of the infant's or toddler's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on the information from the evaluation and assessments.

(B) A statement of the family's resources, priorities, and concerns about enhancing the infant's or toddler's development.

(C) A statement of the measurable results or measurable outcomes expected to be achieved for the infant or toddler and the family. The statement shall contain pre-literacy and language skills, as developmentally appropriate for the infant or toddler, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the results and services are necessary.

(D) A statement of the specific EIS based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services.

(E) A statement of the natural environments in which EIS will be provided including a justification of the

extent, if any, to which the services shall not be provided in a natural environment because the intervention cannot be achieved satisfactorily for the infant or toddler. The IFSP must include a justification for not providing a particular early intervention service in the natural environment.

(F) The projected dates for initiation of services and the anticipated length, duration, and frequency of those services.

(G) The name of the service coordinator who shall be responsible for the implementation of the IFSP and for coordination with other agencies and persons. In meeting these requirements, EDIS may:

(1) Assign the same service coordinator appointed at the infant or toddler's initial referral for evaluation to implement the IFSP;

(2) Appoint a new service coordinator; or

(3) Appoint a service coordinator requested by the parents.

(H) A description of the appropriate transition services supporting the movement of the toddler with a disability to preschool or other services.

(vi) EDIS shall explain the contents of the IFSP to the parents and shall obtain an informed, written consent from the parents before providing EIS described in the IFSP.

(vii) The IFSP shall be implemented within ten business days of completing the document, unless the IFSP team, including the parents, documents the need for a delay.

(viii) If a parent does not provide consent for participation in all EIS, EDIS shall still provide those interventions to which a parent does give consent.

(ix) EDIS shall evaluate the IFSP at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the needs of the child and family). The purpose of the periodic review is to determine:

(A) The degree to which progress toward achieving the outcomes is being made.

(B) Whether modification or revision of the outcomes or services is necessary.

(x) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(7) *Transition.*

(i) EDIS shall provide a written transition plan for toddlers receiving EIS to facilitate their transition to preschool, if appropriate. A transition plan must be recorded on the IFSP between the toddler's second and third birthday and not later than 90 days before the toddler's third birthday.

(ii) Families shall be included in the transition planning. EDIS shall inform the toddler's parents regarding future preschool, the child find requirements of the school, and the procedures for transitioning the toddler from EIS to preschool.

(iii) Not later than 6 months before the toddler's third birthday, the EDIS service coordinator shall obtain parental consent prior to release of identified records of a toddler receiving EIS to the DoD local school in order to allow the DoDEA school to meet child-find requirements.

(iv) The EDIS service coordinator shall initiate a pre-transition meeting with the CSC, and shall provide the toddler's early intervention assessment reports, IFSP, and relevant supporting documentation. The parent shall receive reasonable notice of the pre-transition meeting, shall receive copies of any documents provided to the CSC, and shall have the right to participate in and provide input to the pre-transition meeting.

(v) As soon as reasonably possible following receipt of notice of a toddler potentially transitioning to preschool, the local DoDEA school shall convene a CSC. The CSC and EDIS shall cooperate to obtain parental consent, in accordance with IDEA and this part, to conduct additional evaluations if necessary.

(vi) Based on the information received from EDIS, the CSC, coordinating with EDIS, will determine at the pre-transition meeting whether:

(A) No additional testing or observation is necessary to determine that the toddler is eligible for special education and related services, in which case the CSC shall develop an eligibility report based on the EDIS early intervention assessment reports, IFSP, supporting documentation and other information obtained at the pre-transition meeting, in accordance with paragraph (b) of this section; or

(B) Additional testing or observation is necessary to determine whether the toddler is eligible for special education and related services, in which case the CSC shall develop an assessment plan to collect all required information necessary to determine eligibility for special education and obtain parental consent, in accordance with IDEA and this part, for evaluation in accordance with paragraph (b) of this section.

(vii) In the event that the toddler is first referred to EDIS fewer than 90 days before the toddler's third birthday, EDIS and the DoDEA school shall work cooperatively in the evaluation process and shall develop a joint assessment

plan to determine whether the toddler is eligible for EIS or special education.

(A) EDIS shall complete its eligibility determination process and the development of an IFSP, if applicable.

(B) The CSC shall determine eligibility for special education.

(viii) Eligibility assessments shall be multidisciplinary and family-centered and shall incorporate the resources of the EDIS as necessary and appropriate.

(ix) Upon completion of the evaluations, the CSC shall schedule an eligibility determination meeting at the local school, no later than 90 days prior to the toddler's third birthday.

(A) The parents shall receive reasonable notice of the eligibility determination meeting, shall receive copies of any documents provided to the CSC, and shall have the right to participate in and provide input to the meeting.

(B) EDIS and the CSC shall cooperate to develop an eligibility determination report based upon all available data, including that provided by EDIS and the parents, in accordance with paragraph (b) of this section.

(x) If the toddler is found eligible for special education and related services, the CSC shall develop an individualized education program (IEP) in accordance with paragraph (b) of this section, and must implement the IEP on or before the toddler's third birthday.

(xi) If the toddler's third birthday occurs during the period June through August (the traditional summer vacation period for school systems), the CSC shall complete the eligibility determination process and the development of an IEP before the end of the school year preceding the toddler's third birthday. An IEP must be prepared to ensure that the toddler enters preschool services with an instructional program at the start of the new school year.

(xii) The full transition of a toddler shall occur on the toddler's third birthday unless the IFSP team and the CSC determine that an extended transition is in the best interest of the toddler and family.

(A) An extended transition may occur when:

(1) The toddler's third birthday falls within the last 6 weeks of the school year;

(2) The family is scheduled to have a permanent change of station (PCS) within 6 weeks after a toddler's third birthday; or

(3) The toddler's third birthday occurs after the end of the school year and before October 1.

(B) An extended transition may occur if the IFSP team and the CSC determine

that extended EIS beyond the toddler's third birthday are necessary and appropriate, and if so, how long extended services will be provided.

(1) The IFSP team, including the parents, may decide to continue services in accordance with the IFSP until the end of the school year, PCS date, or until the beginning of the next school year.

(2) Extended services must be delivered in accordance with the toddler's IFSP, which shall be updated if the toddler's or family's needs change on or before the toddler's third birthday.

(3) The CSC shall maintain in its records meeting minutes that reflect the decision for EDIS to provide an extended transition for the specified period.

(4) Prior to the end of the extended transition period, the CSC shall meet to develop an IEP that shall identify all special education and related services that will begin at the end of the transition period and meet all requirements of the IDEA and this part, in accordance with paragraph (b) of this section.

(C) The IFSP team and the CSC may jointly determine that the toddler should receive services in the special education preschool prior to the toddler's third birthday.

(1) If only a portion of the child's services will be provided by the DoDEA school, the information shall be identified in the IFSP, which shall also specify responsibilities for service coordination and transition planning. The CSC shall develop an IEP that shall identify all services to be delivered at the school, in accordance with paragraph (b) of this section.

(2) If all the toddler's services will be provided by the DoDEA school, the services will be delivered pursuant to an IEP developed in accordance with paragraph (b) of this section. Transition activities and other services under the IFSP will terminate with the toddler's entry into the special education preschool.

(3) Early entry into preschool services should occur only in exceptional circumstances (e.g., to facilitate natural transitions).

(xiii) In the case of a child who may not be eligible for DoDEA preschool special education services, with the approval of the parents, EDIS shall make reasonable efforts to convene a conference among EDIS, the family, and providers of other services for children who are not eligible for special education preschool services (e.g., community preschools) in order to explain the basis for this conclusion to the parents and obtain parental input.

(8) *Maintenance of Records.*

(i) EDIS officials shall maintain all EIS records, in accordance with 32 CFR part 310.

(ii) EIS records, including the IFSP and the documentation of services delivered in accordance with the IFSP, are educational records consistent with 32 CFR part 285 and shall not be placed in the child's medical record.

(9) *Procedural Safeguards.*

(i) Parents of an infant or toddler who is eligible for EIS shall be afforded specific procedural safeguards that must include:

(A) The right to confidentiality of personally identifiable information in accordance with 32 CFR part 310, including the right of a parent to receive written notice and give written consent to the exchange of information between the Department of Defense and outside agencies in accordance with Federal law and 32 CFR part 310 and 32 CFR part 285.

(B) The opportunity to inspect and review records relating to screening, evaluations and assessments, eligibility determinations, development and implementation of IFSPs.

(C) The right to determine whether they or other family members will accept or decline any EIS, and to decline such a service after first accepting it, without jeopardizing the provision of other EIS.

(D) The right to written parental consent.

(1) Consent must be obtained before evaluation of the infant or toddler in accordance with this section.

(2) Consent must be obtained before initiation of EIS in accordance with this section.

(3) If consent is not given, EDIS shall make reasonable efforts to ensure that the parent:

(i) Is fully aware of the nature of the evaluation and assessment or the services that would be available.

(ii) Understands that the infant or toddler will not be able to receive the evaluation and assessment or services unless consent is given.

(E) The right to prior written notice.

(1) Prior written notice must be given to the parents of an infant or toddler entitled to EIS a reasonable time before EDIS proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate EIS to the infant or toddler and any family member.

(2) The notice must be in sufficient detail to inform the parents about:

(i) The action that is being proposed or refused.

(ii) The reasons for taking the action.

(iii) Each of the procedural safeguards that are available in accordance with this section, including availability of mediation, administrative complaint procedures, and due process complaint procedures that are available for dispute resolution as described in this section, including descriptions of how to file a complaint and the applicable timelines.

(3) The notice must be provided in language written for a general lay audience and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(F) The right to timely administrative resolution of complaints.

(G) The availability of dispute resolution with respect to any matter relating to the provision of EIS to an infant or toddler, through the administrative complaint, mediation and due process procedures described in paragraph (d) of this section, except the requirement to conduct a resolution meeting, in the event of a dispute between the Military Department concerned and the parents regarding EIS.

(H) Any party aggrieved by the decision regarding a due process complaint filed in accordance with paragraph (d) of this section shall have the right to bring a civil action in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(ii) During the pendency of any proceeding or action involving a complaint by the parent of an infant or toddler with a disability relating to the provision of EIS, unless the parent and EDIS otherwise agree, the infant or toddler shall continue to receive the appropriate EIS currently being provided under the most recent signed IFSP or, if applying for initial EIS services, shall receive the services not in dispute.

(10) *Mediation and Due Process Procedures.* Mediation and due process procedures, described in paragraph (d) of this section, except the requirement to conduct a resolution meeting, are applicable to early intervention when the Military Department concerned and the parents will be the parties in the dispute.

(b) Procedures for the Provision of Educational Programs and Services for Children With Disabilities, Ages 3 Through 21 Years, Inclusive

(1) *Parent Involvement and General Provisions.*

(i) The CSC shall take reasonable steps to provide for the participation of the parent(s) in the special education program of his/her child. School

officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child. Special education parental rights and responsibilities will be provided in the parent's native language, unless it is clearly not feasible to do so, e.g., low incidence language or not a written language.

(ii) The CSC shall afford the child's parents the opportunity to participate in CSC meetings to determine their child's initial or continuing eligibility for special education and related services, to prepare or change the child's IEP, or to determine or change the child's placement.

(iii) No child shall be required to obtain a prescription for a substance covered by the Controlled Substances Act, as amended, 21 U.S.C. 801 et seq. as a condition of attending school, receiving an evaluation, or receiving services.

(iv) For meetings described in this section, the parent of a child with a disability and the DoDEA school officials may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(2) *Identification and Referral.*

(i) DoDEA shall:

(A) Engage in child-find activities to locate, identify, and screen all children who are entitled to enroll in DDESS in accordance with DoD Instruction 1342.26 (see <http://www.dtic.mil/whs/directives/corres/pdf/134226p.pdf>) or in DoDDS in accordance with DoDEA Regulation 1342.13 (see [http://www.dodea.edu/foia/iod/pdf/1342\\_13.pdf](http://www.dodea.edu/foia/iod/pdf/1342_13.pdf)) who may require special education and related services.

(B) Cooperate with the Military Departments to conduct ongoing child-find activities and periodically publish any information, guidelines, and directions on child-find activities for eligible children with disabilities, ages 3 through 21 years, inclusive.

(C) Conduct the following activities to determine if children may need special education and related services:

(1) Review school records for information about student performance on system-wide testing and other basic skills tests in the areas of reading and language arts and mathematics.

(2) Review school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child. For children with disabilities, any health records or other information that tends to identify a child as a person with a disability must be maintained in confidential files that

are not co-mingled with other records and that are available only to essential staff for the purpose of providing effective education and services to the child.

(3) Review school discipline records and maintain the confidentiality of such records and any information that tends to identify a child as a person with a disability.

(4) Participate in transition activities of children receiving EIS who may require special education preschool services.

(ii) DoDEA school system officials, related service providers, or others who suspect that a child has a possible disabling condition shall submit a child-find referral to the CSC containing, at a minimum, the name and contact information for the child and the reason for the referral.

(iii) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services and does not require informed consent.

(3) *Incoming Students.* The DoDEA school will take the following actions, in consultation with the parent, when a child transfers to a DoDEA school with an active IEP:

(i) If the current IEP is from a non-DoDEA school:

(A) Promptly obtain the child's educational records including information regarding assessment, eligibility, and provision of special education and related services from the previous school.

(B) Provide FAPE, including services comparable (i.e., similar or equivalent) to those described in the incoming IEP, in consultation with the parents, until the CSC:

(1) Conducts an evaluation, if determined necessary by such agency.

(2) Develops, adopts, and implements a new IEP, if appropriate, in accordance with the requirements of the IDEA and this part within 30 school days of receipt of the IEP.

(ii) If the current IEP is from a DoDEA school, the new school must provide the child a FAPE, including services comparable to those described in the incoming IEP, until the new school either:

(A) Adopts the child's IEP from the previous DoDEA school; or

(B) Develops, adopts, and implements a new IEP that meets the requirements of the IDEA and this part within 30 school days of receipt of the incoming IEP.

(iii) Coordinate assessments of children with disabilities who transfer with the child's previous school as quickly as possible to facilitate prompt completion of full evaluations.

(4) *Referral by a Parent.* Should a parent submit a written request for an evaluation because they suspect the child has a disability the CSC shall, within 15 school days, review the request, confer with the child's teachers, and gather information related to the educational concerns. Following a review of the information, the CSC shall:

(i) Convene a conference among the parents, teachers, and one or more other members of the CSC to discuss the educational concerns and document their agreements. Following the discussion, the parents may agree that:

(A) The child's needs are not indicative of a suspected disability and other supports and accommodations will be pursued;

(B) Additional information is necessary and a pre-referral process will be initiated; or

(C) Information from the conference will be forwarded to the CSC for action on the parent's request for an evaluation.

(ii) Within 10 school days of receipt of information from the conference regarding the parents' request for evaluation, agree to initiate the preparation of an assessment plan for a full and comprehensive educational evaluation or provide written notice to the parent denying the formal evaluation.

(5) *Referral by a Teacher.*

(i) Prior to referring a child to the CSC, the teacher shall identify the child's areas of specific instructional need and target instructional interventions to those needs as soon as the areas of need become apparent.

(ii) If the area of specific instructional need is not resolved, the teacher shall initiate the pre-referral process involving other members of the school staff.

(iii) If interventions conducted during pre-referral fail to resolve the area of specific instructional need, the teacher shall submit a formal referral to the CSC.

(6) *Assessment and Evaluation.*

(i) A full and comprehensive evaluation of educational needs shall be conducted prior to eligibility determination and before an IEP is developed or placement is made in a special education program, subject to the provisions for incoming students transferring to a DoDEA school as set forth in paragraph (b)(3) of this section. When the school determines that a child

should be evaluated for a suspected disability, the school will:

(A) Issue a prior written notice to the parents of the school's intention to evaluate and a description of the evaluation in accordance with paragraph (b)(19) of this section.

(B) Provide parents notice of procedural safeguards.

(C) Request that the parent execute a written consent for the evaluation in accordance with paragraph (b)(18) of this section.

(ii) The CSC shall ensure that the following elements are included in a full and comprehensive assessment and evaluation of a child:

(A) Screening of visual and auditory acuity.

(B) Review of existing school educational and health records.

(C) Observation in an educational environment.

(D) A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. The assessment plan shall include, as appropriate:

(1) An assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(2) An assessment of physical status including perceptual and motor abilities.

(3) An assessment of the need for transition services for students 16 years and older.

(iii) The CSC shall involve the parents in the assessment process in order to obtain information about the child's strengths and needs and family concerns.

(iv) The CSC, as necessary, shall use all locally available community, medical, and school resources to accomplish the assessment and evaluation. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

(v) The CSC must obtain parental consent, in accordance with IDEA and this part, before conducting an evaluation. The parent shall not be required to give consent for an evaluation without first being informed of the specific evaluation procedures that the school proposes to conduct.

(vi) The evaluation must be completed by the school within 45 school days following the receipt of the parent's written consent to evaluate in accordance with the school's assessment plan.

(vii) The eligibility determination meeting must be conducted within 10 school days after completion of the school's formal evaluation.

(viii) All DoD elements including the CSC and related services providers shall:

(A) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, which may assist in determining:

(1) Whether the child has a disability.

(2) The content of the child's IEP, including information related to enabling the child to be involved and progress in the general education curriculum or, for preschool children, to participate in appropriate activities.

(B) Not use any single measure or assessment as the sole criterion for determining whether a child has a disability or determining an appropriate educational program for the child.

(C) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(ix) The CSC and DoD related services providers shall ensure that assessment materials and evaluation procedures are:

(A) Selected and administered so as not to be racially or culturally discriminatory.

(B) Provided in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide and administer.

(C) Selected and administered to assess the extent to which the child with limited English proficiency has a disability and needs special education, rather than measuring the child's English language skills.

(D) Validated for the specific purpose for which they are used or intended to be used.

(E) Administered by trained and knowledgeable personnel in compliance with the instructions of the testing instrument.

(F) Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

(G) Administered to a child with impaired sensory, motor, or communication skills so that the results accurately reflect a child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills.

(x) As part of an initial evaluation and as part of any reevaluation, the CSC shall review existing evaluation data on the child, including:

(A) The child's educational records.

(B) Evaluations and information provided by the parents of the child.

(C) Current classroom-based, local, or system-wide assessments and classroom observations.

(D) Observations by teachers and related services providers.

(xi) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child has a particular category of disability or, in the case of a reevaluation of a child, whether the child continues to have such a disability.

(B) The present levels of academic achievement and related developmental needs of the child.

(C) Whether the child needs special education and related services or, in the case of a reevaluation of a child, whether the child continues to need special education and related services.

(D) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

(xii) The CSC may conduct its review of existing evaluation data without a meeting.

(xiii) The CSC shall administer tests and other evaluation materials as needed to produce the data identified in paragraph (b)(6)(ii) and (xi) of this section.

(7) *Eligibility.*

(i) The CSC shall:

(A) Require that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team, including specialists with knowledge in the area of the suspected disability and shall receive input from the child's parent(s).

(B) Convene a meeting to determine eligibility of a child for special education and related services not later than 10 school days after the child has been assessed by the school.

(C) Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

(D) Determine whether the child is a child with a disability as defined by the IDEA and this part, and the educational needs of the child.

(E) Issue a written eligibility determination report, including a synthesis of evaluation findings, that documents a child's primary eligibility in one of the disability categories described in paragraph (g) of this section, providing a copy of the eligibility determination report to the parent.

(F) Determine that a child does NOT have a disability if the determinant factor is:

(1) Lack of appropriate instruction in essential components of reading;

(2) Lack of instruction in mathematics; or

(3) Limited English proficiency.

(ii) The CSC shall reevaluate the eligibility of a child with a disability every 3 years, or more frequently, if the child's educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation. School officials shall not reevaluate more often than once a year, unless the parents and the school officials agree otherwise.

(A) The scope and type of the reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation and the review of existing data.

(B) If the CSC determines that no additional data are needed to determine whether the child continues to be a child with a disability, the CSC shall, in accordance with paragraph (b)(19) of this section, provide prior written notice to the child's parents of:

(1) The determination that no additional assessment data are needed and the reasons for their determination.

(2) The right of the parents to request an assessment to determine whether the child continues to have a disability and to determine the child's educational needs.

(C) The CSC is not required to conduct assessments for the purposes described in paragraph (b)(7)(i)(B)(2) of this section, unless requested to do so by the child's parents.

(iii) The CSC shall evaluate a child in accordance with paragraph (b)(7)(ii) of this section before determining that the child no longer has a disability.

(iv) The CSC is not required to evaluate a child before the termination of the child's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE.

(v) When a child's eligibility has terminated due to graduation or exceeding the age of eligibility, the DoDEA school must provide the child, or the parent if the child has not yet reached the age of majority or is otherwise incapable of providing informed consent, with a summary of the child's academic achievement and functional performance.

(A) The summary of performance must be completed during the final year of a child's high school education.

(B) The summary must include:

(1) Child's demographics.

(2) Child's postsecondary goal.

(3) Summary of performance in the areas of academic, cognitive, and functional levels of performance to include the child's present level of performance, and the accommodations, modifications, and assistive technology that were essential in high school to assist the student in achieving maximum progress.

(4) Recommendations on how to assist the child in meeting the child's post-secondary goals.

(8) *IEP*.

(i) *IEP Development*.

(A) DoDEA shall ensure that the CSC develops and implements an IEP to provide FAPE for each child with a disability who requires special education and related services as determined by the CSC. An IEP shall be in effect at the beginning of each school year for each child with a disability eligible for special education and related services under the IDEA and this part.

(B) In developing the child's IEP, the CSC shall consider:

(1) The strengths of the child.

(2) The concerns of the parents for enhancing the education of their child.

(3) The results of the initial evaluation or most recent evaluation of the child.

(4) The academic, developmental, and functional needs of the child.

(ii) *IEP Development Meeting*. The CSC shall convene a meeting to develop the IEP of a child with a disability. The meeting shall:

(A) Be scheduled within 10 school days from the eligibility meeting following a determination by the CSC that the child is eligible for special education and related services.

(B) Include as participants:

(1) An administrator or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education and is knowledgeable about the general education curriculum and available resources.

(2) Not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment).

(3) A special education teacher or provider.

(4) One or both of the child's parents.

(5) An EIS coordinator or other representative of EIS, if the child is transitioning from EIS.

(6) The child, if appropriate.

(7) A representative of the evaluation team who is knowledgeable about the evaluation procedures used and can interpret the instructional implications of the results of the evaluation.

(8) Other individuals invited at the discretion of the parents or school who have knowledge or special expertise regarding the child, including related services personnel, as appropriate.

(iii) *IEP Content*. The CSC shall include in the IEP:

(A) A statement of the child's present levels of academic achievement and functional performance including:

(1) How the child's disability affects involvement and progress in the general education curriculum, or

(2) For preschoolers, how the disability affects participation in appropriate activities.

(B) A statement of measurable annual goals including academic and functional goals designed to meet:

(1) The child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum.

(2) Each of the child's other educational needs resulting from his or her disability.

(C) A description of how the child's progress toward meeting the annual goals shall be measured, and when periodic progress reports will be provided to the parents.

(D) A statement of the special education and related services, supplementary aids and services (which are based on peer-reviewed research to the extent practicable and shall be provided to the child or on behalf of the child), and a statement of the program modifications or supports for school personnel that shall be provided for the child to:

(1) Advance appropriately toward attaining the annual goals.

(2) Be involved in and make progress in the general education curriculum and participate in extracurricular and other non-academic activities.

(3) Be educated and participate with other children who may or may not have disabilities.

(E) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in non-academic activities.

(F) A statement of any individualized appropriate accommodations necessary to measure the child's academic achievement and functional performance on system-wide or district-wide assessments. If the CSC determines that the child shall take an alternate assessment of a particular system-wide or district-wide assessment of student achievement (or part of an assessment), a statement of why:

(1) The child cannot participate in the regular assessment.

(2) The particular alternate assessment selected is appropriate for the child.

(G) Consideration of the following special factors:

(1) Assistive technology devices and services for all children.

(2) Language needs for the child with limited English proficiency.

(3) Instruction in Braille and the use of Braille for a child who is blind or visually impaired, unless the CSC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille) that instruction in Braille or the use of Braille is not appropriate for the child.

(4) Interventions, strategies, and supports including positive behavioral interventions and supports to address behavior for a child whose behavior impedes his or her learning or that of others.

(5) Language and communication needs, and in the case of a child who is deaf or hard of hearing, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's communication mode.

(H) A statement of the amount of time that each service shall be provided to the child, including the date for beginning of services and the anticipated frequency, number of required related services sessions to be provided by EDIS, location and duration of those services (including adjusted school day or an extended school year), and modifications.

(I) A statement of special transportation requirements, if any.

(J) Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a FAPE. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless the child is enrolled full-time in a separate facility or needs specially designed physical education, as prescribed in the child's IEP.

(iv) *Transition Services.*

(A) Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the CSC, and updated annually, thereafter, the IEP must include:

(1) Appropriate measurable postsecondary goals based on age-

appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills.

(2) The transition services, including courses of study, needed to assist the child in reaching postsecondary goals.

(B) Beginning at least 1 year before the child reaches the age of majority (18 years of age), except for a child with a disability who has been determined to be incompetent in accordance with Federal or State law, a statement that the child has been informed of those rights that transfer to him or her in accordance with this part.

(9) *Implementation of the IEP.*

(i) The CSC shall ensure that all IEP provisions developed for any child entitled to an education by the DoDEA school system are fully implemented.

(ii) The CSC shall:

(A) Seek to obtain parental agreement and signature on the IEP before delivery of special education and related services in accordance with that IEP is begun.

(B) Provide a copy of the child's IEP to the parents.

(C) Ensure that the IEP is implemented as soon as possible following the IEP development meeting.

(D) Ensure the provision of special education and related services, in accordance with the IEP.

(E) Ensure that the child's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation, and that each teacher and provider is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP.

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(F) Review the IEP for each child periodically and at least annually in a CSC meeting to determine whether the child has been progressing toward the annual goals.

(G) Revise the IEP, as appropriate, and address:

(1) Any lack of progress toward the annual goals and in the general education curriculum, where appropriate.

(2) The results of any reevaluation.

(3) Information about the child provided by the parents, teachers, or related service providers.

(4) The child's needs.

(10) *Placement and Least Restrictive Environment (LRE).*

(i) The CSC shall determine the educational placement of a child with a disability.

(ii) The educational placement decision for a child with a disability shall be:

(A) Determined at least annually.

(B) Made in conformity with the child's IEP.

(C) Made in conformity with the requirements of IDEA and this part for LRE.

(1) A child with a disability shall be educated, to the maximum extent appropriate, with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment shall occur only if the nature or severity of the child's disability that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) A child with a disability shall not be removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education classroom.

(3) As appropriate, the CSC shall make provisions for supplementary services to be provided in conjunction with general education placement.

(4) Special classes, separate schooling, or other removal of a child with a disability from the general education environment shall occur only when the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(5) In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, assemblies, and study trips, the CSC shall ensure that a child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(iv) In determining the LRE for an individual student, the CSC shall consider:

(A) The needs of the individual child as well as any potential harmful effect on the child or the quality of services that he or she needs.

(B) A continuum of placement options must be made available to meet the needs of children with disabilities for special education and related services. The options on this continuum include the general education classroom, special classes (a self-contained classroom in the school), home bound instruction, or instruction in hospitals or institutions.

(v) When special schools and institutions may be appropriate, the CSC shall consider such placement options

in coordination with the Area Special Education Office.

(vi) In the case of a disciplinary placement, school officials shall follow the procedures set forth in paragraph (b)(13) of this section.

(12) *Extended School Year (ESY) Services.* ESY services must be provided only if a child's IEP team determines that the services are necessary for the provision of FAPE to the child. DoDEA may not:

(i) Limit ESY services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of ESY services.

(13) *Discipline.* (i) *School Discipline.* All regular disciplinary rules and procedures applicable to children attending a DoDEA school shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, except that:

(A) A manifestation determination must be conducted for discipline proposed for children with disabilities in accordance with DoDEA disciplinary rules and regulations and paragraph (b)(13)(v) of this section, and

(B) The child subject to disciplinary removal shall continue to receive educational services in accordance with paragraph (b)(13)(iv) of this section.

(ii) *Change of Placement.* (A) It is a change of placement if a child is removed from his or her current placement for more than 10 consecutive school days or for a series of removals that cumulates to more than 10 school days during the school year that meets the criteria of paragraph (b)(13)(ii)(C) of this section.

(B) It is not a change of placement if a child is removed from his or her current academic placement for less than 10 consecutive or cumulative days in a school year for one incident of misconduct. A child can be removed from the current educational placement for separate incidents of misconduct in the same school year (as long as those removals do not constitute a change of placement under IDEA to the extent such a disciplinary alternative is applied to children without disabilities).

(C) If a child has been removed from his or her current placement for more than 10 days in a school year, but not more than 10 consecutive school days, the CSC shall determine whether the child has been subject to a series of removals that constitute a pattern. The determination is made on a case-by-case basis and is subject to review by a hearing officer in accordance with the provisions of paragraph (d)(5) of this section. The CSC will base its determination on whether the child has been subjected to a series of removals

that constitute a pattern by examining whether:

(1) The child's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals, and,

(2) Additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(D) On the date the decision is made to remove a child with a disability because of misconduct, when the removal would change the child's placement, the school must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (b)(19) of this section.

(iii) *Period of Removal.* School personnel may remove a child with a disability for misconduct from his or her current placement to an appropriate interim alternative educational setting (AES), another setting, or suspension:

(A) For not more than 10 consecutive school days to the extent those alternatives are applied to children without disabilities (for example, removing the child from the classroom to the school library, to a different classroom, or to the child's home), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a pattern); or

(B) For not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child, at school, on school-provided transportation, on school premises, or at a school-sponsored event:

(1) Carries a weapon or possesses a weapon;

(2) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or

(3) Has inflicted serious bodily injury upon another person.

(C) After an expedited hearing if school personnel believe that returning the child to his or her current educational placement is substantially likely to cause injury to the child or to others.

(iv) *Required Services During Removal.* (A) If a child with a disability is removed from his or her placement for 10 cumulative school days or less in a school year, the school is required only to provide services comparable to the services it provides to a child without disabilities who is similarly removed.

(B) If a child with a disability is removed from his or her placement for

more than 10 school days, where the behavior that gave rise to the violation of the school code is determined in accordance with paragraph (b)(13)(v) of this section not to be a manifestation of the child's disability, or who is removed under paragraph (b)(13)(iii)(B) of this section irrespective of whether the behavior is determined to be a manifestation of the child's disability, the school must:

(1) Continue to provide the child with the educational services as identified by the child's IEP as a FAPE so as to enable the child to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(2) Provide, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

(C) If a child with a disability has been removed for more than 10 cumulative school days and the current removal is for 10 consecutive school days or less, then the CSC must determine whether the pattern of removals constitutes a change of placement in accordance with paragraph (b)(13)(ii) of this section.

(1) If the CSC determines the pattern of removals is NOT a change of placement, then the CSC must determine the extent to which services are needed to enable the child to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(2) If the CSC determines that the pattern of removals IS a change of placement, then the CSC must conduct a manifestation determination.

(v) *Manifestation Determination* (A) A principal must give the notice required and convene a manifestation determination meeting with the CSC within 10 school days of recommending, in accordance with DoDEA Regulation 2051.1, a disciplinary action that would remove a child with disabilities for:

(1) More than 10 consecutive school days, or

(2) A period in excess of 10 cumulative school days when the child has been subjected to a series of removals that constitute a pattern.

(B) The manifestation CSC will review all relevant information in the child's file (including the IEP, any teacher observations, and any information provided by the sponsor or parent) and

determine whether the misconduct was a manifestation of the child's disability.

(1) The misconduct must be determined to be a manifestation of the child's disability if it is determined the misconduct:

(i) Was caused by the child's disability or had a direct and substantial relationship to the child's disability; or

(ii) Was the direct result of the school's failure to implement the IEP.

(2) If the determination is made that the misconduct was a manifestation of the child's disability, the CSC must:

(i) Conduct a functional behavioral assessment, unless the school conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) Review any existing behavioral intervention or disciplinary plan and modify it, as necessary, to address the behavior; and

(iii) Revise the student's IEP or placement and delivery system to ensure that the student receives services in accordance with the IEP.

(3) Unless the parent and school agree to a change of placement as part of the modification of the behavioral intervention plan, the CSC must return the child to the placement from which the child was removed:

(i) Not later than the end of 10 days of removal; or

(ii) Not later than the end of 45 consecutive school days, if the student committed a weapon or drug offense or caused serious bodily injury for which the student was removed to an AES.

(4) If the determination is made that the misconduct in question was the direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

(5) If the determination is made that the behavior is NOT a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as the procedures that would be applied to children without disabilities, and must:

(i) Forward the case and a recommended course of action to the school principal, who may then refer the case to a disciplinary committee for processing.

(ii) Reconvene the CSC following a disciplinary decision that would change the student's placement to revise the child's IEP and/or identify an appropriate educational setting and delivery system to ensure the child receives services in accordance with the IEP.

(vi) *Appeals of School Decision Regarding Placement or Manifestation Determination.* (A) The parent of a child with a disability who disagrees with any decision regarding placement or manifestation determination, or a school that believes maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing before a hearing officer by filing a petition in accordance with paragraph (d)(5) of this section.

(B) A hearing officer, appointed in accordance with paragraph (d) of this section, hears and makes a determination regarding an appeal. In making the determination the hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the authority of school personnel in accordance with this part or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim AES for not more than 45 school days if the hearing officer determines that maintaining the child's current placement is substantially likely to result in injury to the child or to others.

(C) At the end of the placement in the appropriate AES, the procedures for placement in an AES may be repeated, with the consent of the Area Director, if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(D) When an appeal has been made by either the parent or the school, the child must remain in the interim AES pending the decision of the hearing officer or until the expiration of the specified time period, whichever occurs first, unless the parent and the DoDEA school system agree otherwise.

(14) *Children Not Yet Determined Eligible for Special Education.* (i) A child who has not been determined to be eligible for special education and related services and who is subject to discipline may assert any of the protections provided for in paragraph (b)(19) of this section if the school had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(ii) DoDEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

(A) The parent of the child expressed concern in writing to a teacher of the child, the school principal or assistant principal, or the school special education coordinator that the child was in need of special education and related services;

(B) The child presented an active IEP from another school;

(C) The parent of the child requested an evaluation of the child; or

(D) The teacher of the child or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the principal or assistant principal, the special education coordinator, or to another teacher of the child.

(iii) A school is deemed NOT to have knowledge that a child is a child with a disability if:

(A) The parent of the child has not allowed an evaluation of the child or the parent has revoked consent, in writing, to the delivery of the child's special education and related services, in accordance with this part; or

(B) The child has been evaluated and determined not to be a child with a disability.

(iv) Conditions that apply if there is no basis of knowledge that the child is a child with a disability.

(A) If a school has no basis of knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to non-disabled children who engage in comparable behaviors in accordance with paragraph (b)(13)(i) of this section.

(B) If a request is made for an evaluation of a child during the time period when the child is subjected to disciplinary measures:

(1) The evaluation must be expedited.

(2) Until the evaluation is completed, the child remains in his or her then current educational placement, which can include suspension or expulsion without educational services.

(v) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the school must provide special education and related services in accordance with an IEP.

(15) *Referral to and Action by Law Enforcement and Judicial Authorities.*

(i) Rule of Construction. Nothing prohibits a school from reporting a crime threatened or committed by a child with a disability to appropriate authorities, or prevents military, host-nation, or State law enforcement and judicial authorities from exercising their

responsibilities with regard to the application of Federal, host-nation, and State law to crimes committed or threatened by a child with a disability.

(ii) *Transmittal of Records.* An agency reporting a crime in accordance with this paragraph may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is in accordance with 32 CFR part 285.

(16) *Children With Disabilities Who are Placed in a Non-DoDEA School or Facility Pursuant to an IEP.* (i) Children with disabilities who are eligible to receive a DoDEA school education, but are placed in a non-DoD school or facility by DoDEA because a FAPE cannot be provided by DoD, shall have all the rights of children with disabilities who are enrolled in a DoDEA school.

(ii) A child with a disability may be placed at DoD expense in a non-DoD school or facility only if required by the IEP.

(iii) DoDEA school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoD school or facility should attend the meeting. If the representative cannot attend, the DoDEA school officials shall communicate in other ways to facilitate participation including individual or conference telephone calls. A valid IEP must document the necessity of the placement in a non-DoD school or facility. The IEP must:

(A) Be signed by an authorized DoDEA official before it becomes valid.

(B) Include a determination that the DoDEA school system does not currently have and cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(C) Include a determination that the non-DoD school or facility and its educational program and related services conform to the requirements of this part.

(iv) The DoD shall not be required to reimburse the costs of special education and related services if DoDEA made FAPE available in accordance with the requirements of the IDEA and a parent unilaterally places the child in a non-DoD school without the approval of DoDEA.

(A) Reimbursement may be ordered by a hearing officer if he or she determines that DoDEA had not made FAPE available in a timely manner prior to enrollment in the non-DoDEA school and that the private placement is appropriate.

(B) Reimbursement may be reduced or denied:

(1) If, at the most recent CSC meeting that the parents attended prior to removal of the child from the DoDEA school, the parents did not inform the CSC that they were rejecting the placement proposed by the DoDEA school to provide FAPE to their child, including stating their concerns and their intent to enroll their child in non-DoD school at DoD expense.

(2) If, at least 10 business days (including for this purpose any holidays that occur on a Monday through Friday) prior to the removal of the child from the DoDEA school, the parents did not give written notice to the school principal or CSC chairperson of the information described in paragraph (b)(16)(iv)(B)(1) of this section.

(3) If, the CSC informed the parents of its intent to evaluate the child, using the notice requirement described in paragraph (b)(6)(i) and paragraph (b)(19) of this section, but the parents did not make the child available; or

(4) Upon a hearing officer finding of unreasonableness with respect to actions taken by the parents.

(C) Reimbursement may not be reduced or denied for failure to provide the required notice if:

(1) The DoDEA school prevented the parent from providing notice;

(2) The parents had not received notification of the requirement that the school provide prior written notice required by paragraph (b)(19) of this section;

(3) Compliance would result in physical or emotional harm to the child; or

(4) The parents cannot read and write in English.

(17) *Confidentiality of the Records.* The DoDEA school and EDIS officials shall maintain all student records in accordance with 32 CFR part 310.

(18) *Parental Consent.* (i) *Consent Requirements.* The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before:

(A) Initiation of formal evaluation procedures to determine whether the child qualifies as a child with a disability and prior to conducting a reevaluation;

(B) Initial provision of special education and related services; or

(ii) *Consent for Initial Evaluation.* If the parent of a child does not provide consent for an initial evaluation or fails to respond to a request for consent for an initial evaluation, then DoDEA may use the procedures described in paragraph (d) of this section to pursue an evaluation of a child suspected of having a disability.

(A) Consent to evaluate shall not constitute consent for placement or receipt of special education and related services.

(B) If a parent declines to give consent for evaluation, DoDEA shall not be in violation of the requirement to conduct child-find, the initial evaluation, or the duties to follow evaluation procedures or make an eligibility determination and write an IEP as prescribed in this section.

(iii) *Consent for Reevaluation.* The school must seek to obtain parental consent to conduct a reevaluation. If the parent does not provide consent or fails to respond to a request for consent for a reevaluation, then the school may conduct the reevaluation without parental consent if the school can demonstrate that it has made reasonable efforts to obtain parental consent and documented its efforts. The documentation must include a record of the school's attempts in areas such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls.

(B) Copies of correspondence sent to the parents and any responses received.

(C) Detailed records of visits made to the parents' home, place of employment or duty station, and the results of those visits.

(iv) *Consent for the Initial Provision of Special Education and Related Services.* The school that is responsible for making a FAPE available to a child with a disability under this part must seek to obtain informed consent from the parent of such child before providing special education and related services to the child. If the parent refuses initial consent for services, the DoDEA school:

(A) May not use the procedures described in paragraph (d) of this section (mediation and due process) to obtain agreement or a ruling that the special education and related services recommended by the child's CSC may be provided to the child without parental consent.

(B) Shall not be considered to be in violation of the requirement to make a FAPE available to the child for its failure to provide those services to the child for which parental consent was requested.

(C) Shall not be required to convene an IEP meeting or develop an IEP for the child.

(19) *Parent Revocation of Consent for Continued Special Education and Related Services.*

(i) Parents may unilaterally withdraw their children from further receipt of all special education and related services by revoking their consent for the continued provision of special

education and related services to their children.

(ii) Parental revocation of consent must be in writing.

(iii) Upon receiving a written revocation of consent, the DoDEA school must cease the provision of special education and related services and must provide the parents prior written notice before ceasing the provision of services. The notice shall comply with the requirements of paragraph (b)(19) of this section and shall advise the parent:

(A) Changes in educational placement and services that will result from the revocation of consent.

(B) That the school will terminate special education and related services to the child on a specified date, which shall be within a reasonable time following the delivery of the written notice.

(C) That DoDEA will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services.

(D) That the DoDEA school will not be deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and will not be entitled to the IDEA discipline protections.

(E) That the parents maintain the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services and that their child will not receive special education and related services until eligibility has been determined.

(F) That the DoDEA school will not challenge, through mediation or a due process hearing, the revocation of consent to the provision of special education or related services.

(G) That while the school is not required to convene a CSC meeting or to develop an IEP for further provision of special education and related services, it is willing to convene a CSC meeting upon request of the parent prior to the date that service delivery ceases.

(iv) Revocation of consent for a particular service:

(A) Upon receiving a revocation of consent for a particular special education or related service, the DoDEA school must provide the parent prior written notice in accordance with the requirements of paragraph (b)(19) of this section.

(B) If parents disagree with the provision of a particular special education or related service and the school members of the CSC and the

parents agree that the child would be provided a FAPE if the child did not receive that service, the child's IEP may be modified to remove the service.

(C) If the parent and the school members of the CSC disagree as to whether the child would be provided a FAPE if the child did not receive a particular service, the parent may use the mediation or due process procedures under this part to obtain a determination as to whether the service with which the parent disagrees is or is not appropriate to his or her child and necessary to FAPE, but the school may not cease the provision of a particular service that has been included in the child's active IEP until the dispute is resolved.

(20) *Procedural Safeguards.* (i) *Parental Rights.* Parents of children, ages 3 through 21 inclusive, with disabilities must be afforded procedural safeguards with respect to the provision of FAPE which shall include:

(A) The right to confidentiality of personally identifiable information in accordance with Federal law and DoD regulations.

(B) The right to examine records and to participate in meetings with respect to assessment, screening, eligibility determinations, and the development and implementation of the IEP.

(C) The right to furnish or decline consent in accordance with this section.

(D) The right to prior written notice when the school proposes to initiate or change, or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a child with a disability.

(1) The notice must be in sufficient detail to inform parents about:

(i) The action that is being proposed or refused.

(ii) An explanation of why the agency proposes or refuses to take the action.

(iii) A description of any other options considered by the CSC and the reasons why those options were rejected.

(iv) A description of the factors that were relevant to the agency's proposal or refusal.

(v) Each of the procedural safeguards that is available in accordance with the IDEA and this part.

(vi) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(vii) Dispute resolution procedures, including a description of mediation, how to file a complaint, due process hearing procedures, and applicable timelines.

(2) The notice must be provided in language understandable to a lay person and in the native language of the parent or other mode of communication used

by the parent, unless it is clearly not feasible to do so.

(E) The right to obtain an independent educational evaluation (IEE) of the child.

(F) The right to timely administrative resolution of complaints.

(G) The availability of dispute resolution through the administrative complaint, mediation, and due process procedures described in paragraph (d) of this section with respect to any matter relating to the identification, evaluation, or educational placement of the child, or a FAPE for the child, age 3 through 21 years, inclusive.

(H) The right of any party aggrieved by the decision regarding a due process complaint to bring a civil action in a district court of the United States of competent jurisdiction in accordance with paragraph (d)(21) of this section.

(ii) *Procedural Safeguards Notice.* A DoDEA school shall not be required to give parents a copy of the procedural safeguards notice more than once a school year, except that a copy must be given to parents upon a request from the parents; upon initial referral for evaluation or parental request for evaluation; and upon receipt of the first due process complaint.

(A) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, including:

(1) Independent evaluation for children (3 through 21 years, inclusive).

(2) Prior written notice.

(3) Parental consent.

(4) Access to educational records.

(5) Dispute resolution procedures together with applicable timelines including:

(i) The availability of mediation.

(ii) Procedures for filing a due process complaint and the required time period within which a due process complaint must be filed.

(iii) The opportunity for the DoDEA school system to resolve a due process complaint filed by a parent through the resolution process.

(iv) Procedures for filing an administrative complaint and for administrative resolution of the issues.

(6) The child's placement during pendency of due process proceedings in accordance with paragraph (d)(18) of this section.

(7) Procedures for children (3 through 21 years, inclusive) who are subject to placement in an interim AES.

(8) Requirements for unilateral placement by parents of children in private schools at public expense.

(9) Due process hearings, including requirements for disclosure of evaluation results and recommendations.

(10) The right to bring a civil action in a district court of the United States in accordance with paragraph (d)(21) of this section, including the time period in which to file such action.

(11) The possibility of an award of attorney's fees to the prevailing party in certain circumstances.

(B) The procedural safeguards notice must be:

(1) Written in language

understandable to the general public.

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the procedural safeguards notice is not translated into the native language of the parent, then the DoDEA school system shall ensure that:

(i) The notice is translated orally or by other means for the parent in his or her native language or other mode of communication.

(ii) The parent understands the content of the notice.

(iii) There is written evidence that the requirements above have been met.

(iii) *Independent Educational Evaluation (IEE).*

(A) *Obtaining an IEE.* The DoDEA school system shall provide to the parents, upon request for an IEE, information about where an IEE that meets DoDEA school system criteria, as set forth in paragraph (b)(19)(iii)(F) of this section, may be obtained.

(B) *Right to IEE.* The parents of a child with a disability have a right to an IEE at the DoDEA school system expense if the parent disagrees with an evaluation obtained by the DoDEA school system, subject to paragraph (b)(19)(iii)(C) to (H) of this section.

(C) *Written Request for IEE.* If a parent provides the DoDEA school system with a written request for an IEE funded by the school system, then the school system shall either:

(1) Agree to fund an appropriate IEE that meets the DoDEA school system criteria, or

(2) Initiate a due process hearing in accordance with paragraph (d) of this section, without unnecessary delay, and demonstrate that its evaluation was appropriate under this part.

(i) If the DoDEA school system initiates a due process hearing and the final decision is that the school system's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.

(ii) If a parent requests an IEE, the DoDEA school system may ask for the parent's reason why he or she objects to the school system's evaluation. However, the parent may not be compelled to provide an explanation

and the DoDEA school system may not unreasonably delay either agreeing to fund an IEE that meets DoDEA school system criteria or initiating a due process hearing to defend its evaluation.

(D) *Parent-Initiated Evaluations.* If the parent obtains an IEE funded by the school system or shares with the DoDEA school system an evaluation obtained at private expense:

(1) The results of the evaluation shall be considered by the DoDEA school if it meets the school system's criteria in any decision made with respect to the provision of FAPE to the child.

(2) The results may be presented by any party as evidence at a due process hearing under this section regarding that child.

(3) The DoDEA school system may not be required to fund an IEE that has been obtained by a parent if at a due process hearing initiated by either party and conducted under this section, the DoDEA school system demonstrates either that:

(i) The parentally obtained evaluation was not educationally appropriate or failed to meet agency criteria; or

(ii) The DoDEA school system's evaluation was appropriate.

(E) *Hearing Officer Order for Evaluation.* A hearing officer may only order an IEE at the DoDEA school system's expense as part of a due process hearing under this section if:

(1) The school system has failed to demonstrate its assessment was appropriate; or

(2) The school system has not already funded an IEE in response to a given school evaluation.

(F) *DoDEA School System Criteria.* An IEE provided at the DoDEA school system's expense must:

(1) Conform to the requirements of paragraph (b)(6)(viii) and (ix) of this section.

(2) Be conducted, when possible, in the geographic area where the child resides utilizing available qualified resources, including qualified examiners employed by the Military Department, unless the parent can demonstrate to the satisfaction of the DoDEA school system or in a due process hearing filed in accordance with paragraph (d) of this section, that the geographic limitation renders the IEE impossible.

(3) Meet DoD standards governing persons qualified to conduct an IEE, including an evaluation for related services.

(G) *Conditions.* Except for the criteria in paragraph (b)(6)(viii) and (b)(6)(ix) of this section, the DoDEA school system shall not impose conditions or timelines

related to obtaining an IEE at the DoDEA school system expense.

(H) *Limitations.* A parent is entitled to only one IEE at DoDEA school system expense in response to a given DoDEA school system evaluation with which the parent disagrees.

(iv) *Placement During Due Process, Appeal, or Civil Procedures.* While an impartial due process proceeding, appeal proceeding, or civil proceeding is pending, unless the DoDEA school system and the parent of the child agree otherwise in writing, the child shall remain in his or her current placement, subject to the disciplinary procedures prescribed in paragraph (b)(13) of this section.

(v) *Transfer of Parental Rights at Age of Majority.*

(A) In the DoDEA school system, a child reaches the age of majority at age 18.

(B) When a child with a disability reaches the age of majority (except for a child with a disability who has been determined to be incompetent in accordance with Federal or State law) the rights afforded to the parents in accordance with the IDEA and this part transfer to the child.

(C) When a child reaches the age of majority, the DoDEA school shall notify the child and the parents of the transfer of rights.

(D) When a child with a disability who has not been determined to be incompetent, but who does not have the ability to provide informed consent with respect to his or her educational program, reaches the age of majority, the DoD shall appoint a parent or the parents of the child to represent the educational interests of the child throughout the period of eligibility for special education services.

(c) *Procedures for Provision of Related Services by the Military Departments to Students With Disabilities in a DoDDS*

(1) *Evaluation Procedures.*

(i) Upon request by a CSC, the responsible EDIS shall ensure that a qualified medical authority conducts or verifies a medical evaluation for use by the CSC in determining the medically related disability that results in a child's need for special education and related services, and shall oversee an EDIS evaluation used in determining a child's need for related services.

(ii) The medical or related services evaluation, including necessary consultation with other medical personnel, shall be supervised by a physician or other qualified healthcare provider.

(iii) The medical or related services evaluation shall be specific to the

concerns addressed in the request from the CSC.

(iv) The EDIS shall provide to the CSC an evaluation report that responds to the questions posed in the original request for an evaluation. The written report shall include:

(A) Demographic information about the child, such as the child's name, date of birth, and grade level

(B) Behavioral observation of the child during testing.

(C) Instruments and techniques used.

(D) Evaluation results.

(E) Descriptions of the child's strengths and limitations.

(F) Instructional implications of the findings.

(G) The impact of the child's medical condition(s), if applicable, on his or her educational performance.

(v) If the EDIS that supports the DoDDS school requires assistance to conduct or complete an evaluation, the EDIS shall contact the MTF designated by the Military Department with geographic responsibility for the area where the EDIS is located.

(vi) If EDIS determines that in order to respond to the CSC referral the scope of its assessment and evaluation must be expanded beyond the areas specified in the initial parental permission, EDIS must:

(A) Obtain parental permission for the additional activities.

(B) Complete its initial evaluation by the original due date.

(C) Notify the CSC of the additional evaluation activities.

(vii) When additional evaluation information is submitted by EDIS, the CSC shall review all data and determine the need for program changes and the reconsideration of eligibility.

(viii) An EDIS provider shall serve on the CSC when eligibility, placement, or requirements for related services that EDIS provides are to be determined.

(2) *IEP*

(i) EDIS shall be provided the opportunity to participate in the IEP meeting.

(ii) EDIS shall provide related services assigned to EDIS that are listed on the IEP.

(3) *Liaison With DoDDS*. Each EDIS shall designate a special education liaison officer to:

(i) Provide liaison between the EDIS and DoDDS on requests for evaluations and other matters within their purview.

(ii) Offer, on a consultative basis, training for school personnel on medical aspects of specific disabilities.

(iii) Offer consultation and advice as needed regarding the medical services provided at school (for example, tracheotomy care, tube feeding, occupational therapy).

(iv) Participate with school personnel in developing and delivering in-service training programs that include familiarization with various conditions that impair a child's educational endeavors, the relationship of medical findings to educational functioning, related services, and the requirements of the IDEA and this part.

(d) *Dispute Resolution and Due Process Procedures*

(1) *General*. This section establishes requirements for resolving disputes regarding the provision of EIS to an infant or toddler up to 3 years of age, or the identification, evaluation, or educational placement of a child (ages 3 through 21, inclusive), or the provision of a FAPE to such child in accordance with the IDEA and this part.

(2) *Conferences*. Whenever possible, parties are encouraged to resolve disputes through the use of conferences at the lowest level possible between the parents and EDIS or the DoDEA school.

(i) Within a DoDEA school, problems should be brought first to the teacher, then the school administrator, and then the district office.

(ii) At EDIS, problems should be brought first to the EDIS provider, then the EDIS program manager, and then the local MTF commander.

(3) *Administrative Complaints*. (i) A complaint filed with the responsible agency, relating to the provision of services under the IDEA and this part, other than due process complaints filed in accordance with paragraph (d)(5) of this section, is known as an administrative complaint.

(ii) An individual or organization may file an administrative complaint alleging issues relating to services required to be delivered under the IDEA and this part with:

(A) The Office of the Inspector General of a Military Department when the issue involves services or programs for infants and toddlers with disabilities, or related services provided by the Military Departments to children with disabilities.

(B) The DoDEA Director, Office of Investigations and Internal Review (OI&IR) when the issue involves the services or programs for children ages 3 to 21, inclusive that are under the direction or control of the DoDEA school system.

(iii) An administrative complaint alleging issues relating to services required to be delivered under the IDEA or this part must include:

(A) A statement that the Military Service or the DoDEA school system has violated a requirement of the IDEA or this part.

(B) The facts on which the statement is based.

(C) The signature and contact information for the complainant.

(D) If alleging violations with respect to specific children:

(1) The name of the school the child is attending.

(2) The name and address of the residence of the child.

(3) A description of the nature of the problem of the child, including facts relating to the problem.

(4) A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

(iv) An administrative complaint may not allege a violation that occurred more than 1 year prior to the date that the complaint is received.

(v) The complainant filing an administrative complaint alleging issues related to services required to be delivered under the IDEA or this part must forward a copy of the complaint to the DoDEA school or EDIS clinic serving the child at the same time the complainant files the complaint with the appropriate authority in paragraph (d)(3)(i) of this section.

(A) Upon receipt of the complaint, the Inspector General of the Military Department concerned will notify the Secretary of the Military Department concerned, and the OCA will notify the Director, DoDEA, of the complaint.

(B) Upon receipt of a complaint, the responsible Military Department Inspector General or the OCA shall, if warranted, promptly open an investigation consistent with its established procedures for investigating complaints.

(1) The investigation shall afford the complainant an opportunity to submit additional information about the allegations.

(2) The investigation shall afford the DoDEA school system or the Military Department an opportunity to:

(i) Respond to the complaint;

(ii) Propose a resolution to the complaint; or

(iii) If the parties are willing, voluntarily engage in mediation of the complaint.

(3) The investigation shall produce a report consistent with those the investigating agency routinely provides, shall determine whether its findings support the complaint, and shall state whether the DoDEA school system or the Military Department is violating a requirement of the IDEA or this part.

(vi) The findings and conclusions of the report of investigation related to the administrative complaint shall be made available to the complainant and

members of the public in accordance with the standard operating procedures of the investigating activity and 32 CFR part 310 and 32 CFR part 285.

(A) The investigating activity shall provide a copy of the report to the Director, DoDEA and the Secretary of a Military Department concerned or in accordance with the investigating activity's protocols.

(B) The report shall be provided, to the extent practicable, within 60 days of initiating the investigation, unless extended by the complainant and the DoDEA school system or the Military Department.

(vii) The Secretary of the Military Department concerned or the Director, DoDEA shall resolve complaints within their respective area of responsibility when the Military Service or the DoDEA school system is found to have failed to provide appropriate services consistent with the requirements of the IDEA or this part. Remediation may include corrective action appropriate to address the needs of the child such as compensatory services, or monetary reimbursement where otherwise authorized by law.

(viii) When a complaint received under this section is also the subject of a due process complaint regarding alleged violations of rights afforded under the IDEA and this part, or contains multiple issues of which one or more are part of that due process complaint, the investigation activity shall set aside any issues alleged in the due process complaint until a hearing is concluded in accordance with the IDEA and this part. Any issue that is not part of the due process hearing must be resolved using the procedures of this section.

(ix) If an issue raised in a complaint filed under this section has been previously decided in a due process hearing involving the same parties:

(A) The due process hearing decision is binding on that issue.

(B) The Director, DoDEA or the Secretary of the Military Department concerned shall so inform the complainant.

#### (4) *Mediation.*

(i) A parent, the Military Department concerned, or DoDEA may request mediation at any time, whether or not a due process petition has been filed, to informally resolve a disagreement on any matter relating to the provision of EIS to an infant or toddler (birth up to 3 years of age), or the identification, evaluation, or educational placement of a child (ages 3 through 21, inclusive), or the provision of a FAPE to such child.

(ii) Mediation must be voluntary on the part of the parties and shall not be

used to deny or delay a parent's right to a due process hearing or to deny other substantive or procedural rights afforded under the IDEA.

(A) DoDEA school officials participate in mediation involving special education and related services; the cognizant Military Department participates in mediation involving EIS.

(B) The initiating party's request must be written, include a description of the dispute, bear the signature of the requesting party, and be provided:

(1) In the case of a parent initiating mediation, to:

(i) The local EDIS program manager in disputes involving EDIS; or

(ii) The school principal in disputes involving a DoDEA school.

(2) In the case of the school or EDIS initiating mediation, to the parent.

(C) Acknowledgment of the request for mediation shall occur in a timely manner.

(D) Agreement to mediate shall be provided in writing to the other party in a timely manner.

(ii) Upon agreement of the parties to mediate a dispute, the local EDIS or DoDEA school shall forward a request for a mediator to the Military Department or to DoDEA's Center for Early Dispute Resolution (CEDR), respectively.

(iii) The mediator shall be obtained from the Defense Office of Hearings and Appeals (DOHA) unless another qualified and impartial mediator is obtained by the Military Department or CEDR.

(A) Where DOHA is used, the DOHA Center for Alternate Dispute Resolution (CADR) shall provide the mediator from its roster of mediators qualified in special education disputes.

(B) Where the Military Department or DoDEA elects to secure a mediator through its own DoD Component resources, the mediator shall be selected from the Component's roster of mediators qualified in special education disputes, or by contract with an outside mediator duly qualified in special education disputes and who is trained in effective mediation techniques.

(iv) The Military Department or DoDEA through CEDR shall obtain a mediator within 15 business days of receipt of a request for mediation, or immediately request a mediator through the Director, DOHA, through the DOHA CADR.

(v) When requested, the Director, DOHA, through the CADR, shall appoint a mediator within 15 business days of receiving the request, unless a party provides written notice to the Director, DOHA that the party refuses to participate in mediation.

(vi) Unless both parties agree otherwise, mediation shall commence in a timely manner after both parties agree to mediation.

(vii) The parents of the infant, toddler, or child, and EDIS or the school shall be parties in the mediation. With the consent of both parties, other persons may attend the mediation.

(viii) Mediation shall be conducted using the following rules:

(A) The Military Department concerned shall bear the cost of the mediation process in mediations concerning EIS.

(B) DoDEA shall bear the cost of the mediation process in mediations concerning special education and related services.

(C) The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(D) Unless the parties and the mediator agree, no person may record a mediation session, nor shall any written notes be taken from the room by either party.

(E) Either party may request a recess of a mediation session to consult advisors, whether or not present, or to consult privately with the mediator.

(F) The mediator shall ensure and the contract for mediation services shall require that any partial or complete resolution or agreement of any issue in mediation is reduced to writing, and that the written agreement is signed and dated by the parties, with a copy given to each party.

(ix) Any written agreement resulting from the mediation shall state that all discussions that occurred during the mediation process and all records of the mediation other than a final executed agreement shall be confidential and may not be discoverable or admissible as evidence in any subsequent due process proceeding, appeal proceeding, or civil proceeding under this part, and shall be legally binding upon the parties and enforceable in a district court of the United States.

(x) All mediation sessions shall be held in a location that is convenient to both parties.

(xi) No hearing officer or adjudicative body shall draw any inference from the fact that a mediator or a party withdrew from mediation or from the fact that mediation did not result in settlement of a dispute.

(xii) Discussions and statements made during the mediation process, and any minutes, statements or other records of a mediation session other than a final executed mediation agreement, shall be considered confidential between the parties to that mediation and are not discoverable or admissible in a due

process proceeding, appeal proceeding, or civil proceeding under this part.

(5) *Due Process Complaint Procedures.*

(i) Parents of infants, toddlers, and children who are covered by this part and the cognizant Military Department or DoDEA, are afforded impartial hearings and administrative appeals after the parties have waived or participated in and failed to resolve a dispute through:

(A) Mediation, in the case of an infant or toddler; or

(B) A resolution process, or mediation in lieu of the resolution process prior to proceeding to a due process hearing, in the case of a child (ages 3 through 21 years, inclusive).

(ii) An impartial due process hearing is available to resolve any dispute concerning the provision of EIS to infants and toddlers with disabilities or with respect to any matter relating to the identification, evaluation, educational placement of, and the FAPE provided by the Department of Defense to children (ages 3 through 21, inclusive) who are covered by this part, in accordance with the IDEA and this part.

(A) Whenever the parents or the cognizant Military Department present a due process complaint (petition) in accordance with this part, an impartial due process hearing is available to resolve any dispute concerning the provision of EIS.

(B) When the parents of children ages 3 through 21 years, inclusive, or the cognizant Military Department or DoDEA, present a due process complaint (petition) in accordance with this part relating to any matter regarding the identification, evaluation, placement, or the provision of FAPE, the parties shall first proceed in accordance with the requirements for a statutory resolution process in accordance with this part, after which time an impartial due process hearing is available to resolve the dispute set forth by the complaint.

(iii) An expedited impartial due process hearing may be requested:

(A) By a parent when the parent disagrees with the manifestation determination or any decision regarding the child's disciplinary placement.

(B) By the school when it believes that maintaining a student in his or her current educational placement is substantially likely to result in injury to the student or others and.

(iv) Any party to a special education dispute may initiate a due process hearing by filing a petition stating the specific issues that are in dispute. The initiating party is the "petitioner" and the responding party is the

"respondent." The petition itself will remain confidential, in accordance with applicable law, not be released to those not a party to the litigation and its Personally Identifiable Information shall be protected in accordance with the DoD Privacy Act.

(v) Petitioner and respondent are each entitled to representation by counsel at their own expense. The parent and child may choose to be assisted by a personal representative with special knowledge or training with respect to the problems of disabilities rather than by legal counsel.

(vi) To file a petition that affords sufficient notice of the issues and commences the running of relevant timelines, petitioners shall specifically include in the petition:

(A) The name and residential address of the child and the name of the school the child is attending or the location of the EDIS serving the child.

(B) A description of the dispute(s) between the parents and the school or EDIS describing the facts (who, what, when, where, how, why) pertinent to each dispute and relating those facts to:

(1) A proposal, or the refusal of a proposal, to initiate or change the identification, evaluation, or educational placement of the child; or

(2) Any allegation of the failure to provide a FAPE to the child.

(C) A proposed resolution of the problem to the extent known and available to the petitioner at the time.

(D) The signature of the parent, or if the petitioner is DoDEA or a Military Department, an authorized representative of that petitioner, or of the counsel or personal representative for the petitioner, and his or her telephone number and mailing address.

(vii) When the cognizant Military Department or DoDEA petitions for a hearing, it shall additionally:

(A) Inform the parent of the 10 business-day deadline (or 5 school days in the case of an expedited hearing) for filing a response that specifically addresses the issues raised in the petition.

(B) Provide the parent with a copy of this part.

(viii) A special rule applies for expedited hearing requests. The petitioner must state, as applicable to his or her petition:

(A) The disciplinary basis for the child's change in placement to an interim AES or other removal from the child's current placement.

(B) The reasons for the change in placement.

(C) The reasoning of the manifestation determination committee in concluding that a particular act of misconduct was

not a manifestation of the child's disability.

(D) How the child's current educational placement is or is not substantially likely to result in injury to the child or others.

(ix) The petition or request for an expedited due process hearing must be delivered to:

(A) The Director, DOHA, by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703-696-1831, or email to [specialedcomplaint@osdgc.osd.mil](mailto:specialedcomplaint@osdgc.osd.mil). Filing may also be made by hand delivery to the office of the Director, DOHA if approval from the Director, DOHA is obtained in advance of delivery.

(B) The respondent by mail, fax, email, or hand delivery.

(1) If the petitioner is a parent of a child (ages of 3-21, inclusive), or a child (in the event that rights have been transferred in accordance with paragraph (b)(19) of this section, the respondent is DoDEA and the petition must be delivered to and received by the principal of the school in which the child is enrolled, or if the child is enrolled in the Non-DoD School Program (NDSP) to the DoDEA General Counsel ([generalcounsel@hq.dodea.edu](mailto:generalcounsel@hq.dodea.edu)).

(2) If the petitioner is the parent of an infant or toddler (birth to age 3), the respondent is the responsible Military Department and the petition must be delivered to and received by the EDIS manager.

(3) If the petitioner is the responsible Military Department or DoDEA, the petition must be delivered to and received by the parent of the child.

(C) Filing of the due process petition with DOHA is considered complete when received by DOHA.

(x) The timelines for requesting and conducting a due process hearing are:

(A) *Timelines for Requesting a Hearing.* A petitioner may not allege a violation that occurred more than 2 years before the date the petitioner knew, or should have known, about the alleged action that forms the basis of the complaint, unless the parent was prevented from requesting the hearing due to:

(1) Specific misrepresentation by DoDEA or EDIS that it had resolved the problem forming the basis of the complaint.

(2) The withholding of information by DoDEA or EDIS from the petitioning parent that was required to be provided to the parent in accordance with the IDEA and this part.

(B) *Timeline for Conducting a Due Process Hearing.* Except as provided in paragraph (d)(5)(x)(D) and (d)(8)(ii) of

this section, a hearing officer shall issue findings of fact and conclusions of law not later than 50 business days:

(1) In a case involving EDIS, following the filing and service of a legally sufficient petition or amended petition in accordance with this section.

(2) In disputes involving a school and a child age 3–21, inclusive, following the filing and service of a legally sufficient petition or amended petition in accordance with this section and the hearing officer's receipt of notice that the 30-day resolution period concluded without agreement, the parties waived the resolution meeting, or the parties have concluded mediation in lieu of the resolution process without reaching agreement.

(C) *Exceptions to the Timelines for Conduct of a Hearing*

(1) When the hearing officer grants a request for discovery made by either party, as provided for in paragraph (d)(10) of this section, in which case the time required for such discovery does not count toward the 50 business days.

(2) When the hearing officer grants a specific extension of time for good cause in accordance with paragraph (d)(8) of this section.

(D) *Timeline for Conducting an Expedited Hearing.*

(i) In the event of a petition for expedited hearing is requested, a DOHA hearing officer shall arrange for the hearing to be held not later than 20 school days (when school is in session) of the date the request is filed with DOHA, subject to the timeline for scheduling a resolution meeting and the 15 day resolution period requirements of this section.

(ii) The hearing officer must make a determination within 10 school days after the hearing.

(6) *Responses and Actions Required Following Receipt of a Petition or Request for Expedited Hearing.*

(i) Immediately upon receipt of the petition, the Director, DOHA, shall appoint a hearing officer to take charge of the case.

(A) The hearing officer shall immediately notify the parties of his or her appointment.

(B) Upon receipt of notice that a hearing officer is appointed, the parties shall communicate all motions, pleadings, or amendments in writing to the hearing officer, with a copy to the opposing party, unless the hearing officer directs otherwise.

(ii) Within 10 business days of receipt of the petition (5 school days when school is in session in the case of a petition for an expedited hearing), the respondent shall deliver a copy of the written response to the petitioner and file the original written response with

the hearing officer. Filing may be made by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, by hand delivery if approved in advance by the hearing officer, or by email to [specialcomplaint@osdgc.osd.mil](mailto:specialcomplaint@osdgc.osd.mil). If a hearing officer has not yet been appointed, the respondent will deliver the original written response to the Director, DOHA in accordance with paragraph (d)(5)(ix) of this section.

(iii) The respondent shall specifically address the issues raised in the due process hearing petition.

(iv) If the respondent is the cognizant Military Department or DoDEA, the response shall include:

(A) An explanation of why the respondent proposed or refused to take the action at issue in the due process complaint.

(B) A description of each evaluation procedure, assessment, record, or report the DoD Component used as the basis for the proposed or refused action.

(C) A description of the options that the respondent considered and the reasons why those options were rejected.

(D) A description of the other factors that are relevant to the respondent's proposed or refused action.

(v) The respondent may file a notice of insufficient petition within 15 business days of receiving a petition if the respondent wishes to challenge the sufficiency of the petition for failure to state the elements required by the IDEA. Within 5 business days of receiving a notice of insufficient petition, the hearing officer will issue a decision and will notify the parties in writing of that determination.

(vi) A response to the petitioner shall not be construed to preclude the respondent from asserting that the parents' due process complaint was insufficient.

(vii) Parties may amend a petition only if:

(A) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through the resolution process; or

(B) The hearing officer grants permission, except that the hearing officer may not grant such permission at any time later than 5 days before a due process hearing is scheduled to begin.

(viii) The filing of an amended petition resets the timelines for:

(A) The conduct of a resolution meeting and the resolution period relating to the amended petition, and

(B) All deadlines for responses and action required following the receipt of the amended petition, and for conducting a due process hearing on the amended petition.

(7) *Statutory Resolution Process.* A resolution meeting shall be convened by DoDEA and a resolution period afforded, in accordance with this section, for any dispute in which a due process petition has been filed regarding the the identification, evaluation, or educational placement, or the provision of FAPE for children ages 3 to 21, inclusive.

(i) Within 15 calendar days of receiving the parent's petition for due process (7 calendar days in the case of an expedited hearing), DoDEA, through the pertinent school principal or superintendent, shall convene a dispute resolution meeting, which must be attended by:

(A) The parents.

(B) A legal representative of the parents if desired by the parents.

(C) A DoDEA official designated and authorized by the District Superintendent or Area Director to exercise decision-making authority on behalf of DoDEA.

(D) A DoDEA legal representative, only if the parent is represented by counsel at the resolution meeting.

(E) The relevant members of the child's CSC who have specific knowledge of the facts identified in the petition.

(ii) The parties may agree to mediate in lieu of conducting a resolution meeting or in lieu of completing the resolution period. The resolution meeting need not be held if the parties agree in writing to waive the meeting or agree to use the mediation process.

(iii) Failure to convene or participate in resolution meeting.

(A) If DoDEA has offered to convene a resolution meeting and has been unable to obtain parental participation in the resolution meeting after making and documenting its reasonable efforts, DoDEA may, at the conclusion of the resolution period (30 days or 15 days in the case of an expedited hearing) request that a hearing officer dismiss the parent's due process complaint or request for an expedited due process hearing.

(B) If DoDEA fails to convene a resolution meeting within 15 days of receipt of a due process complaint or if it fails to participate in the resolution meeting, the parent may request the hearing officer to immediately convene the due process hearing without waiting for the 30-day resolution period to expire.

(iv) DoDEA shall have a 30-day resolution period, counted from the receipt of the complaint by the school principal, (15 days in the case of an expedited hearing request) within

which to resolve the complaint to the satisfaction of the parents.

(v) The resolution period may be adjusted because of one of the following events:

(A) Both parties agree in writing to waive the resolution meeting.

(B) After the resolution meeting starts, but before the end of the applicable resolution period, the parties agree in writing that no agreement is possible and agree to waive the balance of the resolution period.

(C) Both parties agree in writing to continue the resolution meeting at the end of the applicable resolution period, but later the parent or the school withdraws from the resolution process.

(vi) If a partial or complete resolution to the dispute is reached at the resolution meeting, the parties must execute a written agreement that is:

(A) Signed by both the parents and a representative of the school with authority to bind the school to the terms of the agreement.

(B) Legally enforceable in a U.S. District Court of competent jurisdiction, unless the parties have voided the agreement within an agreement review period of 3 business days following the execution of the agreement.

(vii) Discussions held, minutes, statements, and other records of a resolution meeting, and any final executed resolution agreement are not presumed confidential and therefore are discoverable and admissible in a due process proceeding, appeal proceeding, or civil proceeding, except when the parties have agreed to confidentiality.

(viii) If DoDEA has not resolved the complaint to the satisfaction of the parents at the expiration of the resolution period or the adjusted resolution period, if applicable:

(A) DoDEA shall provide written notice to the hearing officer, copy to the parents, within 3 business days (1 business day in the case of an expedited hearing) of the expiration of the resolution period or adjusted resolution period that the parties failed to reach agreement.

(B) Upon receipt of that notification by the hearing officer, all of the applicable timelines for proceeding to a due process hearing under this section shall commence.

(ix) If the parties execute a binding written agreement at the conclusion of the resolution period, and do not subsequently declare it void during the 3-business day agreement review period, then:

(A) DoDEA shall provide written notice to the hearing officer, copy to the parents, at the conclusion of the agreement review period that the parties

have reached an agreement for resolution of complaints set forth in the due process petition.

(B) Upon receipt of that notification by the presiding hearing officer, no due process hearing shall proceed on the issues resolved.

(8) *The Due Process Hearing.* (i) *Purpose.* The purpose of the due process hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case.

(ii) *Hearing Officer Duties.* The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include, but are not limited to, the authority to:

(A) Determine the adequacy of pleadings.

(B) Decide whether to allow amendment of pleadings, provided permission is granted to authorize the amendment not later than 5 days before a due process hearing occurs.

(C) Rule on questions of timeliness and grant specific extension of time for good cause either on his or her own motion or at the request of either party.

(1) Good cause includes the time required for mediation in accordance with paragraph (d)(4) of this section where the parties have jointly requested an extension of time in order to complete mediation.

(2) If the hearing officer grants an extension of time, he or she shall identify the length of the extension and the reason for the extension in the record of the proceeding. Any such extension shall be excluded from the time required to convene a hearing or issue a final decision, and at the discretion of the hearing officer may delay other filing dates specified by this section.

(D) Rule on requests for discovery and discovery disputes.

(E) Order an evaluation of the child at the expense of the DoDEA school system or the Military Department concerned.

(F) Rule on evidentiary issues.

(G) Ensure a full and complete record of the case is developed.

(H) Decide when the record in a case is closed.

(I) Issue findings of fact and conclusions of law.

(J) Issue a decision on substantive grounds based on a determination of whether the child received a FAPE. When the petition alleges a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(1) Impeded the child's right to a FAPE;

(2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or

(3) Caused a deprivation of educational benefits.

(K) Order such relief as is necessary for the child to receive a FAPE or appropriate EIS, including ordering the DoDEA school system or the responsible Military Department to:

(1) Correct a procedural deficiency that caused a denial of a FAPE or appropriate EIS;

(2) Conduct evaluations or assessments and report to the hearing officer;

(3) Change the school-aged child's placement or order the child to an AES for up to 45 days;

(4) Provide EIS or specific school-age educational or related services to a child to remedy a denial of FAPE, including compensatory services when appropriate and in accordance with the current early intervention or educational program; or

(5) Placement of a school-aged child in an appropriate residential program for children with disabilities at DoD expense, when appropriate under the law and upon a determination that DoDEA has failed to provide and cannot provide an otherwise eligible child with a FAPE at the appropriate DoD facility.

(i) A residential program must be one that can address the specific needs of the child as determined by the DoDEA school.

(ii) The program should, whenever possible, be located near members of the child's family.

(9) *Attendees at the Hearing.*

Attendance at the hearing is limited to:

(i) The parents and the counsel or personal representative of the parents.

(ii) A representative of DoDEA or the EDIS concerned and the counsel representing DoDEA or the EDIS.

(iii) Witnesses for the parties, including but not limited to the professional employees of DoDEA or the EDIS concerned and any expert witnesses.

(iv) A person qualified to transcribe or record the proceedings.

(v) Other persons with the agreement of the parties or the order of the hearing officer, in accordance with the privacy interests of the parents and the individual with disabilities.

(10) *Discovery.* (i) Full discovery shall be available, with the Federal Rules of Civil Procedure, Rules 26–37, 28 U.S.C. appendix, serving as a guide to parties to a due process hearing or conducted in accordance with this part.

(ii) If voluntary discovery cannot be accomplished, a party seeking discovery

may file a motion with the hearing officer to accomplish discovery. The hearing officer shall grant an order to accomplish discovery upon a showing that the document or information sought is relevant or reasonably calculated to lead to the discovery of admissible evidence. An order granting discovery, or compelling testimony or the production of evidence shall be enforceable by all reasonable means within the authority of the hearing officer, to include the exclusion of testimony or witnesses, adverse inferences, and dismissal or summary judgment.

(iii) Records compiled or created in the regular course of business, which have been provided to the opposing party at least 5 business days prior to the hearing, may be received and considered by the hearing officer without authenticating witnesses.

(iv) A copy of the written or electronic transcription of a deposition taken by a Military Department or DoDEA shall be made available by the Military Department or DoDEA without charge to the opposing party.

(11) *Right to an Open Hearing.* The parents, or child who has reached the age of majority, have the right to an open hearing upon waiving, in writing, their privacy rights and those of the individual with disabilities who is the subject of the hearing.

(12) *Location of Hearing.* Subject to modification by the hearing officer for good cause shown or upon the agreement of the parties, the hearing shall be held:

(i) In the DoDEA school district attended by the child (ages 3 through 21, inclusive):

(ii) On the military installation of the EDIS serving infants and toddlers with disabilities; or

(iii) At a suitable video teleconferencing facility convenient for the parents of the child involved in the hearing and available for the duration of a hearing.

(13) *Witnesses and Documentary Evidence.* (i) At least 5 business days prior to a hearing, the parties shall exchange lists of all documents and materials that each party intends to use at the hearing, including all evaluations and reports. Each party also shall disclose the names of all witnesses it intends to call at a hearing along with a proffer of the anticipated testimony of each witness.

(ii) At least 10 business days prior to a hearing, each party must provide the name, title, description of professional qualifications, and summary of proposed testimony of any expert witness it intends to call at the hearing.

(iii) Failure to disclose documents, materials, or witnesses may result in the hearing officer barring their introduction at the hearing.

(iv) Parties must limit evidence to the issues specifically pleaded, except by order of the hearing officer or with the consent of the parties.

(v) The rules of evidence shall be relaxed to permit the development of a full evidentiary record with the Federal Rules of Evidence, 28 U.S.C. appendix, serving as guide.

(vi) All witnesses testifying at the hearing shall be advised by the hearing officer that under 18 U.S.C. 1001, it is a criminal offense to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation to a department or agency of the U.S. Government as to any matter within the jurisdiction of that department or agency, and may result in a fine or imprisonment.

(vii) A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDEA school system or the Military Department concerned shall pay such expenses if a witness is called by the hearing officer.

(viii) The parties shall have the right to cross-examine witnesses testifying at the hearing.

(ix) The hearing officer may issue an order compelling a party to make a specific witness employed by or under control of the party available for testimony at the party's expense or to submit specific documentary or physical evidence for inspection by the hearing officer or for submission into the record on motion of either party or on the hearing officer's own motion.

(x) When the hearing officer determines that a party has failed to obey an order to make a specific witness available for testimony or to submit specific documentary or physical evidence in accordance with the hearing officer's order, and that such failure is in knowing and willful disregard of the order, the hearing officer shall so certify as a part of the written record in the case and may order appropriate sanctions.

(14) *Transcripts.* (i) A verbatim written transcription of any deposition taken by a party shall be provided to the opposing party in hardcopy written format or as attached to an electronic email with prior permission of the recipient. If a Military Department or DoDEA takes a deposition, the verbatim written transcript of that deposition shall be provided to the parent(s) without charge.

(ii) A verbatim written transcription of the due process hearing shall be arranged by the hearing officer and shall

be made available to the parties in hardcopy written format, or as an attachment to an electronic email, with prior permission of the recipient, on request and without cost to the parent(s), and a copy of the verbatim written transcript of the hearing shall become a permanent part of the record.

(15) *Hearing Officer's Written Decision.* (i) The hearing officer shall make written findings of fact and conclusions of law and shall set forth both in a written decision addressing the issues raised in the due process complaint, the resolution of those issues, and the rationale for the resolution.

(ii) The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the transcript of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed.

(iii) The hearing officer shall file the written decision with the Director, DOHA, and additionally provide the Director, DOHA with a copy of that decision from which all personally identifiable information has been redacted.

(iv) The Director, DOHA, shall forward to parents and to the DoDEA or the EDIS concerned, copies, unredacted and with all personally identifiable information redacted, of the hearing officer's decision.

(v) The decision of the hearing officer shall become final unless a timely notice of appeal is filed in accordance with paragraph (d)(17) of this section.

(vi) The DoDEA or the EDIS concerned shall implement the decision as soon as practicable after it becomes final.

(16) *Determination Without Hearing.* (i) At the request of a parent of an infant or toddler, birth to 3 years of age, when EIS are at issue, or of a parent of a child age 3 through 21, inclusive, or child who has reached the age of majority, when special education (including related services) are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and conclusions of law and issue a written decision within the period fixed by paragraph (d)(5)(x) of this section.

(ii) DoDEA or the EDIS concerned may oppose a request to waive a hearing. In that event, the hearing officer shall rule on the request.

(iii) Documentary evidence submitted to the hearing officer in a case determined without a hearing shall comply with the requirements of paragraph (d)(13) of this section. A party submitting such documents shall provide copies to all other parties.

(17) *Appeal of Hearing Officer Decision.* (i) A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal within 15 business days of receipt of the hearing officer's decision with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703-696-1831, by email to [specialcomplaint@osdgc.osd.mil](mailto:specialcomplaint@osdgc.osd.mil), or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of delivery. The notice of appeal must contain the appealing party's certification that a copy of the notice of appeal has been provided to the other party by mail.

(ii) Within 30 business days of filing the notice of appeal, the appealing party shall file a written statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703-696-1831, by email to [specialcomplaint@osdgc.osd.mil](mailto:specialcomplaint@osdgc.osd.mil), or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of filing. The appealing party shall deliver a copy to the other party by mail.

(iii) The non-appealing party shall file any reply within 20 business days of receiving the appealing party's statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703-696-1831, by email to [specialcomplaint@osdgc.osd.mil](mailto:specialcomplaint@osdgc.osd.mil), or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of filing. The non-appealing party shall deliver a copy of the reply to the appealing party by mail.

(iv) Appeal filings with DOHA are complete upon transmittal. It is the burden of the appealing party to provide timely transmittal to and receipt to DOHA.

(v) The DOHA Appeal Board, shall issue a decision on all parties' appeals within 45 business days of receipt of the matter.

(vi) The determination of the DOHA Appeal Board shall be a final

administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right, in accordance with the IDEA, to bring a civil action on the matters in dispute in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(vii) No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this section before seeking judicial review of a determination.

(18) *Maintenance of Current Educational Placement.* (i) Except when a child is in an interim AES for disciplinary reasons, during the pendency of any proceeding conducted pursuant to this section, unless the school and the parents otherwise agree, the child will remain in the then current educational placement.

(ii) When the parent has appealed a decision to place a child in an interim AES, the child shall remain in the interim setting until the expiration of the prescribed period or the hearing officer makes a decision on placement, whichever occurs first, unless the parent and the school agree otherwise.

(19) *General Hearing Administration.* The Director, DOHA, shall: (i) Exercise administrative responsibility for ensuring the timeliness, fairness, and impartiality of the hearing and appeal procedures to be conducted in accordance with this section.

(ii) Appoint hearing officers from the DOHA Administrative judges who shall:

(A) Be attorneys who are active members of the bar of the highest court of a State, U.S. Commonwealth, U.S. Territory, or the District of Columbia and permitted to engage in the active practice of law, who are qualified in accordance with DoD Instruction 1442.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/144202p.pdf>).

(B) Possess the knowledge of and ability to:

(1) Understand the provisions of the IDEA and this part, and related Federal regulations and legal interpretations of those regulations by Federal courts.

(2) Conduct hearings in accordance with appropriate, standard legal practice.

(3) Render and write decisions in accordance with the requirements of this part.

(C) Be disqualified from presiding in any individual case if the hearing officer:

(1) Has a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing.

(2) Is a current employee of, or military member assigned to, DoDEA or the Military Medical Department providing services in accordance with the IDEA and this part.

(20) *Publication and Reporting of Final Decisions.* The Director, DOHA, shall ensure that hearing officer and appeal board decisions in cases arising in accordance with this section are published and indexed with all personally identifiable information redacted to protect the privacy rights of the parents who are parties in the due process hearing and the children of such parents, in accordance with 32 CFR part 310.

(21) *Civil Actions.* Any party aggrieved by the final administrative decision of a due process complaint shall have the right to file a civil action in a district court of the United States of competent jurisdiction, without regard to the amount in controversy. The party bringing the civil action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the date of the decision of the DOHA Appeal Board, to file a civil action.

(e) *DoD-CC on Early Intervention, Special Education, and Related Services*

(1) *Committee Membership.* The DoD-CC shall meet at least annually to facilitate collaboration in early intervention, special education, and related services in the Department of Defense. The Secretary of Defense shall appoint representatives to serve on the DoD-CC who shall be full-time or permanent part-time government employees or military members from: (i) USD(P&R), who shall serve as the Chair.

(ii) Secretaries of the Military Departments.

(iii) TRICARE Management Activity.

(iv) DoDEA.

(v) GC, DoD.

(2) *Responsibilities.* The responsibilities of the DoD-CC include:

(i) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their families.

(ii) Provision of a FAPE, including special education and related services, for children with disabilities who are enrolled full-time in the DoDEA school system, as specified in their IEP.

(iii) Designation of a subcommittee on compliance to:

(A) Advise and assist the USD(P&R) in the performance of his or her responsibilities.

(B) At the direction of the USD(P&R), advise and assist the Military

Departments and DoDEA in the coordination of services among providers of early intervention, special education, and related services.

(C) Monitor compliance in the provision of EIS for infants and toddlers and special education and related services for children ages 3 to 21, inclusive.

(D) Identify common concerns, facilitate coordination of effort, and forward issues requiring resolution to the USD(P&R).

(E) Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and related services through DoDEA or EIS through the Military Departments.

(F) Perform other duties as assigned by the USD(P&R), including oversight for monitoring the delivery of services consistent with the IDEA and this part.

(f) *Monitoring.*

(1) *Program Monitoring and Oversight.*

(i) The USD(P&R) shall monitor the implementation of the provisions of the IDEA and this part in the programs operated by the Department of Defense. The USD(P&R) will carry out his or her responsibilities under this section primarily through the DoD-CC.

(ii) The primary focus of monitoring shall be on:

(A) Improving educational results and functional outcomes for all children with disabilities.

(B) Ensuring the DoD programs meet the requirements of the IDEA and this part.

(iii) Monitoring shall include the following priority areas and any additional priority areas identified by the USD(P&R):

(A) Provision of a FAPE in the LRE and the delivery of early intervention services.

(B) Child-find.

(C) Program management.

(D) The use of dispute resolution including administrative complaints, due process and the mandatory resolution process, and voluntary mediation.

(E) A system of transition services.

(iv) The USD(P&R) shall develop quantifiable indicators in each of the priority areas and such qualitative indicators necessary to adequately measure performance.

(v) DoDEA and the Military Departments shall establish procedures for monitoring special services and reviewing program compliance in accordance with the requirements of this section.

(vi) By January 1 of each calendar year, the DoD-CC shall identify any

additional information required to support compliance activities that will be included in the next annual compliance report to be submitted no later than September 30 of that year.

The results of monitoring program areas described in paragraph (f)(1)(iii) of this section shall be reported in a manner that does not result in the disclosure of data identifiable to individual children.

(2) *Compliance Reporting.* The Director, DoDEA, and the Military Departments shall submit reports to the DoD-CC not later than September 30 each year that summarize the status of compliance. The reports shall:

(i) Identify procedures conducted at headquarters and at each subordinate level, including on-site visits, to evaluate compliance with the IDEA and this part.

(ii) Summarize the findings and indicate the status of program compliance.

(iii) Describe corrective actions required of the programs that did not meet the requirements of the IDEA and this part and identify the technical assistance that was or shall be provided to ensure compliance.

(iv) Include applicable data on the operation of special education and early intervention in the Department of Defense. Data must be submitted in the format required by the DoD-CC to enable the aggregation of data across components. March 31 shall be the census date for counting children for the reporting period that begins on July 1 and ends on June 30 of the following year.

(3) *School Level Reporting.* (i) The reporting requirements for school aged children (3 through 21, inclusive) with disabilities shall also include:

(A) Data to determine if significant disproportionality based on race and ethnicity is occurring with respect to:

(1) The identification of school-aged children as children with disabilities including the identification of children as children with disabilities affected by a particular impairment described in paragraph (g) of this section.

(2) The placement of these children in particular educational settings.

(3) The incidence, duration, and type of disciplinary suspensions and expulsions.

(4) Removal to an interim AES, the acts or items precipitating those removals, and the number of children with disabilities who are subject to long-term suspensions or expulsions.

(5) The number and percentage of school-aged children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are:

(i) Receiving special education and related services.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(B) The number of due process complaints requested, the number of hearings conducted, and the number of changes in placement ordered as a result of those hearings.

(C) The number of mediations held and the number of settlement agreements reached through such mediations.

(ii) For each year of age from age 16 through 21, children who stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma) or other reasons, and the reasons why those children stopped receiving special education and related services.

(4) *Early Intervention Reporting.* The reporting requirements for infants and toddlers with disabilities shall also include:

(i) Data to determine if significant disproportionality based on race, gender, and ethnicity is occurring with respect to infants and toddlers with disabilities who:

(A) Received EIS by criteria of developmental delay or a high probability of developing a delay.

(B) Stopped receiving EIS because of program completion or for other reasons.

(C) Received EIS in natural environments.

(D) Received EIS in a timely manner as defined in paragraph (a) of this section.

(ii) The number of due process complaints requested and the number of hearings conducted.

(iii) The number of mediations held and the number of settlement agreements reached through such mediations.

(5) *USD(P&R) Oversight.* (i) On behalf of the USD(P&R), the DoD-CC shall make or arrange for periodic visits, not less than annually, to selected programs to ensure the monitoring process is in place; validate the compliance data and reporting; and address select focus areas identified by the DoD-CC and priority areas identified in paragraph (f)(1) of this section. The DoD-CC may use other means in addition to periodic visits to ensure compliance with the requirements established in this part.

(ii) The DoD-CC shall identify monitoring team members to conduct monitoring activities.

(iii) For DoD-CC monitoring visits, the Secretaries of the Military Departments shall:

(A) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which they are responsible.

(B) Provide necessary travel funding and support for their respective team members.

(C) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(D) Promptly implement monitoring teams' recommendations concerning early intervention and related services for which the Secretary concerned has responsibility, including those to be furnished through an inter-Service agreement.

(iv) For DoD-CC monitoring visits, the Director, DoDEA, shall:

(A) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which he or she is responsible.

(B) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(C) Promptly implement monitoring teams' recommendations concerning special education and related services for which the DoDEA school system concerned has responsibility.

(v) The ASD(HA) shall provide technical assistance to the DoD monitoring teams when requested.

(vi) The GC, DoD shall:

(A) Provide legal counsel to the USD(P&R), and, where appropriate, to DoDEA, monitored agencies, and monitoring teams regarding monitoring activities conducted pursuant to this part.

(B) Provide advice about the legal requirements of this part and Federal law to the DoDEA school systems, military medical commanders, military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

(g) *Types of Disabilities* (1) *Autism Spectrum Disorder*. A developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age 3. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder not

otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

(2) *Deafness*. A hearing loss or deficit so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the child's educational performance adversely.

(3) *Deaf-Blindness*. A combination of hearing and visual impairments causing such severe communication, developmental, and educational problems that the child cannot be accommodated in a program specifically for the deaf or a program specifically for the blind.

(4) *Developmental Delay*. A significant discrepancy, as defined and measured in accordance with this part and confirmed by clinical observation and judgment, in the actual functioning of an infant, toddler, or child, birth through age 7, when compared with the functioning of a non-disabled infant, toddler, or child of the same chronological age in any of the following developmental areas: physical, cognitive, communication, social or emotional. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.

(i) *Significant Discrepancy*. The child is experiencing a developmental delay of two standard deviations below the mean as measured by diagnostic instruments and procedures in at least one area; a 25 percent delay in at least one developmental area on assessment instruments that yield scores in months; a developmental delay of 1.5 standard deviations below the mean as measured by diagnostic instruments and procedures in two or more areas; or a 20 percent delay in two or more developmental areas on assessment instruments that yield scores in months.

(ii) *High Probability for Developmental Delay*. An infant or toddler, birth up to age 3, with a diagnosed physical or mental condition that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of EIS. Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(5) *Emotional Disturbance*. A condition confirmed by clinical

evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance and exhibits one or more of the following characteristics:

(i) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior or feelings under normal circumstances.

(iv) A tendency to develop physical symptoms or fears associated with personal or school problems.

(v) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are emotionally disturbed.

(6) *Hearing Impairment*. An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but is not included under the definition of deafness.

(7) *Intellectual Disability*. Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior. This disability is manifested during the developmental period and adversely affects a child's educational performance.

(8) *Orthopedic Impairment*. A severe orthopedic impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contractures.

(9) *Other Health Impairment*. Limited strength, vitality, or alertness including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments may include, but are not necessarily limited to, attention deficit disorder, attention deficit hyperactivity disorder, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, or diabetes.

(10) *Specific Learning Disability*. A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest

itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. This term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

(11) *Speech or Language Impairments.* (i) Communication disorder is characterized by stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

(ii) Articulation disorder is characterized by substitutions, distortions, and/or omissions of phonemes that are not commensurate with expected developmental age norms, that are not the result of limited

English proficiency or dialect difference, and that may cause unintelligible conversational speech.

(iii) Fluency disorder is characterized by atypical rate, rhythm, repetitions, and/or secondary behaviors that interfere with communication or is inconsistent with age or development.

(iv) Language and phonological disorders are characterized by an impairment or delay in receptive or expressive language including semantics, morphology and syntax, phonology, or pragmatics. This impairment does not include students whose language problems are due to English being their second language or dialect differences.

(v) Voice disorder is characterized by abnormal pitch, intensity, resonance, duration, or quality that are inappropriate for chronological age or gender.

(12) *Traumatic Brain Injury.* An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment (or both) that

adversely affects educational performance. Includes open or closed head injuries resulting in impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries that are induced by birth trauma.

(13) *Visual Impairment, Including Blindness.* An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partial sight and blindness.

Dated: December 5, 2013.

**Aaron Siegel,**

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

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