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Contents

Federal Register
Vol. 80, No. 210
Friday, October 30, 2015

Agriculture Department
See Commodity Credit Corporation
See Forest Service
See National Agricultural Statistics Service

Army Department
NOTICES
Privacy Act; Systems of Records, 66881–66882

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66881

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66904–66905

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66905–66906

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act; Systems of Records, 66867

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 66880

Commodity Credit Corporation
NOTICES
Estimate of Peanuts and Peanut Products Available for Donation, 66866

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 66880–66881

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
New Designated Countries–Montenegro and New Zealand, 67253–67254
Removal of Cuba from the List of State Sponsors of Terrorism, 67252–67253
Requirements Relating to Supply Chain Risk, 67244–67252
Technical Amendments, 67254–67255

Defense Department
See Army Department
See Defense Acquisition Regulations System
See Engineers Corps
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66883, 66885–66886
Charter Amendments:
Department of Defense Federal Advisory Committees, 66886–66887
Privacy Act; Systems of Records, 66883–66885
TRICARE:
Young Adult Program Premium Update, 66882–66883

Education Department
RULES
Program Integrity and Improvement, 67126–67201
Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 67204–67242
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Postsecondary Student Aid Study 2015–16 Full Scale Student Data Collection, 66893
Meetings:
National Assessment Governing Board, 66891–66893

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Designation of Performance Review Board Standing Register:
Senior Executive Service Performance Review Board, 66893–66894
Senior Executive Service Performance Review Board, 66894

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66894–66895

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Glades Reservoir Water Supply Project, 66888–66889
Meetings:
Inland Waterways Users Board, 66887–66888

Environmental Protection Agency
RULES
Pesticide Tolerances:
Metaflumizone, 66795–66801
Rimsulfuron, 66801–66805
Teflubenzuron, 66805–66809
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Idaho; Interstate Transport of Ozone, 66862–66865
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Diesel Emissions Reduction Act Rebate Program, 66898–66899
Environmental Impact Statements; Availability, etc., 66898
Meetings:
Good Neighbor Environmental Board, Public Advisory Committee; Teleconference, 66899

Equal Employment Opportunity Commission

PROPOSED RULES

Genetic Information Nondiscrimination Act of 2008, 66853–66862

Federal Aviation Administration

RULES

Airworthiness Directives:
  Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Gliders, 66790–66792
Special Conditions:
  Honda Aircraft Company (Honda) Model HA–420, HondaJet; Cruise Speed Control System, 66788–66789

PROPOSED RULES

Airworthiness Directives:
  The Boeing Company Airplanes, 66841–66843

Federal Communications Commission

RULES

Assessment and Collection of Regulatory Fees for Fiscal Years 2014 and 2013; Procedures for Assessment and Collection of Regulatory Fees, 66811–66817

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66900–66903

Federal Deposit Insurance Corporation

NOTICES

Privacy Act; Systems of Records, 66982–67024
Terminations of Receiverships:
  Community Capital Bank, Jonesboro, GA, 66903–66904
  Security Bank of North Fulton, Alpharetta, GA, 66903

Federal Emergency Management Agency

RULES

Suspension of Community Eligibility, 66809–66811

NOTICES

Disaster Declarations:
  South Carolina; Amendment No. 8, 66915–66916
Flood Hazard Determinations, 66919–66924
Flood Hazard Determinations; Changes, 66916–66919
Major Disasters and Related Determinations:
  Washington, 66921

Federal Energy Regulatory Commission

RULES

Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, 67056–67123

NOTICES

Alleged Violations, 66895–66896
Combined Filings, 66895–66898
Requests Under Blanket Authorization:
  Eastern Shore Natural Gas Co., 66896–66897
Staff Attendances, 66897

Fiscal Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  ACH Vendor/Miscellaneous Payment Enrollment Form, 66971–66972

Fish and Wildlife Service

RULES

Endangered and Threatened Wildlife and Plants:
  Black-Footed Ferrets in Wyoming; Establishment of a Nonessential Experimental Population, 66821–66838

PROPOSED RULES

Injurious Wildlife Species:
  Listing 10 Freshwater Fish and 1 Crayfish, 67026–67054

NOTICES

Environmental Impact Statements; Availability, etc.:
  Delta Research Station, Sacramento, CA, 66926–66927
Final Comprehensive Conservation Plan and Environmental Impact Statements:
  Monomoy National Wildlife Refuge, Barnstable County, MA, 66928–66929
Meetings:
  North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group, 66930–66931

Food and Drug Administration

PROPOSED RULES

Guidance for Industry and Staff:
  Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products, 66850–66851
  Human Cells, Tissues, and Cellular and Tissue-Based Products From Adipose Tissue—Regulatory Considerations; Reopening Comment Period, 66849–66850
  Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Reopening Comment Period, 66844–66845
  Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing, 66845–66847
  Same Surgical Procedure Exception—Questions and Answers Regarding the Scope of the Exception; Reopening Comment Period, 66847–66848

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Guidance for Industry on Controlled Correspondence Related to Generic Drug Development, 66910
  Impact of Ad Exposure Frequency on Perception and Mental Processing of Risks and Benefit Information in Direct-to-Consumer Prescription Drug Ads, 66912
  Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patient Perceptions, 66912
Determinations that Products Were Not Withdrawn from Sale for Reasons of Safety or Effectiveness:
  TENSILON and TENSILON Preservative Free (Edrophonium Chloride) Injectable, et al., 66911–66912
Guidance for Industry and Staff:
  Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an Investigational New Drug Application, 66907–66909
  Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation, 66906–66907
Meetings:
  Clinical Trials—Assessing Safety and Efficacy for Diverse Populations, 66909–66910

Forest Service
NOTICES
Meetings:
Tongass Advisory Committee, 66866

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application/Permit for Use of Space in Public Buildings and Grounds, 66904

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66931–66932

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Designation of a Class of Employees for Addition to the Special Exposure Cohort, 66913
Performance Review Board Members, 66912–66913

Homeland Security Department
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 66925–66926

Interior Department
See Fish and Wildlife Service
See Geological Survey
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Preparer Tax Identification Number User Fee Update, 66792–66795
PROPOSED RULES
Preparer Tax Identification Number User Fee Update, 66851–66853

International Trade Administration
NOTICES
Retractions of Publications:
Final Redetermination Pursuant to Court Remand, Wheatland Tube Co. v. United States, 66867

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Barium Chloride from China, 66935
Certain Radiotherapy Systems and Treatment Planning Software, and Components Thereof, 66934–66935

Justice Department
NOTICES
Proposed Consent Decrees under the Clean Air Act, 66935

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Resource Justification Model, 66935–66936

Merit Systems Protection Board
RULES
Practices and Procedures, 66787–66788

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66866–66867

National Endowment for the Humanities
NOTICES
Meetings:
Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee, 66936–66937
National Council on the Humanities, 66937

National Foundation on the Arts and the Humanities
See National Endowment for the Humanities

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Consumer Health Information in Public Libraries User Needs Survey, 66914–66915
Generic Clearance for the Eunice Kennedy Shriver National Institute of Child Health and Human Development Data and Specimen Hub, 66913–66914

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area, 66839–66840
NOTICES
Presidential Task Force on Combating Illegal Unreported and Unregulated Fishing and Seafood Fraud Action Plan, 66867–66879

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Programmatic Clearance for NPS-Sponsored Public Surveys, 66932–66933

National Science Foundation
NOTICES
Meetings; Sunshine Act, 66937–66938

Navy Department
NOTICES
Privacy Act; Systems of Records, 66889–66891

Nuclear Regulatory Commission
NOTICES
License Amendment Applications:
Pacific Gas and Electric Company; Diablo Canyon Independent Spent Fuel Storage Installation, 66938–66941
Meetings; Sunshine Act, 66938

Personnel Management Office
RULES
Federal Long Term Care Insurance Program Eligibility Changes, 66785–66787

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage, 66817–66821

Postal Regulatory Commission
NOTICES
New Postal Products, 66941–66942

Presidential Documents
ADMINISTRATIVE ORDERS
Iran Threat Reduction and Syria Human Rights Act of 2012; Delegation of Functions and Authorities (Memorandum of October 18, 2015), 66781–66782
Iran; Joint Comprehensive Plan of Action Implementation (Memorandum of October 18, 2015), 66783–66784
Sudan; Continuation of National Emergency (Notice of October 28, 2015), 67257–67259

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Sacramento Regional County Sanitation District South County Ag Water Recycling Program, 66933–66934

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX BX, Inc., 66949–66951
NASDAQ OMX PHLX, LLC, 66955–66958
NASDAQ Stock Market, LLC, 66947–66949
New York Stock Exchange, LLC, 66942–66944
NYSE Arca, Inc., 66951–66955, 66958–66960
NYSE MKT, LLC, 66944–66947

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66961–66963
Disaster Declarations:
South Carolina; Amendment 1, 66962–66963
South Carolina; Amendment 2, 66960–66961
South Carolina; Amendment 5, 66962
Texas, 66960
Washington, 66962
Military Reservist Economic Injury Disaster Loans:
Interest Rate for First Quarter FY 2016, 66963

Social Security Administration
PROPOSED RULES
Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process; Comment Period Extention, 66843–66844
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66967–66968
Cost-of-Living Increase and Other Determinations for 2016, 66963–66967

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66968–66969
Control Exemptions:
SteelRiver Infrastructure Fund North America LP, et al.; Georgia Northeastern Railroad Co., Inc. and Blue Ridge Scenic Excursions, Inc., 66969–66970
Lease and Operation Exemptions:
Intermodal RR Transfer, LLC; JACJON Associates, 66968

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66970–66971

Treasury Department
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66972–66977

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Identification Card, 66915

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplement to VA Form, 66977–66978
Environmental Impact Statements; Availability, etc.:
Reconfiguration of VA Black Hills Health Care System, 66978–66979
Replacement Robley Rex Veterans Affairs Medical Center, Louisville, KY, 66979–66980
Meetings:
Commission on Care, 66980
National Research Advisory Council, 66979

Separate Parts In This Issue

Part II
Federal Deposit Insurance Corporation, 66982–67024

Part III
Interior Department, Fish and Wildlife Service, 67026–67054

Part IV
Energy Department, Federal Energy Regulatory Commission, 67056–67123

Part V
Education Department, 67126–67201

Part VI
Education Department, 67204–67242

Part VII
Defense Department, Defense Acquisition Regulations System, 67244–67255

Part VIII
Presidential Documents, 67257–67259

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Memorandums:
Memorandum of October 18, 2015 66781
Memorandum of October 18, 2015 66783
Notices:
Notice of October 28, 2015 67259

5 CFR

875 66785
1201 66787

14 CFR

23 66788
39 66790

Proposed Rules:

39 66841

18 CFR

35 67056

20 CFR

Proposed Rules:

404 66843
416 66843

21 CFR

Proposed Rules:

1271 (5 documents) 66844, 66845, 66847, 66849, 66850

26 CFR

300 66792

Proposed Rules:

300 66851

29 CFR

Proposed Rules:

1635 66853

34 CFR

668 (2 documents) 67126, 67204
682 67204
685 67204

40 CFR

180 (3 documents) 66795, 66801, 66805

Proposed Rules:

52 66862

44 CFR

64 66809

47 CFR

1 66811

48 CFR

201 67254
202 67244
206 67254
208 (2 documents) 67244, 67254
212 67244
213 67244
214 67244
215 (2 documents) 67244, 67254
216 67254
222 67254
225 67254
233 67244
237 67254
239 67244
244 67244
252 (4 documents) 67244, 67252, 67253, 67254

49 CFR

175 66817

50 CFR

17 66821
679 66839

Proposed Rules:

16 67026

Federal Register
Vol. 80, No. 210
Friday, October 30, 2015

Presidential Documents

Title 3—

The President

Memorandum of October 18, 2015

Delegation of Certain Functions and Authorities Under Section 213(b)(1) of the Iran Threat Reduction and Syria Human Rights Act of 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Commerce[,] the United States Trade Representative[,] the Secretary of Homeland Security[, and] the Chairman of the Board of Governors of the Federal Reserve System

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate the functions and authorities vested in the President by section 213(b)(1) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) to the Secretary of State, in consultation with: the Secretaries of the Treasury and Commerce and the United States Trade Representative; and with the Secretary of Homeland Security, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies as appropriate.

The delegation of authorities under section 213(b)(1) of the TRA to the Secretary of the Treasury contained in the Presidential Memorandum of October 9, 2012, entitled ''Delegation of Certain Functions and Authorities Under the Iran Threat Reduction and Syria Human Rights Act of 2012'' is hereby rescinded. The other provisions of that Presidential Memorandum remain in effect.

Any reference herein to provisions of any Act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provisions of law that are the same or substantially the same as such provisions.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, October 18, 2015

[FR Doc. 2015–27868
Filed 10–29–15; 8:45 am]
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Presidential Documents

Memorandum of October 18, 2015

Preparing for Implementation of the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA)

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Commerce[, and] the Secretary of Energy

Today, October 18, 2015, marks Adoption Day under the JCPOA, the day on which the JCPOA comes into effect and all JCPOA participants, including the United States, are to make the necessary arrangements and preparations for implementation of their respective JCPOA commitments.

Consistent with section 11 of Annex V of the JCPOA, the Secretary of State, acting under previously delegated authority, is taking action with respect to waivers of relevant statutory sanctions, to take effect upon confirmation by the Secretary of State that Iran has implemented the nuclear-related measures specified in sections 15.1–15.11 of Annex V of the JCPOA, as verified by the International Atomic Energy Agency (IAEA).

I hereby direct you to take all appropriate additional measures to ensure the prompt and effective implementation of the U.S. commitments set forth in the JCPOA, in accordance with U.S. law. In particular, subject to the requirements of applicable U.S. law, I hereby direct you to take all necessary steps to give effect to the U.S. commitments with respect to sanctions described in section 17 of Annex V of the JCPOA, including preparation for the termination of Executive Orders as specified in section 17.4 and the licensing of activities as set forth in section 17.5, to take effect upon confirmation by the Secretary of State that Iran has implemented the nuclear-related measures specified in sections 15.1–15.11 of Annex V of the JCPOA, as verified by the IAEA.

In discharging these responsibilities, you are directed to consult with the heads of other executive departments and agencies as may be appropriate.

The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, October 18, 2015

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Rules and Regulations

Federal Register
Vol. 80, No. 210
Friday, October 30, 2015

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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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AN05

Federal Long Term Care Insurance Program Eligibility Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Long Term Care Insurance Program (FLTCIP) regulation to expand eligibility to apply for coverage under the Program. This rule expands the definition of ''qualified relative'' to include opposite-sex domestic partners of Federal and U.S. Postal Service employees, annuitants, members of the uniformed services, and retired members of the uniformed services. In addition, this rule provides that adult children of domestic partners will be considered one of the types of individuals comprising the statutory term ''qualified relative'' who may apply for FLTCIP coverage.

DATES: Effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202) 606–0004, or by email to *Ronald.Brown@opm.gov*.

SUPPLEMENTARY INFORMATION: On November 13, 2014, OPM published proposed regulations in the **Federal Register** (79 FR 67377—67379) to (1) Expand the definition of ''qualified relative'' under 5 U.S.C. 9001(5)(D) to include both same-sex and opposite-sex domestic partners of Federal and U.S. Postal Service employees and annuitants and members and retired members of the uniformed services; (2) expand the definition of ''qualified relative'' to include adult children of domestic partners of Federal and U.S. Postal Service employees and annuitants, and members and retired members of the uniformed services; (3) allow the workforce member or his or her domestic partner to provide notice to the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions for a domestic partnership are no longer met, in which case a domestic partnership is deemed terminated; (4) require domestic partners to provide documentation to establish that they meet the criteria for domestic partnership; (5) clarify that once coverage has begun, termination of a domestic partnership does not terminate a domestic partner's insurance coverage as long as the Carrier continues to receive the required premium when due; and (6) make other technical conforming amendments to the FLTCIP rules in connection with the extension of coverage to domestic partners and to adult children of domestic partners.

Comments were requested to be received on or before January 12, 2015. After reviewing the comments received OPM is issuing the final regulation as proposed.

Analysis of and Response to Public Comments

We received three comments on the proposed rule. All commenters expressed support for the proposed rule that extends important coverage to domestic partners and to children of domestic partners under the FLTCIP. One commenter approved the wording of the proposed rule with no suggested changes and this comment is not addressed. Below, please find our response to the remaining two comments we received.

Comment: The commenter had concerns as to the wording or the implications of this expansion primarily concerning states that do not recognize domestic partnerships, and requested to know how eligibility would be treated for qualified partners in states that do not recognize domestic partnerships. The commenter requested to know whether a couple that is considered, and could register as a domestic partnership in one state would be deemed ineligible in a state that does not recognize and does not register domestic partnerships or whether this would prohibit same-sex partnerships in states that prevent same-sex marriage. This commenter also noted that the FLTCIP regulation explains that one would not be deemed eligible if related in a way that would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed and requested further clarification of how would this impact same-sex domestic partnerships in states that prevent same-sex marriage.

Response: The proposed and final regulations expand the definition of ''qualified relative'' to cover all individuals who are domestic partners (both same-sex and opposite-sex) of Federal and U.S. Postal Service employees, annuitants, members of the uniformed services, and retired members of the uniformed services no matter their state of residence. The regulation allows coverage for individuals who certify to their employing office that they meet the criteria in the regulatory definition of domestic partnership. The requirement in paragraph (v)(ii) of the definition of domestic partnership does not prevent those who reside in states that prohibit same-sex marriage to register as domestic partners. The requirement is meant to prevent those who are related by blood to certify to a domestic partnership as determined by their state of residence. This requirement already applies to same-sex domestic partners who can currently apply for coverage.

Comment: The commenter recommended that we amend the proposed rulemaking to ensure that all children of same-sex parents are eligible to access FLTCIP Benefits, regardless of their parents' ability to marry. The commenter stated that this can be achieved by redefining an eligible child to include the child of a person standing *in loco parentis,* where *in loco parentis* means those persons with day-to-day responsibilities to care for and financially support a child, and with whom a biological or legal relationship is not necessary.

Response: The proposed rule clarifies that OPM intends for children of domestic partners to be treated the same as currently eligible individuals. The eligibility of the stepchild does not depend upon the parent's ability to marry. The FLTCIP regulation provides that a ''stepchild,'' as defined in the proposed rule, may qualify for FLTCIP coverage as a qualified relative, if all eligibility requirements are met. The

stepchild must be the child of the spouse or domestic partner of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services. The stepchild(ren) may apply for coverage even if the employee does not apply, and his or her eligibility for FLTICP coverage is determined independent of the workforce member's ability to marry.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds additional groups to the list of groups eligible to apply for coverage under the FLTCIP. The FLTCIP is a voluntary, self-pay, benefits program with no Government contribution.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 875

Administrative practice and procedure, Employee benefit plans, Government contracts, Government employees, health insurance, military personnel, organization and functions, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending 5 CFR part 875 as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: 5 U.S.C. 9008.

Subpart A—Administration and General Provisions

■ 2. Section 875.101 is amended by revising the definitions of ''domestic partner'' and ''domestic partnership'' and by adding in alphabetical order a definition of ''stepchild(ren)'' to read as follows:

§ 875.101 Definitions.

* * * * *

Domestic partner is defined as a person in a domestic partnership with an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

Domestic partnership means:

(1) A committed relationship between two adults, of the opposite sex or same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of paragraphs (1)(i) through (vii) of this definition as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in paragraph (1)(viii) of this definition may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(2) You or your domestic partner must notify the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions listed in paragraphs (1)(i) through (vii) of this definition are no longer met, in which case a domestic partnership is deemed terminated. Such notification must be made as soon as possible, but in no event later than thirty calendar days after such conditions are no longer met.

* * * * *

Stepchild(ren), as set forth in section 9001 of title 5, United States Code, means the child(ren) of the spouse or domestic partner of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

* * * * *

Subpart B—Eligibility

■ 3. Section 875.208 is revised to read as follows:

§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?

You may not apply as a qualified relative if the workforce member on whom you are basing your qualified relative status died prior to the time you apply for coverage, unless you are receiving a survivor annuity as the spouse or an insurable interest annuity as the domestic partner of a deceased workforce member. In this case, your adult children and your current spouse or domestic partner are also considered to be qualified relatives.

■ 4. In § 875.213, paragraph (a) is revised to read as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of a workforce member?

(a) You may apply for coverage as a qualified relative if you are a domestic partner, as described in § 875.101 of this chapter. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements, and you must submit to full underwriting requirements. However, as explained in § 875.210 of this chapter, if you lose your status as a domestic partner, and therefore a qualified relative, before your coverage goes into effect, you are no longer eligible for FLTCIP coverage.

* * * * *

Subpart D—Coverage

■ 5. Section 875.405 is revised to read as follows:

§ 875.405 If I marry, may my new spouse apply for coverage; if I become a domestic partner, may my new domestic partner apply for coverage; and may other qualified relatives apply for coverage?

(a) *Marriage.* (1) If you are an active workforce member and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage and will be subject to the underwriting requirements in force for the spouses of active workforce members during the most recent open season. You, however, are not eligible for abbreviated underwriting because of your marriage. You, your spouse, or both you and your spouse may apply for coverage during this 60-day period, but full underwriting will be required for you. After 60 days from the date of your marriage, you and/ or your spouse may still apply for

coverage but will be subject to full underwriting.

(2) If you are an active workforce member and you have entered into a domestic partnership, your domestic partner is eligible to submit an application for coverage under this section at any time from the commencing date of your domestic partnership and will be subject to full underwriting requirements. You are not eligible for abbreviated underwriting because of your domestic partnership. You, your domestic partner, or both you and your domestic partner may apply for coverage at any time, but full underwriting will be required for both of you.

(b) *Domestic partnership.* The new spouse or domestic partner of an annuitant or retired member of the uniformed services may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

(c) *Other qualified relatives.* Other qualified relative(s) of a workforce member may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

■ 6. In § 875.412, the introductory text is revised and paragraph (e) is added to read as follows:

§ 875.412 When will my coverage terminate?

Except as provided in paragraph (e) of this section, your coverage will terminate on the earliest of the following dates:

* * * * *

(e) Termination of a domestic partnership does not terminate insurance coverage as long as the Carrier continues to receive the required premium when due.

[FR Doc. 2015–27381 Filed 10–29–15; 8:45 am]

BILLING CODE 6325–63–P

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) hereby amends its rules of practice and procedure to clarify that parties have a right to discovery under the MSPB's existing discovery procedures in compliance proceedings.

DATES: This interim final rule is effective on October 30, 2015. Submit written comments concerning this interim final rule on or before December 29, 2015.

ADDRESSES: Submit your comments concerning this interim final rule by one of the following methods and in accordance with the relevant instructions:

Email: mspb@mspb.gov. Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule. The MSPB asks that commenters use email to submit comments if possible. Submission of comments by email will assist the MSPB to process comments and speed publication of a final rule.

Fax: (202) 653–7130. Comments submitted by fax should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule.

Mail or other commercial delivery: Comments submitted by mail should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419.

Hand delivery or courier: Comments submitted by hand delivery or courier should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: As noted above, the MSPB requests that commenters use email to submit comments, if possible. All comments received will be made available online at the Board's Web site, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body of a comment.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC, 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: This interim final rule is necessary because in *Bernard* v. *Dep't of Agric.,* 788 F.3d 1365, 1367–70 (Fed. Cir. 2015), the United States Court of Appeals for the Federal Circuit held that the MSPB's regulations provide no clear guarantee that parties are authorized to undertake discovery in enforcement proceedings. This interim final rule amends the MSPB's regulations to address this holding and make clear that the parties have a right to discovery in such cases under the Board's existing discovery procedures.

Amendments Made by This Interim Final Rule

A new provision, section 1201.183(a)(9), is inserted to make clear that discovery may be undertaken in enforcement matters. This new provision makes clear that the Board's regular discovery procedures apply in enforcement matters and sets a deadline by which initial discovery requests must be filed. As in other Board cases, this deadline may be changed by the judge.

Justification for Use of Interim Final Rule

Ordinarily, the Administrative Procedure Act (APA) requires an agency to provide notice of proposed rulemaking and a period of public comment before the promulgation of a new regulation. 5 U.S.C. 553(b) and (c). However, section 553(b) of the APA specifically provides that the notice and comment requirements do not apply:

(A) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The APA also requires the publication of any substantive rule at least thirty days before its effective date, 5 U.S.C. 553(d), except where the rule is interpretive, where the rule grants an exception or relieves a restriction, or ''as

otherwise provided by the agency for good cause found and published with the rule.'' *Id.*

The Board finds that use of an immediately effective interim final rule instead of notice and comment rulemaking is appropriate here because the amendments contained herein merely reflect the decision of the Federal Circuit in *Bernard* and are necessary to avert any further confusion regarding the Board's practice and procedures governing the right to discovery in compliance cases. Under these circumstances, notice and comment rulemaking is unnecessary and not required by any public interest.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Section 1201.183 is amended by adding paragraph (a)(9) to read as follows:

§ 1201.183 Procedures for processing petitions for enforcement.

(a) * * *

(9) Discovery may be undertaken in accordance with the Board's regular discovery procedures (§§ 1201.71 through 1201.75 of this part), except that unless otherwise directed by the judge, initial discovery requests must be served no later than 15 days after the alleged noncomplying party files a response to the petition for enforcement as required under paragraph (a)(1) of this section.

* * * * *

William D. Spencer,

Clerk of the Board.

[FR Doc. 2015–27652 Filed 10–29–15; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2015–3880; Special Conditions No. 23–271–SC]

Special Conditions: Honda Aircraft Company (Honda) Model HA–420, HondaJet; Cruise Speed Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Honda Aircraft Company HA–420 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of a cruise speed control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective October 30, 2015 and are applicable on October 26, 2015.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2006, Honda Aircraft Company applied for a type certificate for their new Model HA–420. On October 10, 2013, Honda Aircraft Company requested an extension with an effective application date of October 1, 2013. This extension changed the type certification basis to amendment 23–62.

The HA–420 is a four to five passenger (depending on configuration), two crew, lightweight business jet with a 43,000-foot service ceiling and a maximum takeoff weight of 9963 pounds. The airplane is powered by two GE-Honda Aero Engines (GHAE) HF–120 turbofan engines.

The HA–420 airplane will use a cruise speed control system (CSC), which is part of the automatic flight control system (AFCS), to reduce pilot workload during cruise flight only. The intended function is automatic airplane speed control during altitude hold AFCS mode by adjustment of the engine thrust within a narrow authority band utilizing the existing engine synchronization control. The CSC system does not back drive the throttles. The command authority is limited to values used for engine synchronization and can only be engaged when the throttle is positioned in a pre-determined range typically used for cruise power. This significantly reduces the CSC authority such that failure modes of the system should be minor. The proposed CSC system functions in a manner similar to an auto-throttle system, but has significantly less authority when compared to a traditional auto-throttle system.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Honda Aircraft Company must show that the HA–420 meets the applicable provisions of part 23, as amended by amendments 23–1 through 23–62, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the HA–420 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the HA–420 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2). Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The HA–420 will incorporate the following novel or unusual design features: Cruise Speed Control system

Discussion

As defined in the summary section, this airplane makes use of a CSC system, which is a novel design for this type of airplane. The applicable airworthiness

regulations do not contain adequate or appropriate safety standards for this design feature. Mandating additional requirements, developed in part by adapting relevant portions of 14 CFR 25.1329, Automatic pilot systems, applicable to auto-throttle systems along with FAA experience with similar autothrust systems, mitigates the concerns associated with installation of the proposed CSC system.

Discussion of Comments

Notice of proposed special conditions No. 23–15–05–SC for the Honda Aircraft Company model HA–420 airplanes was published in the **Federal Register** on September 23, 2015 (80 FR 57312). No comments were received; therefore, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the HA–420. Should Honda Aircraft Company apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Honda Aircraft Company model HA–420 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of HA–420 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Honda Aircraft Company HA–420 airplanes.

1. Cruise Speed Control.

In addition to the requirements of §§ 23.143, Controllability and Maneuverability—General; 23.1309, Equipment, systems, and installations; and 23.1329, Automatic pilot system; auto throttle systems of limited authority that do not back drive the throttles and for which all failure modes are shown to be no greater than minor, the following requirements apply:

(a) Quick disengagement controls for the autothrust functions must be provided for each pilot. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to effect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of this section.

(f) The function and direction of motion of each command reference control (such as CSC) must be plainly indicated on, or adjacent to, each control, if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and, unless there are no misleading or hazardous consequences associated with its absence, auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in § 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Issued in Kansas City, Missouri, on October 26, 2015.

Mel Johnson

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27700 Filed 10–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3300; Directorate Identifier 2015–CE–024–AD; Amendment 39–18309; AD 2015–22–04]

RIN 2120–AA64

Airworthiness Directives; Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Gliders

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Models G103 TWIN ASTIR, G103 TWIN II, and G103A TWIN II ACRO gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a broken bell-crank installed in the air brake control system. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective December 4, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 4, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3300; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Fiberglas-Technik Rudolf Lindner GmbH & Co.KG, Steige 3, D–88487 Walpertshofen, Germany; phone: ++49 (0) 7353/22 43; fax: ++49 (0) 7353/30 96; email: *info@LTB-Lindner.com;* Internet: *www.ltb-lindner.com*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2015–3300.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to all Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Models G103 TWIN ASTIR, G103 TWIN II, and G103A TWIN II ACRO gliders. The NPRM was published in the **Federal Register** on August 10, 2015 (80 FR 47871). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> A report was received concerning a broken bell-crank, installed in the air brake control circuit approximately 1.4 m outside the wing root rib of a GROB G 103 Twin II sailplane. Preliminary investigation results revealed additional cases of cracks on the same part, installed in the air brake control systems of the early Twin II type design.
>
> The same bell-cranks are also installed at the same location in the control systems of other models belonging to the same type design (see list of affected models under Applicability).
>
> This condition, if not detected and corrected, could lead to failure of the air brake system, possibly resulting in reduced control of the sailplane.
>
> To address this potential unsafe condition, Fiberglas-Technik issued Technische Mitteilung (TM)/Service Bulletin (SB) TM–G08/SB–G08 (one document) and Anweisung (A)/Instructions (I) A/I–G08 (one document) to provide instructions for a check of the air brake locking forces, the inspection of the bell-crank and, if cracks are found, replacement of the bell-crank.
>
> Additionally, TM–G07/SB–G07 (one document) and A/I–G07 (one document) provide instructions for the installation of inspection openings in the wing of GROB G 103 TWIN II and G 103 A TWIN II ACRO sailplanes to facilitate the inspection of the bell-crank. (For the TWIN ASTIR and TWIN ASTIR TRAINER sailplanes, such an opening is required by LBA AD 92–190/2 (GROB SB 315–45/2.) This installation is optional for sailplanes not exceeding the original intended life limit.
>
> For the reason described above, this AD requires a check of the air brake locking forces, an inspection for cracks in the air brake control unit and, if cracks are found, replacement of the affected flight control system parts. This AD is a temporary measure and further AD action may follow.

The MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-3300-0003*.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request Credit for Certain Inspections Done Before AD Was Issued

William Tisdale requested that the AD give credit for inspections that were done following Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and Fiberglas-Technik Rudolf Lindner Anweisung (English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015, within the year before the AD being issued as meeting the initial inspection requirement for both the tension and crack inspection.

We infer that the commenter made this request in order to prevent duplication of work already done.

We agree with the commenter. In paragraph (f) of this AD, the first sentence reads, ''Unless already done, do the following actions:.'' This sentence gives compliance credit to owners/operators of the affected gliders for actions required by this AD that have already been done before the effective date of this AD, if done following the service information required by this AD.

Because the requested change is already part of this AD, we have not changed the final rule AD action based on this comment.

Request to Use Lighted Borescope To Inspect the Bell-Crank

William Tisdale requested the use of a lighted borescope from either the wing rib root or access through the spoiler box push rod opening to inspect the bell-crank.

We infer that the commenter wants us to incorporate into the AD an allowance to use a lighted borescope to do the inspection of the bell-crank installed in the air brake control system.

We agree with the commenter about using a lighted borescope for the inspection from the wing rib root as it is already allowed in Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and Fiberglas-Technik Rudolf Lindner Anweisung (English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015. In the service information it states, ''This inspection is done using an endoscope or small camera working

through the wing root rib or using a mirror when working through an inspecting opening.'' An endoscope consists of an optical system with a high intensity light source and is sometimes referred to as a borescope.

We disagree with the commenter with using a lighted borescope to do the inspection by accessing the area through the spoiler box push rod opening since this procedure is not specified in the required service information. The commenter may request an alternative method of compliance (AMOC) for this process. The request, including all substantiating data, may be submitted following 14 CFR 39.19 as specified in paragraph (g)(1) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 47871, August 10, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 47871, August 10, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and Fiberglas-Technik Rudolf Lindner Anweisung/(English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015. The service information describes procedures for inspecting the air brake locking forces; inspecting the bell-crank; and, if cracks are found during the inspections, replacing the bell-crank. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Interim Action

We consider this AD interim action. The design approval holder is working toward a terminating action for the repetitive inspections. We may take further AD action in the future.

Costs of Compliance

We estimate that this AD will affect 106 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $18,020, or $170 per product.

In addition, we estimate that any necessary follow-on actions will be as follows:

- Replacement of bell-crank will take about 5 work-hours per product. Required parts will cost about $566 for a total of $991 per product.
- Installation of optional inspection openings will take about 15 work-hours per product. Required parts will cost about $1,004 for a total of $2,279 per product.

We have no way of determining the number of products that may need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3300; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2015–22–04 Fiberglas-Technik Rudolf Lindner GmbH & Co. KG: Amendment 38–18309; Docket No. FAA–2015–3300; Directorate Identifier 2015–CE–024–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 4, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Models G103 TWIN ASTIR, G103 TWIN II, and G103A TWIN II ACRO gliders, all manufacturer serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a broken bell-crank installed in the air brake control system. We are issuing this AD to detect and correct a broken bell-crank which could lead to failure of the air brake system, possibly resulting in reduced control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 30 days after December 4, 2015 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 12 months, inspect the locking forces of the air brake control unit, and, if any discrepancy is found, before further flight, correct the locking forces. Do the inspection and correction of any discrepancy following the instructions of Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and Fiberglas-Technik Rudolf Lindner Anweisung (English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015.

Note 1 to paragraph (f)(1) of this AD: This service information contains German to English translation. The European Aviation Safety Agency (EASA) used the English translation in referencing the document. For enforceability purposes, we will refer to the Fiberglas-Technik Rudolf Lindner service information as it appears on the document.

(2) Within 60 days after December 4, 2015 (the effective date of this AD), inspect the bell-crank installed in the air brake control system, and, if any cracks are found, before further flight, replace the bell-crank with a serviceable part. Do the inspection and replacement following the instructions of Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and Fiberglas-Technik Rudolf Lindner Anweisung (English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015.

Note 2 to paragraph (f)(2) of this AD: In the lower wing surface inspection, openings near the bell-crank may be installed to simplify the inspection and make a possible replacement of the bell-crank possible. This optional installation is described in GROB Luft Und Raumfahrt Service Bulletin 315–45/2, dated December 21, 1995; and Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G07), Edition April 24, 2015.

(3) Within 30 days after replacing a bell-crank as required by paragraph (f)(2) of this AD or within the next 30 days after December 4, 2015 (the effective date of this AD), whichever occurs later, report the inspection results of the removed bell-crank to Fiberglas-Technik Rudolf Lindner GmbH & Co. KG. You may find contact information for Fiberglas-Technik Rudolf Lindner GmbH & Co. KG in paragraph (h) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0116, dated June 24, 2015; GROB Luft Und Raumfahrt Service Bulletin 315–45/2, dated December 21, 1995; and Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G07), Edition April 24, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-3300-0003*.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G08), Edition April 24, 2015; and

(ii) Fiberglas-Technik Rudolf Lindner Anweisung (English translation: Instructions), (A/I–G08), Ausgabe (English translation: Edition) April 24, 2015.

(3) For Fiberglas-Technik Rudolf Lindner GmbH & Co. KG service information identified in this AD, contact Fiberglas-Technik Rudolf Lindner GmbH & Co. KG, Steige 3, D–88487 Walpertshofen, Germany; phone: ++49 (0) 7353/22 43; fax: ++49 (0) 7353/30 96; email: *info@LTB-Lindner.com;* Internet: *http://www.ltb-lindner.com*.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3300.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri on October 22, 2015.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27440 Filed 10–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[T.D. 9742]

RIN 1545–BN03

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the user fee to apply for or renew a preparer tax identification number (PTIN) and affect individuals who apply for or renew a PTIN. The Independent Offices Appropriations Act of 1952 authorizes the charging of user fees. The text of the temporary regulations also serves as the text of the proposed regulations (REG–121496–15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on October 30, 2015.

Applicability Date: For date of applicability, see paragraph (d) of these temporary regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations, Hollie M. Marx at (202) 317–6844; concerning cost methodology, Eva J. Williams at (202) 803–9728.

SUPPLEMENTARY INFORMATION:

Background

The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993) (OMB Circular A–25).

Under OMB Circular A–25, federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the special benefit. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the direct and indirect costs of providing the service, unless the Office of Management and Budget grants an exception. OMB Circular A–25 provides that agencies are to review user fees biennially and update them as necessary.

PTIN Requirement

Section 6109(a)(4) of the Internal Revenue Code authorizes the Secretary to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. On September 30, 2010, the Treasury Department and IRS published final regulations under section 6109 (REG–134235–08) in the **Federal Register** (TD 9501) (75 FR 60315) (PTIN regulations) to provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The PTIN regulations require a tax return preparer who prepares or who assists in preparing all or substantially all of a tax return or claim for refund after December 31, 2010 to have a PTIN. The PTIN regulations also state that the IRS will set forth in forms, instructions or other appropriate guidance PTIN application and renewal procedures, including the payment of a user fee. The PTIN regulations further state that the IRS may conduct a Federal tax compliance check on an individual who applies for or renews a PTIN.

In accordance with section 1.6109–2(d) of the PTIN regulations, the IRS has set forth application and renewal procedures in Form W–12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal,* and the Form W–12 Instructions. Individuals may also apply for or renew a PTIN and pay the user fee online at *irs.gov/ptin.* The annual PTIN application and renewal period generally begins in the fall (on October 15 in previous years) of the year preceding the filing season to which the PTIN relates. A third-party vendor processes applications to obtain or renew a PTIN and charges a reasonable fee that is separate from the user fee charged by the government.

Requiring the use of PTINs improves tax administration and tax compliance and benefits tax return preparers by allowing them to provide an identifying number on the return that is not an SSN. Requiring the use of PTINs enables the IRS to better collect and track data on tax return preparers, including the number of persons who prepare returns, the qualifications of those who prepare returns, and the number of returns each person prepares. PTIN use allows the IRS to more easily identify and communicate with tax return preparers who make errors on returns, which benefits tax return preparers by improving compliance and therefore reducing the number of client returns that are examined. The PTIN also enables the IRS to more easily locate and review returns prepared by a tax return preparer when instances of misconduct or potential misconduct are detected, which aids tax administration and compliance. These aids to tax administration and compliance in turn benefit taxpayers and tax return preparers by working to reduce preparer error and misconduct.

Section 1.6109–2(d) states that only individuals authorized to practice before the IRS under 31 U.S.C. 330 are eligible to obtain a PTIN. Under section 1.6109–2(h), the IRS may prescribe in forms, instructions, or other appropriate guidance exceptions to the requirements of the PTIN regulations, including the requirement that an individual must be authorized to practice before the IRS to be eligible to receive a PTIN. On December 30, 2010, the IRS released Notice 2011–6 (2011–3 IRB 315 (Jan. 17, 2011)), which stated that, until December 31, 2013, a provisional PTIN could be renewed upon proper application and payment of the applicable user fee, even if the individual holding the provisional PTIN was not authorized to practice before the IRS.

On June 3, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 32286) amendments to Treasury Department Circular No. 230 (31 CFR part 10), to regulate all tax return preparers under 31 U.S.C. 330. In *Loving* v. *IRS,* 917 F.Supp.2d 67 (D.D.C. 2013), the district court concluded that the IRS and Treasury Department lacked statutory authority to regulate tax return preparation as practice before the IRS under 31 U.S.C. 330 and enjoined the IRS and Treasury from enforcing the regulation of registered tax return preparers. The district court subsequently modified its order to clarify that the IRS's authority to require that tax return preparers obtain a PTIN is unaffected by the injunction. *Loving* v. *IRS,* 920 F.Supp.2d 108, 109 (D.D.C. 2013) (stating ''Congress has specifically authorized the PTIN scheme by statute . . . [and that] scheme, therefore, does not fall within the scope of the injunction and may proceed as promulgated.''). The United States Court of Appeals for the District of Columbia Circuit affirmed the district court's decision and order for injunction. *Loving* v. *IRS,* 742 F.3d 1013 (D.C. Cir. 2014).

PTIN User Fee

Final regulations (REG–139343–08) published in the **Federal Register** (TD 9503) (75 FR 60316) (PTIN user fee regulations) on September 30, 2010, established a $50 user fee to apply for

or renew a PTIN. The $50 user fee was based on an annual PTIN renewal period and an estimate that 1.2 million individuals would be applying for or renewing a PTIN each year.

The IRS and Treasury Department determined that a $50 user fee to apply for or renew a PTIN would recover the full direct and indirect costs that the government incurs to administer the PTIN application and renewal process. The initial determination of a $50 annual fee took into account certain costs that the IRS ascertained it would incur to provide the special benefit associated with the provision of PTINs. As explained in the PTIN user fee regulations, the initial projected costs included the development and maintenance of the IRS information technology system that would interface with a third-party vendor, the development and maintenance of internal applications that would have the capacity to process and administer the anticipated increase in PTIN applications, customer service support activities, which included Web site development and maintenance and call center staffing to respond to questions regarding PTIN usage and renewal. The $50 user fee was also determined to recover costs for personnel, administrative, and management support needed to evaluate and address tax compliance issues of individuals applying for and renewing a PTIN, to investigate and address conduct and suitability issues, and otherwise support and enforce the programs that required an individual to apply for and renew a PTIN.

The vendor's fee, currently set at $14.25 for new applications and $13 for renewal applications, is paid directly to the vendor and covers the costs incurred by the vendor to process applications and renewals. The agency user fee and the vendor fee pay for different aspects of the PTIN program, each of which is essential to the program.

Explanation of Provisions

Pursuant to the guidelines in OMB Circular A–25, the IRS has re-calculated its cost of providing services under the PTIN application and renewal process. The IRS has determined that the full cost of administering the PTIN program going forward has been reduced from $50 to $33 per application or renewal. Individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation are required to have a PTIN. The ability to prepare tax returns and claims for refund for compensation is a special benefit, for which the IRS may charge a user fee to recover the full costs of providing the special benefit.

The amount of the user fee is $33 for both initial PTIN applications and renewals because the activities the IRS is required to perform to issue a new PTIN or renew an existing PTIN are the same. Pursuant to the authority granted in section 6109(c), the IRS has determined that it requires certain information to assign (or, in the case of a renewal, re-assign) a PTIN to an individual. The required information is set forth in the Form W–12 and Form W–12 Instructions.

The PTIN user fee is based on direct costs of the PTIN program, which include staffing and contract-related costs for activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and IRS complaint activities; information technology and contract-related expenses; and communications. The PTIN user fee also takes into account various indirect program costs, including management and support costs.

The reduction in the fee amount is attributable to several factors, which include the reduced number of PTIN holders (approximately 700,000) from the number originally projected (1.2 million) in 2010, which reduced associated costs; the absorption of certain development costs in the early years of the program; and the fact that certain activities that would have been required to regulate registered tax return preparers will not be performed. In particular, the determination of the user fee no longer includes expenses for personnel who perform functions primarily related to continuing education and testing for registered tax return preparers. Additionally, expenses related to personnel who perform continuing education and testing for enrolled agents and enrolled retirement plan agents were also removed from the user fee.

Individuals who apply for or renew a PTIN will continue to pay a fee directly to a third-party vendor, which is separate from the user fee described in this Treasury decision. The vendor fee is increasing from $14.25 for original applications and $13 for renewal applications to $17 for original applications and $17 for renewal applications.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

Historically, the annual PTIN application and renewal period has begun on October 15. For 2015, the date has been postponed to November 1. There is insufficient time before November 1 to provide an opportunity for notice and public comment and issue a final regulation prior to that date. To enable the reduced fee amount to be in effect for PTINs issued or renewed by tax return preparers preparing returns in 2016, the IRS and Treasury find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). It would be impracticable, unnecessary, and contrary to the public interest to continue to charge the current fee when the IRS has determined pursuant to the biennial review conducted under OMB Circular A–25 that the fee should be reduced going forward. The IRS and Treasury Department will consider public comments submitted in response to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** and will promulgate a final rule after considering those comments.

For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), this Treasury decision has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Hollie M. Marx, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.13 is amended by removing and reserving paragraph (b) to read as follows:

§ 300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) *Fee.* [Reserved]

* * * * *

■ **Par. 3.** Section 300.13T is added to read as follows:

§ 300.13T Fee for obtaining a preparer tax identification number.

(a) [Reserved]

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is $33 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) [Reserved]

(d) *Effective/applicability date.* This section will be applicable for all PTIN applications filed on or after November 1, 2015.

Karen M. Schiller,

Acting Deputy Commissioner for Services and Enforcement.

Approved: October 16, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–27789 Filed 10–29–15; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0607; FRL–9934–88]

Metaflumizone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of the insecticide metaflumizone in or on the raw agricultural commodities citrus (crop group 10–10) at 0.04 parts per million (ppm); pome fruit (crop group 11–10) at 0.04 ppm; stone fruit (crop group 12–12) at 0.04 ppm; and tree nut (crop group 14–12) at 0.04 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 30, 2015. Objections and requests for hearings must be received on or before December 29, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0607, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111), *e.g.,* agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), *e.g.,* cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), *e.g.,* agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), *e.g.,* agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0607 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk on or before December 29, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0607, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Background and Statutory Findings

In the **Federal Register** of December 17, 2014 (79 FR 75107) (FRL–9918–90), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #4F8286) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.657 be amended by establishing a tolerance for the combined residues of the

insecticide metaflumizone (2-[2-(4-cyanophenyl)-1-[3-(trifluoromethyl)phenyl]ethylidene]-N-[4-(trifluoromethoxy)phenyl] hydrazinecarboxamide; E and Z isomers) and its metabolite 4-{2-oxo-2-[3-(trifluoromethyl)phenyl]ethyl}-benzonitrile, in or on the raw agricultural commodities citrus (crop group 10–10) at 0.04 ppm; pome fruit (crop group 11–10) at 0.04 ppm; stone fruit (crop group 12–12) at 0.04 ppm; and tree nut (crop group 14–12) at 0.04 ppm. In addition, that petition requested removal of the existing tolerances for metaflumizone in or on fruit, citrus group 10 at 0.04 ppm and nut, tree, group 14 at 0.04 ppm upon establishment of the petitioned-for tolerances. That document included a summary of the petition prepared by BASF Corporation, the registrant. There were no substantive comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Hematotoxicity (toxicity of the blood) was the primary toxic effect of concern following subchronic or chronic oral exposures to metaflumizone. Splenic extramedullary hematopoiesis, increased hemosiderin, and anemia were the most common hematotoxic effects reported after repeated oral dosing with metaflumizone. Chronic oral (gavage) exposures to dogs resulted in slight decreases in mean corpuscular hemoglobin concentration and total hemoglobin, leading to increased plasma bilirubin, increased urinary urobilinogen, and increased hemosiderin in the liver. In a chronic toxicity/carcinogenicity study in mice, anemia was observed in the form of increased hemosiderin in the spleen, increased mean absolute reticulocyte count, decreased mean corpuscular volume, and mean corpuscular hemoglobin.

The postulated pesticidal mode of action of metaflumizone involves inhibition of sodium channels in target insect species; however, in mammals (rats), there were only clinical signs of neurotoxicity (*i.e.,* piloerection and body temperature variations) with no neuropathology in the presence of systemic toxicity (*e.g.,* recumbency and poor general state) following acute or repeated exposures. Similarly, several immune system organs seem to be affected following metaflumizone administration via the oral, dermal, and inhalation routes (*e.g.,* the presence of macrophages in the thymus, lymphocyte necrosis in the mesenteric lymph nodes, and diffuse atrophy of the mandibular); however, there was no evidence of any functional deficits at the highest dose tested in a recently submitted and reviewed guideline immunotoxicity study. Therefore, the clinical neurotoxicity signs and the effects on the immune system organs following metaflumizone administration are likely to be secondary to the hematotoxic effects.

Metaflumizone induced an increased incidence of a missing subclavian artery at a relatively high dose that also caused severe maternal toxicity (*e.g.,* late term abortions) in the developmental toxicity study in rabbits. There was no evidence (quantitative or qualitative) of increased susceptibility following *in utero* exposures to rats or rabbit and following pre- and post natal exposures. There was no evidence that metaflumizone is genotoxic and carcinogenicity studies with mice and rabbits were negative.

Specific information on the studies received and the nature of the adverse effects caused by metaflumizone as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled, ''Metaflumizone: Human Health Risk Assessment in Support of Section 3 Registrations for Application of Metaflumizone to Pome Fruit (crop group (CG) 11–10) and Stone Fruit (CG 12–12); Updating the CG Designation for Citrus to 10–10 and Tree Nuts to 14–12; and Permitting Aerial Application to Citrus Fruits, Grapes, Tree Nuts, and Nurseries Containing Field-/Container-Grown Nonbearing Stone and Pome Fruit Trees'' in docket ID number EPA–HQ–OPP–2014–0607.

B. Toxicological Endpoints of Departure/Levels of Concern

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

A summary of the toxicological endpoints for metaflumizone used for human risk assessment is provided below:

i. *Acute Dietary Endpoint (General population including infants and children).* An acute dietary endpoint was not established for this population group since an endpoint of concern (effect) attributable to a single dose was not identified in the database. Studies considered for this endpoint included the acute neurotoxicity study for which a LOAEL was not observed.

ii. *Acute Dietary Endpoint (Females 13–49 years old).* This endpoint was established based on a developmental effect observed in the rabbit developmental toxicity study that can be potentially due to a single dose of metaflumizone. This effect consisted of an increased incidence of an absent subclavian artery in the offspring at the LOAEL of 300 milligram/kilogram (mg/kg) body weight/day (bw/day) metaflumizone (NOAEL = 100 mg/kg bw/day). The rat developmental toxicity study was also considered for this endpoint; however, no developmental effects were observed in this study at the highest dose tested of 120 mg/kg bw/day metaflumizone. A combined uncertainty factor (UF) of 300 was applied to account for interspecies (10x) and intraspecies (10x) extrapolation. A Food Quality Protection Act (FQPA) safety factor (SF) of 3x was retained because the rabbit developmental toxicity study was performed via oral gavage dosing. In an absorption study submitted by the petitioner, dietary exposures (which are more relevant for human exposures) exhibited an approximately 2-fold greater absorption into the systemic circulation than oral gavage dosing and, thus, can potentially lead to toxicity at 2-fold lower levels of exposure. Thus, aPAD for females 13–49 years old is estimated to be 0.33 mg/kg bw/day.

iii. *Chronic Dietary Endpoint.* This endpoint was established based on results of a chronic toxicity study with dogs via capsule administration. The effects at the LOAEL of 30 mg/kg bw/day (NOAEL = 12 mg/kg bw/day), consisted of reduced general health condition, slight to severe ataxia, recumbency, and severe salivation, decreases in mean cell hemoglobin concentration (MCHC) and total hemoglobin (Hb) and increased bilirubin, increased urobilinogen, and increased hemosiderin in the liver. A combined UF of 300 was applied to account for interspecies (10x) and intraspecies (10x) extrapolation and an FQPA SF of 3x was retained for the higher absorption observed in dietary exposures to metaflumizone (see above). Thus, the chronic population adjusted dose (cPAD) is estimated to be 0.040 mg/kg bw/day.

iv. *Incidental Oral (Short- and Intermediate-Term).* This endpoint was selected on the basis of the maternal effects observed in the rat two-generation reproductive toxicity study at the LOAEL of 50 mg/kg bw/day metaflumizone (NOAEL = 20 mg/kg bw/day). Maternal toxicity consisted of poor general health and body weight deficits which were also associated with improper nursing behavior. Similar effects were also noted in a developmental neurotoxicity study (gavage, range finding) also considered for this endpoint. In this study, poor maternal health was also observed at the LOAEL of 120 mg/kg bw/day metaflumizone (NOAEL = 80 mg/kg bw/day). Both studies considered for this endpoint achieved a clear maternal NOAEL for the offspring effects, but the NOAEL of 20 mg/kg bw/day for the 2-generation reproductive toxicity study is considered more protective. A combined UF of 300 was applied to account for interspecies (10x) and intraspecies (10x) extrapolation, and an FQPA SF of 3x to account for the 2-fold greater absorption observed in dietary versus oral gavage exposures (see above). The LOC is 300.

v. *Dermal (Short- and Intermediate-Term).* This endpoint was based on a rat 90-day dermal toxicity study in which deficits in body weight, body-weight gain, and food consumption (in males and females); anogenital smearing; increased macrophages in the thymus; lymphocyte necrosis in the mesenteric lymph nodes; diffuse atrophy of the mandibular lymph node; and increased hemosiderin in the liver (females only) were observed at the LOAEL of 300 mg/kg bw/day (NOAEL = 100 mg/kg bw/day). The LOC, for both occupational and residential exposure is 100, based on a combined UF of 100 for interspecies (10x) and in intraspecies (10x) extrapolation. The FQPA SF is reduced to 1x for this exposure scenario because there is no residual uncertainty concerning potential effects on infants and children.

vi. *Inhalation (Short- and Intermediate-Term).* There is a 28-day inhalation study that is adequate for both exposure durations. There was no NOAEL identified for female rats. At the LOAEL of 0.10 milligrams per Liter (mg/L) metaflumizone (NOAEL = 0.03 mg/L), histopathology of the nasal tissues, lungs, thymus, prostate, and adrenal cortex was observed in males. The LOAEL of 0.03 mg/L identified in females resulted in lymphocyte necrosis in the mesenteric lymph node.

The methods and dosimetry equations described in EPA's reference concentration (RfC) guidance (1994) are suited for calculating human-equivalent concentrations (HECs) based on the inhalation toxicity point of departure (NOAEL, LOAEL, or Benchmark Dose Lower Confidence Limit (BMDL)) for use in MOE calculations. The regional-deposited-dose ratio (RDDR), which accounts for the particulate diameter (mass median aerodynamic diameter (MMAD) and geometric standard deviation (σg) of aerosols), can be used to estimate the different dose fractions deposited along the respiratory tract. The RDDR accounts for interspecies differences in ventilation and respiratory-tract surface areas. Thus, the RDDR can be used to adjust an observed inhalation particulate exposure of an animal to the predicted inhalation exposure for a human. For the subchronic inhalation toxicity study with metaflumizone, an RDDR was estimated at 2.81 based on systemic effects (lymphocyte necrosis in the mesenteric lymph node) in females at the LOAEL of 0.03 mg/L (no NOAEL established), and a MMAD of 1.7 micrometer (µm) and σg of 2.7.

For this action with metaflumizone, residential and occupational handler scenarios are being assessed. For residential handler scenarios, 2-hr/day inhalation exposures are assumed. Adjustment to shorter exposure scenarios relative to the animal toxicity study duration (*e.g.,* 2 hr. residential exposures) should *only* be made if there is time-course information that would support a shorter time-frame. Since there is no such information available for metaflumizone, the unadjusted animal POD was used to assess the shorter duration residential handler exposures. Thus, the HEC equals the LOAEL from the study, and was calculated to be 0.084 mg/L. The FQPA SF of 10x is being retained for lack of a NOAEL for females in the study. The standard interspecies extrapolation UF can be reduced from 10x to 3x due to the HEC calculation accounting for pharmacokinetic (not pharmacodynamic) interspecies differences. The intraspecies UF remains at 10x. Therefore, the LOC for this scenario is 300, which includes the FQPA SF of 10x, interspecies (3x), and intraspecies (10x) extrapolation.

C. Exposure Assessment

1. *Dietary Exposure from Food and Feed Uses.* Tolerances have been established in (40 CFR 180.657) for the residues of metaflumizone, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from metaflumizone in food as follows:

i. *Acute Exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for metaflumizone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA assumed tolerance-level residues. It was further assumed that 100% of crops with the requested uses of metaflumizone were treated.

ii. *Chronic Exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues. It was further assumed that 100% of crops with the requested uses of metaflumizone were treated.

iii. *Cancer.* EPA has concluded that metaflumizone does not pose a cancer risk to humans; therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated Residue and Percent Crop Treated (PCT) Information.* EPA did not use anticipated residue or PCT information in the dietary assessment for metaflumizone. Tolerance-level residues and 100 PCT were assumed for all food commodities.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of metaflumizone for acute exposures are estimated to be 1.03 parts per billion (ppb) for surface water and 1.09×10^{-12} ppb for ground water. The EDWCs of metaflumizone for chronic exposures for non-cancer chronic assessments are estimated to be 0.487 ppb for surface water and 1.09×10^{-12} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.03 ppb was used to assess the contribution of drinking water. For chronic dietary risk assessment, the water concentration value of 0.487 ppb was used to assess the contribution of drinking water.

3. *From Non-Dietary Exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Metaflumizone is currently registered for the following uses that could result in residential exposures: As a fire ant bait for application to lawns, landscapes, golf courses, and other non-cropland area; and as a fly bait for use around industrial buildings, commercial facilities, agricultural structures/premises, and recreational facilities/areas.

EPA assessed residential exposure using the following assumptions: Fire ant bait applications to home lawns are expected to result in short-term, residential handler exposure to adults. Fire ant bait applications to lawns and golf-courses are expected to result in short-term, post-application dermal exposure to adults, children 11 to <16 years old, and children 1 to <2 years old, and incident oral exposure for children 1 to <2 years old. For the fly bait product, residential handler exposure is not expected, because the product is applied by commercial handlers. The fly bait product is expected to result in short-term, post-application dermal exposure to adults, children 11 to <16 years old, and children 1 to <2 years old, and incident oral exposure for children 1 to <2 years old.

For residential handlers, dermal and inhalation exposures are combined since the endpoints are similar for these routes. For children (1- to <2-year-olds), post-application hand-to-mouth and dermal exposures are combined. Since the LOCs for the dermal, inhalation and incidental oral routes are not the same (dermal LOC = 100, inhalation LOC = 300, and incidental oral LOC = 300), these routes were combined using the aggregate risk index approach. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to metaflumizone and any other substances and metaflumizone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action; therefore, EPA has not assumed that metaflumizone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA SFs, as appropriate.

2. *Prenatal and Postnatal Sensitivity.* There is no evidence for increased qualitative or quantitative sensitivity/susceptibility resulting from pre- and/or postnatal exposures. In the rat prenatal development toxicity study, there was no offspring toxicity reported at any

dose tested whereas in the rabbit study a maltransformation based on an absent subclavian artery was noted to occur only in the presence of severe maternal toxicity. Similarly, offspring mortality in the 2-generation reproductive toxicity occurred only in the presence of a poor maternal health state. Thus, there is no evidence for increased susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced from 10x to 3x for all oral exposure scenarios; retained at 10x for inhalation exposure scenarios; and reduced to 1x for dermal exposures. That decision is based on the following findings:

i. The toxicological database for metaflumizone is adequate for risk assessment and FQPA SF evaluation. Several studies are available for evaluating the safety of metaflumizone, although differences in dose administration and a missing NOAEL warrant retention of various FQPA safety factors in this instance.

Dietary exposures exhibited an approximately 2-fold greater absorption into the systemic circulation as compared to oral gavage and, thus, can potentially lead to toxicity at 2-fold lower levels of exposure. Applying an FQPA SF of 3x for all oral exposure scenarios is adequate to protect against any greater toxicity that might occur in dietary exposures (absorption was noted to be 2-fold greater in dietary versus oral gavage studies).

The FQPA SF of 10x is being retained for inhalation exposure scenarios for the use of a LOAEL instead of a NOAEL (no NOAEL achieved) for histopathological lesions consisting of lymphocyte necrosis in the mesenteric lymph node. The FQPA SF of 10x is adequate because the effect (lymphocyte necrosis) is considered minimal to slight and does not exhibit a strong dose dependence.

The FQPA SF for dermal exposure scenarios is being reduced from 10x to 1x since there is a route-specific study with a clear NOAEL.

ii. There is no indication that metaflumizone directly affects the nervous system. Clinical signs indicative of neurotoxicity were observed in several studies; however, these signs were generally observed in the presence of poor animal health (*e.g.,* reduced general health condition, loss of body weight, or death). In addition, no neuropathology was observed in any study with metaflumizone. There is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There are no residual concerns or uncertainties for increased sensitivity/susceptibility in developing animals resulting from pre- and/or postnatal exposure.

iv. There are no residual uncertainties identified in the exposure databases. The dietary analyses assumed tolerance-level residues, 100 PCT, and modeled drinking water estimates. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to metaflumizone in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by metaflumizone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists. Based on the proposed/registered uses and since inhalation, dermal, and incidental oral exposures can be combined, aggregate acute (dietary), short-term (dietary, incidental oral, and/or dermal), and chronic (dietary) assessments were conducted.

1. *Acute Risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute aggregate exposure assessment consists of exposure from only food and water. The acute dietary exposure assessment for females 13–49 years old was 1.6% of the aPAD and therefore, does not exceed EPA's LOC.

2. *Chronic Risk.* Since there are no registered/proposed uses that result in chronic residential exposure, the chronic aggregate exposure assessment consists of exposure from only food and water. The chronic dietary exposure estimate was ≤7.2% the cPAD and therefore, does not exceed EPA's LOC.

3. *Short-Term Risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaflumizone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to metaflumizone. Since the LOC and toxicological points of departure for the short-term dermal and oral routes of exposure differ, the aggregate risk index method was used to determine aggregate risk (aggregate risk indices >1 are not a risk of concern).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate risk indices of 42 for the general population, and 22 for children 1–2 years old. Because EPA's LOC for metaflumizone is an aggregate risk index less than 1, the aggregate risks are not of concern.

4. *Intermediate-Term Risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaflumizone is not currently registered for uses that could result in intermediate-term residential exposure; however, since the PODs for the short- and intermediate-term durations are the same for metaflumizone, the short-term aggregate assessment is protective of intermediate-term exposures.

5. *Aggregate Cancer Risk for U.S. Population.* As discussed in Unit III.A., EPA does not expect metaflumizone to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

EPA previously reviewed method validation and independent laboratory validation (ILV) studies for the BASF high-performance liquid chromatography (HPLC)/mass spectrometry (MS)/MS analytical method 531/0 and forwarded the method to FDA for tolerance enforcement (46264221.der; D308394, T. Bloem, 30-Nov-2005; D328915, T. Bloem, 17-May-2006). It is noted that following method validation, BASF incorporated several minor modifications to method 531/0 with this revised method specified as 531/1 (method 531/1 is the current enforcement method). Based on the similarities of the proposed crops to that currently registered and since the grape, citrus, and tree nut residue samples

were analyzed using a method very similar to the current enforcement method and since adequate validation data were submitted, EPA concludes that the current enforcement method is suitable for enforcement of the tolerances recommended herein. The limit of quantitation (LOQ) is 0.01 ppm for metaflumizone (E and Z isomers) and 0.018 ppm for M320I04 (expressed in parent equivalents).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex MRLs are not established in/on the relevant crops for metaflumizone; therefore, harmonization is not an issue for this petition.

V. Conclusion

Therefore, the tolerance is established for the combined residues of the insecticide metaflumizone (2-[2-(4-cyanophenyl)-1-[3-(trifluoromethyl)phenyl]ethylidene]-*N*-[4-(trifluoromethoxy)phenyl] hydrazinecarboxamide; E and Z isomers), in or on the following raw agricultural commodities: Fruit, citrus, group 10–10 at 0.04 ppm; fruit, pome, group 11–10 at 0.04 ppm; fruit, stone, group 12–12 at 0.04 ppm; and nut, tree, group 14–12 at 0.04 ppm. The existing tolerances for fruit, citrus, group 10 at 0.04 ppm and for nut, tree, group 14 at 0.04 ppm are removed because they are superseded by the tolerances being established in this action.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 21, 2015.

G. Jeffrey Herndon,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.657 is amended as follows:

■ a. Remove the entries for ''Fruit, citrus, group 10'' and ''Nut, tree, group 14'' from the table in paragraph (a).

■ b. Add alphabetically the following list of commodities to the table in paragraph (a).

The additions read as follows:

§ 180.657 Metaflumizone; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Fruit, citrus, group 10–10	0.04
Fruit, pome, group 11–10	0.04
Fruit, stone, group 12–12	0.04
* * * * *	
Nut, tree, group 14–12	0.04
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[FR Doc. 2015–27788 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0035; FRL–9912–31]

Rimsulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of rimsulfuron in or on sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover. E.I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 30, 2015. Objections and requests for hearings must be received on or before December 29, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0035, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the Office of Chemical Safety and Pollution Prevention (OCSPP) test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0035 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 29, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0035, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 19, 2013 (78 FR 43115) (FRL–9392–9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8131) by E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. The petition requested that 40 CFR 180.478 be amended by establishing tolerances for residues of the herbicide rimsulfuron, N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on sorghum, forage; sorghum, grain; and sorghum, stover at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed commodity definitions. EPA has also revised the chemical name nomenclature for rimsulfuron in the tolerance expression. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

A. Toxicological Profile

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

Rimsulfuron has low acute toxicity by oral, dermal, and inhalation routes of exposure. It is moderately irritating to the eye, non-irritating to the skin, and is not a skin sensitizer. In subchronic and chronic toxicity studies in rats, toxic effects included decreased body weight, decreased body weight gain, increased relative liver and absolute kidney weights, and diuresis. In the subchronic study in mice, increased red blood cell and hemoglobin, and decreased body weight gain and food efficiency were observed. In the chronic study in mice, decreased body weight, increased incidences of dilation and cysts in the glandular stomach, and degeneration of the testicular artery and tunica albuginea were observed. In the subchronic study in dogs, diuresis was indicated by urinary volume, platelet concentration, and kidney weights accompanied by decreased urinary osmolality. In the chronic study in dogs, increased absolute liver and kidney weights, increased seminiferous tubule degeneration, and increased number of spermatid giant cells present in epididymides in males were observed. In both sexes, decreases in mean body weights and body weight gain, and increases in serum cholesterol levels, alkaline phosphatase activity, absolute liver weight, relative liver, and relative kidney weights were observed.

In the developmental toxicity study in rats, no toxicity was seen at the highest dose tested. In the developmental toxicity study in rabbits (in which both maternal and fetal death were observed), and in the 2-generation reproduction toxicity study in rats (in which decreases in body weight gain were observed in both parents and offspring), developmental and offspring effects were seen in the presence of maternal/systemic toxicity at the same dose levels.

In the acute and subchronic neurotoxicity studies, no evidence of neurotoxicity was observed. In the immunotoxicity study, no evidence of immunosuppression was observed. In the mutagenicity studies, no evidence of clastogenicity or mutagenicity was observed. Rimsulfuron is classified as ''Not Likely to be Carcinogenic to Humans'' based on lack of evidence of carcinogenicity in rats and mice studies.

Specific information on the studies received and the nature of the adverse effects caused by rimsulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Rimsulfuron. Human Health Risk Assessment for Proposed Section 3 Use on Acetolactase Synthase (ALS) Tolerant Grain Sorghum'' at pp. 27–32 in docket ID number EPA–HQ–OPP–2013–0035.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for rimsulfuron used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR RIMSULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	No endpoint attributable to a single dose identified.		
Chronic dietary (All populations)	NOAEL = 11.8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.118 mg/kg/day. cPAD = 0.118 mg/kg/day	Combined Chronic/Carcinogenicity—Rat. LOAEL = 121 mg/kg/day in males; 568 mg/kg/day in females . (NOAEL = 163 mg/kg/day in females), based on decreased body weight gains and liver effects.

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to rimsulfuron, EPA considered exposure under the petitioned-for tolerances as well as all existing rimsulfuron tolerances in 40 CFR 180.478. EPA assessed dietary exposures from rimsulfuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for rimsulfuron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed that rimsulfuron residues were present at tolerance levels in all commodities for which tolerances have been established or proposed, and that 100% of those crops were treated with rimsulfuron.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that rimsulfuron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM–GW), the estimated drinking water concentrations (EDWCs) of rimsulfuron for chronic exposures for non-cancer assessments are estimated to be 0.38 parts per billion (ppb) for surface water and 19.7 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 19.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Rimsulfuron is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has not found rimsulfuron to share a common mechanism of toxicity with any other substances, and rimsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that rimsulfuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* In the developmental toxicity study in rats, no developmental toxicity was seen at the highest dose tested. In the developmental toxicity study in rabbits and in the 2-generation reproductive study in rats, developmental and offspring toxicity were seen only in the presence of maternal/systemic toxicity. Consequently, there is no evidence of quantitative or qualitative increased susceptibility following pre- and/or postnatal exposures.

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

i. The toxicity database for rimsulfuron is complete.

ii. There is no indication that rimsulfuron is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional Uncertainty Factor (UF) to account for neurotoxicity.

iii. There is no evidence that rimsulfuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to rimsulfuron in drinking water. These assessments will not underestimate the exposure and risks posed by rimsulfuron.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified

and no acute dietary endpoint was selected. Therefore, rimsulfuron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to rimsulfuron from food and water will utilize 1.4% of the cPAD for all infants less than 1-year old, the population group receiving the greatest exposure. There are no residential uses for rimsulfuron.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Because there are no residential uses, no short- or intermediate-term aggregate risk assessments were conducted.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, rimsulfuron is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method DuPont-32277, a high performance liquid chromatography with tandem mass spectroscopy (HPLC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

C. Revisions to Petitioned-For Tolerances

The Agency is revising the proposed commodity definitions of ''sorghum, forage'' to ''sorghum, grain, forage''; ''sorghum, grain'' to ''sorghum, grain, grain''; and ''sorghum, stover'' to ''sorghum, grain, stover''. The tolerance expression is revised to reflect the preferred chemical name for rimsulfuron using CAS nomenclature.

V. Conclusion

Therefore, tolerances are established for residues of rimsulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 21, 2015.

G. Jeffrey Herndon,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.478, revise paragraph (a) and add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide rimsulfuron, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only rimsulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide.

Commodity	Parts per million
* * * *	*
Sorghum, grain, forage	0.01
Sorghum, grain, grain	0.01
Sorghum, grain, stover	0.01
* * * *	*

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[FR Doc. 2015–27790 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0600; FRL–9933–25]

Teflubenzuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of teflubenzuron [*N*-[[(3,5-dichloro-2,4-difluorophenyl)amino]carbonyl]-2,6-difluorobenzamide] in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 30, 2015. Objections and requests for hearings must be received on or before December 29, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0600, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

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A. Does this action apply to me?

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0600 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 29, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of January 28, 2015 (80 FR 4525) (FRL–9921–55), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8230) by BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide teflubenzuron, in or on apple at 0.5 parts per million (ppm); apple, wet pomace at 0.8 ppm; broccoli at 0.2 ppm; cattle, meat byproducts at 0.01 ppm; cattle, muscle at 0.01 ppm; cauliflower at 0.01 ppm; citrus, oil at 90 ppm; coffee, bean, green at 0.6 ppm; corn,

field, grain at 0.01 ppm; corn, field, refined oil at 0.02 ppm; egg at 0.01 ppm; goat, meat byproducts at 0.01 ppm; goat, muscle at 0.01 ppm; horse, meat byproducts at 0.01 ppm; horse, muscle at 0.01 ppm; lemon at 0.9 ppm; mango at 1.5 ppm; melon, at 0.3 ppm; milk at 0.01 ppm; orange at 0.6 ppm; papaya at 0.4 ppm; pineapple at 0.8 ppm; pork, muscle at 0.01 ppm; pork, meat byproducts at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; poultry, muscle at 0.01 ppm; sheep, meat byproducts at 0.01 ppm; sheep, muscle at 0.01 ppm; soybean, hulls at 0.4 ppm; soybean, seed at 0.05 ppm; sugarcane, cane at 0.01 ppm; sunflower, seed at 0.3 ppm; tomato at 1.5 ppm; and tomato, paste at 5 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* No tolerance-related comments were submitted. Based upon review of the data supporting the petition, EPA has edited tolerance levels for some food commodities, and declined to grant tolerances for others. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Exposure of animals to teflubenzuron has shown no evidence of neurotoxicity, immunotoxicity, or genotoxicity. It is categorized as having low acute lethality by oral, dermal and inhalation routes of exposure. It is not a dermal sensitizer or eye irritant. In all species tested, hepatotoxicity was indicated. The liver is the primary target organ for teflubenzuron. In the mouse, which is the most sensitive species compared to the rat and the dog, liver adenomas were observed following chronic exposure. Increased enzyme release and numerous microscopic indicators of liver injury (diffuse hypertrophy, disseminated single-cell necrosis, patchy glycogen storage, Kupffer cell proliferation, phagocytic foci, lipofuscin accumulation and centrilobular fatty change) were observed in all species exposed to teflubenzuron.

The 2-generation reproductive study shows evidence of increased quantitative offspring susceptibility. There were no effects of teflubenzuron exposure on the parental generation, but effects on offspring consisted of decreased F_2 litter weights and increased incidence of unilateral dilatation of the renal pelvis in F_1 offspring. There is no evidence of increased fetal susceptibility in either the rat or rabbit developmental studies.

Because rare liver tumors were observed only in male mice and there was no evidence of carcinogenicity from teflubenzuron in female mice or in male or female rats, the Agency is using a non-linear approach (*i.e.* reference dose (RfD)) to account for the observed carcinogenicity that could result from exposure to teflubenzuron. Moreover, there is no concern for mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by teflubenzuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Teflubenzuron: Human Health Risk Assessment'' at pp. 4, 13, 21, and 22 in docket ID number EPA–HQ–OPP–2014–0600.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for teflubenzuron used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEFLUBENZURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established.		
Chronic dietary (All populations)	NOAEL = 2.1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.021 mg/kg/day. cPAD = 0.021 mg/kg/day	Carcinogenicity (mouse) LOAEL = 10.5 mg/kg/day based on increased microscopic lesions in the liver (diffuse hypertrophy, centrilobular single-cell necrosis, patchy glycogen storage, Kupffer cell proliferation, phagocytic foci, and centrilobular fatty change) associated with increased relative liver weight.
Cancer (Oral, dermal, inhalation).	The Agency is using a non-linear approach (*i.e.,* RfD) that will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to teflubenzuron.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to teflubenzuron, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from teflubenzuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for teflubenzuron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed teflubenzuron residues are present in all commodities at tolerance levels and that 100% of all crops are treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a non-linear RfD approach is appropriate for assessing cancer risk to teflubenzuron. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii. *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for teflubenzuron. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Because there are no domestic agricultural or residential uses registered or proposed for teflubenzuron, there will be no exposure in drinking water; therefore, a drinking water assessment is not necessary.

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

Teflubenzuron is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found teflubenzuron to share a common mechanism of toxicity with any other substances, and teflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that teflubenzuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The rat 2-generation reproductive study showed evidence of increased quantitative offspring susceptibility to teflubenzuron. While there were no parental effects, adverse offspring effects were observed and consisted of decreased F_2 litter weights and increased incidence of unilateral dilatation of the renal pelvis in F_1 offspring. There were no effects of teflubenzuron in the developmental rat study up to the highest dose tested. In the developmental rabbit study, maternal effects were observed at the limit dose and were consistent with liver toxicity; no fetal effects were observed.

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

i. The toxicity database for teflubenzuron is complete for assessing the safety of tolerances for which there is no associated U.S. pesticide registration.

ii. There is no indication that teflubenzuron is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. As discussed in Unit III.D.2., there is evidence of quantitative susceptibility in the rat in the 2-generation reproductive study. There is no residual concern or uncertainty regarding these effects as the study established a clear NOAEL and LOAEL. Moreover, the Agency is using a lower POD in its assessment, which will be protective of these effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. There are no drinking water or residential exposures as there are no U.S. registrations of pesticides containing teflubenzuron. These assessments will not underestimate the exposure and risks posed by teflubenzuron.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, teflubenzuron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to teflubenzuron from food and water will utilize 50% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for teflubenzuron.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Teflubenzuron is for use on imported commodities only, no residential exposure or chronic exposure from water is expected. Because no short-term adverse effect was identified, teflubenzuron is not expected to pose a short-term risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, teflubenzuron is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the results of the chronic assessment, EPA concludes that teflubenzuron will not pose a cancer risk for the U.S. population.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner submitted a high-performance liquid chromatography method with tandem mass-spectrometry detection (LC/MS/MS) analytical method, BASF Method L0160/01, for analysis of residues of teflubenzuron in/on dry and oily crop commodities. The method has been adequately validated by the petitioner as well as by an independent laboratory, and was also adequately radio validated using weathered samples obtained from metabolism studies. In addition, the Quechers multi residue method (MRM) is considered suitable for the analysis of teflubenzuron in fruits and vegetables.

Adequate enforcement methodology (high-performance liquid chromatography with tandem mass spectrometry) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established a MRL for teflubenzuron in or on pome fruit at 1.0 ppm. The U.S. tolerance being established for residues of teflubenzuron on apples is harmonized with this value.

C. Revisions to Petitioned-For Tolerances

The petition requested tolerances for several livestock commodities (cattle, meat byproducts; cattle, muscle; egg; goat, meat byproducts; goat, muscle; horse, meat byproducts; horse, muscle; milk; pork, meat byproducts; pork, muscle; poultry, meat byproducts; poultry, muscle; sheep, meat byproducts; and sheep, muscle.) Based on the results of livestock feeding studies, EPA is not establishing tolerances for these commodities because there is no expectation of finite residues in livestock commodities. The tolerance proposal for apple, wet pomace is not being established because the commodity is not likely to be imported. The petitioned-for tolerance for tomato, paste is not being established because concentration of residues is not expected above the tolerance established for tomato (1.5 ppm); the tolerance for tomato will be adequate to cover any residues in tomato paste.

In the case of apple, EPA is establishing a higher tolerance (from 0.5 ppm to 1.0 ppm) to harmonize with the established Codex MRL. Based on EPA's methods for calculating residue levels on processed commodities, EPA is establishing a higher tolerance for citrus, oil (90 ppm to 100 ppm) and a lower tolerance for soybean, hulls (0.4 ppm to 0.15 ppm) than what was requested. Using the Organization for Economic Cooperation and Development (OECD) calculation procedures, EPA is establishing a higher tolerance for papaya tolerance (0.4 ppm to 0.5 ppm) and a lower tolerance for the lemon (0.90 ppm to 0.80 ppm) than was requested.

In addition, EPA is adding significant figures to tolerance levels in accordance with EPA policy for the following commodities: Broccoli; coffee, bean,

green; melon, subgroup 9A; orange; pineapple; and sunflower, seed. EPA is also revising the commodity term ''corn, field'' to ''corn, field, grain'' to be consistent with the food and feed commodity vocabulary used for tolerances. Finally, EPA is establishing a tolerance for ''melon, subgroup 9A'' instead of ''melon'' as requested because the regulatory definition of ''melon'' includes all commodities listed under ''melon, subgroup 9A.''

V. Conclusion

Therefore, tolerances are established for residues of teflubenzuron, in or on apple at 1.0 ppm; broccoli at 0.20 ppm; cauliflower at 0.01 ppm; citrus, oil at 100 ppm; coffee, bean, green at 0.60 ppm; corn, field, grain at 0.01 ppm; corn, field, refined oil at 0.02 ppm; lemon at 0.80 ppm; mango at 1.5 ppm; melon, subgroup 9A at 0.30 ppm; orange at 0.60 ppm; papaya at 0.50 ppm; pineapple at 0.80 ppm; soybean, seed at 0.05 ppm; soybean, hulls at 0.15 ppm; sugarcane, cane at 0.01 ppm; sunflower, seed at 0.30 ppm; and tomato at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 20, 2015.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.687 to subpart C to read as follows:

§ 180.687 Teflubenzuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide teflubenzuron, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only teflubenzuron (*N*-[[(3,5-dichloro-2,4-difluorophenyl)amino]carbonyl]-2,6-difluorobenzamide).

Commodity	Parts per million
Apple [1]	1.0
Broccoli [1]	0.20
Cauliflower [1]	0.01
Citrus, oil [1]	100
Coffee, bean, green [1]	0.60
Corn, field, grain [1]	0.01
Corn, field, refined oil [1]	0.02
Lemon [1]	0.80
Mango [1]	1.5
Melon, subgroup 9A [1]	0.30
Orange [1]	0.60
Papaya [1]	0.50
Pineapple [1]	0.80
Soybean, seed [1]	0.05
Soybean, hulls [1]	0.15
Sugarcane, cane [1]	0.01
Sunflower, seed [1]	0.30
Tomato [1]	1.5

[1] There are no U.S. registrations as of October 30, 2015.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2015–27593 Filed 10–29–15; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–8407]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under

the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Bret Gates, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4133.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Vermont:				
Arlington, Town of, Bennington County	500012	August 5, 1975, Emerg; July 17, 1986, Reg; December 2, 2015, Susp.	Dec. 2, 2015	Dec. 2, 2015.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Dorset, Town of, Bennington County	500014	July 29, 1975, Emerg; August 1, 1986, Reg; December 2, 2015, Susp.	......do	Do.
Landgrove, Town of, Bennington County.	500178	December 23, 1975, Emerg; September 18, 1985, Reg; December 2, 2015, Susp.	......do	Do.
Manchester, Town of, Bennington County.	500015	January 28, 1972, Emerg; April 3, 1978, Reg; December 2, 2015, Susp.	......do	Do.
Manchester, Village of, Bennington County.	500179	September 10, 1975, Emerg; August 19, 1986, Reg; December 2, 2015, Susp.	......do	Do.
Peru, Town of, Bennington County	500181	August 12, 2013, Emerg; N/A, Reg; December 2, 2015, Susp.	......do	Do.
Pownal, Town of, Bennington County	500016	July 9, 1975, Emerg; April 1, 1980, Reg; December 2, 2015, Susp.	......do	Do.
Rupert, Town of, Bennington County	500018	May 27, 1975, Emerg; September 18, 1985, Reg; December 2, 2015, Susp.	......do	Do.
Sandgate, Town of, Bennington County	500183	June 5, 2013, Emerg; N/A, Reg; December 2, 2015, Susp.	......do	Do.
Shaftsbury, Town of, Bennington County.	500019	July 2, 1975, Emerg; September 18, 1985, Reg; December 2, 2015, Susp.	......do	Do.
Stamford, Town of, Bennington County	500020	June 10, 1975, Emerg; July 3, 1978, Reg; December 2, 2015, Susp.	......do	Do.
Sunderland, Town of, Bennington County.	500021	September 10, 1975, Emerg; November 1, 1985, Reg; December 2, 2015, Susp.	......do	Do.
Winhall, Town of, Bennington County	500022	September 10, 1975, Emerg; June 19, 1989, Reg; December 2, 2015, Susp.	......do	Do.
Woodford, Town of, Bennington County	500023	November 13, 1975, Emerg; September 18, 1985, Reg; December 2, 2015, Susp.	......do	Do.
Region III				
Virginia:				
Isle of Wight County, Unincorporated Areas.	510303	May 20, 1975, Emerg; August 19, 1991, Reg; December 2, 2015, Susp.	......do	Do.
Smithfield, Town of, Isle of Wight County.	510081	September 24, 1974, Emerg; December 5, 1990, Reg; December 2, 2015, Susp.	......do	Do.
Windsor, Town of, Isle of Wight County	510295	August 11, 1988, Emerg; August 1, 1990, Reg; December 2, 2015, Susp.	......do	Do.
Region V				
Illinois:				
Galena, City of, Jo Daviess County	175168	August 27, 1971, Emerg; July 20, 1973, Reg; December 2, 2015, Susp.	......do	Do.
Jo Daviess County, Unincorporated Areas	170902	April 19, 1979, Emerg; January 18, 1984, Reg; December 2, 2015, Susp.	......do	Do.
Region IX				
Arizona: Fort Mojave Indian Tribe, Mohave County.	040133	January 31, 1992, Emerg; March 18, 1996, Reg; December 2, 2015, Susp.	......do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 20, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–27750 Filed 10–29–15; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 12–201; 13–140; 14–92; FCC 14–88]

Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends language in its rules to reflect that regulatory fees must be paid electronically, and can no longer be paid by check or money order. Electronic payments are not only cost-effective, they are also efficient and can provide an electronic ''paper trail''. As a result, in an effort to improve efficiency, the Commission discontinued the practice of paying regulatory fees with a check or money order.

DATES: Effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: These revisions to the Commission's rules were first published as a proposed rule along with the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Notice of Proposed Rulemaking,* 79 FR 37982, July 3, 2014, but it is now being published as a final rule.

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),[1] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission submitted the PRA documents to the Office of Management and Budget (OMB) under section 3507(d) of the PRA, and obtained OMB approval on May 30, 2014. Consequently, the requirement to obtain OMB approval for new and modified information collection has been fulfilled. Finally, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission sought previous comment on how it might further reduce the information collection burden on small businesses with fewer than 25 employees.

C. Congressional Review Act

3. The Commission will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

II. Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[2] an Initial Regulatory Flexibility Analysis (IRFA) was included in the *FY 2014 Notice of Proposed Rulemaking* to which this Order was attached.[3] The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.[4]

A. Need for, and Objectives of, the Order

5. In this Order, the Commission amends language to sections 1.1112, 1.1158, 1.1161, and 1.1164 of its rules to note that regulatory fee payments must be made electronically, and payments by check and/or money order will no longer be accepted.

6. In various places within the Code of Federal Regulations (CFR), the Commission specifies the method of payment that can be made for various types of fees (*e.g.* regulatory fees, application fees, auction fees, etc.). The basic method of fee payment has historically been by check or money order, but in more recent times, electronic forms of payment (*e.g.* credit card, ACH Debit, and wire transfer) have dominated the payment process. Electronic payments are not only cost-effective, they are also efficient and can provide an electronic ''paper trail''. As a result, in an effort to improve efficiency, the Commission discontinued the practice of paying regulatory fees with a check or money order. This *Order* amends the Commission's rules to state that payment of regulatory fees must be electronic and checks and/or money orders will no longer be accepted as a form of payment.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

7. None.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8] Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[9]

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''[10] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[11] Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with less than 1,000 employees.[12] Thus, under this size standard, the majority of firms in this industry can be considered small.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[2] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, and Procedures for Assessment and Collection of Regulatory Fees,* Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14–92, 13–140, and 12–201, 29 FCC Rcd 6417 (2014) (*FY 2014 NPRM*).

[4] 5 U.S.C. 604.

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[8] 15 U.S.C. 632.

[9] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.*

[10] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[11] *See* 13 CFR 120.201, NAICS Code 517110.

[12] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[13] According to Commission data, census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.[14] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

11. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[15] According to Commission data, 3,188 firms operated in that year. Of this total, 3,144 operated with fewer than 1,000 employees.[16] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[17] Of this total, an estimated 1,006 have 1,500 or fewer employees.[18]

12. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.[20] Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[21] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[22] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[23] Also, 72 carriers have reported that they are Other Local Service Providers.[24] Of this total, 70 have 1,500 or fewer employees.[25] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the rules adopted.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[26] U.S. Census data for 2007 indicates that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.[27] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[28] Of this total, an estimated 317 have 1,500 or fewer employees.[29] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules adopted.

14. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.[30] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[31] U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.[32] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[33] All 193 carriers have 1,500 or fewer employees.[34] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

15. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[35] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000

[13] 13 CFR 121.201, NAICS code 517110.

[14] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[15] 13 CFR 121.201, NAICS code 517110.

[16] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[17] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[18] Id.

[19] 13 CFR 121.201, NAICS code 517110.

[20] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[21] *See Trends in Telephone Service,* at Table 5.3.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] 13 CFR 121.201, NAICS code 517110.

[27] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[28] *See Trends in Telephone Service,* at Table 5.3.

[29] *Id.*

[30] *http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[31] 13 CFR 121.201, NAICS code 517911.

[32] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[33] *See Trends in Telephone Service,* at Table 5.3.

[34] *Id.*

[35] 13 CFR 121.201, NAICS code 517911.

employees.[36] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[37] Of this total, an estimated 211 have 1,500 or fewer employees.[38] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

16. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[39] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.[40] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[41] Of this total, an estimated 857 have 1,500 or fewer employees.[42] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules adopted.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[43] Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.[44] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[45] Of these, an estimated 279 have 1,500 or fewer employees.[46] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted.

18. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[47] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[48] Of this total, an estimated 261 have 1,500 or fewer employees.[49] Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. *Cable Television and Other Subscription Programming.*[50] Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers. That category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [51] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[52] Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.[53] Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

20. *Cable Companies and Systems.* The Commission has developed its own

[36] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[37] *See Trends in Telephone Service,* at Table 5.3.

[38] *Id.*

[39] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[40] *Id.*

[41] *Trends in Telephone Service, at* Table 5.3.

[42] *Id.*

[43] 13 CFR 121.201, NAICS code 517110.

[44] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.*

[45] *Trends in Telephone Service,* at Table 5.3.

[46] *Id.*

[47] NAICS Code 517210. *See http://www.census.gov/cgi-bin/ssd/naics/naiscsrch.*

[48] *Trends in Telephone Service,* at Table 5.3

[49] *Id.*

[50] In 2014, ''Cable and Other Subscription Programming,'' NAICS Code 515210, replaced a prior category, now obsolete, which was called ''Cable and Other Program Distribution.'' Cable and Other Program Distribution, prior to 2014, was placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between ''Cable and Other Subscription Programming'' and ''Cable and other Program Distribution,'' we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of $38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *FY 2015 NPRM.* Second, the data available under the size standard of $38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. The data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of $38.5 million or less. *See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table.*

[51] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition), (Full definition stated in paragraph 6 of this IRFA) available at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[52] 13 CFR 121.201, NAICS code 517110.

[53] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US-51SSSZ5&prodType=Table.*

small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[54] Industry data indicate that there are currently 4,600 active cable systems in the United States.[55] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[56] In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[57] Current Commission records show 4,600 cable systems nationwide.[58] Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[59] Thus, under this standard as well, we estimate that most cable systems are small entities.

21. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [60] There are approximately 52,403,705 cable video subscribers in the United States today.[61] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[62] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[63] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[64] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[65] The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less.[66] For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than $25 million.[67] Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the rules adopted can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

23. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[68]

25. This *Order* does not adopt any new reporting requirements. Therefore no adverse economic impact on small entities will be sustained based on reporting requirements. There will be a regulatory fee instituted on DBS providers due to the adoption of a new fee category, but we anticipate that the two primary DBS companies required to pay these fees are not small entities. Similarly, a new regulatory fee for Responsible Organizations (Resp. Org) has also been instituted in FY 2015 for the toll free number fee category that was previously adopted—the fee rate adopted is 12 cents per year. This is not a new reporting requirement, and should not have any adverse economic impact on small Resp. Org. entities because they are able to recover these assessed fees from their customers.

26. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. For example, beginning in FY 2015 the Commission has increased the *de minimis* threshold from under $10 to $500 (the total of all regulatory fees), which will impact many small entities that pay regulatory fees for ITSP, paging, cellular, cable, and Low Power Television/FM Translators. Historically, many of these small entities have been late in making their fee payments to the Commission by the due date. This increase in the *de minimis* threshold to $500 will relieve regulatees both financially and administratively. Finally, regulatees may also seek waivers or other relief on the basis of financial hardship. *See* 47 CFR 1.1166.

[54] 47 CFR 76.901(e).

[55] August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations And Licensing System (COALS). See *www/fcc.gov/coals*.

[56] *See* SNL KAGAN at *Https://snl.cominteractiveX top cable MSOs aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc*.

[57] 47 CFR 76.901(c).

[58] *See* footnote 2, supra.

[59] August 5, 2015 report from the Media Bureau based on its research in COALS. *See www.fcc.gov/coals*.

[60] 47 CFR 901 (f) and notes ff. 1, 2, and 3.

[61] *See* SNL KAGAN at *htpps://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx*.

[62] 47.901(f) and notes ff. 1, 2, and 3.

[63] *See* SNL KAGAN at *www.snl.com/Interactivex/TopCable* MSOs.aspx.

[64] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[65] *http://www.census.gov/cgi-bin/ssssd/naics/naicsrch*.

[66] 13 CFR 121.201; NAICS Code 517919.

[67] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table*.

[68] 5 U.S.C. 603(c)(1) through(c)(4).

F. Federal Rules That May Duplicate, Overlap, or Conflict

27. None.

III. Ordering Clauses

28. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Order* IS HEREBY ADOPTED.

29. IT IS FURTHER ORDERED that this *Order* SHALL BE EFFECTIVE November 30, 2015.

30. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.1112 is amended by revising paragraphs (a) and (b), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), and by adding new paragraph (e) to read as follows:

§ 1.1112 Form of payment.

(a) Annual and multiple year regulatory fees must be paid electronically as described in paragraph (e) of this section. Fee payments, other than annual and multiple year regulatory fee payments, should be in the form of a check, cashier's check, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (*i.e.,* checks with a third party as maker or endorser) will not be accepted.

(1) Although payments (other than annual and multiple year regulatory fee payments) may be submitted in the form of a check, cashier's check, or money order, payors of these fees are encouraged to submit these payments electronically under the procedures described in paragraph (e) of this section.

(2) Specific procedures for electronic payments are announced in Bureau/Office fee filing guides.

(3) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing.

(4) To insure proper credit, applicants making wire transfer payments must follow the instructions set out in the appropriate Bureau Office fee filing guide.

(b) Applicants are required to submit one payment instrument (check, cashier's check, or money order) and FCC Form 159 with each application or filing; multiple payment instruments for a single application or filing are not permitted. A separate Fee Form (FCC Form 159) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

* * * * *

(e) Annual and multiple year regulatory fee payments shall be submitted by online ACH payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission. No other credit card is acceptable. Any other form of payment for regulatory fees (*e.g.,* paper checks) will be rejected and sent back to the payor.

* * * * *

■ 3. Section 1.1158 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1.1158 Form of payment for regulatory fees.

Any annual and multiple year regulatory fee payment must be submitted by online Automatic Clearing House (ACH) payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission. No other credit card is acceptable. Any other form of payment for annual and multiple year regulatory fees (*e.g.,* paper checks, cash) will be rejected and sent back to the payor. The Commission will not be responsible for cash, under any circumstances, sent through the mail.

(a) Payors making wire transfer payments must submit an accompanying FCC Form 159–E via facsimile.

* * * * *

■ 4. Section 1.1161 is amended by revising paragraph (a) to read as follows:

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing for which an annual or multiple year regulatory fee is required to accompany the application or filing will be conditioned upon final payment of the current or delinquent regulatory fees. Current annual and multiple year regulatory fees must be paid electronically as described in § 1.1112(e). For all other fees, (*e.g., application fees, delinquent regulatory fees*) final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, cashier's check, or money order is drawn. Electronic payments are considered timely when a wire transfer was received by the Commission's bank no later than 6:00 p.m. on the due date; confirmation to pay.gov that a credit card payment was successful no later than 11:59 p.m. (EST) on the due date; or confirmation an ACH was credited no later than 11:59 p.m. (EST) on the due date.

* * * * *

■ 5. Section 1.1164 is amended by revising the introductory text to read as follows:

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

Electronic payments are considered timely when a wire transfer was received by the Commission's bank no later than 6:00 p.m. on the due date; confirmation to pay.gov that a credit card payment was successful no later

than 11:59 p.m. (EST) on the due date; or confirmation an ACH was credited no later than 11:59 p.m. (EST) on the due date. In instances where a non-annual regulatory payment (*i.e.,* delinquent payment) is made by check, cashier's check, or money order, a timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. Where a non-annual regulatory fee payment is made by check, cashier's check, or money order, a timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or the Managing Director. Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner.

* * * * *

[FR Doc. 2015–27630 Filed 10–29–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 175

[Docket No. PHMSA–2015–0165]

RIN 2137–AF12

Hazardous Materials: Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Interim final rule.

SUMMARY: PHMSA is issuing an interim final rule to prohibit passengers and crewmembers from carrying battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems) in checked baggage and prohibit passengers and crewmembers from charging the devices and/or batteries on board the aircraft. These devices may continue to be carried in carry-on baggage. This action is consistent with a similar action taken by the International Civil Aviation Organization (ICAO) that incorporated this restriction into the 2015–2016 Edition of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air by way of an addendum and is necessary to address an immediate safety risk. This interim final rule does not impact the existing rules on the transport of lithium batteries or other portable electronic devices that are transported for personal use in a passenger's checked or carry-on baggage.

Because the actions taken in this interim final rule address a public safety risk, PHMSA finds that good cause exists to amend the regulations without advance notice and opportunity for public comment. For the reasons described below, public notice is impracticable, unnecessary, and contrary to the public interest. PHMSA encourages persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We will consider all comments received on or before the closing date for comments. We will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

DATES: *Effective Date:* The effective date of these amendments is November 6, 2015.

Comments: Comments must be received by November 30, 2015.

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

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Fax:* 1–202–493–2251.
3. *Mail:* Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
4. *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2015–0165 or RIN 2137–AF12 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Kevin A. Leary, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

A battery-powered portable electronic smoking device (e-cigarette), also called an e-cig, a personal vaporizer or electronic nicotine delivery system, is a battery-powered device that simulates tobacco smoking. E-cigarettes contain a liquid, an atomizer or heating element, and a battery. When an e-cigarette is operated by a user, the heating element vaporizes the liquid. Many e-cigarettes are designed to look like traditional cigarettes, but they are also made to look like cigars, pipes, and even everyday products such as pens. The use of e-cigarettes has been rising substantially and e-cigarettes have increasingly become a common item in passenger baggage. Airline passengers and crewmembers are currently permitted to carry these devices under the provisions for portable electronic devices contained in 49 CFR 175.10(a)(18). However, the provisions for portable electronic devices do not adequately address the safety risks posed by e-cigarettes, which include a heating element as a function of their design.

Recent fire incidents involving e-cigarettes in checked baggage, along with actions taken by the Federal Aviation Administration (FAA) and ICAO, highlight the need for PHMSA to take prompt action to address this issue.

On August 9, 2014, at Boston's Logan Airport, an e-cigarette contained in a passenger's checked bag in the cargo hold of a passenger aircraft caused a fire that forced an evacuation of the aircraft. An airline ramp agent noticed smoke coming from the bag. The bag was removed from the aircraft cargo compartment and investigators determined the source of the fire was an e-cigarette, which continued to burn after it was removed from the bag. Air carrier personnel extinguished the fire. Massport Fire responded and ensured the fire was no longer burning. The fire

burned a hole approximately 4 inches in diameter in the outer pocket of the bag. Passengers were deplaned as a precaution.

On January 4, 2015, at Los Angeles International Airport, a checked bag that arrived late and missed its connecting flight was found to be on fire in a baggage area. Emergency responders attributed the fire to an overheated e-cigarette inside the bag.

These incidents have shown that e-cigarettes can overheat and cause fires when the heating element is accidentally activated or turned on. This danger may be exacerbated by the growing trend of users modifying and rebuilding their reusable e-cigarette devices and swapping components, which may include the use of batteries, heating elements, and electronic components not original to the manufactured e-cigarette.

An October 2014 report from the U.S. Fire Administration [1] identified at least 25 incidents of explosion and fire involving e-cigarettes between 2009 and 2014. Many of these incidents occurred while the device was charging and resulted in the ignition of nearby combustible materials. This report highlights the risks associated with charging e-cigarettes.

Following the fire at Logan Airport, on December 10, 2014, the ICAO issued an Electronic Bulletin (EB) titled, Dangerous Goods Carried by Passenger and Crew—Incidents Related to Electronic Cigarettes (EB 2014/074).[2] The ICAO bulletin recommended that a passenger's e-cigarettes be carried in the cabin of the aircraft and not in checked baggage.

On January 22, 2015, the FAA issued a Safety Alert for Operators (SAFO) [3] that highlighted current provisions of the hazardous materials regulations (HMR), which state, ''transportation of battery-powered devices that are likely to create sparks or generate a dangerous evolution of heat is prohibited unless they are packaged in such a manner to preclude such an occurrence (see 49 CFR 173.21(c)).'' The SAFO further recommended that air operators require their passengers to carry e-cigarettes only in the cabin of the aircraft.

Effective June 9, 2015, the ICAO published an addendum to the 2015–2016 ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air to prohibit carriage of e-cigarettes in checked baggage and restrict the charging of these devices while on board the aircraft. This addendum constitutes an amendment to the 2015–2016 ICAO Technical Instructions, which took effect on January 1, 2015. On January 8, 2015, PHMSA published a rulemaking harmonizing the HMR with the 2015–2016 ICAO Technical Instructions. This issuance of this interim final rule is necessary to incorporate the June 9, 2015 amendment to the Technical Instructions to address the known safety risk.

The partial restriction in this interim final rule applies only to battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems). Passengers and crewmembers can continue to carry battery-powered portable electronic smoking devices in carry-on baggage. This interim final rule does not prohibit a passenger from transporting other devices containing batteries for personal use (such as laptop computers, cell phones, cameras, etc.) in checked or carry-on baggage nor does it restrict a passenger from transporting batteries for personal use in carry-on baggage.

II. Justification for Interim Final Rule

PHMSA is issuing this interim final rule without providing an opportunity for prior public notice and comment as is normally required by the Administrative Procedure Act (APA). See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). ''Good cause'' exists in impracticable situations when notice unavoidably prevents the due and required execution of agency functions or when an agency finds that due and timely execution of its functions is impeded by the notice otherwise required by the APA. For example, an ''impracticable'' good cause situation might be where air safety rules should be amended without delay if the FAA determines that the safety of the traveling public is at stake. Public notice is unnecessary when the public does not need or benefit from the notice and comment, such as with a minor or technical amendment. ''Public interest'' supplements the other terms and requires that public rulemaking procedures must not prevent an agency from operating and that a lack of public concern warrants an agency dispensing with public procedure.

In this case, the agency finds, for good cause, that notice and public comment is impracticable, unnecessary, and contrary to the public interest. The importance of the safety of the flying public provides good cause for this measure. Here, there is a credible indication of an emerging transportation safety risk from two recent incidents involving battery-powered portable electronic smoking devices in checked baggage and additional non-transportation incidents that occurred while these types of devices were being charged. In August 2014 at Boston's Logan Airport, an e-cigarette contained in a passenger's checked bag caught fire pre-flight and caused the evacuation of an airplane. Similarly, in January 2015 at Los Angeles International Airport, a bag containing an e-cigarette was found to be on fire in a baggage area. The bag in question had missed a flight connection, and should have been in the air at the time of the incident. Although neither airplane was in the air when the fires ignited, these incidents represent two near misses for the safety of aviation passengers. E-cigarettes in checked bags present a safety risk because the devices are capable of generating extreme heat and an incident can result in the ignition of nearby contents. Carriage of e-cigarettes in the passenger cabin addresses this safety risk by ensuring that if an incident does occur, it can be immediately identified and mitigated. PHMSA believes that a delay in implementing this measure could result in serious harm to the traveling public.

Under these circumstances, notice is impracticable and contrary to the public interest. Because ICAO issued the addendum on a very short timeframe due to the gravity of the safety risk, the HMR are currently not harmonized with the ICAO Technical Instructions. Given the safety risks posed by e-cigarettes in checked baggage, PHMSA believes that public notice would frustrate the due and required execution of agency functions. Although some airlines have voluntarily complied with the SAFO recommendations, there is no domestic regulation to require continued compliance with the recently adopted ICAO amendment. Typically, PHMSA

[1] Electronic Cigarette Fires and Explosions, U.S. Fire Administration, October 2014 (See appendix 1 for a list of the incidents) *https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf.*

[2] Dangerous Goods Carried by Passenger and Crew—Incidents Related to Electronic Cigarettes, Electronic Bulletin (EB) 2104/074, International Civil Aviation Administration (ICAO), October 10, 2014, *http://www.faa.gov/about/office_org/headquarters_offices/ash/ash_programs/hazmat/passenger_info/media/ICAO_ecigarettes_bulletin.pdf.*

[3] Fire Risk of Electronic Cigarettes (e-cigarettes) in Checked Baggage, Safety Alert for Operators—SAFO15003, Federal Aviation Administration (FAA), January 22, 2015, *https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2015/SAFO15003.pdf.*

amends the HMR to conform to recent amendments to the ICAO Technical Instructions through periodic international harmonization rulemaking. If PHMSA utilized this process, this HMR amendment would become effective no earlier than January 1, 2017. The accelerated effective date of the addendum to the ICAO Technical Instructions ensures that passengers that travel on international airlines are subject to this provision before PHMSA would have time to issue a final rule through its regular harmonization rulemaking process. In light of the recent incidents and the serious harm that could result from the public safety risk of e-cigarettes in checked baggage, PHMSA believes that a delay caused by adhering to the APA notice-and-comment process to adopt conforming amendments is impracticable and contrary to the public interest.

Further, PHMSA believes that APA notice and comment would be unnecessary because the public would not benefit from such notice. The scope of this regulatory change is very limited; PHMSA is including a new entry for e-cigarettes in 49 CFR 175.10 with carriage instructions. The change does not impact whether passengers may bring their e-cigarettes on an airplane. Instead, the new language affects how the e-cigarettes must be stowed. This rulemaking does not impact the ability to travel by air with these devices. FAA's January 2015 SAFO recommended that air carriers require their passengers to carry e-cigarettes and related devices exclusively in the cabin of the aircraft. In voluntary compliance with the SAFO, many airlines instruct passengers to carry their e-cigarettes in carry-on baggage only. Because a substantial degree of compliance with this safety provision already exists through voluntary airline actions, this amendment is limited in scope yet pivotal for the safety of the traveling public. Thus, in light of the recent safety incidents and limited scope of the June 9, 2015, ICAO amendment, PHMSA has determined that the notice and comment rulemaking process is unnecessary, impracticable, and contrary to the public interest in this instance.

The DOT is taking immediate action to strengthen safeguards for the carriage of battery-powered portable electronic smoking devices in passenger checked baggage and prohibit passengers and crewmembers from charging the devices and/or batteries on board the aircraft. This interim final rule is effective seven days after publication in the **Federal Register**. The APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. See 5 U.S.C. 553(d). This interim final rule meets the good cause exception in this instance because of credible evidence from two separate incidents involving battery-powered portable electronic smoking devices in checked baggage and additional non-transportation incidents that occurred while the devices were being charged. The retroactive nature of the ICAO amendments makes a 30-day effective date impracticable and contrary to the public interest, because such a delay would further extend the time period in which the HMR does not harmonize with ICAO. Because several incidents have highlighted the safety risks of the charging and cargo carriage of these devices, the public interest is served by providing a seven-day effective date for this interim final rule.

The Regulatory Policies and Procedures of DOT (44 FR 110034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, PHMSA encourages persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We will consider all comments received on or before the closing date for comments. We will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

III. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule is amending the HMR to maintain alignment with the ICAO Technical Instructions.

B. Executive Orders 13563 and 12866 and DOT Regulatory Policies and Procedures

The Department has determined that the transportation of battery-powered portable electronic smoking devices in checked baggage is an immediate safety threat. Therefore, this rule is being issued to address an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866. Under section 6(a)(3)(D), in emergency situations, an agency must notify OMB as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of section 6 of EO 12866. The Department has notified and consulted with OMB on this interim final rule. We do not anticipate the actions in this interim final rule will impose a significant impact on airlines, airline passengers, crewmembers, or the Federal government. We expect airlines will incur minimal costs associated with updating notifications to airline passengers (*e.g.* Web sites, automated check-in facilities, signage and verbal notifications from the operator). Airlines already have mechanisms to notify airline passengers of hazardous materials restrictions and we expect that airlines would incorporate this additional provision into existing notifications. Airline passengers will still be permitted to carry their e-cigarettes in their carry-on baggage or on their person. Spare lithium batteries must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, *e.g.,* by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch). This is consistent with existing requirements for the carriage of spare lithium batteries for portable electronic devices. We do not anticipate this would result in any impact on passengers because these devices are a type of portable electronic device and spare lithium batteries for portable electronic devices are already required to be protected from short circuits and carried in carry-on baggage only. Some passengers may incur a non-quantifiable cost in the lost opportunity to charge their device while on board the aircraft. We expect that this will be a small number of passengers and that the per-passenger cost will also be small. The Transportation Security

Administration may incur new costs associated with amending security procedures for checked baggage to inform security officers that these items should be treated as hazardous materials. PHMSA welcomes public comments on potential costs and benefits of this regulatory action.

Under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034), this rule is considered to be an emergency regulation. The Department has determined that an immediate safety threat exists in the carriage of battery-powered portable electronic smoking devices in checked baggage and, therefore, this rule is considered to be an emergency regulation. Because of the need to move quickly to address this risk, it would be impractical, unnecessary, and contrary to the public interest to follow the usual procedures under the DOT order.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rule preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–27, contains express preemption provisions (49 U.S.C. 5125) that preempt inconsistent State, local, and Indian tribe requirements, including requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses subject items (1) and (2) described above and, accordingly, State, local, and Indian tribe requirements on these subjects that do not meet the ''substantively the same'' standard will be preempted.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from publication of this interim final rule in this matter in the **Federal Register**. This effective date for preemptive effect should not provide a conflict with the overall effective date for this interim final rule because the FAA Act, and various court decisions dealing with the regulation of air transport, generally preempts State and local requirements. Historically the States and localities are aware of this preemptive effect and do not regulate in conflict with Federal requirements in these situations.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this interim final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act and Executive Order 13272

Section 603 of the Regulatory Flexibility Act (RFA) requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553 to publish a general notice of proposed rulemaking for any proposed rule. Similarly, section 604 of the RFA requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after being required to publish a general notice of proposed rulemaking. Because of the need to move quickly to address the identified risk, prior notice and comment would be contrary to the public interest. As prior notice and comment under 5 U.S.C. 553 are not required to be provided in this situation, the analyses in 5 U.S.C.s 603 and 604 are not required.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155,000,000 or more, adjusted for inflation, to either State, local or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. This interim final rule prohibits the carriage of battery-powered portable electronic smoking devices in checked baggage and the charging of such devices on board a passenger-carrying aircraft. Airline passengers will still be permitted to carry their e-cigarettes in their carry-on baggage or on their person. In other words, the interim final rule only impacts how a passenger may carry battery-powered portable electronic smoking devices on aircraft, not whether a passenger can carry such devices. We find that there are no significant environmental impacts associated with this interim final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you

may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp*

List of Subjects in 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR Chapter I as follows:

PART 175—CARRIAGE BY AIRCRAFT

■ 1. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 2. In § 175.10, redesignate paragraphs (a)(19) through (a)(24) as paragraphs (a)(20) through (a)(25) and add new paragraph (a)(19) to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(19) Except as provided in § 173.21 of this subchapter, battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems) when carried by passengers or crewmembers for personal use must be carried on one's person or in carry-on baggage only. Spare lithium batteries must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, *e.g.,* by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch). Each lithium battery must be of a type which meets the requirements of each test in the UN Manual of Tests and Criteria, Part III, Sub-section 38.3. Recharging of the devices and/or the batteries on board the aircraft is not permitted. Each battery must not exceed the following:

(i) For lithium metal batteries, a lithium content of 2 grams; or

(ii) For lithium ion batteries, a Watt-hour rating of 100 Wh.

* * * * *

Issued in Washington, DC, on October 23, 2015 under authority delegated in 49 CFR part 1.97

Marie Therese Dominguez,

Administrator.

[FR Doc. 2015–27622 Filed 10–29–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2015–0013; FXES11130900000C6–145–FF09E42000]

RIN 1018–BA42

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-footed Ferrets in Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in coordination with the State of Wyoming and other partners, will reestablish additional populations of the black-footed ferret (*Mustela nigripes*), a federally listed endangered mammal, into prairie dog (*Cynomys* spp.) occupied habitat in Wyoming and classify any reestablished population as a nonessential experimental population (NEP) under section 10(j) of the Endangered Species Act of 1973, as amended (Act). This final rule establishes the NEP area and provides for allowable legal incidental taking of the black-footed ferret within the defined NEP area. The best available data indicate the reintroduction of black-footed ferrets to Wyoming is biologically feasible and will promote conservation and recovery of the species. This NEP area and two previously designated NEPs in Wyoming collectively cover the entire State of Wyoming and provide consistent management flexibility Statewide. We are also amending the historical range column for the species within the List of Endangered and Threatened Wildlife (List) to include Mexico; the historical range information in the List is informational, not regulatory.

DATES: This rule becomes effective November 30, 2015.

ADDRESSES: This final rule, along with the public comments, environmental assessment (EA), and finding of no significant impact (FONSI), is available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R6–ES–2015–0013. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will also be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307–772–2374. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Mark Sattelberg, Field Supervisor, Telephone: 307–772–2374. Direct all questions or requests for additional information to: BLACK–FOOTED FERRET QUESTIONS, U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This is a final rule to designate the black-footed ferret (*Mustela nigripes*) nonessential experimental population (NEP) area in the State of Wyoming in accordance with section 10(j) of the Endangered Species Act (Act). This designation increases the Service's flexibility and discretion in managing reintroduced endangered species and allows promulgation of regulations deemed appropriate for conservation of the reintroduced species. We have determined that the issuance of this rule will advance the recovery of the endangered black-footed ferret. Specifically, this rulemaking will facilitate the establishment of free-ranging populations of ferrets within the species' historical range in Wyoming, thereby contributing to the numerical and distributional population targets laid out in the recovery plan's delisting and downlisting (reclassifying from endangered to threatened) criteria (U.S. Fish and Wildlife Service 2013a, p. 6)

Summary of the Major Provisions of the Regulatory Action In Question

Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may establish an NEP, outside of the current range of the species, but within its historical range, for the purposes of reintroducing the species into formerly occupied habitat. Under this 10(j) rule, the Service is classifying any reestablished black-footed ferret population in the State of Wyoming as an NEP. The Service has determined that this NEP designation meets the requirements of the Act; the population is wholly geographically separate from other populations, and the experimental population is not essential to the

continued existence of the black-footed ferret in the wild.

This NEP designation will apply to all ferrets reintroduced to Wyoming, with the exception of animals found on lands managed by the National Park Service or U.S. Fish and Wildlife Service. Under a section 10(j) designation as an NEP, both the take prohibitions and consultation requirements of the Act are relaxed, easing regulatory burden associated with endangered species and facilitating acceptance by local landowners and managers.

Once this rule takes effect, the Service, the Wyoming Game and Fish Department (WGFD), and other partners propose to reintroduce the black-footed ferret at one or more additional sites within the species' historical range in Wyoming. The WGFD will serve as the lead agency in the reintroduction and subsequent management of black-footed ferret in Wyoming; however, WGFD will continue to coordinate closely with the Service on these restoration efforts.

Costs and Benefits

Costs and benefits of a Statewide NEP designation in Wyoming will depend upon the number and type of reintroduction efforts initiated. The Black-footed Ferret Recovery Plan estimates that 35,000 acres (ac) (14,000 hectares (ha)) of purposefully managed prairie dog occupied habitat will be needed to meet Wyoming's portion of the rangewide habitat goal for downlisting, and 70,000 ac (28,000 ha) to meet their portion of the rangewide habitat goal for delisting (USFWS 2013a, Table 8). This equates to purposeful management of approximately 2 percent of prairie dog occupied habitat in Wyoming to meet their portion of the rangewide habitat goal for delisting. We completed an environmental assessment for this action, which analyzes potential impacts of reestablishing black-footed ferrets in Wyoming under section 10(j) of the Act. Participation in this recovery effort is entirely voluntary and would not occasion any substantive change in land use by participants; consequently, we anticipate that the benefits of reintroduction will off-set the costs incurred for any recovery partners who choose to participate.

Background

Statutory and Regulatory Framework

The black-footed ferret was listed as endangered throughout its range on March 11, 1967 (32 FR 4001), and again on June 2, 1970 (35 FR 8491), under early endangered species legislation and was ''grandfathered'' under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) without critical habitat. The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitable and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the rule issued under section 10(j) of the Act (hereafter referred to as a 10(j) rule) contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/ or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and

implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that any future experimental populations of black-footed ferrets in Wyoming would not be essential to the continued existence of the species in the wild. This determination has been made because loss of an experimental population in Wyoming will not affect the captive population or the 24 existing reintroduction sites in Arizona, Colorado, Kansas, Montana, New Mexico, South Dakota, Utah, and Wyoming; in Chihuahua, Mexico; and in Saskatchewan, Canada. Therefore, loss of an experimental population in Wyoming will not appreciably reduce the likelihood of future survival of the ferret rangewide.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species only when the NEP is located within a National Wildlife Refuge or unit of the National Park Service. In these areas, the Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the NEP is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for black-footed ferrets established within the NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

On April 10, 2015, the Service published a proposed rule in the **Federal Register** to establish a nonessential experimental population of black-footed ferrets in Wyoming, and announced the availability of a draft environmental assessment (EA) in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (80 FR 19263). This EA analyzed the potential environmental impacts associated with the proposed reintroduction of ferrets in Wyoming. We contacted interested parties including Federal and State agencies, local governments, scientific organizations, interest groups, and private landowners through a press release and related fact sheets, and emails. In addition, we notified the public and invited comments through news releases to local media outlets. The public comment period for the proposed rule and the draft EA closed on June 9, 2015. Prior to the April 10, 2015, publication of the proposed rule, we also held a series of informational public meetings across the State in concert with Wyoming Game and Fish Department.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Biological Information

The endangered black-footed ferret is the only ferret species native to the Americas (Anderson *et al.* 1986, p. 24). It is a medium-sized mustelid, typically weighing 1.4 to 2.5 pounds (645 to 1,125 grams) and measuring 19 to 24 inches (479 to 600 millimeters) in total length; upper body parts are yellowish buff, occasionally whitish, feet and tail tip are black, and a black ''mask'' occurs across the eyes (Hillman and Clark 1980, p. 30).

The black-footed ferret depends almost exclusively on prairie dogs for food and on prairie dog burrows for shelter (Hillman 1968, p. 438; Biggins 2006, p. 3). Historical habitat of the ferret coincided with the ranges of the black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*C. leucurus*), and Gunnison's prairie dog (*C. gunnisoni*), which collectively occupied approximately 100 million ac (40 million ha) of intermountain and prairie grasslands extending from Canada to Mexico (Anderson *et al.* 1986, pp. 25–50; Biggins *et al.* 1997, p. 420). This amount of prairie dog habitat could have supported 500,000 to 1,000,000 ferrets (Anderson *et al.* 1986, p. 58). Since the late 1800s, ferret specimens have been collected from Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming in the United States and Saskatchewan and Alberta in Canada (Anderson *et al.* 1986, pp. 25–50). In the 1990s, we concluded that the ferret's historical range also included Mexico, which is within the contiguous range of the black-tailed prairie dog as previously noted (Biggins *et al.* 1997, p. 420). This inclusion of Mexico in the ferret's historical range is described in more detail in the recovery plan and resulted in a ferret reintroduction initiated in 2001 (USFWS 2013a, pp. 16–17). This final rule also corrects the historical range of the species at 50 CFR 17.11(h); this action has no regulatory impact as this column is strictly informational.

Black-footed ferrets historically occurred throughout most of Wyoming. Specifically, black-footed ferrets occurred within black-tailed prairie dog habitat in the eastern portion of the State and white-tailed prairie dog habitat in the west; black-footed ferrets did not occur in the extreme northwest corner of the State (Anderson *et al.* 1986, p. 48). The last wild population of ferrets (from which all surviving black-footed ferrets descend) was discovered near Meeteetse, Wyoming, in 1981, after the species was presumed extinct (Clark *et al.* 1986, p. 8; Lockhart *et al.* 2006, p. 8). Following disease outbreaks at Meeteetse, all surviving wild ferrets were removed from the wild between 1985 and 1987, to initiate a captive-breeding program (Lockhart *et al.* 2006, p. 8). No wild populations have been found since the capture of the last

Meeteetse ferret despite extensive and intensive rangewide searches; it is unlikely that any undiscovered wild populations remain. Therefore, the Service considers the State of Wyoming unoccupied by wild ferrets, with the exception of reintroduced populations, which alleviates the requirement for project proponents to conduct presence/absence surveys for ferrets under section 7 of the Act prior to developing projects (USFWS 2013c).

In 1991, a reintroduced population of ferrets was established in Shirley Basin, Wyoming as an NEP in accordance with section 10(j) of the Act. In 2001, the Wolf Creek, Colorado, reintroduction site was also established as an NEP under section 10(j), and includes a small portion of Sweetwater County, Wyoming, in the experimental population area. However, no evidence of ferrets from the Wolf Creek reintroduction effort has been found in Sweetwater County or elsewhere in Wyoming. The Shirley Basin NEP persists today. The map at the conclusion of this rule identifies the existing NEPs in Wyoming.

Relationship of the Experimental Population to Recovery Efforts

All known black-footed ferrets in the wild are the result of reintroduction efforts. There have been 24 ferret reintroduction projects, beginning in 1991, at Shirley Basin in the southeastern portion of Wyoming. Shirley Basin contains the only ferret population currently in Wyoming.

The downlisting criteria for the black-footed ferret include establishing at least 1,500 free-ranging breeding adults in 10 or more populations, in at least 6 of 12 States within the historical range of the species, with no fewer than 30 breeding adult ferrets in any population; delisting criteria include establishing at least 3,000 free-ranging breeding adults in 30 or more populations, in at least 9 of 12 States within the historical range of the species, with no fewer than 30 breeding adults in any population (USFWS 2013a, pp. 61–62). In our recovery plan for the ferret, we suggest recovery guidelines for the States that are proportional to the amount of prairie dog habitat historically present. A proportional share for Wyoming would include approximately 171 free-ranging breeding adult ferrets to meet their portion of the rangewide numerical goal for downlisting and 341 breeding adults to meet their portion of the rangewide numerical goal for delisting (USFWS 2013a, Table 8).

Approximately 100 breeding adult black-footed ferrets have been established at Shirley Basin, Wyoming (USFWS 2013a, Table 8). Shirley Basin is one of four currently successful ferret reintroduction sites—other successful sites include two in South Dakota and one in Arizona (USFWS 2013a, p. 73). We are confident that Wyoming can support additional successful reintroduction sites, based on the amount of available habitat (see the following section on *Likelihood of Population Establishment and Survival*) and a history of successful ferret management at Shirley Basin since 1991. Additional viable ferret populations within Wyoming will aid recovery of the species.

Location of the Nonessential Experimental Population Area

The NEP area for Wyoming is Statewide, with the exception of the two areas where a NEP designation for black-footed ferret already exists (see below). In combination, these three NEPs collectively cover the entire State of Wyoming. Suitable habitat for ferret reintroduction will likely be limited to Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Uinta, Washakie, and Weston Counties because these counties have sufficient prairie dog habitat to support viable ferret populations. We are not aware of any prairie dog complexes suitable for ferret reintroduction on or adjacent to Tribal lands in Wyoming. The nearest potential reintroduction sites to Tribal lands are two white-tailed prairie dog complexes—Fifteen-mile Complex near Worland in Hot Springs County and Sweetwater Complex near Sweetwater Station in Fremont County (Luce 2008, pp. 29–30). Both sites are of intermediate potential for ferret reintroduction and are located approximately 19 miles (30 kilometers) from any reservation boundaries.

Any ferrets found in Wyoming would be considered part of an NEP. There are many historical records of ferrets in Wyoming (Anderson *et al.* 1986, pp. 36–37). However, the species has been extirpated from the State since 1987, with the exception of a reintroduced ferret population in the Shirley Basin. As previously noted, a 10(j) designation already exists for the Shirley Basin ferret population in Albany County and portions of Carbon and Natrona Counties that are east of the North Platte River. A 10(j) designation also exists for the Wolf Creek, Colorado, ferret reintroduction site, which includes a small portion of Sweetwater County in Wyoming. Both of these reintroduction sites would remain outside the boundary of this newly designated NEP area and would continue to operate under their respective management plans. Any new reintroduction sites within this newly designated NEP area would require development of a new management plan approved by the Service.

Several sites in Wyoming are suitable for reintroduction of black-footed ferrets in addition to the Shirley Basin site. The main requirements for ferret reintroduction are: (1) An area of occupied prairie dog habitat that is purposefully managed and of sufficient size to support a viable population of ferrets (a minimum of 1,500 ac (608 ha) of black-tailed prairie dog occupied habitat or 3,000 ac (1,215 ha) of white-tailed or Gunnison's prairie dog occupied habitat); (2) a willing landowner; and (3) a management plan that addresses sylvatic plague. Recent estimates of prairie dog occupied habitat in Wyoming include 2,893,487 ac (1,171,862 ha) in the white-tailed prairie dog range and 229,607 ac (92,991 ha) in the black-tailed prairie dog range (Van Pelt 2013, pp. 8, 14). Luce (2008, pp. 28–31) identified several sites in Wyoming with potential for ferret reintroduction including one site with potential for reintroduction within less than 3 years, 24 sites with potential for reintroduction within 3 to 10 years, and two sites with long-term potential for reintroduction.

Likelihood of Population Establishment and Survival

The Service and its partners have initiated 24 black-footed ferret reintroduction projects since 1991. These projects have experienced varying degrees of success. However, all reintroduction efforts have contributed to our understanding of the species' needs. Recovery of the species is a dynamic process that requires adaptive management.

Some transfers of individual black-footed ferrets between populations will likely be necessary in perpetuity to maintain genetic diversity in the face of habitat fragmentation and as a management tool for sylvatic plague (until additional plague vaccines can be adapted for field use). Nevertheless, we believe that recovery can be achieved through a combination of expansion of ferret populations at existing reintroduction sites and reintroduction of ferrets at new sites, both of which are possible if conservation of prairie dog occupied habitat and disease management are aggressively pursued.

Participation by all States within the historical range of the black-footed ferret is important to maximize resilience of

ferret populations in the wild and to allow for an equitable distribution of the responsibility for achieving recovery goals. Federal, State, and local agencies in Wyoming have been active participants in ferret recovery since the last wild population was found at Meeteetse in 1981. We estimate 100 breeding adult ferrets are already established at Shirley Basin. The suggested numerical recovery guidelines for Wyoming are 171 breeding adults to support the State's share of the rangewide downlisting target and 341 breeding adults to support the State's share of the rangewide delisting target. Meeting their portion of the rangewide numerical goal for downlisting would require establishing one additional large reintroduction site similar to Shirley Basin or two to three smaller sites. Meeting their portion of the rangewide numerical goal for delisting would require establishing two large sites, six small sites, or a combination of large, medium, and small sites, in addition to the sites previously established for meeting their portion of the rangewide numerical goal for downlisting. The Recovery Plan estimates that 35,000 ac (14,000 ha) of purposefully managed prairie dog occupied habitat will be needed to meet Wyoming's portion of the rangewide habitat goal for downlisting and 70,000 ac (28,000 ha) to meet their portion of the rangewide habitat goal for delisting (USFWS 2013a, Table 8). This equates to purposeful management of approximately 2 percent of prairie dog occupied habitat in Wyoming to meet their portion of the rangewide habitat goal for delisting.

Sustaining black-footed ferret numbers during periodic outbreaks of sylvatic plague will require ongoing management, potentially including dusting prairie dog burrows with flea control powder and vaccinating ferrets prior to release. Additionally, research is currently underway investigating the potential for supporting ferrets at reintroduction sites by providing a vaccine to wild prairie dogs via oral bait.

Based upon the past history of successful management at Shirley Basin, Wyoming, and the substantial amount of prairie dog occupied habitat available for additional reintroduction of black-footed ferrets, we believe there is a high likelihood of population establishment and survival in Wyoming.

Addressing Causes of Extirpation

The black-footed ferret rangewide population declined for three principal reasons: (1) A major conversion of native rangeland to cropland, particularly in the eastern portion of the species' range, beginning in the late 1800s; (2) poisoning of prairie dogs to reduce competition with domestic livestock for forage, beginning in the early 1900s; and (3) the inadvertent introduction of sylvatic plague, which causes mortality to both ferrets and prairie dogs, beginning in the 1930s. The combined effects of these three factors resulted in a rangewide decrease in the amount of habitat occupied by prairie dogs from approximately 100 million ac (40.5 million ha) historically to 1.4 million ac (570,000 ha) in the 1960s (USFWS 2013a, pp. 23–24). This habitat loss and fragmentation resulted in a corresponding decrease in ferrets, which require relatively large areas of prairie dog occupied habitat to maintain viable populations. By the 1960s, only two remnant ferret populations remained—in Mellette County, South Dakota, and in Meeteetse, Wyoming (Lockhart *et al.* 2006, pp. 7–8).

Wyoming has had less rangeland converted to cropland than most other States within the historical range of the black-footed ferret (U.S. Department of Agriculture 2005, Table 1). Consequently, prairie dog poisoning and sylvatic plague are likely the two primary reasons for extirpation of ferrets from the State. Extensive poisoning of prairie dogs had begun in Wyoming by 1916 (Clark 1973, p. 89), and plague was present in Wyoming by 1936 (Eskey and Haas 1940, p. 4). Occupied prairie dog habitat reached a low in Wyoming in the early 1960s when approximately 64,336 ac (26,056 ha) were reported (U.S. Bureau of Sport Fisheries and Wildlife 1961, Table 1). However, large-scale poisoning of prairie dogs no longer occurs, and the use of poisons is more closely regulated than it was historically. Improved plague management, including dusting prairie dog burrows with insecticide to control fleas (the primary vector for plague transmission), is also being used, and the development of vaccines that prevent plague in prairie dogs and black-footed ferrets is underway. The most recent surveys estimate 3,123,094 ac (1,264,853 ha) of occupied prairie dog habitat in Wyoming (Van Pelt 2013, pp. 8, 14). This considerable increase over the past 50 years indicates that there has been a reduction in threats and improved management of prairie dogs. This increases the likelihood of successful reintroduction of ferrets in Wyoming.

Release Procedures

The Service will cooperate with other Federal agencies, WGFD, Tribes, landowners, and other stakeholders to develop, implement, and maintain long-term site management before, during, and after releases. Partners will collect habitat data for site evaluation and documentation of baseline conditions and develop management plans for prairie dogs and plague prior to any release of black-footed ferrets. All applicable laws regulating the protection of ferrets will be followed (see section on *Management Considerations and Protective Measures,* below). Partners will develop annual site-specific reintroduction plans and submit them to the Service by mid-March as part of an annual ferret allocation process (which allocates available captive ferrets for release in specific numbers for specific sites). Reintroduction plans will include current estimates of prairie dog numbers and density, disease prevalence and management, and proposed reintroduction and monitoring methods. If the reintroduction plan covers years subsequent to the initial releases, it will also include a recent description of the status of ferrets on the site.

All reintroduction efforts will follow techniques described in Roelle *et al.* (2006) as appropriate, which presents recommendations for managing captive populations, evaluating potential habitat, reestablishing populations, and managing disease. Captive-reared black-footed ferrets exposed to prairie dog burrows and natural prey in outdoor preconditioning pens prior to their release survive in the wild at significantly higher rates than cage-reared, non-preconditioned ferrets (Biggins *et al.* 1998, pp. 651–652; Vargas *et al.* 1998, p. 77). Therefore, all captive-reared ferrets released within the Wyoming NEP area will receive adequate preconditioning in outdoor pens at the National Black-footed Ferret Conservation Center or at another facility approved by the Service. We will vaccinate all ferrets for canine distemper and sylvatic plague, and mark them with passive integrated transponder tags prior to release. We will transport ferrets to the reintroduction site and release them directly from transport cages into prairie dog burrows. In conformance with standard ferret reintroduction protocol, no fewer than 20 captive-raised or wild-translocated ferrets will be released at any reintroduction site in Wyoming during the first year of the project. Twenty or more additional animals will be released annually for the next 2 to 4 years. Released ferrets will be excess to the needs of the captive-breeding program.

Donor Stock Assessment and Effects on Captive or Wild-Born Donor Populations

Eighteen black-footed ferrets were captured from the last wild population at Meeteetse, Wyoming in 1985–1987, and used to initiate a captive-breeding program (Lockhart *et al.* 2006, pp. 11–12). Of the 18 captured ferrets, 15 individuals, representing the genetic equivalent of 7 distinct founders, produced a captive population that is the foundation of present recovery efforts (Garelle *et al.* 2006, p. 4). Extant populations, both captive and reintroduced, descend from these ''founder'' animals. The purpose of the captive-breeding program is to provide animals for reintroduction to achieve recovery of the species, while maintaining maximum genetic diversity in the captive population (USFWS 2013a, p. 81).

Black-footed ferrets used to establish any experimental population in the Wyoming NEP area will either be translocated wild-born kits from another self-sustaining reintroduced population (such as Shirley Basin) or come from one of six captive-breeding populations currently housed at the U.S. Fish and Wildlife Service National Black-footed Ferret Conservation Center near Wellington, Colorado; the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado; the Louisville Zoological Garden, Louisville, Kentucky; the Smithsonian Biology Conservation Institute, Front Royal, Virginia; the Phoenix Zoo, Phoenix, Arizona; or the Toronto Zoo, Toronto, Ontario.

The Service and its partners maintain a captive-breeding population of approximately 280 breeding adult black-footed ferrets in order to provide a sustainable source of ferrets for reintroduction. The captive-breeding facilities produce approximately 120 to 240 juvenile ferrets annually. Approximately 80 juveniles are retained annually at these facilities for future captive-breeding purposes. The remaining juveniles are allocated annually for reintroduction, or occasionally for research (USFWS 2013a, p. 81). Ferrets selected for reintroduction under this final rule will be genetically redundant to animals maintained for captive-breeding. Consequently, any loss of reintroduced ferrets will not impact the genetic diversity of the species. Only ferrets that are surplus to the needs of the captive-breeding program are used for reintroduction into the wild. Therefore, any loss of an experimental population in the wild will not threaten the survival of the species as a whole. Therefore, there will be no effects on donor populations beyond those which are intended and accounted for in the management of wild or captive populations.

Status of Proposed Population

The effects of using black-footed ferrets from any captive or wild-born donor populations for releases into the Wyoming NEP area will be examined through our section 10 permitting authority and section 7 consultation process to ensure that their use is not likely to jeopardize the continued existence of the species in the wild. We based this determination on the following: (1) As an NEP, black-footed ferrets utilized for reintroductions are not essential to the survival of the species; (2) The 10(j) rule is expected to result in the creation of additional reintroduction areas in Wyoming; (3) Measures to avoid and minimize the incidental take of black-footed ferrets will be implemented within reintroduced populations; (4) The 10(j) rule will likely constitute a beneficial effect for the black-tailed and white-tailed prairie dog, as it includes measures to reduce the incidence of sylvatic plague, the primary factor responsible for the decline of these two species. This will result in an increase in the reproduction, numbers and distribution of the black-footed ferret, and therefore not resulting in reducing appreciably the likelihood of survival and recovery.

Additional successful reintroductions of ferrets are necessary for recovery of the species. Once this rule takes effect (see DATES, above), any releases of ferrets in Wyoming will be part of an NEP because of the need for increased management flexibility, which will encourage landowner participation and alleviate concerns regarding possible land use restrictions.

This 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of black-footed ferrets that is incidental to otherwise lawful activities. We provide this exemption because we believe that such incidental take of members of the NEP associated with otherwise lawful activities is necessary and advisable for the conservation of the species.

This designation is justified because no adverse effects to extant wild or captive black-footed ferret populations will result from release of progeny from either a wild or captive donor population onto a new reintroduction site. We also expect that any reintroduction efforts in Wyoming will result in the successful establishment of a self-sustaining population, which will contribute to the recovery of the species.

Management Considerations and Protective Measures

We conclude that the effects of Federal, State, or private actions and activities will not pose a substantial threat to black-footed ferret establishment and persistence in Wyoming because most activities currently occurring in the NEP area are compatible with ferret recovery and there is no information to suggest that future activities would be incompatible with ferret recovery. We base this conclusion on experience at previous reintroduction sites, where incidental take associated with otherwise lawful activities such as ranching and energy development has been low. Poisoning of prairie dogs can occur in prairie dog habitat and could result in habitat loss or incidental take of ferrets. However, poisoning within a reintroduction site is very restricted, occurring only in specific instances where protection of residences, resources, or infrastructure on participating farm and ranch lands becomes necessary. These considerations are planned for in cooperation with participating landowners and stakeholders and documented in site-specific management plans that must be approved by the Service before ferrets are allocated to any reintroduction sites. Poisoning with the anticoagulant Rozol® at current and future reintroduction sites, however, is prohibited by Environmental Protection Agency label that governs use of Rozol (USFWS 2013a, p. 50). Prairie dog control programs may also be necessary at the boundary between ferret reintroduction sites and adjacent properties in order to maintain local support for the reintroduction. If boundary control is necessary because prairie dogs have encroached onto adjacent properties where prairie dogs are not wanted, it is carefully managed. Lethal control of prairie dogs should not be employed at a level that would reduce prairie dog occupied habitat to the extent that the viability of any potential ferret population is compromised—a minimum of 1,500 ac (608 ha) of black-tailed prairie dog occupied habitat or 3,000 ac (1,215 ha) of white-tailed or Gunnison's prairie dog occupied habitat is needed to sustain a viable ferret population.

The Service will coordinate closely with WGFD and other partners in the management of any black-footed ferrets in Wyoming that are reintroduced under section 10(j) authorities. Management of ferret populations in the Wyoming NEP

area will be guided by provisions in site-specific management plans developed by partners (WGFD) with input from any affected landowners and stakeholders such as U.S Animal and Plant Health Inspection Service, U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), Natural Resources Conservation Service, Wyoming Department of Agriculture, or potentially affected Tribes. The responsibilities and commitments of the participating agencies will be documented in the management plan. As mentioned above, management plans must be approved by the Service before ferrets are allocated to any reintroduction sites.

Management plans will be site-specific with management strategies based on site-specific characteristics (*e.g.,* prairie dog distribution and expansion potential, sylvatic plague history, ferret movement barriers) and land use patterns (*e.g.,* livestock grazing, recreational use, mineral development potential). Management plans are tailored to achieve conservation objectives using management strategies compatible with existing ranch, livestock, and mineral extraction operations so that neither lifestyles nor income potential are negatively affected. We expect that future management plans under this 10(j) rule will have many similarities to past plans for other reintroduction sites. Some examples of management strategies for Shirley Basin in Wyoming include: (1) Attempting to schedule ferret releases so overlap with hunting opening weekends does not occur; (2) allowing landowners and land managers the opportunity to cooperatively decide the number and distribution of prairie dogs (and correspondingly ferrets) that may occur on privately owned and leased lands; (3) annually obtaining landowner approval of human activity necessary for actions specified in this plan; (4) biannual review of the progress of ongoing activities by all concerned parties. Other management plans may contain provisions similar to these, although the specific content and details will vary by site.

Most of the area containing suitable release sites with high potential for ferret establishment is managed by the BLM, the USFS, or private landowners, and is currently protected through the following mechanisms.

(1) Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)—The BLM's mission is set forth under the Federal Land Policy and Management Act, which mandates that BLM manage public land resources for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting the natural, cultural, and historical resources on those lands. The BLM manages listed and sensitive species under guidance provided in the BLM MS–6840 Manual—Special Status Species Management. The Manual directs BLM to proactively conserve species listed under the Act and the ecosystems upon which they depend, ensure that all actions authorized or carried out by BLM are in compliance with the Act, and cooperate with the planning and recovery of listed species. The BLM has experience in managing the black-footed ferret at four reintroduction sites in four States that occur at least in part on lands it manages, including Shirley Basin, Wyoming, and Wolf Creek, Colorado, which includes a small portion of Sweetwater County, Wyoming. Therefore, we anticipate appropriate management by BLM on any future ferret reintroduction sites that include BLM lands.

(2) National Forest Management Act of 1976, as amended (16 U.S.C. 1600 *et seq.*)—The National Forest Management Act instructs the USFS to strive to provide for a diversity of plant and animal communities when managing national forest lands. The USFS identifies species listed as endangered or threatened under the Act, including the black-footed ferret, as Category 1 species at risk based on rangewide and national imperilment. The USFS has experience in managing the black-footed ferret at one reintroduction site in South Dakota that occurs at least in part on USFS lands. Therefore, we anticipate appropriate management by the USFS on any future ferret reintroduction sites that include USFS lands.

(3) Wyoming State Law—The responsibilities of WGFD are defined in Wyoming Statute section 23–1–103, which instructs the WGFD to provide an adequate and flexible system for the control, management, protection, and regulation of all Wyoming wildlife. The Statute defines the black-footed ferret as a protected animal. The WGFD also defines the ferret as a ''species of greatest conservation need'' (Wyoming Game and Fish Department 2010, pp. IV–2–10–IV–2–13). This final rule has been developed in cooperation with the State to address any concerns and initiate additional ferret reintroductions in Wyoming. The WGFD has successfully managed the ferret at the Shirley Basin Reintroduction site since 1991. Therefore, we anticipate appropriate management by WGFD on any future ferret reintroduction sites in Wyoming.

Management issues related to the black-footed ferret Wyoming NEP area that have been considered include:

(a) *Incidental Take:* The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations. Experimental population rules contain specific prohibitions and exceptions regarding the taking of individual animals. Once this 10(j) rule becomes effective, incidental take of black-footed ferrets within the Wyoming NEP area will not be prohibited, provided that the take is unintentional and is in accordance with this 10(j) rule. However, if there is evidence of intentional take of this species within the NEP area that is not authorized by the 10(j) rule, we would refer the matter to the appropriate law enforcement entities for investigation.

(b) *Special handling:* In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service or of a State wildlife agency may in the course of their official duties, handle black-footed ferrets to aid sick or injured ferrets, or to salvage dead ferrets. Employees or agents of other Federal, Tribal, or State agencies would need to acquire the necessary permits from the Service for these activities.

(c) *Coordination with landowners and land managers:* This NEP designation under section 10(j) of the Act was discussed with potentially affected State and Federal agencies, Tribes, local governments, and other stakeholders within the expected reestablishment area. These agencies, landowners, and land managers have either indicated support for, or no opposition to, the establishment of future populations, provided an NEP is designated and a rule is promulgated to exempt incidental take from the section 9 take prohibitions. The Service and the WGFD will continue to coordinate to ensure local communities are fully engaged in any future black-footed ferret reintroduction efforts.

(d) *Public awareness and cooperation:* We informed the general public of the importance of this reintroduction project for the overall recovery of the black-footed ferret through the proposed rule and associated public meetings. We notified a comprehensive list of stakeholders of the meetings including affected Federal and State agencies, Tribal entities, local governments, landowners, nonprofit organizations,

and other interested parties. The comments we received are listed in the final EA, were included in the formulation of alternatives considered in the NEPA process, and are considered in this final rule designating an NEP area for reintroduced black-footed ferrets in Wyoming. Designation of the NEP area will increase reintroduction opportunities and provide greater flexibility in management of the reintroduced ferret. The NEP designation is necessary to secure needed cooperation of the State, landowners, and other interests in the affected area.

(e) *Potential impacts to other federally listed species:* There are several federally listed, proposed (any species of fish, wildlife, or plant that is proposed in the **Federal Register** to be listed), and candidate (the Service has concluded that they should be proposed for listing) species in Wyoming. These species are identified in the following table.

TABLE 1—FEDERALLY LISTED, PROPOSED, AND CANDIDATE SPECIES IN WYOMING

Species	Current status in Wyoming under the act
Black-footed ferret (*Mustela nigripes*)	Shirley Basin NEP.
Gray wolf (*Canis lupus*)	NEP in Wyoming.
Whooping crane (*Grus americana*)	Endangered.
Interior least tern (*Sterna antillarum*)	Endangered.
Piping plover (*Charadrius melodus*)	Threatened.
Wyoming toad (*Bufo baxteri*)	Endangered.
Bonytail (*Gila elegans*)	Endangered.
Colorado pikeminnow (*Ptychocheilus lucius*)	Endangered.
Humpback chub (*Gila cypha*)	Endangered.
Razorback sucker (*Xyrauchen texamus*)	Endangered.
Kendall Warm Springs dace (*Rhinichthys osculus thermalis*)	Endangered.
Pallid sturgeon (*Scaphirhynchus albus*)	Endangered.
Blowout penstemon (*Penstemon haydenii*)	Endangered.
Canada lynx (*Lynx canadensis*)	Threatened, with critical habitat.
Grizzly bear (*Ursus arctos horribilis*)	Threatened.
Preble's meadow jumping mouse (*Zapus hudsonius preblei*)	Threatened.
Yellow-billed cuckoo (*Coccyzus americanus*)	Threatened, with critical habitat proposed.
Colorado butterfly plant (*Gaura neomexicana coloradensis*)	Threatened, with critical habitat.
Desert yellowhead (*Yermo xanthocephalus*)	Threatened, with critical habitat.
Western prairie fringed orchid (*Platanthera praeclara*)	Threatened.
Ute ladies'-tresses (*Spiranthes diluvialis*)	Threatened.
Northern long-eared bat (*Myotis septentrionalis*)	Threatened.
Greater sage-grouse (*Centrocercus urophasianus*)	Candidate at the time of the proposed 10(j) rule, recently found to be not warranted for listing.
Fremont County rockcress (*Boechera pusilla*)	Candidate.
Whitebark pine (*Pinus albicaulis*)	Candidate.

Nearly all of the aforementioned species have habitat requirements such as forests, dunes, wetlands, or river systems that differ from the grassland prairie habitat requirements for the black-footed ferret. The only species that may be affected by reintroduction projects for the ferret in the Wyoming NEP area, other than the ferret, is the greater sage-grouse. At the time of the proposed 10(j) rule, the greater sage-grouse was a candidate species. Recently, the Service determined that the greater sage-grouse is no longer warranted for listing under the Act (80 FR 59858; October 2, 2015). The greater sage-grouse requires large, interconnected expanses of sagebrush (Connelly *et al.* 2004, p. 3–2; Stiver *et al.* 2006, p. I–2; Knick and Connelly 2011, p. 1). Habitat loss, degradation, and fragmentation are the primary stressors to the greater sage-grouse. A detailed description of the species' natural history, seasonal habitats, threats, and population trends can be found in the Service's recent 12-month not warranted finding (80 FR 59858; October 2, 2015). The ferret also requires large expanses of intact habitat, although it is dependent on prairie dogs, not sagebrush. However, some prairie dog habitat, particularly white-tailed prairie dog habitat, contains sagebrush.

Direct adverse effects to greater sage-grouse can occur from the application of zinc phosphide-based pesticides to manage expanding prairie dog colonies at reintroduction sites. Because the application of zinc phosphide will occur in July through February, greater sage-grouse (males, hens, and broods) may ingest zinc phosphide and become sickened or die. We determined that the issuance of this Federal rule to designate the black-footed ferret as a nonessential experimental population in the State of Wyoming in accordance with section 10(j) of the Act is not likely to jeopardize the continued existence of the greater sage-grouse based on the following: (1) The use of zinc phosphide is anticipated to be relatively rare at reintroduction sites, which minimizes exposure risk; (2) zinc phosphide can only be applied by a certified pesticide applicator, which minimizes misapplication and exposure risk to non-targeted species; and (3) there are approximately 43,000,000 acres of estimated greater sage-grouse habitat in Wyoming. To meet delisting guidelines in the Black-footed Ferret Recovery Plan, there must be 70,000 acres of prairie dog habitat. Thus, most greater sage-grouse habitat in Wyoming would not be impacted by the proposed action.

(f) *Monitoring and Evaluation:* Monitoring is a required element of all black-footed ferret reintroduction projects. The following types of monitoring will be conducted.

Reintroduction Effectiveness Monitoring: Partners will monitor population demographics and potential sources of mortality, including plague, annually for 5 years following the last release using spotlight surveys, snow tracking, other visual survey techniques, and possibly radio-telemetry of some individuals. Thereafter, demographic and genetic surveys will be completed periodically to track population status. Surveys will incorporate methods to monitor breeding success and long-term survival rates. In general, the Service anticipates that monitoring will be

conducted by the lead for each reintroduction site, which in Wyoming will be the WGFD and participating partners. The WGFD will present monitoring results in their annual reports.

Donor Population Monitoring: Ferrets used for reintroduction will either be from the captive-breeding population or translocated from another viable reintroduction site. Ferrets in the captive-breeding population are managed and monitored in accordance with the Association of Zoos and Aquariums (AZA) Black-footed Ferret Species Survival Plan (SSP®). A breeding population of 280 animals will be maintained to provide a sustainable source of ferrets for reintroduction. The AZA SSP® Husbandry Manual provides up-to-date protocols for the care, propagation, preconditioning, and transportation of captive ferrets, and is used at all participating captive-breeding facilities. Ferrets may also be translocated from other reintroduction sites (which also originated from captive sources), provided their removal will not create adverse impacts upon the donor population and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. Population monitoring will be conducted at all donor sites.

Monitoring Impacts to Other Listed Species: We do not expect impacts to other federally listed species (see discussion under (e), above). The greater sage-grouse is the only species with habitat that might overlap with the black-footed ferret. However, we do not expect ferret reintroduction efforts to adversely impact greater sage-grouse for the reasons previously discussed. The WGFD conducts annual monitoring of the greater sage-grouse statewide. Additional monitoring will occur on non-federal lands enrolled in the Wyoming Candidate Conservation Agreement with Assurances for the greater sage-grouse and on Federal lands enrolled in the Wyoming Candidate Conservation Agreement for the greater sage-grouse.

Summary of Comments and Responses

In the proposed rule published on April 10, 2015 (80 FR 19263), we requested that all interested parties submit written comments on the proposal by June 9, 2015. We also contacted appropriate federal and state agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposal.

During the public comment period on the proposed rule, we received a total of 29 comment letters addressing the proposed rule and several comments that were not relevant to the proposed rule. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with the black-footed ferret and its habitat, biological needs, recovery efforts, and threats. We received responses from all three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the establishment of a nonessential experimental population designation for black-footed ferret in the State of Wyoming. In general, the peer reviewers stated that the proposed rule provided an accurate summation of the best available scientific information on the biology, current status, and recovery efforts for black-footed ferret, and that the proposed establishment of an NEP area in Wyoming to facilitate black-footed ferret reintroduction is well supported by the best available scientific information. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One reviewer and several commenters were concerned with the statement in the proposed rule that the WGFD would have primary management responsibilities for ferret reintroduction in Wyoming. The reviewer stated that ''[t]urning primary authority for management of a federally endangered species over to a state, even under 10(j), would be unprecedented as far as I can determine''.

Our Response: The Service will maintain authority for black-footed ferrets under the Act until the species is recovered and subsequently delisted. That said, as is true for nearly every endangered species recovery effort, recovery is a collaborative effort with success depending on the coordination and collaboration of a multitude of partners working towards a common goal. The WGFD is anticipated to play a lead role in recovery for the black-footed ferret in Wyoming under this 10(j) rule, likely conducting the actual on-the-ground ferret reintroduction and management work. This situation is in no way unprecedented, as on-the-ground reintroduction efforts under 10(j) are often managed by non-Service groups, including state agencies, non-governmental organizations, and Tribes. The Service considers participation by the WGFD invaluable to this recovery effort given their long history with black-footed ferret conservation and recovery, leadership in successful reintroductions in Shirley Basin (also under a 10(j) rule), intimate knowledge of local biological conditions, and familiarity with local landowners and other stakeholders.

This cooperative approach is consistent with our 2013 Memorandum Of Uderstanding (MOU), which committed the Service, the State of Wyoming, and other Federal partners (''Parties'') to work collaboratively to develop and implement the NEP area designation (WGFD and USFWS 2013). This MOU includes the following guiding principles, among others: (1) The Parties agree that they will collaboratively identify, and prioritize, prospective ferret reintroduction sites in Wyoming outside of the current 10(j) areas (*i.e.,* Shirley Basin and Wolf Creek); and (2) the Parties agree that future reintroductions of the ferret will be based on mutually affirmed prioritization of prospective reintroduction sites (WGFD and USFWS 2013, pp. 5–6).

The Service will continue to play an active role in black-footed ferret recovery in Wyoming as outlined in the MOU and through the Service's oversight of the black-footed ferret allocation process. The Service determines, based on reintroduction proposals, which reintroduction sites receive captive born ferrets (*i.e.,* kits) for release into the wild. Ferret allocation decisions made by the Service are based on the biological and scientific merit of the proposals, the suitability of proposed reintroduction sites, management capabilities of reintroduction programs, comprehensiveness of site work plans, the overall contribution to species recovery each project represents, and other considerations that may be unforeseen. Furthermore, the Service must be kept apprised of any post allocation changes in project design, direction, management, or field implementation of ferret reintroduction projects. No ferrets may be translocated, relocated, or removed from the wild (except for emergency health concerns)

without prior Service notification and authorization.

(2) *Comment:* One peer reviewer stated that our determination of ''nonessential'' is misleading and erroneous, as it is was based on the conclusion that a loss of the proposed NEP in Wyoming will not appreciably reduce the likelihood of future survival of the ferret rangewide (*i.e.,* at the 23 reintroduction sites outside of Wyoming). This reviewer further stated that ''it is not whether the loss of a future population in Wyoming will affect the survival of another population somewhere else, but whether that population is intended to contribute to the recovery of the species.'' Another peer reviewer and several commenters also questioned how all populations in Wyoming could be designated as nonessential despite the anticipated future ''essential'' role of such populations for the recovery of the species. In other words, some collection of reintroduction sites will necessarily comprise an ''essential'' part of the future recovered population.

Our Response: We agree with the contention that successfully reintroduced populations under this 10(j) rule will be a central part of black-footed ferret recovery. This is consistent with the Act's requirements for 10(j) experimental populations. Specifically, the Act requires that experimental populations further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary (16 U.S.C. 1532(3)). In short, experimental populations must further the species' recovery.

Under the revised Black-footed Ferret Recovery Plan, the species may be downlisted from endangered to threatened when at least 10 ferret populations, each with at least 30 breeding adults, are established. Thus, downlisting is based on biological parameters (*e.g.,* number of breeding adults, number of successful sites). The recovery plan makes no distinction as to how these populations are designated once biological criteria are satisfied; each population will contribute toward recovery of the species whether it is designated as endangered, essential experimental, or nonessential experimental. The importance of future reintroduction sites to recovery, however, does not mean these populations are ''essential'' under section 10(j) of the Act. All reintroduction efforts are undertaken with the primary goal to move a species toward recovery. If importance to recovery was equated with essentiality, no reintroductions would qualify for nonessential status. This interpretation would conflict with Congress' expectation that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34; USFWS 1984) and our 1984 implementing regulations, which indicated an essential population will be a special case and not the general rule (USFWS 1984).

(3) *Comment:* Two reviewers and one commenter expressed concern over the reliance of the black-footed ferret recovery program on the captive population. Selection acts on captive populations, potentially resulting in animals adapted for survival in captivity and maladapted for life in the wild.

Our Response: We agree that reliance on captive populations for species conservation is never ideal for numerous reasons, including those noted by the reviewers. Unfortunately, there are few alternatives for the black-footed ferret at this time. Thus, we recognize that it is vitally important for species persistence to expedite the establishment of reintroduction sites and wild populations whenever possible. For this reason, our recovery strategy emphasizes the rapid expansion of ferret recovery in the wild (USFWS 2013a, p. 68). Working in close coordination with the WGFD and other stakeholders, we fully expect establishment of additional wild populations in Wyoming under this 10(j) rule. An increase in successful reintroductions will result in a reduced reliance on the captive population in the future and allow for translocations of wild individuals to more fully support recovery efforts.

(4) *Comment:* One reviewer stated that due to a potential for genetic adaptation to the captive environment, the assumption by the Service that replacing wild animals with captive animals is equivalent to maintaining wild populations is biologically and legally flawed. The reviewer further stated that this assertion should be clarified and/or deleted entirely.

Our Response: Both in our proposal and this final rule, we state that animals lost during reintroduction efforts can be readily replaced through captive breeding, which produces juvenile ferrets in excess of the numbers needed to maintain the captive-breeding population. We do not make the assumption that replacement of wild animals with captive animals is equivalent to maintaining wild populations. It is always the Service's goal for reintroductions to be successful and contribute to recovery, which means the establishment of secure, self-sustaining populations in the wild. We recognize, however, that reintroductions are, by their nature, experiments whose outcome is uncertain. The point we are making with the above statement that ''animals lost during reintroduction can be readily replaced through captive breeding'' reflects the very real conservation status of the black-footed ferret; at this time, loss of the captive population could be catastrophic to the species, whereas the reverse is not true. The captive population of ferrets has been responsible for establishment of every wild ferret population in existence today, either wholly or primarily. Animals lost at reintroduction sites can be replaced by reintroduction of captive-bred individuals. We expect this trend will continue for the foreseeable future. Specifically, the captive population will remain important until establishment of the at least 30 wild populations needed for recovery is accomplished; both as a source of animals for reintroduction and as insurance against stochastic environmental events in wild populations (*e.g.,* plague epizootics). Conversely, the populations in the Wyoming NEP can be established or re-established from the captive population. Thus, until the species is recovered, the Service considers the captive population to be far more important to the survival of the species in the wild than the planned Wyoming NEP. Whether the Wyoming NEP is essential to recovery of the species ''in the wild'' was discussed in more detail under Comment 2.

(5) *Comment:* One reviewer suggested that instead of giving reasons why the NEP is not ''essential'' the Service should indicate its intentions for the experimental population as follows: ''Once the ferret population reaches its delisting goal this 10(j) rule will be mooted, as the species will no longer require protection of the [Act]. The FWS will then enter into post-delisting monitoring and management agreements with Wyoming to ensure adequate persistence of and protection for reintroduced populations of ferrets to ensure that ferrets are no longer subject to relisting under the [Act].''

Our Response: We are required under the Act to designate any experimental population as either ''essential'' or ''nonessential.'' Our nonessential determination is based on the best scientific and commercial data available and thus meets the requirements under the Act. This population satisfies all requirements for a 10(j) population and meets the standards for a nonessential

population under this section of the Act. Although post-delisting management agreements are beyond the scope of this 10(j) rule, we do anticipate reintroductions authorized by this rule to advance the conservation of the species and that this progress may contribute to an eventual reclassification to threatened or full species recovery and delisting. Prior to delisting, it is likely we would pursue management agreements to provide us adequate confidence that recovery progress achieved will be maintained. This is consistent with the Black-footed Ferret Recovery Plan, which calls for the completion and implementation of a post-delisting monitoring and management plan, in cooperation with the states and Tribes, to ensure recovery goals are maintained (USFWS 2013a, p.6).

(6) *Comment:* Two reviewers and several commenters were concerned about the potential use of anticoagulant poisons like Rozol® to control prairie, dogs due to the potential for secondary toxicities to predators like black-footed ferrets. While they recognized that details on anticoagulant poison use may be more appropriately addressed in site-specific plans, they thought a framework for how the Service intends to approach this issue needed to be set out in this rule.

Our Response: Anticoagulant poisons can result in secondary impacts to any wildlife that consumes a poisoned prairie dog. In 2012, the Service completed formal consultation with the Environmental Protection Agency (EPA) to evaluate potential impacts to endangered and threatened species, including the black-footed ferret, from the use of the anticoagulant Rozol® to poison prairie dogs. Label restrictions resulting from this process prohibit application of Rozol® within current and future ferret recovery sites. It is a violation of Federal law to use a pesticide in a manner inconsistent with its labeling.

The Service would have no additional section 7 consultation role regarding the use of Rozol® at reintroduction sites in Wyoming, except in National Parks and National Wildlife Refuges. However, through the allocation process of providing captive ferrets to reintroduction sites, we determine which sites will receive ferrets. We do not support the use of Rozol® or other anticoagulants for control of prairie dogs, particularly at black-footed ferret reintroduction sites. Boundary control of prairie dogs at reintroduction sites is sometimes necessary because prairie dogs have encroached onto adjacent properties where prairie dogs are not wanted. If boundary control becomes necessary to maintain relations with neighboring landowners, we support the use of zinc phosphide in these instances. In comparison with Rozol®, which has a high risk of secondary poisoning of wildlife, zinc phosphide-based pesticides pose fewer risks to non-target wildlife when properly applied by a certified pesticide applicator as required by label.

(7) *Comment:* One reviewer expressed concern over WGFD management of future reintroductions, noting that WGFD has not consistently conducted annual monitoring for the Shirley Basin black-footed ferret population.

Our Response: Long-term wildlife management and monitoring programs seldom are able to achieve 100 percent success when it comes to meeting monitoring goals. Potential impediments to meeting monitoring goals include such things as changing staff workloads and turnover, budget limitations, inclement weather, and equipment failures, among many others. Overall, we believe that during the last 20 years, WGFD has demonstrated a meaningful commitment to black-footed ferret conservation in Shirley Basin through data reporting, multiple scientific publications on the black-footed ferret, plague management, and the release of over 500 ferrets into the area. Therefore, we are confident in their ability to manage future reintroduction efforts in Wyoming.

(8) *Comment:* One reviewer and several commenters requested we provide a specific timeline for completion of the identification and evaluation of reintroduction sites.

Our Response: Stakeholders in Wyoming essentially viewed the implementation of a Statewide 10(j) rule as a prerequisite to participation in any ferret recovery actions in the State of Wyoming. Thus, implementation of this rule is only a first step in advancing black-footed ferret recovery in Wyoming. Under the 2013 MOU guiding principles, the WGFD and the Service will collaboratively identify and prioritize prospective reintroduction sites in the Wyoming NEP area. The steps that must be taken before a site can receive ferrets are substantial and calculated with the goal of selecting sites with the best potential of success. Steps include, but are not limited to: (1) Identification of interested and willing landowners; (2) biological evaluation of each site's potential to support at least 30 ferrets; and (3) creation of site-specific management plans (see *Location of the Nonessential Experimental Population Area*). At this time we do not have precise information on locations of all suitable habitat, nor have any prospective reintroduction sites been approved yet for allocation of captive-bred ferrets. Therefore, we believe reporting a specific timeline would be arbitrary and premature.

Implementation of this Statewide 10(j) rule will significantly reduce the administrative burden that would have been associated with development of multiple site-specific rules. In this case, the WGFD is not precluded from coordinating simultaneously with multiple landowners and evaluating sites for potential reintroduction. We believe under this Statewide 10(j) rule, the process for black-footed ferret reintroductions in Wyoming will be effectively streamlined. Encouragingly, following publication of the proposed rule in the **Federal Register**, WGFD has reported that a number of landowners have approached them expressing interest in establishing a ferret population on their land following implementation of the 10(j) rule.

(9) *Comment:* One reviewer and several commenters wanted greater detail on specific reintroduction and sylvatic plague management plans.

Our Response: Many of the specific questions raised in the comments are answered under *Release Procedures,* above. Development of management plans for reintroductions and sylvatic plague are a cooperative effort between the Service, WGFD, other federal agencies, landowners, and affected stakeholders. Final plans must be approved by the Service as part of the ferret allocation process. Ferret allocation decisions are based on the considerations mentioned in our response to Comment 1. We expect that future site-specific management plans will have many similarities to past plans for other reintroduction sites.

(10) *Comment:* One reviewer and several commenters wondered if the public would have an opportunity to comment on potential reintroduction sites in the future.

Our Response: There is no formal public comment period for potential reintroduction sites or site-specific management plans, but there will be opportunities for public involvement. The Service and the WGFD recognize that local involvement is important to the success of recovery efforts and the long-term conservation of the black-footed ferret in Wyoming. Consequently, as required in the 2013 MOU, the Service and WGFD will coordinate to ensure local communities, including potentially affected landowners, stakeholder groups, local governments, and Tribes are fully engaged in any future black-footed ferret reintroduction

efforts. Future management plans may contain provisions similar to the following, although the specific content and details will vary by reintroduction site. Public involvement may include but is not limited to the following: (1) Public meetings to outreach to all interested parties on determining potential reintroduction sites; (2) Coordination with all interested parties after a reintroduction site is determined; (3) Direct involvement of management plan development which could include state and federal agencies, County Commissioners, landowners, companies, academia, and other stakeholders, and tribes; (4) Allowing landowners and land managers the opportunity to cooperatively decide the number and distribution of prairie dogs (and correspondingly black-footed ferrets) that may occur on privately owned and leased lands; (5) Annually obtaining landowner approval of human activity necessary for actions specified in a plan; (6) Biannual review of the progress of ongoing activities by all concerned parties; (7) Direct involvement any interested parties in monitoring activities on reintroduction sites.

(11) *Comment:* Two reviewers questioned whether the estimates for the number of black-footed ferrets currently in the wild were the most current estimates available.

Our Response: As is true for many species, and particularly with one that is largely fossorial (*i.e.,* lives mostly underground) and nocturnal like the black-footed ferret, determining precise population numbers is challenging. Black-footed ferret populations are difficult to count due to their remote locations, difficult accessibility, nocturnal habits, small population sizes, and logistical problems and costs associated with the requisite field work. More importantly, ferret populations can also fluctuate significantly from one year to the next depending on the presence or absence of plague and active plague management, or due to other environmental factors like drought. Accordingly, a tally of adult ferret numbers at any one point in time is likely a poor indicator of recovery progress. We view ferret population estimates at most sites as minimum numbers because of the aforementioned issues.

We stated in the EA and proposed rule that there are approximately 418 breeding adult ferrets in the wild, including approximately 102 breeding adults in the reintroduced population at Shirley Basin, Wyoming, as was reported in the 2013 Black-footed Ferret Recovery Plan (USFWS 2013a, Table 2). The reviewers are correct that the value for Shirley Basin is an estimate derived from surveys conducted in 2010. A more recent report gives the same estimate of approximately 100 breeding adults in Shirley Basin based on the 2010 survey and approximately 295 breeding adults rangewide (Black-footed ferret Recovery and Implementation Team Conservation Subcommittee Report 2014, Table 1). The current Shirley Basin estimate is based on the best available science and is meant to provide the most accurate assessment of the magnitude of the population size rather than the precise number of individuals, which can fluctuate considerably for the reasons given above.

(12) *Comment:* One reviewer questioned the meaning of the phrase ''occupied prairie dog habitat,'' noting that one could ask ''occupied by what?''

Our Response: When we use the phrase ''occupied prairie dog habitat,'' we mean areas that are occupied by prairie dogs. A review of the scientific literature on prairie dogs shows both ''occupied prairie dog habitat'' and ''prairie dog occupied habitat'' are commonly used terms to indicate habitat that is occupied by prairie dogs. While we agree with the comment in general as prairie dog colonies can and typically are ''occupied'' by a number of other species, in this case we believe, however, it is clear by the context that what is being referenced in this rule is occupancy by prairie dogs.

(13) *Comment:* One reviewer questioned the criteria for evaluating potential reintroduction sites. The reviewer stated that occupancy of habitat by prairie dogs is a simplistic criterion considering prairie dog populations can fluctuate significantly over time, expanding and contracting for a number of reasons, including plague.

Our Response: Determining occupancy by prairie dogs is simply a first step in determining the potential for reintroduction site. A large number of other factors are considered for determining the suitability of proposed reintroduction sites. Foremost in consideration for prioritizing black-footed ferret allocations (*i.e.,* young ferrets available for release into the wild) is the size, density, health, and overall stability of potential ferret habitat. Additional non-biological requirements for ferret allocations include a willing landowner and a management plan that addresses sylvatic plague.

(14) *Comment:* One reviewer agreed with our identification of plague as a major impediment to the recovery of black-footed ferret, but noted that the management of plague only ''during periodic outbreaks of sylvatic plague'' understates the problem. Recent research has shown that plague has serious negative effects on prairie dog populations not only during major ''outbreaks'' but also when present at lower levels.

Our Response: Currently, management for sylvatic plague is carried out largely by dusting the impacted area with pesticides meant to kill the fleas that host the plague bacteria. This type of management can be effective. We agree, however, that this approach is not ideal, as it is typically only applied after plague has been detected, which is often too late, as mortality of ferrets and prairie dogs has already been significant. A new oral vaccine, currently being field tested, could provide a more effective, less expensive way to protect prairie dogs.

The Service recognizes that understanding how to control or preferably eradicate sylvatic plague is critical to black-footed ferret conservation. The complex dynamics of sylvatic plague are not fully understood. As scientific knowledge of sylvatic plague advances, that information will be incorporated into management plans that address sylvatic plague. Although research projects are not required program elements for ferret allocations to reintroduction sites, the Service encourages, supports, and may give greater priority to projects that incorporate research elements addressing specific ferret recovery problems or questions.

(15) *Comment:* One reviewer wanted to see affirmation that the Wind River Tribes concur with the application of 10(j) to tribal lands within the Wind River Indian Reservation. The reviewer stated that Tribes may have an interest in maintaining full protection for ferrets within their boundaries.

Our Response: We contacted the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation and invited them to comment on the proposal. We did not receive comments from either Tribe. It is unlikely that these two Tribes have adequate prairie dog occupied habitat that would be suitable for a future reintroduction of the black-footed ferret. This does not preclude coordination with the Tribes in the future if circumstances change.

Comments From the State of Wyoming

(16) *Comment:* The State of Wyoming and several commenters were concerned that the Service could change the NEP designation to experimental essential,

endangered, or threatened in the future. The Service should clarify under what conditions a change in designation could occur.

Our Response: We do not foresee the need to change the NEP designation for any reintroduced black-footed ferret population. One of the benefits of an NEP designation is that it provides flexibility in the regulatory requirements in the area where the reintroduction occurs. This regulatory relief is important because, prior to reintroduction, these sites had no regulation related to the subject species because the species was not present. Thus, State, tribal, and private landowners typically resist endangered species reintroductions that bring with them new Federal regulation. This resistance can be nearly insurmountable. Fewer black-footed ferret reintroductions would have been initiated during the past 20 years without the added flexibility of nonessential experimental designations. To date, 11 black-footed ferret reintroductions have occurred through use of section 10(j) designated NEP areas in the United States, including in the Shirley Basin in Wyoming (USFWS 2013a, pp. 38–39). We do not believe ferrets would likely exist today in Wyoming if not for their nonessential experimental designation in Shirley Basin and the resulting reduced regulatory burden.

All determinations on essentiality are made prior to any reintroduction action being taken. It is instructive that Congress did not put requirements in section 10(j) to reevaluate the classification after a reintroduction has occurred. While our regulations require a ''periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species'' (50 CFR 17.81(c)(4)), this has not been interpreted as requiring reevaluation and reconsideration of sites' nonessential experimental status (USFWS 1991, 1994, and 1996). We believe Congressional intent was to ensure that our partners could rely upon the original rules promulgated for the reintroduction effort. We also contend that retracting the nonessential experimental designation following implementation of this 10(j) rule would be extremely detrimental to ferrets in Wyoming and the partnerships that sustain them. Furthermore, such an alteration of the regulatory framework post-reintroduction would undermine future reintroduction efforts.

Typically, endangered species recovery efforts, including those for ferrets, depend on a myriad of partners working together to accomplish a common goal. In most cases, and particularly for ferrets, recovery would not be possible without substantial partner efforts. In looking back on ferret recovery over the last 25 years, we have gone from no ferret populations known in the wild to having 24 ferret reintroduction sites in the wild, with 17 of those sites continuing to have ferrets through 2015. Hundreds of partners have made this possible. We believe these are not trivial accomplishments. At nearly all the 24 ferret reintroduction sites, it is our partners who accomplish the actual on-the-ground ferret reintroduction and management work. The same will be true in this case, with WGFD taking the lead on implementation of reintroductions. Absent those partnerships, there would be far fewer reintroductions and likely no ferrets in Wyoming. Accordingly, the Service highly values those local partnerships that accomplish ferret recovery and is understandably cautious about undertaking actions that disrupt those partnerships.

In 2009, the Service received a petition to reclassify three reintroduced black-footed ferret populations from nonessential experimental to endangered, including the Shirley Basin NEP in Wyoming. This petition was submitted pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. 553) (WildEarth Guardians *et al.* 2009). The Service strongly believed and continues to believe that the ramifications of such an action would be detrimental to ferrets at these sites and the partnerships that sustain them. As we anticipated, the petition had immediate negative impacts to ferret recovery, prompting landowners to withdraw support for another planned reintroduction in Wyoming. The Service denied the petition in 2010 (USFWS 2010).

As mentioned above, we do not foresee the need to change the NEP designation for any wild black-footed ferret population. The captive population is crucial to survival of the species in the wild at this time, and likely for the foreseeable future. However, a substantial loss of the captive population is highly improbable, as captive ferrets have been purposefully dispersed among six facilities, protecting the species from a single catastrophic event. In any circumstance, any change in the 10(j) listing would require a new proposed rule, a public comment period (including, if requested, public hearings), public meetings, NEPA compliance, and other documentation prior to publication of a final rule to change or abandon the NEP designation.

(17) *Comment:* The State of Wyoming and several commenters requested that the Service provide assurance that if the 10(j) designation changed in any respect, the Service would remove the ferrets.

Our Response: Under 50 CFR 17.84(g)(12), the following will apply to any reintroduced ferret populations under this 10(j) rule:

''We will not include a reevaluation of the ''nonessential experimental'' designation for these populations during our review of the initial five year reintroduction program. We do not foresee any likely situation justifying alteration of the nonessential experimental status of these populations. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black footed ferrets on their lands may rescind their consent, and at their request, we will relocate the ferrets pursuant to paragraph (g)(4)(iii) of this section.''

(18) *Comment:* The State of Wyoming requested assurance from the Service that there will be thorough and appropriate consultation before any ferrets are brought into Wyoming under this rule.

Our Response: We fully expect that all reintroductions efforts under this 10(j) rule will be conducted in close coordination with the WGFD, landowners, and affected stakeholders. This coordination will take place under previsions in the 2013 MOU and as part of the ferret allocation process.

Public Comments

(19) *Comment:* Two commenters stated that the Service's current prairie dog range estimate is not based on the best available science and information. Specifically the commenters point out that the Service claims there to be nearly 3.1 million acres of prairie dog occupied habitat in Wyoming, but previously (in USFWS 2009) has stated that the prairie dog occupies 2.4 million acres across its entire range.

Our Response: It is important to clarify that the 2.4 million acres of occupied habitat estimated in USFWS 2009 is a rangewide estimate for black-tailed prairie dogs (one of four species of prairie dog) only. Our estimate in the proposed rule and above of the amount of prairie dog occupied habitat in Wyoming includes estimates for both species of prairie dog that occur in Wyoming. We cite recent estimates of prairie dog occupied habitat in Wyoming at 2,893,487 ac (1,171,862 ha) in the white-tailed prairie dog range and 229,607 ac (92,991 ha) in the black-

tailed prairie dog range (Van Pelt 2013, pp. 8, 14). Black-tailed prairie dogs have a much smaller estimated range in the State of Wyoming while the estimated white-tailed prairie dog habitat in Wyoming is much larger. The combined estimate for both species of prairie dog in Wyoming is based on the best available scientific information.

(20) *Comment:* Two commenters noted that aerial surveys overestimate occupied prairie dog habitat by as much as 94 percent (Sidle *et al.* 2012). One commenter stated that if the estimate of prairie dog habitat is inaccurate then the area to which black-footed ferrets may be introduced is exaggerated. The commenter also alleged that the Service has used inaccurate data to formulate population goals of both the black-footed ferret and black tailed prairie dogs.

Our Response: We acknowledge that aerial surveys can overestimate the extent of active or occupied prairie dog habitat and that there is some degree of error attached to any such estimate. Overestimates of prairie dog colonies result because observers may have difficulty distinguishing active, occupied burrows from unoccupied burrows from the air. Researchers continue working to refine methods for accurately assessing active prairie dog populations from the air.

It is important to note, however, that in the case of black-footed ferret reintroductions, aerial surveys are used only as a rough guide for identifying potential black-footed ferret habitat for reintroductions. Measurable fluctuations in prairie dog occupancy are a part of the natural dynamics of prairie dog populations, but fluctuations can be especially pronounced in areas experiencing plague or subjected to poisoning. The presence of unoccupied burrows conclusively indicates that prairie dogs occupied the area sometime in the recent past. Thus, while we may use aerial surveys as rough estimate of prairie dog habitat, we do not rely on aerial surveys to identify areas with the highest biological potential for black-footed ferret reintroductions. Reintroduction sites are chosen instead based on a number of other factors including the size, density, health, and overall stability of the prairie dog occupied habitat, information that is gathered from ground surveys and local knowledge of prairie dog colonies in a given area.

States are encouraged to contribute to recovery goals in proportion to the amount of historical ferret habitat (*i.e.,* prairie dog colonies) that once occurred on these lands. The Black-footed Ferret Recovery Plan estimates that 35,000 ac (14,000 ha) of purposefully managed prairie dog occupied habitat will be needed to meet Wyoming's portion of the rangewide habitat goal for downlisting and 70,000 ac (28,000 ha) to meet their portion of the rangewide habitat goal for delisting (USFWS 2013a, Table 8). For the State of Wyoming, this equates to purposeful management of approximately 2 percent of the estimated prairie dog habitat in Wyoming to meet their portion of the rangewide habitat goals for delisting. The best available science supports our estimates of occupied prairie dog habitat and potentially suitable habitat for black-footed ferret reintroductions.

(21) *Comment:* Several commenters were concerned with potential impacts of black-footed ferret reintroductions on federal oil and gas lessees. They asserted that because federal oil and gas leases are interests in real property, the holder of a federal oil and gas lease is no different than a private surface owner.

Our Response: We concluded in the proposed rule and the EA that the most prevalent land use activities, including energy development, currently occurring in the NEP area are compatible with ferret recovery and that there is no information to suggest that future activities would be incompatible with ferret recovery. Federal oil and gas leases will certainly be considered and lessees likely consulted during development of reintroduction proposals for the ferret allocation process. Current and future land management, principal land uses, and potential for change or land management conflicts are serious considerations for all potential reintroduction sites. Reintroduction allocation decisions are made based on a potential reintroduction site's probability for long-term success. We have little interest in allocating ferrets, an exceptionally limited resource, to areas where land management conflicts will be an obvious problem, either currently or in the future.

(22) *Comment:* One commenter stated that black-footed ferrets are believed to be predators of sage-grouse nests and therefore will have negative impacts on sage-grouse.

Our Response: Based on our extensive experience with both species in the wild and our review of the scientific literature, we are not aware of any evidence that black-footed ferrets are predators on sage-grouse at any life stage, including nests (eggs), adults, or chicks. Black-footed ferrets depend almost exclusively on prairie dogs for food.

Summary of Changes From Proposed Rule

In our proposed rule, the language under paragraph (g)(9)(viii) stated that ''Any black-footed ferret found within the Wyoming Experimental Population Area will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside of the State of Wyoming would initially be considered as endangered, but may be captured for genetic testing.''

As noted by one reviewer, this language was included in earlier 10(j) rules at a time when the discovery of other extant wild ferret populations was still considered plausible. There have been no verified reports of any extant black-footed ferret individuals or populations in any prairie dog complex since the discovery of the last known wild black-footed ferret population near Meeteetse, Wyoming, in 1981. Recently, the Service issued a 'block clearance' letter for the ferret in the State of Wyoming (Service 2013c). Block clearance provides an acknowledgement that the likelihood of identifying ferrets in Wyoming, outside of those resulting from reintroductions, is distinctly minimal. Our revision of paragraph (g)(9)(viii) reflects this determination. Thus, once this 10(j) rule becomes effective, any black-footed ferret found within the Wyoming NEP Experimental Population Area will be considered part of the nonessential experimental population. A black-footed ferret that disperses beyond the boundaries of the nonessential experimental population takes on the status of that area (endangered, unless within another nonessential experimental population area).

Finding

We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. We solicited public comment on the proposed NEP designation. We have considered all comments we received on the proposed rule and the draft EA before making this final determination. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that establishing this Wyoming NEP area will further conservation of the species, but that any future experimental populations of black-footed ferrets in Wyoming would not be essential to the continued existence of the species in the wild.

Therefore, we are finalizing our proposal to designate most of Wyoming (the remainder of the State of Wyoming not covered under past NEPs) as an NEP area under section 10(j) of Act. The result of this designation and the two previous designations is that all black-footed ferrets found within the entire State of Wyoming are considered as an NEP. Black-footed ferrets will be managed under the associated NEP regulations, allowing greater management flexibility. We anticipate this will encourage partners to undertake new reintroductions, advancing the conservation and recovery of the species.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that will be affected by this rule includes release sites in Wyoming and adjacent areas in Wyoming into which black-footed ferrets may disperse. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the 10(j) rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for the black-footed ferret populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the black-footed ferret, but we do not expect projects to be halted or substantially modified as a result of these regulations.

This 10(j) rule will broadly authorize incidental take of the black-footed ferret within the NEP area. The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as, agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property in the NEP area are livestock grazing and associated ranch management practices (*e.g.,* fencing, weed treatments). We believe the presence of the black-footed ferret would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon states, non-federal entities, or members of the public due to the presence of the black-footed ferret, and federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. A Small Government Agency Plan is not required. Small governments will not be affected because the NEP designation does not place additional requirements on any city, county, or other local municipalities.

(2) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This NEP designation for the black-footed ferret will not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this final rule does not have significant takings implications. This rule allows for the take of reintroduced black-footed ferret when such take is incidental to an otherwise legal activity, such as recreation (*e.g.,* hiking, hunting,

fishing, bird watching), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP will conflict with existing or proposed human activities or hinder public use of ferret habitat in Wyoming.

A takings implication assessment is not required because this rule: (1) Will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny any economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate public interest (conservation and recovery of a listed species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132 (70 FR 23775), we have considered whether this final rule has significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in Wyoming. Achieving the recovery goals for this species will contribute to its eventual delisting and return to state management. No intrusion on state policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The final 10(j) rule operates to maintain the existing relationship between the State and the Federal governments and is being undertaken in coordination with the State of Wyoming. We have cooperated with WGFD in the preparation of this final rule. Therefore, this final rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain OMB approval before collecting information from the public. This final rule does not include any new collections of information that require OMB approval under the Paperwork Reduction Act. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned OMB Control Number 1018–0095, which expires on October 31, 2017. We 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.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we have analyzed the impact of this rule. Based on this analysis and information resulting from public comment on the proposed action, we determined that this action will not have significant impacts or effects. We have prepared a final EA and finding of no significant impact on this action, which are available for public inspection: (1) In person at the Wyoming Ecological Services Field Office (see **ADDRESSES**) and (2) online at *http://www.regulations.gov.* All appropriate NEPA documents were finalized before this rule was finalized.

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 229511), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian Tribes and have determined that Tribal lands overlap the Wyoming NEP in portions of Fremont and Hot Springs Counties. However, participation in black-footed ferret recovery is entirely voluntary. If suitable habitat for ferret recovery is available, non-Federal landowners, including Tribes, may choose to either not participate, or to participate through authorities under 10(j), 10(a)(1)(A), or the Safe Harbor Agreement (USFWS 2013b). If ferrets were reintroduced on non-tribal lands adjacent to Tribal lands and subsequently dispersed onto Tribal lands, the aforementioned authorities will provide a more relaxed regulatory situation under the Act through allowances for incidental take. However, as stated previously, we are not aware of any prairie dog complexes suitable for ferret reintroduction on or adjacent to Tribal lands. The nearest potential reintroduction sites are two white-tailed prairie dog complexes—Fifteen-mile Complex near Worland in Hot Springs County, and Sweetwater Complex near Sweetwater Station in Fremont County (Luce 2008, pp. 29–30). Both sites are of intermediate potential for ferret reintroduction and are located approximately 19 miles (30 kilometers) from reservation boundaries. We sent letters, describing our proposed action and requesting input, to the Northern Arapaho and Eastern Shoshone Tribes of the Wind River Reservation on September 4, 2014. We did not receive a response from either Tribe.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2015–0013, or upon request from the Wyoming Ecological Services Field Office (see **ADDRESSES**).

Authors

The authors of this final rule are staff members of the Wyoming Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Ferret, black-footed'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Ferret, black-footed.	*Mustela nigripes*.	Western U.S.A., Western Canada, Mexico.	Entire, except where listed as an experimental population.	E	1, 3, 433, 545, 546, 582, 646, 703, 737, 860	NA	NA
Ferret, black-footed.	*Mustela nigripes*.	Western U.S.A., Western Canada, Mexico.	U.S.A. (WY and specified portions of AZ, CO, MT, SD, and UT, see 17.84(g)(9)).	XN	433, 545, 546, 582, 646, 703, 737, 860	NA	17.84(g)
*	*	*	*	*	*	*	

* * * * *

■ 3. Amend § 17.84 by:

■ a. Revising paragraphs (g)(1) and (g)(6)(i);

■ b. Adding paragraph (g)(9)(viii); and

■ c. Adding a map entitled ''Wyoming Nonessential Experiment Population (NEP) Area for the Black-footed Ferret'' immediately following the map entitled ''Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret) Experimental Population Area—South Dakota.''

The revisions and additions read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) * * *

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (viii) of this section are nonessential experimental populations. We will manage each of these populations, and each reintroduction site within the Wyoming Experimental Population Area, in accordance with their respective management plans.

* * * * *

(6) * * *

(i) Report such taking in Wyoming, including the Shirley Basin/Medicine Bow experimental population area, to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

* * * * *

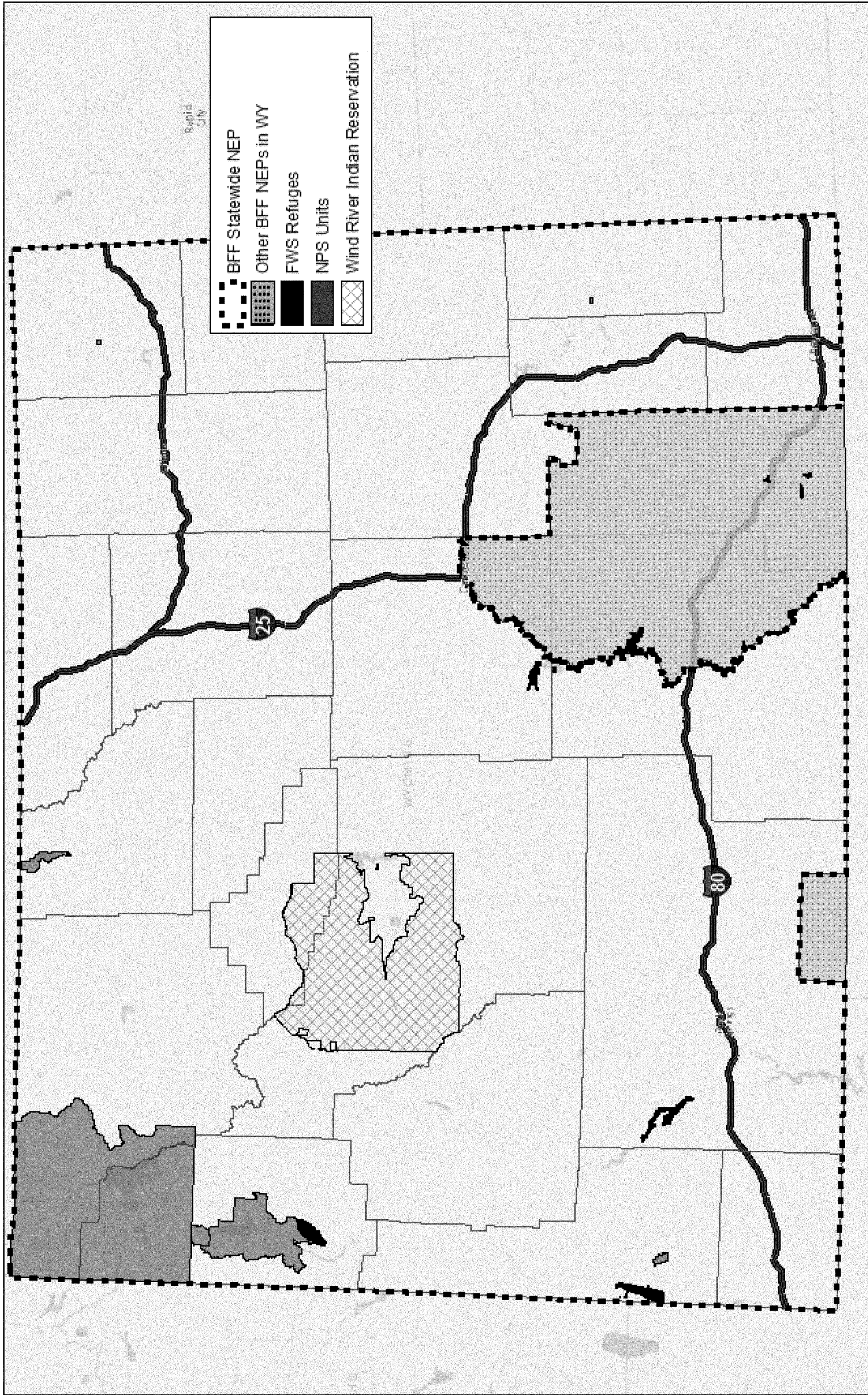
(9) * * *

(viii) The Wyoming Experimental Population Area encompasses most of the State of Wyoming. The boundaries of the nonessential experimental population include all areas in the State of Wyoming outside of the Shirley Basin/Medicine Bow Management Area (see paragraph (g)(9)(i) of this section) and the small portion of Wyoming included as part of the Northwestern Colorado/Northeastern Utah Experimental Population Area (see paragraph (g)(9)(v) of this section). Collectively, however, these three 10(j) areas cover the entire State of Wyoming. Any black-footed ferret found within the Wyoming NEP Experimental Population Area will be considered part of a nonessential experimental population. A black-footed ferret that disperses beyond the boundaries of the nonessential experimental population area takes on the status of that area (endangered, unless within another nonessential experimental population area). Such animals may be captured for genetic testing and relocation. If necessary, disposition of the captured animal may occur in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan.

* * * * *



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Dated: October 21, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–27639 Filed 10–29–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE274

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused Community Development Quota (CDQ) for CDQ acceptable biological catch (ABC) reserves. This action is necessary to allow the 2015 total allowable catch of rock sole and yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective October 30, 2015 through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2015 rock sole and yellowfin sole CDQ reserves specified in the BSAI are 6,875 metric tons (mt) and 17,321 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and following revisions (80 FR 65663, October 27, 2015). The 2015 rock sole, and yellowfin sole CDQ ABC reserves are 12,567 mt and 9,301 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and following revisions (80 FR 65663, October 27, 2015).

The Bristol Bay Economic Development Corporation has requested that NMFS exchange 600 mt of rock sole CDQ reserves for 600 mt of yellowfin sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 600 mt of rock sole CDQ reserves for 600 mt of yellowfin sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and following revisions (80 FR 65663, October 27, 2015) are further revised as follows:

TABLE 11—FINAL 2015 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	8,000	7,000	9,000	17,187	65,315	159,998
CDQ	856	749	963	1,752	6,275	17,921
ICA	100	75	10	5,000	8,000	5,000
BSAI trawl limited access	704	618	161	0	0	16,165
Amendment 80	6,340	5,558	7,866	10,435	51,040	120,912
Alaska Groundfish Cooperative	3,362	2,947	4,171	1,708	13,318	44,455
Alaska Seafood Cooperative	2,978	2,611	3,695	8,727	37,722	76,457

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2015 AND 2016 ABC SURPLUS, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2015 Flathead sole	2015 Rock sole	2015 Yellowfin sole	2016 Flathead sole	2016 Rock sole	2016 Yellowfin sole
ABC	66,130	181,700	248,800	63,711	164,800	245,500
TAC	17,187	65,315	159,998	24,250	69,250	149,000
ABC surplus	48,943	116,385	88,802	39,461	95,550	96,500
ABC reserve	48,943	116,385	88,802	39,461	95,550	96,500
CDQ ABC reserve	5,324	13,167	8,701	4,222	10,224	10,326
Amendment 80 ABC reserve	43,619	103,218	80,101	35,239	85,326	86,175
Alaska Groundfish Cooperative for 2015 [1]	3,836	24,840	35,408	n/a	n/a	n/a
Alaska Seafood Cooperative for 2015 [1]	39,783	78,378	44,693	n/a	n/a	n/a

[1] The 2016 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2015.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Bristol Bay Economic Development Corporation in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–27694 Filed 10–29–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 210

Friday, October 30, 2015

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4210; Directorate Identifier 2015–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This proposed AD was prompted by a determination that certain splice plate locations of the aft pressure bulkhead web are hidden and cannot be inspected using existing manufacturer service information. This proposed AD would require repetitive open-hole high frequency eddy current (HFEC) inspections for cracking of the aft pressure bulkhead web. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web, which could result in rapid decompression and loss of structural integrity.

DATES: We must receive comments on this proposed AD by December 14, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4210.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4210; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–4210; Directorate Identifier 2015–NM–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have determined that certain splice plate locations of the aft pressure bulkhead web at station (STA) 1582 are hidden and cannot be inspected visually for cracking because they are hidden due to the installation of splice plates up to 5 inches in width. These locations cannot be inspected using existing manufacturer service information; therefore, fastener removal and repetitive open-hole HFEC inspections for cracking of the aft pressure bulkhead web at STA 1582 are needed. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web at STA 1582, which, if not found and repaired, could result in rapid decompression and loss of structural integrity.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015. The service information describes procedures for removing the aft row of fasteners from each of the splice plates and doing an open-hole HFEC inspection for cracking in the aft pressure bulkhead at STA 1582. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

For information on the procedures and compliance times, see this service

information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4210.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as required for compliance (RC) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as RC, the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an alternative method of compliance (AMOC) is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

Differences Between This Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 430 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections	Up to 46 work-hours × $85 per hour = $3,910 per inspection cycle.	$0	Up to $3,910 per inspection cycle.	Up to $1,681,300 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2015–4210; Directorate Identifier 2015–NM–067–AD.

(a) Comments Due Date

We must receive comments by December 14, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that areas at certain splice plate locations of the aft pressure bulkhead web are hidden and cannot be inspected using existing manufacturer service information; therefore, an inspection for cracking of the aft pressure bulkhead web at station (STA) 1582 is needed. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web, which could result in rapid decompression and loss of structural integrity.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections of Station (STA) 1582 Aft Pressure Bulkhead Web Under the Pressure Slice Plates

At the applicable times specified in Table 1 and Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, except as required by paragraph (i) of this AD: Do an open-hole high frequency eddy current (HFEC) inspection for cracking in the aft pressure bulkhead web at STA 1582, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 12,000 flight cycles.

(h) Repair

If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, specifies to contact Boeing for repair instructions: Before further flight, repair the crack in accordance with the procedures specified in paragraph (j) of this AD. Accomplishing a repair terminates the inspections required by paragraph (g) of this AD in the area under the repair only.

(i) Exceptions to the Service Information

Where Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 19, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27447 Filed 10–29–15; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2014–0081]

RIN 0960–AH74

Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process; Extending of the Comment Period

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking; extension of the comment period.

SUMMARY: On September 14, 2015, we published in the **Federal Register** an advanced notice of proposed rulemaking (ANPRM) regarding Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process and solicited public comments. We provided a 60-day comment period ending on November 13, 2015. We are extending the comment period to December 14, 2015. Our extension of the comment date accommodates and facilitates public comments we expect in response to the National Disability Forum we are sponsoring on Friday, November 20, 2015. During the forum, we are hosting a moderator-led discussion entitled: The Realities of Work for Individuals with Disabilities: Impact of Age, Education, and Work Experience (for information on the forum see the **SUPPLEMENTARY INFORMATION** section).

DATES: The comment period for the advanced notice of proposed rulemaking published on September 14, 2015 (80 FR 55050), is extended. To ensure that your written comments are considered, we must receive them on or before December 14, 2015.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–SSA–2014–0081 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number SSA–2014–0081. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports

Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–4794. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: This document extends the comment period to Monday, December 14, 2015, for the advanced notice of proposed rulemaking that we published on September 14, 2015. We are extending the comment period in light of the comments we anticipate receiving from our National Disability Forum occurring on November 20, 2015, which includes a panel discussion on the topic of our vocational factors. If you have already provided comments on the proposed rules, we will consider your comments and you do not need to resubmit them.

Social Security Administration—National Disability Forum

Friday, November 20, 2015, 1:00 p.m.–3:00 p.m., National Education Association, 1201 16th Street NW., Washington, DC 20036

Speakers

- Paul Van de Water—Center on Budget and Policy Priorities—Moderator
- Kate Lang—Justice in Aging
- Rebecca Vallas—Center for American Progress
- Mark Warshawsky—Mercatus Center at George Mason University
- Ross Eisenbrey—Economic Policy Institute
- Kim Hildred—Hildred Consulting, LLC

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2015–27692 Filed 10–29–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2014–D–1696]

Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the draft document entitled ''Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff,'' published in the **Federal Register** of December 23, 2014. FDA is reopening the comment period to allow interested persons additional time to submit comments and any new information.

DATES: Submit either electronic or written comments on the draft guidance by April 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–1696 for ''Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff; Reopening the Comment Period.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 23, 2014 (79 FR 77012), FDA announced the availability of a draft document entitled ''Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff'' dated December 2014. The draft guidance document provides human cells, tissues, and cellular and tissue-based product (HCT/P) manufacturers, health care providers, and FDA staff with recommendations for meeting the 21 CFR 1271.10(a)(1) criterion of minimal manipulation. Interested persons were originally given until February 23, 2015, to comment on the draft guidance.

Elsewhere in this issue of the **Federal Register**, FDA is announcing four other related documents. In a separate document, FDA is announcing a public hearing entitled ''Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments'' (part 15 hearing) to be held on April 13, 2016, to provide stakeholders with the opportunity to discuss FDA's policy on regulation of HCT/Ps related to the four draft guidances on the following topics: Homologous use, same surgical procedure exception, minimal manipulation, and adipose tissue.

In a separate document, FDA is announcing the availability of a draft document entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff.''

In separate documents, FDA is also reopening the comment periods to FDA's public dockets on the previously issued draft guidance documents on the following topics related to HCT/Ps: Adipose tissue (Docket No. FDA–2014–D–1856) and same surgical procedure exception (Docket No. FDA–2014–D–1584).

II. Reopening of Comment Period

Following publication of December 23, 2014, notice of availability, FDA received a request to allow interested persons additional time to comment. In conjunction with the part 15 hearing and announcement of availability of the homologous use draft guidance, FDA is reopening the comment period to allow potential respondents to thoroughly evaluate and address pertinent issues. The minimal manipulation draft guidance and other related guidances (homologous use, same surgical procedure exception, adipose tissue) all deal with the interpretation of the regulations under 21 CFR part 1271 that will be addressed as part of the part 15 hearing.

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27705 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2015–D–3719]

Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a 1-day public hearing to obtain input on four recently issued draft guidances relating to the regulation of human cells, tissues, or cellular or tissue-based products (HCT/Ps). These draft guidances were issued by FDA in response to stakeholders' requests for guidance on FDA's current views about how manufacturers, establishments, and distributors of HCT/Ps and health care professionals can meet the criteria under the Agency's regulations that apply to HCT/Ps. FDA will consider information it obtains from the public hearing in the finalization of these guidances.

DATES: The public hearing will be held on April 13, 2016, from 8 a.m. to 5 p.m. The meeting may be extended or end early depending on the level of public participation. Persons seeking to attend or to present at the public hearing must register by January 8, 2016. Section IV provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until April 29, 2016.

ADDRESSES: The public hearing will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/aboutfda/workingatfda/buildingsandfacilities/whiteoakcampusinformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–3719 for ''Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

A link to the live Webcast of this public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on the day of the public hearing. A video record of the public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm.* A video record of the public hearing will be available at the same Web site address for 1 year.

FOR FURTHER INFORMATION CONTACT: Lori Jo Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911, *lori.olsenchurchyard@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

HCT/Ps are defined in § 1271.3(d) (21 CFR 1271.3(d)) as articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. FDA has implemented a risk-based approach to the regulation of HCT/Ps. Under the authority of section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA established regulations for all HCT/Ps to prevent the introduction, transmission, and spread of communicable diseases. These regulations can be found in part 1271. An HCT/P is regulated solely under section 361 of the PHS Act and part 1271, if it meets all of the following criteria (§ 1271.10(a)):

• The HCT/P is minimally manipulated;

• The HCT/P is intended for homologous use only, as reflected by the labeling, advertising, or other indications of the manufacturer's objective intent;

• The manufacture of the HCT/P does not involve the combination of the cells or tissues with another article, except for water, crystalloids, or a sterilizing, preserving, or storage agent, provided that the addition of water, crystalloids, or the sterilizing, preserving, or storage does not raise new clinical safety concerns with respect to the HCT/P; and

• Either

○ The HCT/P does not have a systemic effect and is not dependent upon the metabolic activity of living cells for its primary function, or

○ The HCT/P has a systemic effect or is dependent upon the metabolic activity of living cells for its primary function, and is for the following uses:

▪ Autologous,

▪ Allogeneic, in a first-degree or second-degree blood relative, or

▪ Reproductive.

If an HCT/P does not meet all of the criteria set forth under § 1271.10(a), the HCT/P will be regulated as a drug, device, and/or biological product under the Federal Food, Drug, and Cosmetic Act, and/or section 351 of the PHS Act (42 U.S.C. 262).

In certain circumstances as provided in § 1271.15, an establishment that manufactures HCT/Ps may be excepted from the requirements in part 1271. For example, an establishment is excepted from the requirements if it ''removes HCT/Ps from an individual and implants such HCT/Ps into the same individual during the same surgical procedure'' (§ 1271.15(b)).

II. Draft Guidances

As part of its commitment to public outreach and to explain the Agency's current thinking on the regulatory framework for HCT/Ps, FDA has issued the following four draft guidances:

• Same Surgical Procedure Exception under § 1271.15(b): Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry (Same Surgical Procedure Exception Draft Guidance);

• Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff (Minimal Manipulation Draft Guidance);

• Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry (Adipose Tissue Draft Guidance); and

• Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff (Homologous Use Draft Guidance).

The Same Surgical Procedure Exception Draft Guidance was published in the **Federal Register** of October 23, 2014 (79 FR 63348), and provides answers to common questions regarding the scope of the exception.

The Minimal Manipulation Draft Guidance was published in the 03'**Federal Register** of December 23, 2014 (79 FR 77012), and provides recommendations for meeting the § 1271.10(a)(1) criterion of minimal manipulation.

The Adipose Tissue Draft Guidance was published in the **Federal Register** of December 24, 2014 (79 FR 77414), and

provides those who manufacture and use adipose tissue with recommendations for complying with the regulatory framework for HCT/Ps.

Elsewhere in this issue of the **Federal Register,** FDA is announcing the availability of the Homologous Use Draft Guidance which provides recommendations for applying the § 1271.10(a)(2) homologous use criterion, and is also announcing the reopening of the comment periods on the Same Surgical Procedure Exception, Minimal Manipulation, and Adipose Tissue Draft Guidances.

III. Purpose and Scope of the Public Hearing

The purpose of this public hearing is to obtain comments on these four draft guidances. FDA is seeking feedback, both general and specific, from a broad group of stakeholders, including HCT/P manufacturers, tissue establishments, biological and device product manufacturers, health care professionals, clinicians, biomedical researchers, and the public. For example, FDA would like comments on the scope of each guidance, including the particular topics covered, the particular questions posed, whether there are additional issues for which they seek guidance, and whether FDA's recommendations for each topic are sufficiently clear and consistent within and across documents to provide meaningful guidance to stakeholders. In addition, FDA welcomes any comments that will enhance the usefulness and clarity of these documents.

FDA recommends that comments exclude discussion of products which do not meet the definition of an HCT/P, such as platelet rich plasma. FDA also recommends that stakeholders coordinate comments when possible in order to allow for presentation of a wide range of perspectives within the allotted time of the meeting.

IV. Attendance and Registration

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance is free and will be on a first-come, first-served basis. Individuals who wish to present at the public hearing must register by sending an email to *CBERPublicEvents@fda.hhs.gov* on or before January 8, 2016, and provide complete contact information, including name, title, affiliation, address, email, and phone number. Those without email access may register by contacting Sherri Revell or Loni Warren Henderson at 240–402–7800. You should identify each guidance you wish to comment on in your presentation so that FDA can consider that information in organizing the presentations. Individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. FDA will do its best to accommodate requests to speak and will determine the amount of time allotted for each oral presentation, and the approximate time that each oral presentation is scheduled to begin. FDA will notify registered presenters of their scheduled times, and make available an agenda at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on or before February 5, 2016. Once FDA notifies registered presenters of their scheduled times, presenters should submit an electronic copy of their presentation to *CBERPublicEvents@fda.hhs.gov* by March 11, 2016.

If you need special accommodations because of a disability, please contact Sherri Revell or Loni Warren Henderson at 240–402–7800 at least 7 days before the meeting.

A link to the live Web cast of this public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on the day of the public hearing. A video record of the public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* following the meeting. A video record of the public hearing will be available at the same Web site address for 1 year.

V. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, accompanied by FDA senior management from the Office of the Commissioner and the Center for Biologics Evaluation and Research.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section VI). To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of those provisions as specified in § 15.30(h).

VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *www.regulations.gov* and *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm.* It may be viewed at the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27703 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2014–D–1584]

Same Surgical Procedure Exception: Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the draft document entitled ''Same Surgical Procedure Exception: Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry'' announced in the **Federal Register** of October 23, 2014. FDA is reopening the comment period to allow interested persons

additional time to submit comments and any new information.

DATES: Submit either electronic or written comments on the draft guidance by April 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- M*ail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions''.

Instructions: All submissions received must include the Docket No. FDA–2014–D–1584 for ''Same Surgical Procedure Exception: Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions'', publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 23, 2014 (79 FR 63348), FDA announced the availability of a draft document entitled ''Same Surgical Procedure Exception under 21 CFR 1271.15(b): Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry'' dated October 2014. The draft guidance is intended for tissue establishments and health care professionals and discusses one of the exceptions for establishments from certain regulatory requirements. Interested persons were originally given until December 22, 2014, to comment on the draft guidance.

Elsewhere in this issue of the **Federal Register**, FDA is announcing four other related documents. In a separate document, FDA is announcing a public hearing entitled ''Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments'' (part 15 hearing) to be held on April 13, 2016, to provide stakeholders with the opportunity to discuss FDA's policy on regulation of human cells, tissues, and cellular and tissue-based products (HCT/Ps) related to the four draft guidances on the following topics: Homologous use, same surgical procedure exception, minimal manipulation, and adipose tissue.

In a separate document, FDA is announcing the availability of a draft document entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff.''

In separate documents, FDA is also reopening the comment periods to FDA's public dockets on the previously issued draft guidance documents on the following topics related to HCT/Ps: Minimal manipulation (Docket No. FDA–2014–D–1696) and adipose tissue (Docket No. FDA–2014–D–1856).

II. Reopening of Comment Period

Following publication of the October 23, 2014, notice of availability, FDA received a request to allow interested persons additional time to comment. In conjunction with the part 15 hearing and announcement of availability of the homologous use draft guidance, FDA is reopening the comment period to allow potential respondents to thoroughly evaluate and address pertinent issues. The same surgical procedure exception draft guidance and other related guidances (homologous use, minimal manipulation, adipose tissue) all deal with the interpretation of the regulations under 21 CFR part 1271 that will be addressed as part of the part 15 hearing.

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27707 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2014–D–1856]

Human Cells, Tissues, and Cellular and Tissue-Based Products From Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the draft document entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry'' published in the **Federal Register** of December 24, 2014. FDA is reopening the comment period to allow interested persons additional time to submit comments and any new information.

DATES: Submit either electronic or written comments on the draft guidance by April 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–1856 for ''Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 24, 2014 (79 FR 77414), FDA announced the availability of a draft document entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry'' dated December 2014. The draft guidance document provides sponsors, clinicians, and other establishments that manufacture and use adipose tissue, with recommendations for complying with the regulatory framework for human cells, tissues, and cellular and tissue-based products (HCT/Ps). For purposes of applying the HCT/P regulatory framework, FDA considers connective tissue, including adipose tissue, to be a structural tissue. Interested persons were originally given until February 23, 2015, to comment on the draft guidance.

Elsewhere in this issue of the **Federal Register**, FDA is announcing four other related documents. In a separate document, FDA is announcing a public hearing entitled ''Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments'' (part 15 hearing) to be held on April 13, 2016, to provide stakeholders with the opportunity to discuss FDA's policy on regulation of HCT/Ps related to the four draft guidances on the following topics: Homologous use, same surgical procedure exception, minimal manipulation, and adipose tissue.

In a separate document, FDA is announcing the availability of a draft document entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff.''

In separate documents, FDA is also reopening the comment periods to

FDA's public dockets on the previously issued draft guidance documents on the following topics related to HCT/Ps: Minimal manipulation (Docket No. FDA–2014–D–1696) and same surgical procedure exception (Docket No. FDA–2014–D–1584).

II. Reopening of Comment Period

Following publication of December 24, 2014, notice of availability, FDA received several requests to allow interested persons additional time to comment. In conjunction with the part 15 hearing and announcement of availability of the homologous use draft guidance, FDA is reopening the comment period to allow potential respondents to thoroughly evaluate and address pertinent issues. The adipose tissue draft guidance and other related guidances (homologous use, minimal manipulation, same surgical procedure exception) all deal with the interpretation of the regulations under 21 CFR part 1271 that will be addressed as part of the part 15 hearing.

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27706 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2015–D–3581]

Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff.'' The draft guidance document provides human cells, tissues, and cellular and tissue-based product (HCT/P) manufacturers, health care providers, and FDA staff, with recommendations for applying the criterion of ''homologous use'' as it applies to HCT/Ps. The interpretation and application of the homologous use criterion and related definitions have been of considerable interest to industry stakeholders since they were first proposed during the Agency's rulemaking on HCT/Ps.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions)*: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–3581 for ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, or to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66,

Rm. 5431, Silver Spring MD 20993–0002, or you may send an email request to the Office of Combination Products at *combination@fda.gov.* If you are submitting a written request, send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lori Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Angela Krueger, Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993–0002, 301–796–6380; or Leigh Hayes, Office of Combination Products, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5125, Silver Spring, MD 20993–0002, 301–796–8938.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff.'' The draft guidance document provides HCT/P manufacturers, health care providers, and FDA staff, with recommendations for applying the § 1271.10(a)(2) (21 CFR 1271.10(a)(2)) criterion of homologous use. This guidance will improve stakeholders' understanding of the definition of homologous use in § 1271.3(c), and how to apply the regulatory criterion in § 1271.10(a)(2) to their HCT/P.

HCT/Ps are defined in § 1271.3(d) as articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. FDA has implemented a risk-based approach to the regulation of HCT/Ps. Under the authority of section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA established regulations under part 1271 for all HCT/Ps to prevent the introduction, transmission, and spread of communicable diseases. HCT/Ps are regulated solely under section 361 of the PHS Act and 21 CFR part 1271, if they meet the criteria provided under § 1271.10(a).

If an HCT/P does not meet all of the criteria set out under § 1271.10(a), and does not meet one of the exceptions in § 1271.15, the HCT/P will be regulated as a drug, device, and/or biological product under the Federal Food, Drug, and Cosmetic Act, and/or section 351 of the PHS Act (42 U.S.C. 262).

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirement of the applicable statutes and regulations.

In a separate document published elsewhere in this issue of the **Federal Register**, FDA is announcing a public hearing entitled ''Draft Guidances Relating to the Regulation of Human Cells, Tissues or Cellular or Tissue-Based Products; Public Hearing; Request for Comments'' to be held on April 13, 2016, to provide stakeholders with the opportunity to discuss FDA's policy on regulation of HCT/Ps related to the four draft guidances on the following topics: Homologous use, same surgical procedure exception, minimal manipulation, and adipose tissue.

In separate documents published elsewhere in this issue of the **Federal Register**, FDA is also reopening the comment periods to FDA's public dockets on the previously issued draft guidance documents on the following topics related to HCT/Ps: Minimal manipulation (Docket No. FDA–2014–D–1696), adipose tissue (Docket No. FDA–2014–D–1856), and same surgical procedure exception (Docket No. FDA–2014–D–1584).

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 1271 have been approved under OMB control number 0910–0543.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm* or *http://www.fda.gov/CombinationProducts/GuidanceRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of the draft guidance entitled ''Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff'' may send an email request to *CDRH-guidance@fda.hhs.gov* to receive an electronic copy of the document.

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27704 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–121496–15]

RIN 1545–BN02

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that will amend regulations (TD 9503) relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the amount of the user fee to apply for or renew a preparer tax identification number (PTIN). The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 28, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121496–15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–121496–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://*

www.regulations.gov (IRS REG–121496–15). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Hollie M. Marx at (202) 317–6844; concerning cost methodology, Eva J. Williams at (202) 803–9728; concerning submission of comments and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend regulations under 26 CFR part 300 setting a user fee for individuals who apply for or renew a PTIN. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

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 has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth under the heading ''Initial Regulatory Flexibility Analysis.''

Pursuant to section 7805(f), 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.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency ''to prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the Reasons Why Action by the Agency Is Being Considered

The IRS and the Treasury Department implemented regulatory changes in 2010 that required any individual who prepares or who assists in preparing all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN. Pursuant to the PTIN regulations, only those individuals who apply for and maintain a current PTIN may prepare tax returns and claims for refund for compensation. Because the ability to prepare tax returns and claims for refund for compensation is limited to individuals who have a PTIN, the provision of a PTIN confers a special benefit. The IRS incurs costs associated with processing a PTIN application and providing the special benefit associated with the PTIN. The IRS and Treasury Department initially determined that the full cost of providing the special benefit conferred by a PTIN was $50 for each original application and each annual renewal. In accordance with OMB Circular A–25, the IRS and Treasury conducted a biennial review of the PTIN user fee amount in 2015 and determined that the full cost of providing the special benefit conferred by a PTIN had been reduced to $33 for each original application and each annual renewal.

A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed regulations is to recover the costs to the government associated with providing the special benefit that an individual receives upon applying for or renewing a PTIN. These costs include activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and complaint activities; information technology and contract-related expenses; and communications. The PTIN user fee also takes into account various indirect program costs, including management and support costs. OMB Circular A–25 encourages user fees when special benefits are conferred on identifiable recipients. Individuals who obtain a PTIN receive the ability to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. The ability to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation is a special benefit.

The legal basis for the PTIN user fee is contained in section 9701 of title 31.

A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to apply for or renew a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN.

The appropriate NAICS codes for PTINs are those that relate to tax preparation services (NAICS code 541213), offices of certified public accountants (NAICS code 541211), other accounting services (NAICS code 541219), and offices of lawyers (NAICS code 541110). Entities identified as tax preparation services, offices of certified public accountants, and other accounting services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $20.5 million. Entities identified as offices of lawyers are considered small under the Small Business Administration size standards if their annual revenue is less than $11 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An Identification, to the Extent Practicable, of all Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. OMB Circular A–25 implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. In the IOAA, Congress has stated a preference that special benefits be self-sustaining.

A PTIN is required for an individual to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. PTINs are used by the IRS to collect and track data on tax return preparers. This data allows the IRS to track the number of persons who prepare or assist in preparing returns and claims for refund, the qualifications of those persons who prepare or assist in preparing returns and claims for refund, the number of returns each person prepares, and, when instances of misconduct or potential misconduct are detected, locate and review returns and claims for refund prepared by a specific tax return preparer. PTINs must be renewed annually to ensure that the identifying information associated with a PTIN is current.

Due to the costs to the government to process the application for a PTIN, the requirement to include a PTIN on tax returns and claims for refund, and the expressed preference in the IOAA that special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on all aspects of these proposed regulations. All comments that are submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Hollie M. Marx, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.13 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) [The text of proposed § 300.13(b) is the same as the text of § 300.13T(b) published elsewhere in this issue of the ***Federal Register****].*

* * * * *

(d) [The text of proposed § 300.13(d) is the same as the text of § 300.13T(d) published elsewhere in this issue of the ***Federal Register****].*

Karen M. Schiller,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–27791 Filed 10–29–15; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1635

RIN 3046–AB02

Genetic Information Nondiscrimination Act of 2008

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a proposed rule that would amend the regulations implementing Title II of the Genetic Information Nondiscrimination Act of 2008 as they relate to employer wellness programs. The proposed regulations address the extent to which an employer may offer an employee inducements for the employee's spouse who is also a participant in the employer's health plan to provide information about the spouse's current or past health status as part of a health risk assessment administered in connection with the employer's offer of health services as part of an employer-sponsored wellness program. Several technical changes to the existing regulation are also proposed.

DATES: Comments regarding this proposal must be received by the Commission on or before December 29, 2015. Please see the section below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

ADDRESSES: You may submit comments, identified by *RIN number* 3046–AB02, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *FAX:* (202) 663–4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers).
- *Mail:* Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.
- *Hand Delivery/Courier:* Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE., Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m., from December 29, 2015 until the Commission publishes the rule in final form.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, at (202) 663–4665 (voice), or Kerry E. Leibig, Senior Attorney Advisor, at (202) 663–4516 (voice), or (202) 663–7026 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

Congress enacted Title II of the Genetic Information Nondiscrimination Act of 2008 (''GINA''), codified at 42 U.S.C. 2000ff *et seq.,* to protect job applicants, current and former employees, labor union members, and apprentices and trainees from employment discrimination based on their genetic information. In enacting GINA, Congress noted, ''New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.'' *See* GINA Section 2(1), 42 U.S.C. 2000ff, note. Congress also expressed concerns about common misconceptions that an individual's genetic predisposition for a condition necessarily leads to the individuals developing the condition, explaining that

> [a]n employer might use information about an employee's genetic profile to deny employment to an individual who is healthy and able to perform the job. With these misconceptions so prevalent, employers may come to rely on genetic testing to ''weed out'' those employees who carry genes associated with diseases. Similarly, genetic traits may come to be used by health insurance companies to deny coverage to those who are seen as ''bad genetic risks.'' Enabling employers, health insurers and others to base decisions about individuals on the characteristics that are assumed to be their genetic destiny would be an undesirable outcome of our national investment in genetic research, and may significantly diminish the benefits that this research offers.[1]

Congress enacted GINA to address concerns prevalent at the time that individuals would not take advantage of the increasing number of genetic tests that could inform them as to whether they were at risk of developing specific diseases or disorders due to fear that genetic information would be used to deny health coverage or employment.[2] Consequently, GINA restricts acquisition and disclosure of genetic information, and includes an absolute prohibition on the use of genetic information in making employment decisions.[3] The EEOC issued implementing regulations on November 9, 2010, to provide all persons subject to Title II of GINA additional guidance with regard to the law's requirements. *See* 75 FR 68912 (Nov. 9, 2010).

Title II of GINA prohibits the use of genetic information in employment; restricts employers and other entities covered by GINA [4] from requesting, requiring, or purchasing genetic information, unless one or more of six narrow exceptions applies; and strictly limits the disclosure of genetic information by GINA covered entities. *See* 42 U.S.C. 2000ff *et seq.; see also* 29 CFR 1635.4–1635.9. The statute and the Title II final rule say that ''genetic information'' includes: Information about an individual's genetic tests; information about the genetic tests of a family member; information about the manifestation of a disease or disorder in family members of an individual (*i.e.,* family medical history); [5] requests for and receipt of genetic services by an individual or a family member; and genetic information about a fetus carried by an individual or family member or of an embryo legally held by the individual or family member using assisted reproductive technology. *See* 42 U.S.C. 2000ff(4) and 2000ff–8(b); *see also* 29 CFR 1635.3. Family members of an individual include someone who is a dependent of an individual through marriage, birth, adoption, or placement for adoption and any other individual who is a first-, second-, third-, or fourth-degree relative of the individual. *See* 42 U.S.C. 2000ff(3)(A) (defining family member for purposes of GINA to include a dependent within the meaning of section 701(f)(2) of the Employee Retirement Income Security Act (ERISA)); *see also* 29 CFR 1635.3(a).[6]

Although similar to Title I of the Americans with Disabilities Act (ADA) in that both laws are concerned with limiting the use, acquisition, and disclosure of medical information in the employment setting, GINA, consistent with Congressional concern about the uniquely personal nature of genetic information, provides unique protections. Unlike the ADA, which allows employers to consider medical information in certain limited circumstances (such as using information from a post-offer medical examination to determine an applicant's current ability to perform a job), GINA prohibits employers from using genetic information in employment decisions in all circumstances, with no exceptions.[7] GINA also is stricter in its limits of the acquisition of protected information than the ADA. For example, even though the ADA allows an employer to require a medical examination of all employees to whom it has offered a particular job, GINA limits the scope of medical examinations for employees who have been offered a particular job insofar as it prohibits inquiries about family medical history or other types of genetic information. GINA likewise prohibits employers from obtaining family medical history or any other type of genetic information through any medical examination required of employees for the purpose of determining continued fitness for duty.

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[1] H. Rep. 110–28, Part 1, 28 (Mar. 5, 2007).

[2] *See, e.g.,* S. Rep. No. 110–48, at 7 (2007) (noting that ''a 2004 poll taken by the Genetics and Public Policy Center at Johns Hopkins University found that 92 percent of those surveyed felt that employers should not have access to genetic test results'' and that ''[f]ears about the possible misuse of genetic knowledge appear to influence the public's desire to protect the privacy of genetic information''); *see also id.* at 10 (''While people fear discriminatory action based on their genes, they also fear the unauthorized disclosure or collection of genetic information. The need to protect the privacy of genetic information is important. Knowledge that a person has a particular medical condition or genetic trait may be embarrassing or damaging to that individual, or his or her family members.'').

[3] S. Rep. No. 110–48, at 10 (2007); H.R. Rep. No. 110–28, pt. 3, at 29.

[4] Unless otherwise noted, the term ''GINA'' refers to Title II of GINA.

[5] Congress recognized ''that a family medical history could be used as a surrogate for genetic traits by a health plan or health insurance issuer. A consistent history of a heritable disease in a patient's family may be viewed to indicate that the patient himself or herself is at increased risk for that disease.'' For that reason, Congress believed it was important to include family medical history in the definition of ''genetic information.'' S. Rep. No. 110–48, at 28 (2007).

[6] The Commission's definition of ''dependent'' is solely for purposes of interpreting Title II of GINA, and is not relevant to interpreting the term ''dependent'' under Title I of GINA or under section 701(f)(2) of ERISA and the parallel provisions of the Public Health Service Act (PHSA) and the Internal Revenue Code (Code). *See* the preamble to EEOC's regulations implementing Title II of GINA at 75 FR 68914, note 5 (November 9, 2010) and the preamble to the regulations implementing Title I of GINA at 74 FR 51664, 51666 (October 7, 2009) for additional information.

[7] Sec. 202(a) of Title II of GINA limits employer use of genetic information. Employers cannot ''fail or refuse to hire, or to discharge, any employee, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment'' or otherwise ''limit, segregate, or classify the employees'' in any way that would tend to deprive the employee of employment opportunities based on genetic information. Section 202(a) provides no exceptions to prohibitions on employer use.

There are only six very limited circumstances in which an employer[8] may request, require, or purchase genetic information about an applicant or employee. One of the six narrow exceptions to GINA's acquisition prohibition permits employers that offer health or genetic services, including such services offered as part of voluntary wellness programs,[9] to request genetic information as part of these programs, as long as certain specific requirements are met.[10] U.S.C. 2000ff–1(b)(2), 2000ff–2(b)(2), 2000ff–3(b)(2), 2000ff–4(b)(2); *see also* 29 CFR 1635.8(b)(2). The regulations implementing Title II currently make clear that one of the requirements is that the wellness program cannot condition inducements to employees on the provision of genetic information. This requirement is derived from Title I of GINA's explicit prohibition against adjusting premium or contribution amounts on the basis of genetic information.[11]

Although the EEOC received no comments prior to the publication of the Title II final rule in 2010 regarding how GINA's restriction on employers' acquiring genetic information interacts with the practice of offering employees inducements where a spouse participates in a wellness program, this question has arisen since publication of the final rule. The EEOC has received numerous inquiries about whether an employer will violate GINA and, in particular, 29 CFR 1635.8(b)(2), by offering an employee an inducement if the employee's spouse who is covered under the employer's group health plan[12] completes a health risk assessment (HRA)—including those involving a medical questionnaire, a medical examination (*e.g.,* to detect high blood pressure or high cholesterol), or both—that seeks information about the spouse's current or past health status, in connection with the spouse's receipt of health or genetic services as part of an employer-sponsored wellness program. *See, e.g.,* Letter from the ERISA Industry Committee to EEOC (February 17, 2012) available at *http://www.eeoc.gov/eeoc/meetings/5-8-13/moore.cfm* (attachment to written testimony). Online reports have raised the same concern. *See, e.g.,* Tower Watson, Health Care Reform Bulletin (Oct. 2011) available at *http://www.towerswatson.com/en/Insights/Newsletters/Americas/health-care-reform-bulletin/2011/Providing-Financial-Incentives-for-an-Employees-Spouse-to-Complete-a-Health-Risk-Assessment.* Two panelists also raised this question during a May 2013 Commission meeting on Wellness Programs. *See* Written Testimony of Leslie Silverman available at *http://www.eeoc.gov/eeoc/meetings/5-8-13/silverman.cfm* and Written Testimony of Amy Moore available at *http://www.eeoc.gov/eeoc/meetings/5-8-13/moore.cfm.*

Read in one way, conditioning all or part of an inducement on the provision of the spouse's current or past health information could be read to violate the 29 CFR 1635.8(b)(2)(ii) prohibition on providing financial inducements in return for an employee's protected genetic information. When an employer seeks information from a spouse (who is a ''family member'' under GINA as set forth at 29 CFR 1635.3(a)(1)) about his or her current or past health status, the employer is also treated under GINA as requesting genetic information about the employee. This is because GINA defines the term ''genetic information'' of an employee broadly to include information about a family member's (including a spouse's) current or past health status.[13] However, the EEOC's regulations specifically permit employers to seek such information from a family member who is receiving health or genetic services from the employer, including such services offered as part of a voluntary wellness program, as long as each of the requirements of 29 CFR 1635.8(b)(2)(i) concerning health or genetic services provided on a voluntary basis are met. *See* 29 CFR 1635.8(c)(2).

The proposed regulations would clarify that GINA does not prohibit employers from offering limited inducements (whether in the form of rewards or penalties avoided[14]) for the provision by spouses (covered by the employer's group health plan) of information about their current or past health status as part of a HRA, which may include a medical questionnaire, a medical examination (*e.g.,* to detect high blood pressure or high cholesterol), or both, as long as the requirements of 29 CFR 1635.8(b)(2)(i) are satisfied. These requirements include that the provision of genetic information be voluntary and that the individual from whom the genetic information is being obtained provides prior, knowing, voluntary, and written authorization, which may include authorization in electronic format.[15]

[8] GINA applies to individuals and covered entities in addition to employees and employers, including employment agencies, unions and their members, and joint-labor management training and apprenticeship programs. *See* 42 U.S.C. 2000ff–1, 2000ff–2, 2000ff–3 and 2000ff–4 (describing the prohibited practices of each of these entities); *see also* 29 CFR 1635.2(b) (definition of covered entity) and 29 CFR 1635.4 (description of prohibited practices). For the sake of readability, and recognizing that employers will be the covered entity most likely to offer wellness programs, the NPRM will refer to employers and employees throughout.

[9] A wellness program, defined as a ''program offered by an employer that is designed to promote health or prevent disease,'' is one type of health or genetic service that an employer might offer. Section 2705(j)(1)(A) of the PHSA, as amended by the Affordable Care Act. A wellness program that provides medical care (including genetic counseling) may constitute a group health plan required to comply with section 9802 of the Code, 26 U.S.C. 9802, section 702 of the ERISA, 29 U.S.C. 1182, or section 2705 of the PHSA (*i.e.,* Title I of GINA). Regulations issued under these statutes address wellness programs that collect genetic information. Moreover, wellness programs that condition rewards on an individual satisfying a standard related to a health factor must meet additional requirements. *See* 26 CFR 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f). In addition, EEOC has issued proposed rules that would amend the regulations and interpretive guidance implementing Title I of the ADA as they relate to employer wellness programs. *See* 80 FR 21659 (April 20, 2015).

[10] Other health or genetic services include services such as an Employee Assistance Program or a health clinic that provides flu shots. Under GINA, employers may request genetic information as part of such health or genetic services, as long as the requirements of 29 CFR 1635.8(b)(2) are met.

[11] Title I of GINA applies to genetic information discrimination in health insurance and not employment. In the Commission's original GINA Title II regulation, the Commission, in consultation with the federal agencies responsible for enforcing Title I, determined that permitting employers to condition wellness program inducements on the provision of genetic information would undermine Title I's prohibition on adjusting premium or contribution amounts on the basis of genetic information. For more on the protections provided by Title I of GINA, see *www.dol.gov/ebsa/faqs/faq-GINA.html.* For a discussion of how Titles I and II of GINA allow employers and plans to use financial inducements to promote employee wellness and healthy lifestyles, see the preamble to the GINA Title II final rule at 75 FR 68923 (November 9, 2010).

[12] The term ''group health plan'' includes both insured and self-insured group health plans and is used interchangeably with the terms ''health plan'' and ''the plan'' in this NPRM.

[13] The term ''genetic information'' includes ''the manifestation of a disease or disorder in family members of [an] individual.'' 42 U.S.C. 2000ff(4)(a)(ii). An individual's family members include anyone who is ''a dependent (as such term is used for purposes of section 1181(f)(2) of Title 29), which includes a spouse. 42 U.S.C. 2000ff(3)(a). *See also* 29 CFR 1635.3(a)(1) (defining ''family member'' to include ''[a] person who is a dependent . . . as the result of marriage . . .'').

[14] Under the PHSA, as amended by the Affordable Care Act, when a wellness program offers a reward, the term refers both to obtaining a reward (such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge or other financial or nonfinancial disincentive). *See* 26 CFR 54.9802–1(f)(1)(i), 29 CFR 2590.702(f)(1)(i), and 45 CFR 146.121(f)(1)(i). We have adopted this definition.

[15] The GINA notice and authorization requirement, which was included in the EEOC's regulations pursuant to a specific statutory requirement, *see* 42 U.S.C. 2000ff–(1)(b)(2)(B), is only met if the covered entity uses an authorization

Continued

The Commission further proposes to add to the existing 1635.8(b)(2) requirements a requirement that any health or genetic services in connection with which an employer requests genetic information be reasonably designed to promote health or prevent disease. This addition will make the revised GINA regulations consistent with the proposed rule amending the ADA's regulations as they relate to wellness programs, which permits employers to collect medical information as part of a wellness program only if the program and the disability-related inquiries and medical examinations that are part of the program are reasonably designed to promote health or prevent disease.

These regulations further propose that inducements in exchange for current or past health status information about an employee's children (biological and non-biological [16]) are not permitted, although an employer may offer health or genetic services (including participation in a wellness program) to an employee's children on a voluntary basis and may ask questions about a child's current or past health status as part of providing such services. Although information about the manifestation of disease or disorder in spouses or children is genetic information protected by GINA, adopting a very narrow exception that permits inducements only for a spouse's current or past health status strikes the appropriate balance between GINA's goal of providing strong protections against employment discrimination based on the possibility that an employee may develop a disease or disorder in the future or may face discrimination because a family member is expected to become ill in the future, and the goal of the wellness program provisions of the Health Insurance Portability and Accountability Act (''HIPAA''), as amended by the Affordable Care Act, of promoting participation in employer-sponsored wellness programs. There is minimal, if any, chance of eliciting information about an employee's own genetic make-up or predisposition for disease from the information about current or past health status of the employee's spouse. By contrast, there is a significantly higher likelihood of eliciting information about an employee's own genetic make-up or predisposition for disease from information about the current or past health status of the employee's children, which is why the proposed revision does not permit inducements in exchange for such information. Further, the legislative history makes clear that Congress was particularly concerned about allowing employers access to information revealing the possible genetic conditions of employees' children.[17]

Furthermore, while the proposal allows inducements in return for a spouse's current and past health status, it does not allow inducements in return for the spouse providing his or her own genetic information, including the results of his or her genetic tests. Limiting inducements in this way not only promotes consistency with Title I of GINA, which prohibits inducements in return for the genetic information of a spouse who is a plan participant, but also ensures that the exception to the prohibition on inducements in return for genetic information is drawn narrowly.[18] *See* 42 U.S.C. 300gg–4(b)(3)(A). Additionally, this approach has the advantage of reducing administrative burdens on employers by allowing them to use the same HRA—with questions about family medical history and other genetic information clearly identified and a statement that these questions need not be answered in order to receive an inducement—for employees and their spouses.

This proposal would not alter the absolute prohibition against the use of genetic information in making employment decisions. Were an employer to use information about a spouse's current or past health status to make an employment decision about an employee, it would violate GINA's prohibition on using genetic information.[19] Nor would the proposal permit inducements in return for genetic information of an employee in any circumstance other than where an employee's spouse who is enrolled in the employer's group health plan provides information about his or her current or past health as part of a HRA. Inducements in return for information

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form that (1) is written so that the individual from whom the genetic information is being obtained is reasonably likely to understand it; (2) describes the type of genetic information that will be obtained and the general purpose for which it will be used; and (3) describes the restrictions on disclosure of genetic information. The GINA notice and authorization rule also requires that individually identifiable genetic information is provided only to the individual (or family member if the family member is receiving genetic services) and the licensed health care professionals or board certified genetic counselors involved in providing such services, and is not accessible to managers, supervisors, or others who make employment decisions, or to anyone else in the workplace; and, finally, that any individually identifiable genetic information provided under 29 CFR 1635.8(b)(2) is only available for purposes of such services and is not disclosed to the covered entity except in aggregate terms that do not disclose the identity of specific individuals. *See* 29 CFR 1635.8(b)(2)(i). When an employer requests only current or past health status information from the employee's spouse, authorization by the spouse for the acquisition of the information will suffice to meet GINA's requirement; the employee does not have to separately authorize acquisition of the spouse's current or past health status information. *See* 29 CFR 1635.8(b)(2)(i)(B).

The ADA does not have the same statutory requirement for authorization as is in GINA. In light of this statutory difference, the NPRM on the ADA and wellness programs published by the Commission on April 20, 2015 would require a notice to employees in connection with such a HRA where a wellness program is part of a group health plan. The notice must clearly explain what medical information will be obtained, how it will be used, who will receive it, and the restrictions on disclosure. *See* 80 FR 21659 (April 20, 2015). The ADA proposed rule did not include an authorization requirement, although EEOC asked in the preamble whether one should be part of the final rule. The ADA proposed rule cannot alter the statutory authorization requirements under GINA.

[16] GINA defines information about the manifestation of a disease or disorder in an employee's adopted child to be genetic information about the employee. *See* 29 CFR 1635.3(c)(1)(ii) (genetic information includes information about the ''manifestation of disease or disorder in family members of the individual'') and 1635.3(a)(1) (a family member includes anyone who is a dependent ''as the result of marriage, birth, adoption or placement for adoption). Family members also include first- through fourth-degree relatives of an individual or of the individual's dependents. 29 CFR 1635.3(a)(2). Thus, information about the manifested disease or disorder of a stepchild—the first-degree relative of an employee's spouse—is genetic information about the employee.

[17] GINA's legislative history recognized ''that a family medical history could be used as a surrogate for [an employee's] genetic traits, [and that] a consistent history of a heritable disease in a patient's family may be viewed to indicate that the patient himself or herself is at increased risk for that disease.'' S. Rep. No. 110–48, at 28 (2007). *See, e.g.,* Statement of Sen. Edward M. Kennedy, GINA's principal sponsor in the Senate, 154 Cong. Rec. S3363, S337 (Apr. 28, 2008) (noting concerns of mother who paid out of pocket for anonymous genetic testing because she feared that the results would be used to discriminate against her daughters); Statement of Senator Christopher Dodd, 154 Cong. Rec. S3363, S3369–70 (Apr. 28, 2008) (''Many people are also afraid of affecting their children's ability to get jobs or obtain insurance. So without adequate protections against discrimination, people may forgo genetic testing, even in cases where the results have the potential to save their lives or the lives of their family.''); Statement of Sen. Brownback, *id.* (''Genetic discrimination against anyone is unacceptable, particularly those who are next generation, our children.''); Statement of Sen. Olympia Snowe (noting constituent's fears that having the BRAC test ''would ruin her daughter's ability to obtain insurance in the future.'') *id.* at S3367.

[18] *See John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Sav. Bank,* 510 U.S. 86, 97 (1993) (''[W]e [are] inclined, generally, to tight reading of exemptions from comprehensive [statutory] schemes.'') *citing Commissioner* v. *Clark,* 489 U.S. 726, 739–40 (1989) (when a general policy is qualified by an exception, the Court ''usually read[s] the exception narrowly in order to the preserve the primary operation of the [policy]''), and *A.H. Phillips, Inc.* v. *Walling,* 324 U.S. 490, 493 (1945).

[19] If the information about the spouse disclosed a disability, the employer would also violate the ADA's prohibition on discrimination based on association with someone with a disability. *See* 42 U.S.C. 12112(b)(4).

about the current or past health of an employee's children, or in exchange for inquiries directed to an employee about the employee's family medical history or other genetic information, for example, are still prohibited.

The revisions also prohibit conditioning participation in a wellness program or any inducement on an individual, or an individual's spouse or family member, waiving GINA's confidentiality provisions.

Summary of the Proposed Regulation

Revisions to the Wellness Program Exception

The EEOC proposes to make six substantive changes to its GINA regulations. First, we propose to add a new subsection to 29 CFR 1635.8(b)(2), to be numbered 1635.8(b)(2)(i)(A). It would explain that employers may request, require, or purchase genetic information as part of health or genetic services only when those services, including any acquisition of genetic information that is part of those services, are reasonably designed to promote health or prevent disease. In order to meet this standard, the program must have a reasonable chance of improving the health of, or preventing disease in, participating individuals, and must not be overly burdensome, a subterfuge for violating Title II of GINA or other laws prohibiting employment discrimination, or highly suspect in the method chosen to promote health or prevent disease. Collecting information on a health questionnaire without providing follow-up information or advice would not be reasonably designed to promote health or prevent disease. Additionally, a program is not reasonably designed to promote health or prevent disease if it imposes, as a condition of obtaining a reward, an overly burdensome amount of time for participation, requires unreasonably intrusive procedures, or places significant costs related to medical examinations on employees. A program is also not reasonably designed if it exists merely to shift costs from the covered entity to targeted employees based on their health.

Second, we propose to add a subsection to 29 CFR 1635.8(b)(2), to be numbered 1635.8(b)(2)(iii). It would explain that, consistent with the requirements of paragraphs (b)(2)(i) and (b)(2)(ii), a covered entity may offer, as part of its health plan, an inducement to an employee whose spouse (1) is covered under the employee's health plan; (2) receives health or genetic services offered by the employer, including as part of a wellness program; and (3) provides information about his or her current or past health status as part of a HRA. No inducement may be offered, however, in return for the spouse providing his or her own genetic information, including results of his or her genetic tests.[20]

The HRA, which may include a medical questionnaire, a medical examination (*e.g.,* to detect high blood pressure or high cholesterol), or both, must otherwise comply with paragraph (b)(2)(i) in the same manner as if completed by the employee, including the requirement that the spouse provide prior knowing, voluntary, and written authorization when the spouse is providing his or her own genetic information,[21] and the requirement that the authorization form describe the confidentiality protections and restrictions on the disclosure of genetic information. The employer also must obtain authorization from the spouse when collecting information about the spouse's past or current health status, though a separate authorization for the acquisition of this information from the employee is not necessary.

The total inducement to the employee and spouse may not exceed 30 percent of the total annual cost of coverage for the plan in which the employee and any dependents are enrolled. The 30 percent limit includes any inducement for a spouse's current or past health status information and any other inducements to the employee, as permitted under Title I of the ADA, for the employee's participation in a wellness program that asks disability-related questions or includes medical examinations. Thus, for example, if an employer offers health insurance coverage at a total cost (taking into account both employer and employee contributions towards the cost of coverage for the benefit package) of $14,000 to cover an employee and the employee's spouse and/or spouse and other dependents, and provides the option of participating in a wellness program to the employee and spouse covered by the plan, it may not offer a total inducement greater than 30 percent of $14,000, or $4,200.

This type of inducement limit generally parallels the limitations set forth in section 1201 of the Affordable Care Act,[22] which explains that when dependents of employees, such as spouses, are permitted to fully participate in a health-contingent wellness program, the reward offered must not exceed the applicable percentage of the total cost of the coverage in which an employee and dependents are enrolled. *See* 26 CFR 54.9802–1(f)(3)(ii) and (4)(ii); 29 CFR 2590.702(f)(3)(ii) and (4)(ii); 45 CFR 146.121(f)(3)(ii) and (f)(4)(ii). The limited exception that the Commission proposes to make under Title II of GINA thus allows a practice that is in line with Title I of GINA and the Affordable Care Act. *See* 26 CFR 54.9802–1(f)(3)(ii) and (4)(ii); 29 CFR 2590.702(f)(3)(ii) and (4)(ii); 45 CFR 146.121(f)(3)(ii) and (f)(4)(ii) for the references to the implementing Affordable Care Act regulations; *see* section 702(b)(3)(B) of ERISA (29 U.S.C. 1182(b)(3)(B)); section 2705(b)(3)(B) of the PHSA (42 U.S.C.300gg–4(b)(3)(B)); and section 9802(b)(3)(B) of the Code (26 U.S.C. 9802(b)(3)(B)) for references to Title I of GINA. The EEOC has determined that extending the 30 percent limit established by the Affordable Care Act for health-contingent wellness program inducements in return for information about the health status (but not the genetic information) of spouses promotes GINA's interest in limiting access to genetic information and

[20] 29 CFR 1635.8(b)(2)(i)(B). Title I of GINA specifically prohibits a group health plan and a health insurance issuer in the group or individual market from collecting (including requesting, requiring or purchasing) genetic information prior to or in connection with enrollment in a group health plan or for underwriting purposes. *See* 26 CFR 54.9802–3T(b) and (d); 29 CFR 2590.702–1(b) and (d)); 45 CFR 146.122(b) and (d). ''Underwriting purposes'' includes rules for eligibility for benefits and the computation of premium or contribution amounts under the plan or coverage including any discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a HRA or participating in a wellness program. *See* 26 CFR 54.9802–3T(d)(1)(ii); 29 CFR 2590.702–1(d)(1)(ii); 45 CFR 146.122(d)(1)(ii). Consequently, wellness programs that provide rewards for completing HRAs that request a plan participant's genetic information, including family medical history, violate the prohibition against requesting genetic information for underwriting purposes, regardless of whether the plan participant provides authorization. Under Title I of GINA a group health plan and a health insurance issuer in the group or individual market may request genetic information through an HRA as long as the request is not in connection with enrollment and no rewards are provided.

[21] 42 U.S.C. 2000ff–1(b)(2)(B) states that the ''employee'' must provide prior, knowing, voluntary, and written authorization. EEOC regulations implementing Title II of GINA, by contrast, use the broader term ''individual'' when describing the prior, knowing, voluntary and written authorization requirement. *See* 29 CFR 1635.8(b)(2)(i)(B). The Commission believes that ''individual'' best reflects the intent of Congress, especially when considering the provisions in 42 U.S.C. 2000ff–1(b), which prohibit employers from requesting, requiring, or purchasing genetic information about both employees and their family members with limited exceptions, and the general purpose of the statute.

[22] Section 1201 of the Affordable Care Act added PHSA section 2705(j) and Section 1563 of the Affordable Care Act incorporated by reference such provision into section 715(a)(1) to the ERISA, and section 9815(a)(1) to the Code. *See* 29 U.S.C. 1182(j)(3)(A); 42 U.S.C. 300gg–4(j)(3)(A); 26 U.S.C. 9802(j)(3)(A).

ensuring that inducements are not so high as to be coercive, and thus prohibited. The EEOC consulted with the Departments of Health and Human Services, Labor, and the Treasury, which share interpretive jurisdiction over the wellness program provisions under HIPAA and the Affordable Care Act, and while the proposed revisions may differ in some respects from the wellness program standards set forth by the Affordable Care Act and its implementing regulations,[23] the EEOC believes that employers will be able to comply with both the wellness requirements under the Affordable Care Act and these regulations.[24]

Third, in addition to limiting the total inducement to 30 percent of the total cost of coverage for the plan in which the employee and any dependents are enrolled, the proposed rule, at new section 1635.8(b)(2)(iv), describes the manner in which inducements for employees and spouses are to be apportioned. The EEOC proposes that the maximum share of the inducement attributable to the employee's participation in an employer wellness program (or multiple employer wellness programs that request such information) be equal to 30 percent of the cost of self-only coverage, which is the maximum amount the Commission has proposed may be offered under the ADA for an employee to answer disability-related inquiries or take medical examinations in connection with a wellness program that is part of a group health plan. *See* 80 FR 21659, 21663 (April 20, 2015). The remainder of the inducement—equal to 30 percent of the total cost of coverage for the plan in which the employee and any dependents are enrolled minus 30 percent of the total cost of self-only coverage—may be provided in exchange for the spouse providing information to an employer wellness program (or multiple employer wellness programs that request such information) about his or her current or past health status. These limitations would be set forth at 29 CFR 1635.8(b)(2)(iv)(a) and (b).

Thus, for example, if an employee is enrolled in a health plan that covers the employee and any class of dependents for which the total cost of coverage is $14,000, the maximum inducement the employer can offer for the employee and the employee's spouse to provide information about their current or past health status is 30 percent of $14,000, or $4,200. If the employer's self-only coverage costs $6,000, the maximum allowable incentive the employer may offer for the employee's participation is 30 percent of $6,000, or $1,800. The rest of the inducement, $4,200 minus $1,800, or $2,400, may be offered for the spouse to provide current or past health status information. However, an employer would be free to offer all or part of the $2,400 inducement in other ways as well, such as for the employee, the spouse, and/or another of the employee's dependents to undertake activities that would qualify as participatory or health-contingent programs but do not include requests for genetic information, disability-related inquiries, or medical examinations. Thus, in the example above, an employer could offer $1,800 for the employee to answer disability-related questions and/or to take medical examinations as part of a health risk assessment, could offer the same amount for the employee's spouse to answer the same questions and to take the same medical examinations, and could offer the remaining $600 for the employee, the spouse, or both to undertake an activity-based health-contingent program, such as a program that requires participants to walk a certain amount each week. Additionally, a wellness program may offer inducements in accordance with HIPAA and the Affordable Care Act without regard to the limits on apportionment set forth in this proposed rule if neither the employee nor the employee's spouse are required to provide current or past health status information, so long as the wellness program otherwise complies with the requirements of the ADA and GINA.

Fourth, proposed section 1635.8(b)(2)(vi) would prohibit a covered entity from conditioning participation in a wellness program or an inducement on an employee, or the employee's spouse or other covered dependent, agreeing to the sale of genetic information or waiving protections provided under section 1635.9. Section 1635.9 prohibits the disclosure of genetic information, except in six narrowly defined circumstances.

Fifth, we propose to add another example to 29 CFR 1635.8(c)(2) to make clear that an employer is permitted to seek information—through medical questionnaires, medical examinations (*e.g.,* to detect high blood pressure or high cholesterol), or both—about the current or past health status of an employee's spouse who is covered by the employer's group health plan and is completing a HRA on a voluntary basis in compliance with 29 CFR 1635.8(b)(2). This provision of the regulations describes two circumstances under which the employer is permitted to request, require, or purchase genetic information or information about the past or current health status of an employee's family members who are receiving health or genetic services on a voluntary basis. The provision cross-references 29 CFR 1635.8(b)(2) to make clear that such acquisitions are only permitted if all of the requirements for seeking genetic information as part of a voluntary health or genetic service, including the rules on authorization and inducements, are met.

Finally, the revisions would remove the term ''financial'' as a modifier of the type of inducements discussed in the regulation and make clear that the term ''inducements'' includes both financial and in-kind inducements, such as time-off awards, prizes, or other items of value, in the form of either rewards or penalties.[25] Since promulgation of the original Title II regulations in 2010, the EEOC has become aware that inducements other than those that might be called purely financial are used with some frequency and intends that the regulations apply to all such inducements.

These revisions would require renumbering throughout 29 CFR 1635.8(b)(2), as well as the addition of a reference to the new subsections within 29 CFR 1635.8(b)(2)(ii).

[23] There are differences between the inducement limit provided in this proposal under GINA and the inducement limits under the wellness regulations implementing HIPAA, as amended by the Affordable Care Act, including that under those wellness regulations: (1) The inducement limit does not apply to ''participatory wellness programs,'' which include HRAs that all participants may answer, regardless of their health status (but only to ''health-contingent wellness programs''); and (2) the inducement limit on health-contingent wellness programs does not contain specific rules apportioning the inducement between the spouse and the employee. *See* 26 CFR 54.9802–1(f); 29 CFR 2590.702(f); 45 CFR 146.121(f).

[24] Regulations implementing the wellness provisions in HIPAA, as amended by the Affordable Care Act, permit covered entities to offer financial incentives as high as 50 percent of the total cost of employee coverage for tobacco-related wellness programs, such as smoking cessation programs. *See* 26 CFR 54.9802–1(f)(5); 29 CFR 2590.702(f)(5); 45 CFR 146.121(f)(5). The inducement rules in 1635.8(b)(2) apply only to health and genetic services that request genetic information. A smoking cessation program that asks employees whether they use tobacco (or whether they ceased using tobacco upon completion of the program) or requires blood tests to determine nicotine levels is not a wellness program that requests genetic information and is therefore not covered by this proposed rule.

[25] Removal of the modifier ''financial'' is consistent with the HIPAA and the Affordable Care Act wellness program provisions, which generally define a permissible reward as ''a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive.'' *See* 26 CFR 54.9802–1(f)(1)(i); 29 CFR 2590.702(f)(1)(i); 45 CFR 146.121(f)(1)(i). See footnote 14 for additional discussion of the meaning of ''inducement.''

Technical Amendments

The first sentence of 29 CFR 1635.8(b)(2)(iv) (which, in the proposed rule, will be renumbered as 29 CFR 1635.8(b)(2)(vii)) reads as follows: ''Nothing in § 1635.8(b)(2)(iii) limits the rights or protections of an individual under the Americans with Disabilities Act (ADA), as amended, or under any other applicable civil rights law, or under the Health Insurance Portability and Accountability Act (HIPAA), as amended by GINA.'' This subsection should have referred to subsection (b)(2)(ii) concerning inducements for completing HRAs, as well as subsection (b)(2)(iii) (which, in the proposed rule, will be renumbered as 29 CFR 1635.8(b)(2)(v)) concerning disease management or other programs that offer inducements for achieving certain health outcomes. We propose to revise the rule so that it references the appropriate subsections, including the newly proposed 29 CFR 1635.8(b)(2)(iii) and (iv) concerning inducements for spouses to complete HRAs. Finally, we propose to amend this and other subsections to include reference to HIPAA and the Affordable Care Act, where appropriate.

Request for Comments

The Commission invites written comments from members of the public on any issues related to this proposed rule about particular practices that might violate GINA. In addition, the Commission specifically requests comments on several issues:

(1) Whether employers that offer inducements to encourage the spouses of employees to disclose information about current or past health must also offer similar inducements to persons who choose not to disclose such information, but who instead provide certification from a medical professional stating that the spouse is under the care of a physician and that any medical risks identified by that physician are under active treatment.

(2) Should the proposed authorization requirement apply only to wellness programs that offer more than de minimis rewards or penalties to employees whose spouses provide information about current or past health status as part of a HRA? If so, how should the Commission define ''de minimis''?

(3) Which best practices or procedural safeguards ensure that employer-sponsored wellness programs are designed to promote health or prevent disease and do not operate to shift costs to employees with spouses who have health impairments or stigmatized conditions?

(4) Given that, in contrast to the status quo when the ADA was enacted, most employers today store personnel information electronically, and in light of increasingly frequent breaches to electronically stored employment records, should the rule include more specific guidance to employers regarding how to implement the requirements of 29 CFR 1635.9(a) for electronically stored records? If so, what procedures are needed to achieve GINA's goal of ensuring the confidentiality of genetic information with respect to electronic records stored by employers?

(5) In addition to any suggestions offered in response to the previous question, are there best practices or procedural safeguards to ensure that information about spouses' current health status is protected from disclosure?

(6) Given concerns about privacy of genetic information, should the regulation restrict the collection of any genetic information by a workplace wellness program to only the minimum necessary to directly support the specific wellness activities, interventions, and advice provided through the program—namely information collected through the program's HRA and biometric screening? Should programs be prohibited from accessing genetic information from other sources, such as patient claims data and medical records data?

(7) Whether employers offer (or are likely to offer in the future) wellness programs outside of a group health plan or group health insurance coverage that use inducements to encourage employees' spouses to provide information about current or past health status as part of a HRA, and the extent to which the GINA regulations should allow inducements provided as part of such programs.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, the EEOC has coordinated this proposed rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, the EEOC has determined that the proposed regulation will not have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

Although a detailed cost-benefit assessment of the proposed regulation is not required, the Commission notes that the rule will aid compliance with Title II of GINA by employers. Currently, employers face uncertainty as to whether providing an employee with an inducement if his or her spouse provides information about the spouse's current or past health status on a HRA will subject them to liability under Title II of GINA. This rule will clarify that offering limited inducements in these circumstances is permitted by Title II of GINA if the requirements of section 202(b)(2)(A) of GINA otherwise have been met. We believe that a potential benefit of this rule is that it will provide employers that adopt wellness programs that include spousal inducements with clarity about their obligations under GINA.

The Commission does not believe the costs to employers associated with the rule are significant. Under HIPAA, as amended by the Affordable Care Act, inducements of up to 30 percent of the total cost of coverage in which an employee is enrolled are permitted where the employee and the employee's dependents are given the opportunity to fully participate in the health-contingent wellness program. This proposed rule simply clarifies that a similar inducement is permissible under Title II of GINA where an employer offers inducements for an employee's spouse enrolled in the group health plan to provide current or past health status information.

The Commission further believes that employers will face initial start-up costs to train human resources staff and others on the revised rule. The EEOC conducts extensive outreach and technical assistance programs, many of them at no cost to employers, to assist in the training of relevant personnel on EEO-related issues. For example, in FY 2013, the agency's outreach programs reached more than 280,000 persons through participation in more than 3,800 no-cost educational, training and outreach events. We expect to put information about the revisions to the GINA regulations in our outreach programs in general and to continue to offer GINA-specific outreach programs which will, of course, include information about the revisions once the proposed rule becomes final. We will also post technical assistance documents on our Web site explaining the revisions to the GINA regulations, as

we do with all of our new regulations and policy documents.[26]

We estimate that there are approximately 782,000 employers with 15 or more employees subject to Title II of GINA [27] and, of that number, one half to two thirds (391,000 to 521,333) offer some type of wellness program.[28] Assuming that nearly half of employer wellness programs are open for participation by the spouses or dependents of workers, and using the highest estimates, we assume that approximately 260,667 employers will be covered by this requirement.[29] We further estimate that the typical human resources professional will need to dedicate, at most, 60 minutes to gain a satisfactory understanding of the revised regulations and that the median hourly pay rate of a human resources professional is approximately $49.41. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2014 at *http://www.bls.gov/oes/current/oes113121.htm.* Assuming that an employer will train up to three human resources professionals/managers on the requirements of this rule, we estimate that initial training costs will be approximately 38,638,670.00.[30]

Finally, GINA's plain language (at 42 U.S.C. 2000ff–(1)(b)(2)) and EEOC's regulations (at 29 CFR 1635.8(b)(2) and (c)(2)) make it clear that an employer must obtain authorization for the collection of genetic information as part of providing health or genetic services to employees and their family members on a voluntary basis. Consequently, this proposed rule imposes no new obligations with respect to authorization for the collection of genetic information. We welcome comments on this and all of our conclusions concerning the benefits and burdens of the revisions.

Paperwork Reduction Act

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

Title II of GINA applies to all employers with 15 or more employees, approximately 764,233 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See Firm Size Data,* at *http://www.sba.gov/advocacy/849/12162.*

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it imposes no reporting burdens and only minimal costs on such firms. The proposed rule simply clarifies that employers that offer wellness programs are free to adopt a certain type of inducement without violating GINA. It also corrects an internal citation and provides citations to the Affordable Care Act. It does not require any action on the part of covered entities, except to the extent that those entities created documentation or forms which cite to GINA for the proposition that the entity is unable to offer inducements to employees in return for a spouse's completion of HRAs that request information about the spouse's current or past health. We do not have data on the number or size of businesses that may need to alter documents relating to their wellness programs. However, our experience with enforcing the ADA, which required all employers with 15 or more employees to remove medical inquiries from application forms, suggests that revising questionnaires to eliminate or alter an instruction would not impose significant costs.

To the extent that employers will expend resources to train human resources staff and others on the revised rule, we reiterate that the EEOC conducts extensive outreach and technical assistance programs, many of them at no cost to employers, to assist in the training of relevant personnel on EEO-related issues. For example, in FY 2013, the agency's outreach programs reached more than 280,000 persons through participation in more than 3,800 no-cost educational, training and outreach events. We expect to put information about the revisions to the GINA regulations in our outreach programs in general and to continue to offer GINA-specific outreach programs which will, of course, include information about the revisions once the proposed rule becomes final. We will also post technical assistance documents on our Web site explaining the revisions to the GINA regulations, as we do with all of our new regulations and policy documents.

We estimate that the typical human resources professional will need to dedicate, at most, 60 minutes to gain a satisfactory understanding of the revised regulations. We further estimate that the median hourly pay rate of a human resources professional is approximately $49.41. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2014 at *http://www.bls.gov/oes/current/oes113121.htm.* Assuming that small entities have between one and five human resources professionals/managers, we estimate that the cost per entity of providing appropriate training will be between approximately $49.41 and $247.05. The EEOC does not believe that this cost will be significant for the impacted small entities. We urge small entities to submit comments concerning the EEOC's estimates of the number of small entities affected, as well as the cost to those entities.

Unfunded Mandates Reform Act of 1995

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

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[26] *See, e.g., http://www.eeoc.gov/laws/types/genetic.cfm* for documents explaining Title II of GINA.

[27] *See Firm Size Data,* at *http://www.sba.gov/advocacy/849/12162.*

[28] *See* Rand Health, Workplace Wellness Programs Study Final Report (2013), sponsored by the U.S. Departments of Labor and Health and Human Services, available at *http://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR254/RAND_RR254.pdf* (hereinafter referred to as the RAND Final Study). *See also* The Kaiser Family Foundation and Health Research & Educational Trust 2014 Employer Health Benefits Survey, available at *http://kff.org/health-costs/report/2014-employer-health-benefits-survey/* [hereinafter referred to as the Kaiser Survey]. According to the RAND Final Report, ''approximately half of U.S. employers offer wellness promotion initiatives.'' By contrast, the Kaiser Survey found that ''[s]eventy-four percent of employers offering health benefits'' offer at least one wellness program.

[29] Although the Kaiser Survey reports that 51 percent of large employers versus 32 percent of small employers ask employees to complete a HRA, we are not aware of any data indicating what percentage of those employers provide spouses with the opportunity to participate in the HRA. We therefore have substituted a more general statistic to allow an estimate of the number of employers who will be covered by the requirements of this proposed rule. *See* Kaiser Foundation, Workplace Wellness Programs Characteristics and Requirements (2015), available at *http://kff.org/private-insurance/issue-brief/workplace-wellness-programs-characteristics-and-requirements/* (Noting that nearly half (48 percent) of employer wellness programs are open for participation by the spouses or dependents of workers, as well as workers).

[30] A study published in 2009 by the Society for Human Resource Management (SHRM) found that the median number of full-time equivalents for a HR department was three. *See* SHRM Human Capital Benchmarking Study, 2009 Executive Summary available at *https://www.shrm.org/Research/SurveyFindings/Articles/Documents/09-0620_Human_Cap_Benchmark_FULL_FNL.pdf.* Because we are not aware of any more specific data on the average number of human resources professionals per covered employer, we have based our estimates on this figure.

List of Subjects in 29 CFR Part 1635

Administrative practice and procedure, Equal employment opportunity.

Dated: October 27, 2015.

For the Commission.

Jenny R. Yang,

Chair.

For the reasons set forth in the preamble, the EEOC proposes to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1635—[AMENDED]

■ 1. The authority citation for 29 CFR part 1635 is revised to read as follows:

Authority: 29 U.S.C. 2000ff.

■ 2. In § 1635.8(b):

■ a. Redesignate paragraphs (b)(2)(i)(A) through (D) as paragraphs (b)(2)(i)(B) through (E);

■ b. Add new paragraph (b)(2)(i)(A);

■ c. Revise paragraph (b)(2)(ii) introductory text;

■ d. Redesignate paragraphs (b)(2)(iii) and (iv) as paragraphs (b)(2)(v) and (vii);

■ e. Add new paragraphs (b)(2)(iii), (b)(2)(iv), and (b)(2)(vi);

■ f. Revise newly redesignated paragraph (b)(2)(vii).

■ g. Revise paragraph (c)(2).

The revisions and additions read as follows:

§ 1635.8 Acquisition of genetic information.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The health or genetic services, including any acquisition of genetic information that is part of those services, are reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, is not a subterfuge for violating Title II of GINA or other laws prohibiting employment discrimination, and is not highly suspect in the method chosen to promote health or prevent disease.

* * * * *

(ii) Consistent with the requirements of paragraph (b)(2)(i) of this section, a covered entity may not offer an inducement (financial or in-kind), whether in the form of a reward or penalty, for individuals to provide genetic information, except as described in paragraphs (b)(2)(iii) and (iv) of this section, but may offer inducements for completion of health risk assessments that include questions about family medical history or other genetic information, provided the covered entity makes clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information.

* * * * *

(iii) Consistent with the requirements of paragraphs (b)(2)(i) and (ii) of this section, a covered entity may offer, as part of its health plan, an inducement to an employee whose spouse provides information about the spouse's own current or past health status as part of a health risk assessment when the employee has elected coverage for any class of dependents under the health plan, and the spouse is included in such coverage. No inducement may be offered, however, in return for the spouse's providing his or her own genetic information, including results of his or her genetic tests, for the current or past health status information of an employee's children, or for the genetic information of an employee's child. The health risk assessment, which may include a medical questionnaire, a medical examination (*e.g.,* to detect high blood pressure or high cholesterol), or both, must otherwise comply with paragraph (b)(2)(i) of this section in the same manner as if completed by the employee, including the requirement that the spouse provide prior, knowing, voluntary, and written authorization, and the requirement that the authorization form describe the confidentiality protections and restrictions on the disclosure of genetic information. The health risk assessment must also be administered in connection with the spouse's receipt of health or genetic services offered by the employer, including such services offered as part of a wellness program. This inducement, when combined with any other inducement permitted under Title I of the Americans with Disabilities Act (ADA), for an employee's participation in a wellness program that asks disability-related questions or requires medical examinations, may not exceed 30 percent of the total cost of the coverage under the plan in which an employee and the spouse are enrolled. For example, if an employer offers health insurance coverage at a total cost of $14,000 for employees and their dependents (including spouses) and provides the option of participating in a wellness program to employees and spouses who are covered by the plan, the employer may not offer an inducement greater than 30 percent of $14,000, or $4,200.

(iv) When an employer offers an inducement for an employee and the employee's spouse to participate in a wellness program that requests information about the spouse's current or past health status:

(A) The maximum amount of the inducement for an employee's spouse to provide information about current or past health status may not exceed 30 percent of the total cost of coverage for the plan in which the employee is enrolled less 30 percent of the total cost of self-only coverage. For example, if an employer offers health insurance coverage at a total cost of $14,000 for employees and their dependents and $6,000 for self-only coverage, the maximum inducement the employer can offer for the employee and the employee's spouse to provide information about their current or past health status is 30 percent of $14,000, or $4,200. The maximum amount of the $4,200 inducement that could be offered for the employee's spouse to provide current or past health status information is $4,200 minus $1,800 (30 percent of the cost of self-only coverage), or $2,400

(B) The maximum amount of the inducement the employer may offer to the employee for participation is 30 percent of the cost of self-only coverage. For example, if an employer offers health insurance coverage at a total cost of $14,000 for employees and their dependents and $6,000 for self-only coverage, the maximum inducement that may be offered for the employee to respond to disability-related inquiries or take medical examinations is $1,800.

* * * * *

(vi) A covered entity may not, however, condition participation in a wellness program or provide any inducement to an employee, or the spouse or other covered dependent of the employee, in exchange for an agreement permitting the sale of genetic information, including information about the current health status of an employee's family member, or otherwise waiving the protections of § 1635.9.

(vii) Nothing contained in paragraphs (b)(2)(ii) through (vi) of this section limits the rights or protections of an individual under the Americans with Disabilities Act (ADA), as amended, or other applicable civil rights laws, or under the Health Insurance Portability and Accountability Act (HIPAA), as amended by GINA. For example, if an employer offers an inducement for participation in disease management programs or other programs that

promote healthy lifestyles and/or require individuals to meet particular health goals, the employer must make reasonable accommodations to the extent required by the ADA; that is, the employer must make ''modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities'' unless ''such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.'' 29 CFR 1630.2(o)(1)(iii); 29 CFR 1630.9(a). In addition, if the employer's wellness program provides (directly, through reimbursement, or otherwise) medical care (including genetic counseling), the program may constitute a group health plan and must comply with the special requirements for wellness programs that condition rewards on an individual satisfying a standard related to a health factor, including the requirement to provide an individual with a ''reasonable alternative (or waiver of the otherwise applicable standard)'' under HIPAA, when ''it is unreasonably difficult due to a medical condition to satisfy'' or ''medically inadvisable to attempt to satisfy'' the otherwise applicable standard. See section 9802 of the Internal Revenue Code (26 U.S.C. 9802, 26 CFR 54.9802–1 and 54.9802–3T), section 702 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1182, 29 CFR 2590.702 and 2590.702–1), and section 2705 of the PHSA (45 CFR 146.121 and 146.122), as amended by section 1201 of the Affordable Care Act.

* * * * *

(c) * * *

(2) A covered entity does not violate this section when, consistent with paragraph (b)(2) of this section, it requests, requires, or purchases genetic information or information about the manifestation of a disease, disorder, or pathological condition of an individual's family member who is receiving health or genetic services on a voluntary basis. For example, an employer does not unlawfully acquire genetic information about an employee when it asks the employee's family member who is receiving health services from the employer if her diabetes is under control. Nor does an employer unlawfully acquire genetic information about an employee when it seeks information—through a medical questionnaire, a medical examination, or both—about the current or past health status of the employee's family member who is covered by the employer's group health plan and is completing a health risk assessment on a voluntary basis in connection with the family member's receipt of health or genetic services (including health or genetic services provided as part of a wellness program) offered by the employer in compliance with paragraph (b)(2) of this section.

* * * * *

■ 3. In § 1635.11, revise paragraphs (b)(1)(iii) and (iv) to read as follows:

§ 1635.11 Construction.

* * * * *

(b) * * *

(1) * * *

(iii) Section 702(a)(1)(F) of ERISA (29 U.S.C. 1182(a)(1)(F)), section 2705(a)(6) of the Public Health Service Act (PHSA), as amended by section 1201 of the Affordable Care Act and section 9802(a)(1)(F) of the Internal Revenue Code (26 U.S.C. 9802(a)(1)(F)), which prohibit a group health plan or a health insurance issuer in the group or individual market from discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; or

(iv) Section 702(b)(1) of ERISA (29 U.S.C. 1182(b)(1)), section 2705(b)(1) of the PHSA, as amended by section 1201 of the Affordable Care Act and section 9802(b)(1) of the Internal Revenue Code (26 U.S.C. 9802(b)(1)), as such sections apply with respect to genetic information as a health status-related factor, which prohibit a group health plan or a health insurance issuer in the group or individual market from discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information.

* * * * *

[FR Doc. 2015–27734 Filed 10–29–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0258; FRL–9936–31–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport of Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On June 28, 2010, the State of Idaho made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submittal as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standard (NAAQS) in any other state.

DATES: Written comments must be received on or before November 30, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0258, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101
- *Hand Delivery/Courier:* EPA Region 10 9th Floor Mailroom, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2015–0258. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit

an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information the disclosure of which 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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT:
Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:
Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background
II. State Submittal
III. EPA Evaluation
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain ''good neighbor'' provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the applicable air quality standard in any other state. We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the eastern portion of the United States in several past regulatory actions.[1] We most recently promulgated the Cross-State Air Pollution Rule (CSAPR), which addressed CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States.[2] CSAPR addressed multiple national ambient air quality standards, but did not address the 2008 8-hour ozone standard.[3]

In CSAPR, the EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, the EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate.[4] The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. The EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded.[5] In addition, the EPA determined that it was important to use a relatively lower one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels.[6] The EPA also determined that a lower threshold such as 0.5 percent would result in modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a ''0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.''[7]

In the final CSAPR, the EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the EPA's previous use of a one-percent threshold in CAIR. The EPA used a single ''bright line'' air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm.[8] The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter

[1] NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

[2] 76 FR 48208.

[3] CSAPR addressed the 1997 8-hour ozone, and the 1997 and 2006 fine particulate matter NAAQS.

[4] CSAPR proposal, 75 FR 45210, 45237 (August 2, 2010).

[5] *See also* Air Quality Modeling Final Rule Technical Support Document, Appendix F; Analysis of Contribution Thresholds.

[6] CSAPR, 76 FR 48208, 48236–37 (August 8, 2011).

[7] Id.

[8] Id.

used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm.[9]

II. State Submittal

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing.

On June 28, 2010, Idaho submitted a SIP to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the ozone NAAQS. The Idaho submittal included documentation of a public comment period from May 11, 2010 through June 10, 2010, and opportunity for public hearing. We find that the process followed by Idaho in adopting the submittal complies with the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.

With respect to the requirements in CAA section 110(a)(2)(D)(i)(I), the Idaho submittal referred to applicable rules in the Idaho SIP, meteorological and technical characteristics of areas with ozone nonattainment problems in surrounding states, data on nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions from Idaho sources, satellite monitoring data, and the impacts of terrain and prevailing wind direction on the potential for transport of ozone precursors. The Idaho submittal concluded that given the relatively low amount of NO_X emitted by Idaho sources, the general lack of substantial concentrations of VOCs in areas surrounding Idaho, the impacts of significant terrain features on the movement of pollutants, and technical information on the two areas in states bordering Idaho that are having ozone attainment and maintenance problems (Upper Green River Basin, Wyoming and Clark County, Nevada), it is reasonable to conclude that emissions of ozone precursors from Idaho sources will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

The Idaho submittal provided further information to support this conclusion by citing major source permitting regulations approved into the Idaho SIP that require new sources and modifications to protect the ambient air quality standards, including the 2008 ozone NAAQS. With respect to existing sources, the Idaho submittal stated that stationary source operating rules in the Idaho SIP require an owner or operator to demonstrate that the source does not cause or contribute to a violation of any ambient air quality standard.

III. EPA Evaluation

On August 4, 2015, the EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS.[10] The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. The EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_X and volatile VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical documents have been included in the docket for this action.

The modeling data released in the NODA on July 23, 2015, is the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. For purposes of evaluating Idaho's interstate transport SIP submittal with respect to the 2008 8-hour ozone standard, the EPA is proposing that states whose contributions are less than one percent to downwind nonattainment and maintenance receptors are considered non-significant. The modeling indicates that Idaho's largest contribution to any projected downwind nonattainment site is 0.23 ppb and Idaho's largest contribution to any projected downwind maintenance-only site is 0.35 ppb.[11] These values are below the one percent screening threshold of 0.75 ppb, and therefore there are no identified linkages between Idaho and 2017 downwind projected nonattainment and maintenance sites. Note that the EPA has not done an assessment to determine the applicability for the use of the one percent screening threshold for western states that contribute above the one percent threshold. There may be additional considerations that may impact regulatory decisions regarding "potential" linkages in the west identified by the modeling.

IV. Proposed Action

As discussed in Section II, Idaho concluded based on its own technical analysis that emissions from the State do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state. The EPA's modeling, discussed in Section III, confirms this finding. Based on the modeling data and the information and analysis provided in Idaho's June 28, 2010 submittal, we are proposing to approve the submittal for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone standard. The EPA's modeling confirms the results of the State's analysis: Idaho does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state.

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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

[9] Id.

[10] *See* 80 FR 46271 (August 4, 2015) (Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)).

[11] 80 FR 46271 at page 46276, Table 3.

- 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) and 13563 (76 FR 3821, January 21, 2011);
- 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 it does not involve technical standards; and
- Does not provide the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 15, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2015–27594 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 80, No. 210
Friday, October 30, 2015

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Estimate of Peanuts and Peanut Products Available for Donation

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: On behalf of the Commodity Credit Corporation (CCC), the Farm Service Agency estimates that during fiscal year 2016, peanuts and peanut products in CCC inventory may be made available for programming under section 416 of the Agricultural Act of 1949, as amended, in such quantities as may be determined appropriate for direct human feeding in a manner consistent with United States obligations under its international trade agreements.

FOR FURTHER INFORMATION CONTACT: Tiffany Arthur; telephone (202) 720–4284. Persons with disabilities who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice).

Authority: 15 U.S.C. 714b and 7 U.S.C. 1431(b)(8)(B).

Val Dolcini,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2015–27698 Filed 10–29–15; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tongass Advisory Committee (Committee) will meet in Ketchikan, Alaska. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App. 2). Committee recommendations and advice may directly inform the development of a proposed action for modification of the 2008 Tongass Land Management Plan. Additional information concerning the Committee can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/R10/Tongass/TAC.*

DATES: The meetings will be held on:

- Tuesday, December 1, 2015 from 8:30 a.m. to 5:00 p.m. (AKDT).
- Wednesday, December 2, 2015 from 8:30 a.m. to 5:00 p.m. (AKDT).
- Thursday, December 3, 2015 from 8:30 a.m. to 3:30 p.m. (AKDT).

All meetings are subject to change and cancellation. For updated status of the meetings prior to attendance, please visit the Web site listed in the **SUMMARY** section, or contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Best Western Landing Hotel, Sunny Point Ball Room, 3434 Tongass Avenue, Ketchikan, Alaska 99901. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Tongass National Forest Office. Please call ahead at 907–225–3101 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Marina Whitacre, Committee Coordinator, by phone at 907–772–5934, or by email at *mwhitacre@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to:

1. Review Draft Environmental Impact Statement for the Tongass National Forest Plan Amendment;
2. Decide whether or not to amend the package of draft recommendations that was approved in May, 2015; and
3. Finalize TAC input regarding the Implementation and Monitoring Council.

The meetings are open to the public. For members of the public who are not able to attend the meeting in-person, but are interested in listening to the deliberations, a teleconference line will be available. Details regarding how to access the conference line will be posted at *www.merid.org/tongassadvisorycommittee* within 24 hours of the meeting start time.

The agenda will include time for people to make oral statements of three minutes or less. Time is allotted for oral statements on Wednesday, December 2, 2015, between 8:30 a.m. and 9:30 a.m. Individuals wishing to make an oral statement should register at the meeting. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee's staff before or after the meeting. Written comments must be sent to Jason Anderson, Designated Federal Officer, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833; by email at *jasonanderson@fs.fed.us;* or via facsimile at 907–772–5895. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: October 20, 2015.

Jason C. Anderson,

Deputy Forest Supervisor, Tongass National Forest.

[FR Doc. 2015–27640 Filed 10–29–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Submission for OMB Review; Comment Request

October 26, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by November 30, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Bee and Honey Survey.

OMB Control Number: 0535–0153.

Summary of Collection: The National Agricultural Statistics Service (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Domestic honeybees are critical to the pollination of U.S. crops, especially fruits, some nuts, vegetables and some specialty crops. Africanized bees, colony collapse disorder, parasites, diseases, and pesticides threaten the survival of bees. Programs are provided by federal, State and local governments to assist in the survival of bees and to encourage beekeepers to maintain bee colonies.

Need and Use of the Information: NASS will collect information on the number of colonies, honey production, stocks, and prices from beekeepers with five or more honey bee colonies and from a sampling of beekeepers that have less than five colonies. The survey will provide data needed by the Department and other government agencies to administer programs and to set trade quotas and tariffs. Without the information agricultural industry would not be aware of changes at the State and national level.

Description of Respondents: Farms.

Number of Respondents: 31,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8,937.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–27617 Filed 10–29–15; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

[Docket No. 150806684–5967–02]

Privacy Act of 1974, Altered System of Records

AGENCY: U.S. Census Bureau, U.S. Department of Commerce.

ACTION: Notice of Proposed Amendment to Privacy Act System of Records: COMMERCE/CENSUS–9, Longitudinal Employer-Household Dynamics System.

SUMMARY: The Department of Commerce publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled Notice of Proposed Amendment to Privacy Act System of Records: COMMERCE/CENSUS–9, Longitudinal Employer-Household Dynamics System.

DATES: The system of records becomes effective on October 30, 2015.

ADDRESSES: For a copy of the system of records please mail requests to: Chief, Privacy Compliance Branch, Room—8H021, U.S. Census Bureau, Washington, DC 20233–3700.

FOR FURTHER INFORMATION CONTACT: Chief, Privacy Compliance Branch, Room—8H021, U.S. Census Bureau, Washington, DC 20233–3700.

SUPPLEMENTARY INFORMATION: On September 17, 2015 (80 FR 55831), the Department of Commerce published a notice in the **Federal Register** requesting comments on a proposed new Privacy Act System of Records notice entitled Notice of Proposed Amendment to Privacy Act System of Records: COMMERCE/CENSUS–9, Longitudinal Employer-Household Dynamics System. No comments were received in response to the request for comments. By this notice, the Department of Commerce is adopting the proposed new system as final without changes effective October 30, 2015.

Dated: October 26, 2015.

Michael J. Toland,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2015–27719 Filed 10–29–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Retraction of Publication of the Notice of Final Redetermination Pursuant to Court Remand, Wheatland Tube Co. v. United States, Court No. 12–00296

ACTION: Notice of retraction.

SUMMARY: The International Trade Administration inadvertently published a notice of Final Redetermination Pursuant to Court Remand in Wheatland Tube Co. v. United States, in the **Federal Register** on Tuesday, October 20, 2015 (80 FR 63537) (''Notice''). The Notice is hereby retracted from the **Federal Register**, and as such, the Notice should be disregarded.

FOR FURTHER INFORMATION CONTACT: Cara Lofaro, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5720.

Dated: October 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–27777 Filed 10–29–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE285

Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Determination.

SUMMARY: The National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee) has finalized principles for determining seafood species at risk of IUU fishing and seafood fraud (at-risk species) and a list of at-risk species developed using the principles.

DATES: List of principles and at-risk species is final upon October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Danielle Rioux, Office of Sustainable Fisheries, National Marine Fisheries Service (phone 301–427–8516, or email *Danielle.Rioux@noaa.gov*).

SUPPLEMENTARY INFORMATION: According to NOAA statistics, in 2013, U.S. fishers landed 9.9 billion pounds of fish and shellfish worth $5.5 billion. Illegal, unreported, and unregulated (IUU) fishing and seafood fraud undermine the sustainability of U.S. and global seafood stocks and negatively impact general ecosystem health. At the same time, IUU fishing and fraudulent seafood products distort legal markets and unfairly compete with the products of law-abiding fishers and seafood industries globally. On March 15, 2015, the Presidential Task Force on Combating IUU Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, took an historic step to address these issues and published its Action Plan for Implementing Task Force Recommendations (Action Plan).

The Action Plan

(*http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf*) articulates the proactive steps that Federal agencies will take to implement the recommendations the Task Force made to the President in December 2014 on a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud. The Action Plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental organizations, and create a risk-based traceability program to track seafood from harvest to entry into U.S. commerce, including through the use of existing traceability mechanisms. The scope of action anticipated through the Action Plan approaches IUU and fraudulently-labeled seafood at the Flag State, Port State, and Market State levels. The work the Task Force began continues under the oversight of the NOC Committee, established in April 2015.

This final notice is one of several steps in the plan to implement Task Force Recommendations 14 and 15, identifying ''species of fish or seafood that are presently of particular concern because they are currently subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing.'' To begin implementing these recommendations, the NOC Committee created a Working Group (Working Group), led by NOAA and composed of members from partner agencies: Department of State, Food and Drug Administration, Department of Homeland Security, Customs and Border Protection, and the Office of the U.S. Trade Representative.

As the first step, the NOC Committee, through the Working Group, solicited public input through a **Federal Register** notice (80 FR 24246, April 30, 2015) on what principles should be used to determine the seafood species at risk of IUU fishing or seafood fraud. Public input was received both in writing and through webinars. Taking into consideration comments received, the Working Group developed draft principles and a draft list of at-risk species based on those principles. These principles and the draft list were then published in a **Federal Register** notice (80 FR 45955, August 3, 2015) to solicit additional public comment. This public comment period was extended through **Federal Register** notice (80 FR 50270, August 19, 2015) until September 11, 2015. The Working Group considered public input received during the public comment period and developed final principles to determine seafood species at risk of IUU fishing or seafood fraud and a final recommended list of at risk species.

This publication is the NOC Committee's transmission of the list of species at risk of IUU fishing and seafood fraud to the agencies charged with implementing the Task Force recommendations for appropriate action, as requested in the Action Plan, as well as notification to the public. The list does not impose any legal requirements, but will inform the first phase of the risk-based seafood traceability program, as described in the Action Plan. The traceability program itself will be developed through notice-and-comment rulemaking, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and that rulemaking will address data requirements, the design of the program, and the species to which the first phase of the program will be applied. Implementation and enforcement of the traceability program may require engagement of additional U.S. agencies.

Principles for Determining Species at Risk of IUU Fishing and Seafood Fraud

To develop principles, the Working Group considered public comments received through both public comment periods. The Working Group evaluated the strength and utility of various principles as indicators for potential risk of IUU fishing or seafood fraud as well as their measurability and the robustness of data available to assess them. The Working Group minimized overlap of principles to ensure that a species' alignment with several principles does not overstate associated risk, and also to distinguish between risk of IUU fishing and risk of seafood fraud. The Working Group then applied the principles to a base list of species to develop the list of species at risk of IUU fishing or seafood fraud.

Based on the Working Group's evaluation and synthesis of comments received through both public comment periods, the final principles are listed below. Species and species groups were evaluated using these principles:

• *Enforcement Capability:* The existence and effectiveness of enforcement capability of the United States and other countries, which includes both the existing legal authority to enforce fisheries management laws and regulations and the capacity (*e.g.,* resources, infrastructure, etc.) to enforce those laws and regulations throughout the geographic range of fishing activity for a species.

• *Catch Documentation Scheme:* The existence of a catch documentation scheme throughout the geographic range of fishing activity for a species, and the effectiveness of that scheme if it exists, including whether a lack of proper documentation leads to discrepancies between total allowable catch and trade volume of a species.

• *Complexity of the Chain of Custody and Processing:* Consideration of transparency of chain-of-custody for a species, such as the level of transshipment (in this context, the transfer of fish from one vessel to another, either at sea or in port) for a species, as well as the complexity of the supply chain and extent of processing (*e.g.,* fish that goes across multiple country borders or fish that is commonly exported for processing or that is sold as fillet block vs. whole fish) as it pertains to comingling of species or catch.

• *Species Misrepresentation:* The history of known misrepresentation of a species related to substitution with

another species, focused on mislabeling or other forms of misrepresentation of seafood products.

- *Mislabeling or Other Misrepresentation:* The history of known misrepresentation of information other than mislabeling related to species identification (*e.g.,* customs misclassification or misrepresentation related to country of origin, whether product is wild vs. aquaculture, or product weight).
- *History of Violations:* The history of violations of fisheries laws and regulations in the United States and abroad for a species, particularly those related to IUU fishing.
- *Human Health Risks:* History of mislabeling, other forms of misrepresentation, or species substitution leading to human health concerns for consumers, including in particular, incidents when misrepresentation of product introduced human health concerns due to different production, harvest or handling standards, or when higher levels of harmful pathogens or other toxins were introduced directly from the substituted species.

Application of Principles

Given the large number of seafood species that are domestically landed or imported, the Working Group created a base list of species for evaluation using several factors: (1) The value of domestic landings and imports (all seafood species with an imported or domestically-landed value over $100 million USD in 2014 were included on the base list); (2) species identified by the Working Group due to a high cost of product per pound (which could increase the incentive for IUU fishing and fraud); and (3) species proposed based on the expertise of representatives from the Working Group agencies. In some cases, the Working Group combined related species together in its analysis (*e.g.,* shrimp), because the supporting data utilized nomenclature which made further analytical breakouts unworkable. In other cases, the working group was able to target species within larger species groups (*e.g.* red snapper), based on commercial and marketplace significance.

The Working Group determined that data from the past five years was the appropriate timeframe for decision-making because a longer timeframe might not reflect improvements that have been made in some fisheries over time and a shorter timeframe might not include sufficient data to identify risks to certain species.

The resulting list of species and groups analyzed by applying the principles listed above is set forth below. Note that this list is not the list of at-risk species to which the first phase of the traceability program will be applied:

Abalone; Billfish (Marlins, Spearfishes, and Sailfishes); Catfish (Ictaluridae); Cod, Atlantic; Cod, Pacific; Crab, Blue; Crab, Dungeness; Crab, King; Crab, Snow; Dolphinfish (Mahi Mahi); Oyster; Grouper; Haddock; Halibut, Atlantic; Halibut, Pacific; Lake or Yellow Perch; Lobster; Mackerel; Menhaden; Opah; Orange Roughy; Red Drum; Red Snapper; Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallop; Sea bass; Sea cucumber; Shrimp; Sharks; Sole; Squid; Sturgeon caviar; Swordfish; Tilapia; Toothfish; Tunas (Albacore, Bigeye, Bluefin, Skipjack, Yellowfin); Wahoo; Walleye (Alaskan) Pollock; Pacific Whiting.

Based on public comments received on the draft list of at-risk species, the following eight additional species/species groups were also analyzed according to the principles described above: Anchovies; Eels; Flounder (Southern and Summer); Octopus; Queen Conch; Weakfish; Skates and Rays.

Both imported and domestically-landed species were evaluated using the same principles, data sources and methodology, as described below. Principles were not weighted and were evaluated evenly. Additionally, the Working Group considered the interaction of principles to be important. For example, the interaction between the enforcement capability, and history of violations was important when evaluating species. The presence or absence of one principle (*e.g.,* catch documentation scheme) was not determinative in making the at-risk assessment.

The following Federal agency offices contributed to the analysis of the list of species: the Office of Marine Conservation, Bureau of Oceans and International Environmental Affairs, Department of State; Office of the Under Secretary for Economic Growth, Energy, and Environment, Department of State; Office of International Affairs and Seafood Inspection, National Marine Fisheries Service, NOAA, Department of Commerce; Office of Sustainable Fisheries, National Marine Fisheries Service, NOAA, Department of Commerce; Office of Science and Technology, National Marine Fisheries Service, NOAA, Department of Commerce; Office of Law Enforcement, National Marine Fisheries Service, NOAA, Department of Commerce; Office of General Counsel, Enforcement Section, NOAA, Department of Commerce; and Office of General Counsel, Fisheries and Protected Resources Section, NOAA, Department of Commerce; U.S. Customs and Border Protection; U.S. Department of Homeland Security; Division of Seafood, Office of Food Safety, Food and Drug Administration; Office of Analytics and Outreach, Food and Drug Administration; Office of Compliance, Food and Drug Administration; Office of Environment and Natural Resources, U.S. Trade Representative; Office of General Counsel, U.S. Trade Representative. Resources from these offices, including data and expertise, drove the analysis and application of principles. Additional information used was from U.S. government-verifiable sources, such as data gathered by Regional Fisheries Management Organizations to which the United States is a member and whose scientific data is developed and reviewed with active U.S. government participation.

Sub-working groups composed of subject matter experts from the agencies listed above were created to complete the analyses of each species under each individual principle. The Working Group then combined the analyses done by the sub-working groups to determine which species were most at risk of IUU fishing and seafood fraud. The Working Group noted that the suite of risks posed to species varied not only in terms of which risks affected which species, but also in terms of the scale of the risks. For example, a single documented case of species substitution for a species that is sold in high volumes was considered differently than one case for a species rarely found in U.S. markets.

Additionally, as the Working Group discussed the suite of risks associated with the principles, a relationship became evident between the enforcement capability associated with a species and the history of violations. In many cases, a history of violations was indicative of a strong enforcement capability for a species. Conversely, for some species, a lack of violations history may have been due to an in-ability to detect or prosecute violations.

After the second round of public comment, the Working Group reconvened to discuss the eight new species or species groups added to the analysis in response to public comments plus new, relevant, U.S. government-verifiable information from the past five years applicable to species already analyzed. Based upon these discussions, the list of species now deemed to be at risk of IUU fishing and seafood fraud has been modified from the draft list.

Species at Risk of IUU Fishing and Seafood Fraud

The Working Group recognizes that all species of fish can be susceptible to some risk of IUU fishing or seafood fraud due to the inherent complexities in the fishing industry and supply chain. However, the species list has been developed to identify species for which the current risks of IUU fishing or seafood fraud warrant prioritization for the first phase of the traceability program. Pursuant to the Action Plan, implementation of the first phase of the traceability program will be regularly evaluated, beginning with a report to be issued by December 2016, in order to determine ''whether it is meeting the intended objectives and how it can be expanded to provide more information to prevent seafood fraud and combat IUU fishing.''

Based on its evaluation, the Working Group identified the following list of species or species groups at risk of IUU fishing and seafood fraud, in alphabetical order. (Appendix A to this final notice lists the scientific names for these species and/or species groups.) Brief summaries of the Working Group findings are presented here. Detailed presentation of the data considered by the Working Group and its deliberations is protected from disclosure because of data confidentiality and enforcement implications.

Abalone: Abalone is considered to be at-risk due to enforcement concerns. The fishery has a history of poaching, and there is a known black market for this expensive seafood. The fishery is primarily conducted by small vessels close to shore, and does not require specialized gear, which makes it difficult to detect illegal harvest, despite some enforcement capability. In addition to the IUU fishing risks for abalone, there is a history of species substitution where topshell is fraudulently marketed as abalone.

Atlantic Cod: Atlantic cod has been the subject of species substitution with other white fish, and mislabeling due to over-glazing (ice coating), and short-weighting. Despite enforcement capability, Atlantic Cod have been targets of IUU fishing in parts of the geographic range of the species. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas including the United States.

Blue Crab: Atlantic Blue crab is sold in a number of different forms from live animals to significantly processed crab meat. In the crabmeat product form species identification is only possible through DNA testing. There is a strong history of both species substitution and mislabeling. Blue crab has been substituted or co-mingled with swimming crab, which is native to Southeast Asia. The mislabeling history is largely associated with misidentification of product origin, with crab from other locations sold as ''Maryland crab,'' although there have also been incidents of short-weighting in the sale of crab meat.

Dolphinfish: Dolphinfish (also known as Mahi Mahi) is associated with a lack of enforcement capability and lacks a catch documentation scheme throughout the geographic range of fishing activity, which make it vulnerable to IUU fishing. Some dolphinfish is transshipped prior to entry into the United States, and there is concern over mislabeling associated with product origin. In addition, there is a history of species substitution, in which yellowtail flounder has been sold as dolphinfish.

Grouper: Grouper refers to a group of species in the family *Serranidae* that are legally fished and sold under the names grouper and spotted grouper. Grouper, as a species group, has a history of fisheries violations, and lacks a catch documentation scheme throughout the geographic range of fishing activity for the species group. Additionally, this global species is transshipped, and processed both at the local level and at regionally-located or third-country processing plants. Grouper has a strong history of species substitution, including substitution using seafood that is of human health concern, such as escolar (which has a Gempylotoxin hazard).

King Crab (red): King crab (red) has a significant history of fisheries violations, and insufficient enforcement capability in some parts of the world. Additional IUU fishing risk is tied to the lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. King crab is at risk of seafood fraud, mostly due to misrepresentation of product origin, as well as some species substitution. Further, King crab is often transshipped before entering the United States, which increases the IUU fishing and seafood fraud risks.

Pacific cod: Pacific cod is a species at risk of IUU fishing despite significant enforcement capability associated with this fishery. Pacific cod is a target of global IUU fishing operators and has a clear history of fishing violations. It is also subject to highly globalized processing and transshipment. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas including the United States. In addition, as with Atlantic cod, there is a history of species substitution using other white fish and concerns over mislabeling associated with over-glazing (ice coating) and short-weighting.

Red Snapper: Red Snapper is at risk of IUU fishing, based upon the history of fisheries violations, as well as the lack of a catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas including the United States. There are also enforcement capability concerns for red snapper throughout the full geographic range of fishing activity for the species. Additionally, there is a strong history of species substitution with some of the substituted species (*e.g.,* rockfish, porgy, other snappers) presenting a risk to human health due to parasites and natural toxins.

Sea Cucumber: Sea cucumber is an IUU fishing concern, due to the lack of enforcement capability and known illegal harvesting and smuggling associated with this species. This species also lacks a catch documentation scheme throughout the geographic range of fishing activity and is subject to a significant amount of transshipment. Although sea cucumber is often sold live, it can also be processed into a dried product for preservation. There are mislabeling concerns for sea cucumber, often tied to falsification of shipping and export documentation to conceal illegally-harvested product.

Sharks: ''Sharks,'' as included on the at-risk species list, refers to a group of species that are often sold as fins, with some species also sold as steaks or filets. Depending upon the product form, differentiating between species in this broad group is a challenge without identification guides or DNA testing. This led the Working Group to group all shark species together to assess risks. Sharks as a species group have a history of fishing violations because they are processed and transshipped, and there is a lack of enforcement capability throughout the geographic range of fishing activity. There is a global trade in shark fins that is a known enforcement concern. In addition to the IUU fishing risks associated with sharks, there are fraud concerns tied to the sale of imitation shark fin, which has been labeled as shark fin.

Shrimp: Shrimp is produced through both aquaculture and wild harvest. The Working Group found that shrimp is at risk of IUU fishing activity due to the history of fishery violations. Shrimp is also often processed and co-mingled, which can make it vulnerable to seafood fraud. There is a significant amount of mislabeling and/or misrepresentation of shrimp, tied largely to misrepresentation of weight, including where product has been treated with Sodium Tripolyphosphate to increase water retention (the lack of labeling is fraudulent, not the use of Sodium Tripolyphosphate). Mislabeling is also a concern because aquacultured product is sometimes labeled as wild caught and product origin is sometimes falsified. Additionally, there is a history of substitution of one species of shrimp for another when imports cross the border into the United States.

Swordfish: Swordfish are at risk of both IUU fishing and seafood fraud. Swordfish are a highly migratory species and their range crosses numerous jurisdictions, including the high seas. There is a history of fisheries violations in certain swordfish fisheries and regions, in addition to a lack of enforcement capability. The United States does, however, implement a statistical document program for swordfish pursuant to the International Commission for the Conservation of Atlantic Tunas (ICCAT) to help mitigate IUU fishing and seafood fraud risk. This document is required for all swordfish product entering the United States, regardless of the product form or ocean area where it was harvested, although it does not provide the full range of information that would likely be expected in a traceability program, particularly for fish harvested outside the Atlantic, which are not a part of the program. Swordfish is commonly transshipped and is also at risk of species substitution with mako shark.

Tunas: Tunas are a high volume and high value species group that includes five main species: Albacore, bigeye, skipjack, yellowfin, and the bluefins. There is a history of fisheries violations in certain tuna fisheries and in certain regions. Further, harvesting, transshipment, and trade patterns for tunas can be complex, in particular for certain value-added products. While there are multilateral management and reporting measures in place for many stocks within the tuna species group, these management and reporting mechanisms vary in terms of information standards and requirements and some do not provide a complete catch documentation scheme. Tunas are also subject to complicated processing that includes comingling of species and transshipments. Further, there is a history of some species substitutions, with most instances involving substitution of one tuna species for another. Additionally, there have also been instances of escolar, which can contain a toxin, being substituted for albacore tuna.

The Working Group sought public comment specifically on how to narrow the scope of tunas on the list of at-risk species. Public comment received highlighted that the risk levels vary greatly depending on species. The Working Group further discussed the variability of the risk levels for IUU fishing and seafood fraud on a species by species basis. The Working Group has determined that Bluefin tuna species are at a lower risk of IUU fishing and seafood fraud than other tuna species and has determined that it should not be included on the list of at-risk species. This decision reflects our conclusion that two of the principles analyzed demonstrate that there is a lower risk of IUU and seafood fraud as compared to other tunas. First, there are robust catch documentation scheme in place for Atlantic bluefin tuna and Southern bluefin tuna entering the U.S. market, which are implemented through Regional Fisheries Management Organizations. Bluefin tuna was historically a target of IUU fishing and thus had a catch documentation scheme implemented for two of the three species world-wide, which are the two species comprising the vast majority of Bluefin that enters U.S. Commerce. A catch documentation scheme is under development for Pacific Bluefin tuna. The existing catch documentation scheme for Bluefin tuna does not eliminate all risk of IUU fishing, but it mitigates the risk to a low level. Second, Bluefin tuna does not have the history of species substitution that other tunas have, in part because of its different color and texture compared to other tunas, as well as the sophistication of Bluefin buyers, in discerning Bluefin from other fish. Although the Working Group recognizes that there may be further variance in risk level among the three Bluefin species, we have chosen to remove all three stocks, so as not to create any incentive for new species substitution schemes among the three Bluefin species.

Programs To Mitigate Risk

Through the application of the principles for determining at-risk species, the Working Group identified two species—toothfish and catfish—that had a number of risk factors for IUU fishing or seafood fraud but, due to mechanisms to address those risks, are not being listed as at-risk species in this Notice.

Toothfish has been known, historically, as a species with IUU fishing concerns, which led to the development, by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of a number of monitoring tools including a comprehensive catch documentation scheme. Without the existing level of reporting, documentation, and enforcement capability, including through measures adopted by CCAMLR, for this species, the Working Group would have found it to be at-risk.

The Working Group found that while existing measures do not eliminate risk for toothfish, they mitigate the IUU fishing and seafood fraud risks to such a level that the Working Group is not listing toothfish as an at-risk species for the first phase of the traceability program.

In the United States, seafood sold as catfish must be from the family *Ictaluridae* per section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)). There is a strong history of species substitution, in which non-*Ictaluridae* species are sold as catfish. Some of this species substitution has been tied to *Siluriformes* species, which could have a drug hazard associated with them, as well as other species that have been found contaminated with prohibited chemicals and pharmaceuticals. In addition to species substitution, there is a history of other mislabeling issues, including product origin and failure to accurately label product that has been treated with carbon monoxide.

These risks were discussed and are fully recognized by the Working Group. However, there is a rulemaking on catfish inspection (*http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=0583-AD36*) under development, separate from the NOC Committee and Working Group actions. Once in effect, this pending rulemaking may mitigate risks identified by the Working Group. Taking into consideration the underlying principle of the Task Force to maximize the use of existing resources and expertise from across the federal government through increased federal agency collaboration, the Working Group did not include catfish on this initial list of at-risk species.

Summary of Comments in Response to Draft Principles and Draft List of At-Risk Species (80 FR 45955, August 3, 2015)

In response to the August 3, 2015, **Federal Register** notice (described above), and following outreach to foreign nations, the Working Group received 101 unique written comments from fishing industry groups both domestic and abroad, non-governmental organizations, foreign nations, and interested citizens. The comments covered a breadth of issues pertaining to seafood traceability. The Working Group considered all public comments, and has provided responses to all relevant issues raised by comments below. We have not responded to comments that were outside the scope of the public comment request and that may be more relevant to future steps in the process, *e.g.,* the pending rulemaking on the design and implementation of the traceability system.

1. Decision-making Transparency

Comment: The Working Group received numerous public comments requesting additional information on what data was used in making the species risk determinations, as well as what experts were a part of the process.

Response: This notice specifies all government offices that contributed data and expertise. The data came from across the U.S. Federal government and included government-verifiable data, such as that of certain Regional Fisheries Management Organizations. As noted earlier, details of the results have not been included because much of the data reviewed are sensitive and/or confidential, and could compromise the integrity of individual businesses, systems or enforcement capability if released.

2. Approach for Analysis Should Be Quantitative

Comment: We received comment that the application of principles should be quantitative, and use numbers and a systematic data driven approach.

Response: The Working Group partially agrees. We used systems and expertise to apply the principles for determining seafood species at-risk of IUU fishing or seafood fraud evenly, and did not give any individual principle more weight than another. The application of these principles was not entirely quantitative, however, as some of the information we used was not quantitative. Incidents of illegal fishing and incidents of fraudulent activity vary in scope and scale from one to the next and the differences cannot be numerically calculated.

3. Data Used Should Be From a Longer Time Period

Comment: The Working Group received public comment that a longer time horizon would afford more data on violations and more ability to see trends over time.

Response: The Working Group agrees that looking at a longer time horizon would produce more data from the databases utilized; however it would potentially decrease the accuracy of the determination regarding current risk. There have been efforts made in most fisheries to decrease the level of risk, and the Working Group does not think that data from further back than five years accurately depicts the current status of fisheries.

4. Using Additional Authorities

Comment: Comment was received regarding the legal authorities for the rulemaking and regulatory process that will implement a seafood traceability program for the species listed as at-risk.

Response: This comment is outside the scope of this public comment request. The rulemaking process will provide an opportunity for public comment on the proposed seafood traceability program and this comment would be more appropriately directed toward that process.

5. Country Specific Risk/Country of Origin Based

Comment: The Working Group received numerous comments, including from many foreign nations that species risk should be tied to country of origin.

Response: The Working Group acknowledges that the risk of IUU fishing will vary depending on the origin of catch and country of processing. However, the Working Group used enforcement capability and history of fisheries violations when determining the at-risk species to capture this element of the risk analysis because these more directly represent risk. These principles already take into account fisheries identified in NOAA's biennial report to Congress as implicated in IUU fishing (*see* 16 U.S.C. 1826h). In addition, the Working Group does not believe it is useful or appropriate to establish a principle based on country of origin.

6. Vessel Specific

Comment: The Working Group received a comment that the risk level and the application of the traceability program should be vessel specific, as that is the appropriate level at which to assess risk.

Response: The Working Group used history of fisheries violations as a principle, which covers incidents from all vessels.

7. Equality

Comment: Numerous comments were received regarding equality. The majority of the comments received were tied to equality from one nation to another. These comments included requests that countries be treated equally in the analysis for identifying at-risk species, as well as comments outside of the scope of this comment request, pertaining to the equal and evenhanded implementation of the pending traceability program.

Response: The Working Group applied each of the principles for determining risk level evenly and equally. The principles were applied equally to domestically-landed species and imported species.

8. IUU Fishing Should Be Separate From Seafood Fraud

Comment: The working group received a couple of comments that seafood fraud and IUU fishing are separate and should be analyzed as such.

Response: The Working Group agrees and recognizes the difference between IUU fishing and seafood fraud. We recognize that, for example, they may occur at different points in the supply chain from harvest to entry into U.S. commerce; however the Working Group believes they are a part of the same system. The Working Group developed principles, informed by public comment, which are specific to the different components. For example, under the principles applied by the Working Group, the history of fishery violations is specific to the concept of IUU fishing, whereas species misrepresentation is specific to seafood fraud. When analyzing a species, the Working Group applied each principle individually and then analyzed the resulting findings across the supply chain for both IUU fishing and seafood fraud.

9. Enforcement of Existing Laws

Comment: Public comment encouraged the enforcement and application of existing laws before creating new laws.

Response: This notice, which identifies at-risk species, does not, in and of itself, create any new legal requirements. Establishment of the seafood traceability program through a future rulemaking, as well as the resources devoted to implementation of

current laws, are outside the scope of this comment request.

10. Combatting IUU Fishing Requires Focus on Flag State, Port State, and Market State

Comment: The Working Group received comment that proposing a list of at-risk species and the following implementation of a seafood traceability program focuses solely on the market drivers of IUU fishing and seafood fraud, and does not approach Flag State and Port State measures. The commenter stated that all three are critical components to combatting IUU fishing and seafood fraud, and that a narrow focus would limit effectiveness.

Response: The Presidential Task Force on Combatting IUU Fishing and Seafood Fraud Action Plan contains 15 recommendations. This series of **Federal Register** notices pertained only to one component of recommendation 15, the identification of principles for determining at-risk species and the initial list of at-risk species. Other Task Force recommendations focus on Flag State and Port State measures, from actions on enforcement capacity building to working on obtaining entry into force of the Port State Measures Agreement.

11. Biological Vulnerability/Overfished/Overfishing Should Be a Principle

Comment: The Working Group received comments requesting that a principle for determining at-risk species be tied to the biological vulnerability and/or status of a species. Commenters note that as a species is overfished, the risk of IUU fishing can increase.

Response: The Working Group acknowledges that the sustainability of fisheries resources is a priority for NOAA under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Some vulnerable species identified in public comments such as sharks, sturgeon caviar, and abalone were added to the base list and analyzed by the Working Group. The Working Group agrees that as legal catch limits on a species are tightened, the incentive for IUU fishing often increases. However, the main focus of this process is to identify species at risk of IUU fishing or seafood fraud and enforcement capability and history of violations are better indicators of IUU fishing risk than species sustainability.

12. Gear-Type

Comment: The Working Group received a comment that the risk of IUU fishing is tied to gear type, and that gear type should be a principle for determining at-risk species.

Response: The Working Group acknowledges that fishing gear used in IUU fishing can sometimes include illegal gear types that are indiscriminate and can have higher environmental impacts than legal gear types. However, the Working Group does not believe that gear type alone is a sufficiently strong determinant of IUU fishing or seafood fraud risk, and use of illegal gear types was covered through the information collected on enforcement capability and history of violations.

13. Human Rights and/or Human Trafficking Concern

Comment: Numerous comments were received recommending that a history of human rights violations or human trafficking concerns should be a principle used to identify species at risk of IUU fishing and seafood fraud.

Response: Human rights and human trafficking are issues in the fishing industry that warrant consideration and action, but are not in and of themselves determinative of IUU fishing and seafood fraud. The Administration is addressing these issues in a variety of ways. On March 15, 2012, President Obama called on his cabinet to strengthen federal efforts to combat human trafficking and to expand partnerships with civil society and the private sector. The President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF) and its operational arm, the Senior Policy Operating Group (SPOG), bring together federal departments and agencies to ensure a whole-of-government approach that addresses all aspects of human trafficking—enforcement of criminal and labor laws, development of victim identification and protection measures, support for innovations in data gathering and research, education and public awareness, enhanced partnerships and research opportunities, and strategically linked foreign assistance and diplomatic engagement. For more information on the Administration's effort to combat Trafficking of Persons, please visit *http://www.state.gov/j/tip/response/usg/.*

14. Transparency of Vessel Ownership

Comment: The Working Group received comment recommending that the transparency of vessel ownership be used as a principle for determining species at risk of IUU fishing and seafood fraud. The comment suggests that convoluted vessel ownership and flags of convenience are often tied to IUU fishing.

Response: The Working Group agrees with the potential correlation between vessel ownership transparency and the potential for IUU fishing. This was addressed in the Working Group's discussions about enforcement capability; however there is not sufficient data available to analyze this as a principle for determining at-risk species.

15. Complex Chain of Custody

Comment: The Working Group received multiple comments on using the complexity of the chain of custody as a principle for determining IUU fishing risk. Many commenters agreed with the inclusion of this as a principle, while another group suggested there was no connection between IUU fishing and chain-of-custody complexity. The latter group requested more information on the relationship between the level of processing or chain-of-custody complexity and the risk of IUU fishing. We also received public comment stating that the two are not related, and thus this principle should not be used to determine at-risk species.

Response: The Working Group does not believe that a complex chain of custody or high level of processing necessarily signifies fraudulent product or a connection to IUU fishing. In the more complex chains of custody, however, there are more opportunities for mixing illegally caught fish with legally caught fish, and for mislabeling, thereby increasing the risk of IUU fishing or seafood fraud. Transshipments make tracking the chain of custody harder and present opportunities to commingle legally and illegally caught fish. Seafood that undergoes a high amount of processing and enters U.S. Commerce through a long chain of custody may often be legal and not fraudulent, but that does not negate the increased risk. Therefore, the Working Group had retained complexity in the chain of custody as a principle for determining at-risk species.

16. Harmful Antibiotics and Human Health Risk

Comment: The Working Group received comment requesting that in the application of the human health risk principle, we extend our assessment of risk to harmful antibiotic use.

Response: The application of the human health risk principle did include the use of harmful or unlawful antibiotic use. This principle does not, however, include the use of legal and non-harmful antibiotic use in aquaculture practice.

17. Weighting of Principles

Comment: The Working Group received public comment both requesting clarification on whether we weighted some principles more heavily than others, as well as comment requesting that we do so.

Response: The Working Group considered all of the principles without giving weights to them. The discussion for each species evaluated covered all of the principles and the findings associated for each, and the Working Group reviewed the suite of risks as a whole picture, without any one principle having a designated higher level of importance.

18. Number of Species

Comment: The Working Group received comments requesting both that all species be part of the first phase of the pending traceability program as well as comments requesting that the list of at-risk species be limited to two to three species.

Response: The Action Plan specifies that the Working Group is to prioritize species at risk of IUU fishing and seafood fraud in the first phase of a seafood traceability program that could eventually be expanded to cover all species. As directed by the Task Force, the Working Group completed a data driven analysis and listed species determined to be most at risk of IUU fishing or seafood fraud. This exercise was not predicated on creating a list with a certain number of species, rather the focus was on the most at-species, regardless of the numerical results.

19. The Substitute Species Should Be Tracked (e.g., Blue Swimming Crab)

Comment: Public comment received recommended that the traceability program track both the at-risk species and the species that are substitutes for those targets. For example, Atlantic Blue Crab is on the list of at-risk species, in part because Blue Swimmer Crab is known to be mislabeled and fraudulently marketed under the Atlantic Blue Crab name. The recommendation from public comment is that both are at-risk of seafood fraud and, therefore, both the target and the substitute should be tracked.

Response: The Working Group believes that the species at risk of fraud is the one that other species are used to imitate and that, at this time, tracking of the target species is the most efficient approach.

20. Aquaculture Species

Comment: Commenters requested that aquaculture species be exempt from the pending traceability program, and removed from the list of at-risk species because aquacultured species are not subject to IUU fishing.

Response: Both wild caught and aquacultured seafood can be at risk of seafood fraud (*e.g.,* farmed shrimp mislabeled as wild-caught) and therefore both are included on the list of at-risk species.

21. Consistency and Coordination With the Marine Mammal Rule

Comment: Public comment was received regarding the relationship between this list of at-risk species, the pending seafood traceability program, and the proposed rulemaking promulgated under the Marine Mammal Protection Act (MMPA). The proposed MMPA rule aims to reduce marine mammal bycatch associated with commercial fishing operations. Under the proposed MMPA rule, nations wishing to export fish and fish products to the United States must demonstrate they have a regulatory program for reducing marine mammal incidental mortality and serious injury that is comparable in effectiveness to the U.S. program.

Response: The MMPA proposed rulemaking is focused on reducing marine mammal bycatch, unlike this **Federal Register** Notice, which identifies species at risk of IUU fishing and seafood fraud. However, NOAA recognizes the importance of ensuring that its programs are consistent and coordinated.

22. ''High Volume,'' ''High Visibility''

Comment: A commenter requested clarification regarding the meaning of the terms ''high volume'' and ''high visibility'' species when referring to tunas, in the **Federal Register** notice with the draft list of at-risk species.

Response: In using those terms, the Working Group was trying to highlight that this is a popular group of species in the U.S. market. Tuna is a high volume import, and the text should have read that is it also a ''high value'' species.

23. Use Scientific Names

Comment: The Working Group received numerous comments requesting that scientific names be used to in the list of at-risk species, for greater clarity.

Response: The Working Group agrees with this comment, and has included an appendix of the scientific names for the at-risk species.

24. Government Resources

Comment: Comments were received recommending that the U.S. government contribute adequate resources both domestically and in capacity building abroad to implement the pending traceability program effectively. A separate comment was also received stating that no additional government resources should be spent on implementing the pending program.

Response: Implementation of the seafood traceability program is outside the scope of this **Federal Register** Notice, however, the Working Group notes that the Action Plan does not call for additional government resources for this effort.

25. United Nations Food and Agricultural Organization (FAO) Catch Documentation Scheme

Comment: The Working Group received comment that FAO has begun discussions about implementing a catch documentation scheme and that we should use their deliberations to inform our pending program.

Response: The traceability program as outlined in the Action Plan is to be in at least two parts. The first phase applies to species most at risk of IUU fishing and seafood fraud and, by December 2016, an evaluation of the program will be conducted to inform a possible program expansion to all species. The FAO deliberations, if contemporary to the predetermined timeline for the U.S. program, could prove useful, as could additional work being contemplated by the FAO related specifically to traceability.

26. Existing Efforts To Combat IUU Fishing and Seafood Fraud

Comment: The public comment highlighted the importance of not duplicating efforts of existing programs and enforcement that target IUU fishing and seafood fraud.

Response: The Working Group agrees, and the Presidential Task Force to Combat IUU Fishing and Seafood Fraud and the Action Plan both support the idea of coordination, not duplication.

27. Third Party Certification

Comment: The Working Group received public comment requesting clarification on whether third party certification (*e.g.,* Marine Stewardship Council) would exempt product from the pending seafood traceability program. Comment was also received recommending that product should be exempt if it is certified by a third party.

Response: Implementation of the traceability program, including any potential exemptions, is beyond the mandate of the Working Group and outside the scope of this **Federal Register** Notice. It will be addressed in

the forthcoming rulemaking related to the traceability program.

28. Fraud in the United States

Comment: The Working Group received comments on the level of fraud that happens with seafood inside U.S. commerce, once seafood has entered into our markets. Comments requested information on how the pending traceability program will address the amount of fraud that happens once seafood is inside U.S. markets.

Response: The scope of the traceability program is beyond the mandate of the Working Group and outside the scope of this **Federal Register** Notice. It will be addressed in the forthcoming rulemaking related to the traceability program.

29. Chain of Custody Principle Discriminates Against Imports

Comment: One commenter noted that using complex chain of custody as a principle will discriminate against imports.

Response: The Working Group disagrees. The Working Group considered the frequency of transshipment, complexity of processing, and complexity of the supply chain (especially with respect to the potential for fish to be comingled) equally for domestically-harvested and imported fish.

30. Carbon Monoxide

Comment: One comment was received concerning the use of carbon monoxide to improve the color of fish to make it appear fresh. The commenter was concerned that this practice creates an unfair market for local seafood that is fresh and untreated with carbon monoxide. Another commenter was concerned about our inclusion of carbon monoxide as an example of fraud, as it is legal to use.

Response: The Working Group recognizes the concerns raised by these comments. The use of carbon monoxide is legal; however, the product must be labeled appropriately. The mislabeling principle addressed the fraudulent practice of failing to properly label product that has been treated.

31. Tripolyphosphate

Comment: The Working Group received a comment that expressed concern about our inclusion of Tripolyphosphate as an example of fraud associated with shrimp, as it is legal to use.

Response: The Working Group recognizes the concerns raised by these comments. The use of Tripolyphosphate is legal; however, the product must be labeled appropriately. The mislabeling principle addressed the fraudulent practice of failing to properly label product that has been treated.

Canned Tuna

Comment: Public comments noted that the majority of tuna in the United States is from canning companies that have industry-run traceability programs for contamination and human health reasons and thus have a lower level of IUU fishing and fraud risk.

Response: The Working Group agrees that some canned tuna may have a lower level of IUU fishing and seafood fraud risk than other product forms. This is based both upon the existence and potential effectiveness of industry led traceability programs for canned tuna, and the fact that canned product that enters U.S. commerce as ''dolphin safe,'' is required to have a statement from the captain of the harvest vessel thus tying the product to the harvest vessel. The Working Group notes that the potentially lower level of risk for canned tuna products could be considered in the application of the data collections requirements of the forthcoming proposed traceability program or be addressed through the voluntary Trusted Trader Program to be developed by the Departments of Commerce and Homeland Security per Recommendations 14 and 15 of the Action Plan.

32. Bioterrorism Act of 2002

Comment: The Working Group received a comment requesting clarification on the relationship between the pending traceability program and this Bioterrorism Act of 2002.

Response: The Bioterrorism Act of 2002 required FDA to establish requirements for the creation and maintenance of records needed to determine the immediate previous sources and the immediate subsequent recipients of food, (*i.e.,* one up, one down). Such records are to allow FDA to address credible threats of serious adverse health consequences or death to humans or animals. Entities subject to these provisions are those that manufacture, process, pack, transport, distribute, receive, hold or import food. Farms and restaurants are exempt from these requirements.

To carry out this provision in the Bioterrorism Act, the Food Safety Modernization Act (FSMA) was enacted and it included enhancing tracking and tracing of food and recordkeeping. Under FSMA, FDA, working with the U.S. Department of Agriculture (USDA) and State agencies, has established two product tracing pilot projects carried out by the Institute of Food Technologists (IFT). The projects will help determine which data are most needed to trace a product that is in the market back to a common source and, once the contaminated ingredient is identified, to trace the product forward to know where it has been distributed. IFT has recommended steps for traceability improvement, and the information is still under review and we cannot make any comparative analyses.

33. Cooked Seafood

Comment: The Working Group received comment requesting clarification as to whether the pending seafood traceability program would extend to cooked seafood, which is exempted from the Country of Origin Labeling (COOL) protocols.

Response: The product types that will be a part of the program will be delineated in the traceability rule-making process and are beyond the scope of this **Federal Register** Notice.

34. Base List of Species

Comment: The Working Group received a public comment that the base list of species examined was skewed toward high value species, and the focus should be broadened to include mass-market fish.

Response: Initially the Working Group looked at both high value and high volume fisheries, but many of the high volume fisheries were also high value fisheries. Generally the only high volume fisheries that did not meet the value threshold were from bait fish fisheries. Therefore, the Working Group concluded a separate look at high volume fisheries was not useful. There were a number of lower value, but higher volume (mass market), stocks analyzed using the standards noted as part of the base list. However, the level of risk associated with many of them did not warrant having them on a list of species at risk of IUU fishing and seafood fraud.

35. European Union (EU) IUU Seafood Certification

Comment: A number of comments included discussion of the EU approach to combatting IUU fishing, which is country-of-origin based, rather than species-based.

Response: The Working Group is implementing the recommendations of the Presidential Task Force on Combatting IUU fishing and Seafood Fraud, which outlines a species specific approach as the basis for the first phase of the traceability scheme. As noted above, the Working Group does not believe it is appropriate to establish a

principle based on country of origin. In addition, the U.S. government does not have active involvement with the EU country-based IUU fishing risk identification system. Therefore, the Working Group did not include a principle that would identify at-risk species based on whether they are associated with nations that have been issued a yellow or red card under the EU system. However, to the extent available, information generated or collected pursuant to the EU system that could be relevant to other principles used by the Working Group, such as enforcement capability and history of fisheries violations for specific species, was considered.

36. Additional Species

Comment: The Working Group received many comments requesting that additional species be added to the list of at-risk species. The additional species requested included: Anchovies, All Snappers, Eels, Flounder, Lobster, Mackerel, Pollock, Octopus, Salmon, Skates & Rays, Snow Crab, Squid, Totoaba, and Weakfish.

Response: Lobster, Mackerel, Pollock, Salmon, Snow crab, and Squid were evaluated by the Working Group previously. The Working Group has confirmed that its earlier assessment of the species was accurate. Specific to the requests to have all snappers on the list, the Working Group determined that the species that is most at-risk for IUU fishing and seafood fraud is Red Snapper, and that the other snappers are generally used as a substitute for Red Snapper. Thus the Working Group did not expand the at-risk species to include all snappers. Totoaba, was requested for addition through public comment, but was not evaluated. Totoaba is listed as endangered under the Endangered Species Act (ESA), and is listed in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as threatened with extinction. This listing eliminates legal trade and negates the need for including Totoaba on the list of at-risk species.

The Working Group reviewed the following additional species, as suggested through public comments: Anchovies; Eels; Flounder (Southern and Summer); Octopus; Queen Conch; Weakfish; Skates and Rays. All of these species were evaluated using the same principles and methodology applied to the previously analyzed species. The Working Group did not find enough risk across the suite of principles to warrant adding any of the newly suggested species to the final list of at-risk species.

37. Emphasis on Unregulated and Unreported Catch

Comment: A comment was received suggesting the Working Group needed to increase attention on unregulated and unreported catch, while another comment suggested the Working Group needed to pay less attention to unregulated and unreported catch.

Response: Illegal, unregulated and unreported catch all have negative impacts on the sustainability of fisheries and on legal fishing businesses across the world. In its analysis, the Working Group took into consideration unregulated and unreported catch concerns.

Appendix 1

Common	Scientific name (to genus or to species)	Family	Order
abalone	Haliotis spp	Haliotidae	GASTROPODA.
albacore	Thunnus alalunga	Scombridae	SCOMBROIDEI.
Atlantic cod	Gadus morhua	Gadidae	GADIFORMES.
bigeye tuna	Thunnus obesus	Scombridae	SCOMBROIDEI.
blue crab	Callinectes sapidus	Portunidae	BRACHYURA.
dolphinfish	Coryphaena hippurus	Coryphaenidae	PERCOIDEI.
groupers	Aethaloperca spp	Serranidae	PERCOIDEI.
groupers	Anyperodon spp	Serranidae	PERCOIDEI.
groupers	Caprodon spp	Serranidae	PERCOIDEI.
groupers	Cephalopholis spp	Serranidae	PERCOIDEI.
groupers	Cromileptes spp	Serranidae	PERCOIDEI.
groupers	Dermatolepis spp	Serranidae	PERCOIDEI.
groupers	Diplectrum spp	Serranidae	PERCOIDEI.
groupers	Epinephelus spp	Serranidae	PERCOIDEI.
groupers	Gracila spp	Serranidae	PERCOIDEI.
groupers	Hyporthodus spp	Serranidae	PERCOIDEI.
groupers	Mycteroperca spp	Serranidae	PERCOIDEI.
groupers	Plectropomus spp	Serranidae	PERCOIDEI.
groupers	Saloptia spp	Serranidae	PERCOIDEI.
groupers	Triso spp	Serranidae	PERCOIDEI.
groupers	Variola spp	Serranidae	PERCOIDEI.
Pacific cod	Gadus macrocephalus	Gadidae	GADIFORMES.
red king crab	Paralithodes camtschaticus	Lithodidae	ANOMURA.
red snapper	Lutjanus campechanus	Lutjanidae	PERCOIDEI.
All Sea Cucumber Species, including the below list from the Food and Agricultural Organization			
sea cucumber	Actinopyga spp	Holothuriidae	HOLOTHUROIDEA.
sea cucumber	Apostichopus spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Astichopus spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Athyonidium spp	Cucumariidae	HOLOTHUROIDEA.
sea cucumber	Australostichopus spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Bohadschia spp	Holothuriidae	HOLOTHUROIDEA.
sea cucumber	Cucumaria spp	Cucumariidae	HOLOTHUROIDEA.
sea cucumber	Heterocucumis spp	Cucumariidae	HOLOTHUROIDEA.
sea cucumber	Holothuria spp	Holothuriidae	HOLOTHUROIDEA.
sea cucumber	Isostichopus spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Molpadia spp	Molpadiidae	HOLOTHUROIDEA.
sea cucumber	Paradota spp	Chiridotidae	HOLOTHUROIDEA.
sea cucumber	Parastichopus spp	Stichopodidae	HOLOTHUROIDEA.

Common	Scientific name (to genus or to species)	Family	Order
sea cucumber	Pearsonothuria spp	Holothuriidae	HOLOTHUROIDEA.
sea cucumber	Pseudocnus spp	Cucumariidae	HOLOTHUROIDEA.
sea cucumber	Pseudostichopus spp	Synallactidae	HOLOTHUROIDEA.
sea cucumber	Psolidium spp	Psolidae	HOLOTHUROIDEA.
sea cucumber	Psolus spp	Psolidae	HOLOTHUROIDEA.
sea cucumber	Staurocucumis spp	Cucumariidae	HOLOTHUROIDEA.
sea cucumber	Stichopus spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Thelenota spp	Stichopodidae	HOLOTHUROIDEA.
sea cucumber	Trachythyone spp	Cucumariidae	HOLOTHUROIDEA.
All Shark Species (excluding skates and rays), including the below list from the Food and Agricultural Organization			
sharks	Aculeola spp	Squalidae	SQUALIFORMES.
sharks	Alopias spp	Alopiidae	LAMNIFORMES.
sharks	Apristurus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Asymbolus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Atelomycterus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Aulohalaelurus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Brachaelurus spp	Brachaeluridae	ORECTOLOBIFORMES.
sharks	Carcharhinus spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Carcharias spp	Odontaspididae	LAMNIFORMES.
sharks	Carcharodon spp	Lamnidae	LAMNIFORMES.
sharks	Centrophorus spp	Squalidae	SQUALIFORMES.
sharks	Centroscyllium spp	Squalidae	SQUALIFORMES.
sharks	Centroscymnus spp	Squalidae	SQUALIFORMES.
sharks	Cephaloscyllium spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Cephalurus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Cetorhinus spp	Cetorhinidae	LAMNIFORMES.
sharks	Chaenogaleus spp	Hemigaleidae	CARCHARHINIFORMES.
sharks	Chiloscyllium spp	Hemiscylliidae	ORECTOLOBIFORMES.
sharks	Chlamydoselachus spp	Chlamydoselachidae	HEXANCHIFORMES.
sharks	Cirrhigaleus spp	Squalidae	SQUALIFORMES.
sharks	Cirrhoscyllium spp	Parascylliidae	ORECTOLOBIFORMES.
sharks	Ctenacis spp	Proscylliidae	CARCHARHINIFORMES.
sharks	Dalatias spp	Squalidae	SQUALIFORMES.
sharks	Deania spp	Squalidae	SQUALIFORMES.
sharks	Echinorhinus spp	Echinorhinidae	SQUALIFORMES.
sharks	Eridacnis spp	Proscylliidae	CARCHARHINIFORMES.
sharks	Etmopterus spp	Squalidae	SQUALIFORMES.
sharks	Eucrossorhinus spp	Orectolobidae	ORECTOLOBIFORMES.
sharks	Euprotomicroides spp	Squalidae	SQUALIFORMES.
sharks	Euprotomicrus spp	Squalidae	SQUALIFORMES.
sharks	Eusphyra spp	Sphyrnidae	CARCHARHINIFORMES.
sharks	Furgaleus spp	Triakidae	CARCHARHINIFORMES.
sharks	Galeocerdo spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Galeorhinus spp	Triakidae	CARCHARHINIFORMES.
sharks	Galeus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Ginglymostoma spp	Ginglymostomatidae	ORECTOLOBIFORMES.
sharks	Glyphis spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Gogolia spp	Triakidae	CARCHARHINIFORMES.
sharks	Gollum spp	Pseudotriakidae	CARCHARHINIFORMES.
sharks	Halaelurus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Haploblepharus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Hemigaleus spp	Hemigaleidae	CARCHARHINIFORMES.
sharks	Hemipristis spp	Hemigaleidae	CARCHARHINIFORMES.
sharks	Hemiscyllium spp	Hemiscylliidae	ORECTOLOBIFORMES.
sharks	Hemitriakis spp	Triakidae	CARCHARHINIFORMES
sharks	Heptranchias spp	Hexanchidae	HEXANCHIFORMES.
sharks	Heterodontus spp	Heterodontidae	HETERODONTIFORMES.
sharks	Heteroscyllium spp	Brachaeluridae	ORECTOLOBIFORMES.
sharks	Heteroscymnoides spp	Squalidae	SQUALIFORMES.
sharks	Hexanchus spp	Hexanchidae	HEXANCHIFORMES.
sharks	Holohalaelurus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Hypogaleus spp	Triakidae	CARCHARHINIFORMES.
sharks	Iago spp	Triakidae	CARCHARHINIFORMES.
sharks	Isistius spp	Squalidae	SQUALIFORMES.
sharks	Isogomphodon spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Isurus spp	Lamnidae	LAMNIFORMES.
sharks	Lamiopsis spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Lamna spp	Lamnidae	LAMNIFORMES.
sharks	Leptocharias spp	Leptochariidae	CARCHARHINIFORMES.
sharks	Loxodon spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Megachasma spp	Megachasmidae	LAMNIFORMES.

Common	Scientific name (to genus or to species)	Family	Order
sharks	Mitsukurina spp	Mitsukurinidae	LAMNIFORMES.
sharks	Mustelus spp	Triakidae	CARCHARHINIFORMES.
sharks	Nasolamia spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Nebrius spp	Ginglymostomatidae	ORECTOLOBIFORMES.
sharks	Negaprion spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Notorynchus spp	Hexanchidae/Notorynchidae	HEXANCHIFORMES.
sharks	Odontaspis spp	Odontaspididae	LAMNIFORMES.
sharks	Orectolobus spp	Orectolobidae	ORECTOLOBIFORMES.
sharks	Oxynotus spp	Oxynotidae	SQUALIFORMES.
sharks	Paragaleus spp	Hemigaleidae	CARCHARHINIFORMES.
sharks	Parascyllium spp	Parascylliidae	ORECTOLOBIFORMES.
sharks	Parmaturus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Pentanchus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Pliotrema spp	Pristiophoridae	PRISTIOPHORIFORMES.
sharks	Poroderma spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Prionace spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Pristiophorus spp	Pristiophoridae	PRISTIOPHORIFORMES.
sharks	Proscyllium spp	Proscylliidae	CARCHARHINIFORMES.
sharks	Pseudocarcharias spp	Pseudocarchariidae	LAMNIFORMES.
sharks	Pseudotriakis spp	Pseudotriakidae	CARCHARHINIFORMES.
sharks	Rhincodon spp	Rhincodontidae	ORECTOLOBIFORMES.
sharks	Rhizoprionodon spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Schroederichthys spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Scoliodon spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Scyliorhinus spp	Scyliorhinidae	CARCHARHINIFORMES.
sharks	Scylliogaleus spp	Triakidae	CARCHARHINIFORMES.
sharks	Scymnodalatias spp	Squalidae	SQUALIFORMES.
sharks	Scymnodon spp	Squalidae	SQUALIFORMES.
sharks	Somniosus spp	Squalidae	SQUALIFORMES.
sharks	Sphyrna spp	Sphyrnidae	CARCHARHINIFORMES.
sharks	Squaliolus spp	Squalidae	SQUALIFORMES.
sharks	Squalus spp	Squalidae	SQUALIFORMES.
sharks	Squatina spp	Squatinidae	SQUALIFORMES.
sharks	Stegostoma spp	Stegostomatidae	ORECTOLOBIFORMES.
sharks	Sutorectus spp	Orectolobidae	ORECTOLOBIFORMES.
sharks	Triaenodon spp	Carcharhinidae	CARCHARHINIFORMES.
sharks	Triakis spp	Triakidae	CARCHARHINIFORMES.
All Shrimp Species in the Order Decapoda, including the below list from the Food and Agricultural Organization			
shrimps	Acanthephyra spp	Oplophoridae	Decapoda (NATANTIA).
shrimps	Acetes spp	Sergestidae	Decapoda (NATANTIA).
shrimps	Alpheus spp	Alpheidae	Decapoda (NATANTIA).
shrimps	Argis spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Aristaeomorpha spp	Aristaeidae	Decapoda (NATANTIA).
shrimps	Aristaeopsis spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Aristeus spp	Aristaeidae	Decapoda (NATANTIA).
shrimps	Artemesia spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Atya spp	Atyidae	Decapoda (NATANTIA).
shrimps	Atyopsis spp	Atyidae	Decapoda (NATANTIA).
shrimps	Atypopenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Bentheogennema spp	Benthesicymidae	Decapoda (NATANTIA).
shrimps	Benthesicymus spp	Benthesicymidae	Decapoda (NATANTIA).
shrimps	Campylonotus spp	Campylonotidae	Decapoda (NATANTIA).
shrimps	Caridina spp	Atyidae	Decapoda (NATANTIA).
shrimps	Chlorotocus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Crangon spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Cryphiops spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Cryptopenaeus spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Dichelopandalus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Eualus spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Exhippolysmata spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Exopalaemon spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Farfantepenaeus spp (now Penaeus)	Penaeidae	Decapoda (NATANTIA).
shrimps	Fenneropenaeus spp (now Penaeus)	Penaeidae	Decapoda (NATANTIA).
shrimps	Glyphocrangon spp	Glyphocrangonidae	Decapoda (NATANTIA).
shrimps	Glyphus spp	Pasiphaeidae	Decapoda (NATANTIA).
shrimps	Hadropenaeus spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Haliporoides spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Heptacarpus spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Heterocarpoides spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Heterocarpus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Holthuispenaeopsis spp	Penaeidae	Decapoda (NATANTIA).

Common	Scientific name (to genus or to species)	Family	Order
shrimps	Hymenocera spp	Gnatophyllidae	Decapoda (NATANTIA).
shrimps	Hymenodora spp	Oplophoridae	Decapoda (NATANTIA).
shrimps	Hymenopenaeus spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Latreutes spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Leandrites spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Leptocarpus spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Leptochela spp	Pasiphaeidae	Decapoda (NATANTIA).
shrimps	Lipkebe spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Lipkius spp	Nematocarcinidae	Decapoda (NATANTIA).
shrimps	Litopenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Lysmata spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Macrobrachium spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Macropetasma spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Marsupenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Melicertus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Mesopaeneus spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Metacrangon spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Metapenaeopsis spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Metapenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Microprosthema spp	Stenopodidae	Decapoda (NATANTIA).
shrimps	Nematocarcinus spp	Nematocarcinidae	Decapoda (NATANTIA).
shrimps	Nematopalaemon spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Notocrangon spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Notostomus spp	Oplophoridae	Decapoda (NATANTIA).
shrimps	Ogyrides spp	Ogyrididae	Decapoda (NATANTIA).
shrimps	Oplophorus spp	Oplophoridae	Decapoda (NATANTIA).
shrimps	Palaemon spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Palaemonetes spp	Palaemonidae	Decapoda (NATANTIA).
shrimps	Pandalopsis spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Pandalus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Pantomus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Paracrangon spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Parapandalus spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Parapenaeopsis spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Parapenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Paratya spp	Atyidae	Decapoda (NATANTIA).
shrimps	Pasiphaea spp	Pasiphaeidae	Decapoda (NATANTIA).
shrimps	Penaeopsis spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Penaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Pleoticus spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Plesionika spp	Pandalidae	Decapoda (NATANTIA).
shrimps	Plesiopenaeus spp	Aristaeidae	Decapoda (NATANTIA).
shrimps	Pontocaris spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Pontophilus spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Processa spp	Processidae	Decapoda (NATANTIA).
shrimps	Protrachypene spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Rhynchocinetes spp	Rhynchocinetidae	Decapoda (NATANTIA).
shrimps	Saron spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Sclerocrangon spp	Crangonidae	Decapoda (NATANTIA).
shrimps	Sergestes spp	Sergestidae	Decapoda (NATANTIA).
shrimps	Sicyonia spp	Sicyoniidae	Decapoda (NATANTIA).
shrimps	Solenocera spp	Solenoceridae	Decapoda (NATANTIA).
shrimps	Spirontocaris spp	Hippolytidae	Decapoda (NATANTIA).
shrimps	Stenopus spp	Stenopodidae	Decapoda (NATANTIA).
shrimps	Systellaspis spp	Oplophoridae	Decapoda (NATANTIA).
shrimps	Trachypenaeus spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Trachysalambria spp	Penaeidae	Decapoda (NATANTIA).
shrimps	Xiphopenaeus spp	Penaeidae	Decapoda (NATANTIA).
skipjack tuna	Katsuwonus pelamis	Scombridae	SCOMBROIDEI.
yellowfin tuna	Thunnus albacares	Scombridae	SCOMBROIDEI.
swordfish	Xiphias gladiatus	Xiphiidae	SCOMBROIDEI.

Dated: October 27, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–27780 Filed 10–29–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

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

ACTION: Additions to the Procurement List.

SUMMARY: This action adds a product and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 11/29/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

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

SUPPLEMENTARY INFORMATION:

Additions

On 9/11/2015 (80 FR 54768) and 9/18/2015 (80 FR 56450), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.
2. The action will result in authorizing small entities to furnish the product and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

NSN(s)—Product Name(s): 1670–01–F05–1124—T–11R Parachute Insert, Army
Mandatory Source(s) of Supply: Chautauqua County Chapter, NYSARC, Jamestown, NY
Mandatory for: 100% of the requirement of the U.S. Army
Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA
Distribution: C-List

Service

Service Type: Janitorial Service
Service Mandatory for: U.S. Geological Survey, 4611 Research Park Circle, Suites D and E, Las Cruces, NM
Mandatory Source(s) of Supply: Tresco, Inc., Las Cruces, NM
Contracting Activity: Dept of the Interior, Geological Survey, Office of Acquisition and Grants—Denver, Denver, CO

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2015–27686 Filed 10–29–15; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

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

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities and, deletes a product previously furnished by an agency.

Comments Must be Received on or Before: 11/29/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

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

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Furniture Design, Configuration and Installation Service
Service Mandatory for: U.S. Department of the Interior, Stewart Lee Udall, Department of the Interior Building, 1849 C Street and South Interior Building, 1951 Constitution Avenue NW., Washington, DC
Mandatory Source(s) of Supply: Industries for the Blind Inc., West Allis, WI
Contracting Activity: U.S. Department of the Interior, Acquisition Services Directorate, Herndon, VA
Service Type: Call Center Service
Service Mandatory for: OPM, Retirement Service, Retirement Operations, 1137 Branchton Road, Boyers, PA
Mandatory Source(s) of Supply: Orion Career Works, Auburn, WA; Beacon Group SW., Inc., Tucson, AZ
Contracting Activity: Office of Personnel Management, Boyers Region (Non FISD), Boyers, PA

Deletion

The following product is proposed for deletion from the Procurement List:

Product

NSN(s)—Product Name(s): 7125–00–449–6862—Cabinet, Storage.
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2015–27685 Filed 10–29–15; 8:45 am]
BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, November 6, 2015.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time,

date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2015–27787 Filed 10–28–15; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0045]

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection for Office of Management and Budget (OMB) approval titled, ''Policy on No-Action Letters.''

DATES: Written comments are encouraged and must be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov*. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Policy on No-Action Letters.

OMB Control Number: 3170–XXXX (will be assigned upon OMB approval).

Type of Review: New Collection (Request for a new OMB control number).

Affected Public: Private Sector.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden Hours: 300.

Abstract: The Policy provides a process for requesters to submit to Bureau staff a request that the staff issue a no-objection letter to proposed conduct, subject to specified conditions and limitations. Issuance of no-action letters, under the Policy, would be discretionary on the part of Bureau staff. The information will be collected from persons who request a no-action letter from Bureau staff. It will be used by Bureau staff to determine whether issuance of a no-action letter is warranted.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on October 16, 2014, (79 FR 62118). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 23, 2015.

Linda F. Powell,

Chief Data Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–27715 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0044]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to reinstate a system of records.

SUMMARY: The Department of the Army (DOA) proposes to reinstate a system of records, A0351 AMC, entitled ''Student/Faculty Records: AMC Schools Systems'' to its inventory of record systems to the Privacy Act of 1974, as amended. After publication of the deletion notice in the **Federal Register** (October 3, 2012, 77 FR 60412), the DOA discovered that the records had not yet been transferred to the National Personnel Records Center. Therefore, the DOA system of records notice should not have been deleted and is being reinstated in full below.

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3860 or by phone at 703–428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/*.

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 AMC

SYSTEM NAME:

Student/Faculty Records: AMC Schools Systems (February 2, 1996, 61 FR 3916)

SYSTEM LOCATION:

U.S. Army Management Engineering College, Rock Island, IL 61299–7040 and U.S. Army Defense Ammunition Center and School, Savanna, IL 61074–9639.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students enrolled/attending schools identified above, faculty, instructors, and guest speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion and results, aptitudes and personal qualities, grades/ratings assigned; instructor/guest speaker qualifications and evaluations, including biographical data; class historical/academic achievements; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397 (SSN).

PURPOSE(S):

To determine applicant eligibility, monitor individual's progress, maintain record of student/faculty achievements, and to provide bases for management assessment of curricula and faculty effectiveness and class standing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards; photographs; magnetic tapes/discs; and printouts.

RETRIEVABILITY:

By name, Social Security Number, military service number.

SAFEGUARDS:

Records are maintained in locked cabinets within secured areas accessible only to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Individual academic records are retained for 40 years, 3 of which are at the school which created them; they are subsequently transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200. Faculty/instructor qualifications records are retained until individual transfers from the facility, held for 5 years, and then destroyed. Other records are retained until no longer needed, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant/Director of the appropriate School/Agency.

Individual should provide full name, rank/grade, Social Security Number, course title/class number, and date of attendance or, if a faculty member: Name, course(s) taught, and period in which instructed at named training facility.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant/Director of the appropriate School/Agency.

Individual should provide full name, rank/grade, Social Security Number, course title/class number, and date of attendance or, if a faculty member: Name, course(s) taught, and period in which instructed at named training facility.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual student, faculty, instructor, guest speaker, and management analyses of class performance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–27709 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Calendar Year 2016 TRICARE Young Adult Program Premium Update

AGENCY: Office of the Secretary of Defense, Department of Defense.

ACTION: Notice of updated TRICARE Young Adult premiums for calendar year 2016.

SUMMARY: This notice provides the updated TRICARE Young Adult program premiums for Calendar Year (CY) 2016.

DATES: The CY 2016 rates contained in this notice are effective for services on or after January 1, 2016.

ADDRESSES: Defense Health Agency, TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Ellis, (703) 681–0039.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** (FR) on May 29, 2013 (78 FR 32116–32121) sets forth rules to implement the TRICARE Young Adult (TYA) program as required by Title 10, United States Code, Section 1110b. Included in the final rule were provisions for updating the TYA premiums for each CY. By law, qualified young adult dependents are charged TYA premiums that represent the full government cost of providing such coverage.

The Defense Health Agency has updated the monthly premiums for CY 2016 as shown below:

MONTHLY TYA PREMIUMS FOR CY 2016

Type of coverage	Monthly rate
TRICARE Standard Plans	$228
TRICARE Prime Plans	306

The above premiums are effective for services rendered on or after January 1, 2016.

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27711 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–HA–0036]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Statement of Personal Injury—Possible Third Party Liability, Defense Health Agency; DD Form 2527; OMB Control Number 0720–0003.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 188,090.

Responses per Respondent: 1.

Annual Responses: 188,090.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 47,023.

Needs and Uses: This information collection is completed by TRICARE (formerly CHAMPUS) beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Joshua Brammer.

Comments and recommendations on the proposed information collection should be emailed to Mr. Joshua Brammer, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title 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.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27708 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0115]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DMDC 20, entitled ''Personnel Security Breach Notification and Mitigation Services Records''. The Department of Defense is providing notification and facilitating the provision of breach mitigation services to individuals affected by the breach of information in the Office of Personnel Management (OPM) background investigation databases the Department must establish this system in order to provide notification to and facilitate the provision of breach mitigation services. Due to the number and proportion of affected individuals belonging to the DoD, DoD entered into agreements with OPM to handle the breach notification and mitigation services. DoD will also use these records to respond to breach verification inquiries. Individuals may go to OPM's Web site and click on a link that will redirect them to a DoD Web site where they can enter their information to find out if they have been affected by this breach. These records may also be used for tracking, reporting, measuring, and improving The Department's effectiveness in implementing this data breach notification.

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal**

Register and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 27, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 20

SYSTEM NAME:

Personnel Security Breach Notification and Mitigation Services Records.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal civilian and military personnel and applicants, and employees of government contractors, experts, instructors, and consultants to Federal programs who underwent a personnel background investigation after January 1, 1990. Other individuals whose Social Security Numbers (SSNs) were provided on an SF85, SF85–P and SF86 after January 1, 1990. Individuals who submit a breach verification inquiry. Minor children, who were minors as of July 1, 2015, of individuals described in this paragraph.

CATEGORIES OF RECORDS IN THE SYSTEM:

Last, first, and middle name; Social Security Number (SSN); date of birth, place of birth; citizenship status; country of citizenship; home and/or business addresses, phone numbers, and email addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The E-Government Act of 2002 (Pub. L. 107–347); the Federal Information Security Modernization Act of 2014 (Pub. L. 113–283) (44 U.S.C. 3551–3559); 10 U.S.C. 113, Secretary of Defense; 50 U.S.C. 3038, Responsibilities of Secretary of Defense Pertaining to National Intelligence Program; E.O. 12333, United States Intelligence Activities, as amended; E.O. 13402, Strengthening Federal Efforts to Protect Against Identity Theft, as amended; E.O. 13526, Classified National Security Information; White House Memorandum dated September 20, 2006, Subject: Recommendations for Identity Theft Related Data Breach Notification; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide breach notification and facilitate the provision of breach mitigation services to individuals affected by the breach of information in the Office of Personnel Management (OPM) background investigation databases. DoD will also use the data to respond to breach verification inquiries received from individuals using the link on OPM's Web site that redirects individuals to a DoD Web site where they can enter their information to find out if they have been affected by this breach. These records may also be used for tracking, reporting, measuring, and improving the Department's effectiveness in implementing this data breach notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as follows:

To commercial entities, under contract with DoD, for the sole purpose of verifying addresses of affected individuals in order to provide notification to such individuals.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the Federal agency concerned, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Office of Personnel Management Routine Use: A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the OPM concerning information necessary for the OPM to carry out its legally authorized functions.

Counterintelligence Purpose Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use outside the DoD for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) the Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Component's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by an individual's name, SSN, date and place of birth.

SAFEGUARDS:

Access to personally identifiable information is restricted to those who require access to the records in the performance of their official duties in connection with the breach notification process. Access to personally identifiable information is further restricted by the use of Personal Identity Verification (PIV) cards and PIN. Physical entry is restricted by the use of

locks, key cards, security guards, and identification badges. All individuals granted access to this system of records will have completed annual Information Assurance and Privacy Act training and be appropriately vetted. Audit logs will be maintained to document access to data. All electronic records transfers into this system of records will be encrypted. Records will be maintained in a secure database with an intrusion detection system in a physically controlled area accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The National Archives and Records Administration has authorized the destruction of these records 3 (three) year(s) after credit monitoring and identity management services have concluded.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Identity, Defense Manpower Data Center, 4800 Mark Center, Alexandria, VA 22350–4000.

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Manpower Data Center (DMDC), DoD Center Monterey Bay, ATTN: Privacy Act Office, 400 Gigling Road, Seaside, CA 93955–6771.

Signed, written requests must contain the full name (and any alias and/or alternate names used), SSN, and date and place of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide their full name (and any alias and/or alternate names used), SSN, and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records and for contesting or appealing agency determinations are published in OSD Administrative Instruction 81, 32 CFR part 311; or may be obtained directly from the system manager.

RECORD SOURCE CATEGORIES:

Individuals requesting verification via OPM's Web site who click on a link that will redirect them to a DoD Web site where they can enter their information to find out if they have been affected by this breach. The OPM (Personnel Investigations Records). Employees address records from Federal employers (*e.g.,* OPM, Defense Finance and Accounting Service, Defense Manpower Data Center, Department of State, United States Postal Service, Library of Congress, the General Accountability Office, Death master files, the Executive Office of the President, Former Presidents Office, etc.) and address verification from cleared contractors and commercial vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(1), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2015–27745 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0114]

Proposed Collection; Comment Request

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Security Cooperation Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 29, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for reviewing/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: The Defense Security Cooperation Agency (DSCA) (ATTN: Paul Will), 220 12th Street South, Suite 312, Arlington, VA 22202–5408 or call (703) 601–3864.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: The GlobalNET Collection;

GlobalNET User Registration Form; OMB Control No. 0704–XXXX.

Needs and Uses: The purpose of the GlobalNET system is to provide a collaborative social networking environment/capability where students, alumni, faculty, partners, and other community members and subject matter experts can find relevant and timely information about pertinent subject matter experts and conduct required training. GlobalNET also collects information on students in order to allow regional center personnel to manage students while enrolled at regional centers.

Affected Public: Businesses or other for profit; Foreign Service Nationals; Guest Speakers and Lecturers involved in Security Cooperation Activities.

Annual Burden Hours: 1,000 hours.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Average Burden per Response: 10 Minutes.

Frequency: On occasion.

Respondents are contractor personnel, Foreign Service nationals, guest speakers and lecturers involved in the Security Cooperation. If the information is not collected on the GlobalNET user request, IT personnel would not be able to validate the authenticity of user accounts, grant access critical training material required by participating partnering organization, enable Regional Center personnel to manage students while enrolled in training courses at regional centers, and ensure compliance with DepSecDef directive and federal law requiring the reporting of training of foreign nationals (ref. AECA).

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27712 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is amending the charter for the Threat Reduction Advisory Committee (''the Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d).

The Committee is a discretionary Federal advisory committee that provides the Secretary of Defense, through the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs (ASD(NCB)), independent advice and recommendations on:

a. Reducing the threat to the United States, its military forces, and its allies and partners posed by nuclear, biological, chemical, conventional, and special weapons;

b. Combating WMD to include non-proliferation, counterproliferation, and consequence management;

c. Nuclear deterrence transformation, nuclear material lockdown and accountability;

d. Nuclear weapons effects;

e. The nexus of counterproliferation and counter WMD terrorism; and

f. Other AT&L, NCB, and Defense Threat Reduction Agency (DTRA) mission-related matters, as requested by the USD(AT&L).

The Department of Defense (DoD), through the Office of the USD(AT&L), the Office of the ASD(NCB) Defense Programs, and DTRA, shall provide support, as deemed necessary, for the Committee's performance, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

The Committee shall be composed of no more than 25 members who are eminent authorities in the fields of national defense, geopolitical and national security affairs, WMD, nuclear physics, chemistry, and biology.

The Committee members are appointed by the Secretary of Defense or the Deputy Secretary of Defense and their appointments shall be renewed on an annual basis in accordance with DoD policies and procedures. Those members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal employees shall be appointed, pursuant to 41 CFR 102–3.130(a), to serve as regular government employee (RGE) members.

Committee members shall, with the exception of reimbursement for official Committee-related travel and per diem, serve without compensation, unless otherwise authorized by the Secretary of Defense.

The Secretary of Defense, in consultation with USD(AT&L) and the ASD(NCB), shall select the Committee's Chair and Vice Chair from among the membership approved by the Secretary of Defense or the Deputy Secretary of Defense.

The Secretary of Defense or the Deputy Secretary of Defense may approve the appointment of Committee members for one-to-four year terms of service; however, no member, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense, may serve more than two consecutive terms of service, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time.

Each Committee member is appointed to provide advice on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee. Establishment of subcommittees will be based upon written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(AT&L), as the Committee's Sponsor.

Such subcommittees shall not work independently of the chartered Committee, and shall report their findings and advice solely to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the chartered Committee. No subcommittee or any of its members can update or report directly to the DoD or to any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense or the Deputy Secretary of Defense shall appoint subcommittee members to a term of service of one-to-four years, with annual renewals, even if the member in

question is already a Committee member. Subcommittee members shall not serve more than two consecutive terms of service, without approval by the Secretary of Defense or the Deputy Secretary of Defense. Subcommittee members are appointed to provide advice on the basis of their best judgment without representing a particular point of view and in a manner that is free from conflict of interest.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as SGE members. Those individuals who are full-time or permanent part-time Federal officers or employees shall be appointed, pursuant to 41 CFR 102–3.130(a), to serve as RGE members. With the exception of reimbursement for official Committee-related travel and per diem, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

In addition, the Committee's DFO is required to be in attendance at all committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, an Alternate DFO, duly appointed to the Committee, according to the DoD policies and procedures, shall attend the entire duration of the Committee or subcommittee meeting.

The DFO, or the Alternate DFO, shall call all of the Committee's and subcommittee's meetings; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee.

All written statements shall be submitted to the DFO for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Committee's DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Committee. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27710 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's Web site at *http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 9:00 a.m. to 1:00 p.m. on December 2, 2015. Public registration will begin at 8:15 a.m.

ADDRESSES: The Board meeting will be conducted at the Embassy Suites by Hilton St. Louis—St. Charles Hotel, Two Convention Center Plaza, St. Charles, Missouri 63303 at 636–946–5544.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315–3868; by telephone at 703–428–8083; and by email at *Kenneth.E.Lichtman@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Proposed Agenda: At this meeting the agenda will include the status of funding for inland navigation projects and studies, the status of the Inland Waterways Trust Fund, the status of the Olmsted Locks and Dam Project, the Locks and Dams 2, 3, and 4 Monongahela River Project, efficient funding for Inland Waterways Trust Fund projects, status of the Inland Marine Transportation System (IMTS) Capital Investment Strategy (CIS), the Lock Performance Monitoring System (LPMS) Reporting modifications and reporting navigation notices to maritime interests, overview of the economic analysis and preparing traffic projections, and preliminary discussion of the Board's 2015 Annual Report.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the December 2, 2015 meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.1 65, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be

asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Dated: October 27, 2015.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. 2015–27759 Filed 10–29–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Glades Reservoir Water Supply Project, Permit Application SAS–2007–00388 and the Announcement of a Public Hearing

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Corps has released a Draft Environmental Impact Statement (DEIS) for the proposed Glades Reservoir water supply project (Proposed Project), and will conduct a Public Hearing for this DEIS.

DATES: Comments will be received until 5:00 p.m., December 29, 2015; or by letter postmarked no later than December 29, 2015. The public hearing will be held on December 8, 2015.

ADDRESSES: Comments regarding the DEIS may be submitted to: U.S. Army Corps of Engineers, Savannah District, Regulatory Division, Attention: SAS–2007–00388, 100 West Oglethorpe Avenue, Savannah, Georgia 31401–3640

FOR FURTHER INFORMATION CONTACT: Richard Morgan, Project Manager, at (912) 652–5139, or at *Richard.M.Morgan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. National Environmental Policy Act. The Corps prepared this DEIS to meet its National Environmental Policy Act (NEPA) (42 U.S.C. 4321 to 4370f) obligation in its evaluation of an application for a Department of the Army Permit pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) for the Proposed Project. This DEIS presents the direct, indirect, and cumulative impacts of the Proposed Project on the human and natural environment.

2. Project Description. The Hall County Board of Commissioners submitted an application for a permit to construct an 850-acre pump-storage reservoir on Flat Creek, a tributary to the Chattahoochee River located approximately 35 miles northeast of Atlanta, near the upstream end of Lake Sidney Lanier, in Hall County, Georgia. The proposed dam would have a height of 140 feet, with a normal pool surface elevation of 1,180 feet above mean sea level. Dam and reservoir construction would result in the filling and inundation of 39.2 acres of wetland and 95,000 linear feet of stream. A 37 million gallon per day (mgd) intake and pump station would be constructed on the Chattahoochee River, and would transfer water from the river to the reservoir via a 48-inch diameter, 4-mile transmission pipeline. Water would be pumped from the Chattahoochee River to fill or refill the reservoir only when river flows are above the instream flow protection thresholds (IFPT), and only when the IFPT can be maintained in the river below the pump station. Water stored in the reservoir would be released into Flat Creek, flow downstream into Lake Lanier, and be withdrawn at an existing raw water intake operated by the City of Gainesville. The Proposed Project would provide a total storage volume of 11.7 billion gallons and an annual average water supply of 50 mgd, to meet Hall County's projected water demand through the year 2060.

2. Alternatives. This DEIS evaluated 13 alternatives for the Proposed Project based on a range of Lake Lanier allocations, reservoir sites, reservoir yield, and transmission and treatment strategies. A wide range of water supply sources such as water conservation, additional Lake Lanier water supply allocation, purchase from adjacent counties, and additional groundwater develop.m.ent were identified prior to

evaluating the need for any built alternatives. A range of potential Lake Lanier water supply allocations for Gainesville/Hall County were considered in the Alternatives Analysis, resulting in a range of reservoir safe yields for meeting the projected 2060 water supply needs.

3. Issues. There are several potential environmental and public interest issues that were addressed in this DEIS. Public interest issues include but are not limited to potential effects to downstream flows of the Chattahoochee River; Lake Lanier water level and water supply capacity; potential aquatic resources impacts to streams, wetlands and aquatic organisms; and potential effects to cultural resources, aesthetics, recreation, infrastructure, navigation, transportation, and threatened and endangered species.

4. Scoping. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on February 17, 2012. The Corps held a total of three public scoping meetings in March 2012, in Alabama, Florida and Georgia, which are located in the Apalachicola-Chattahoochee-Flint (ACF) River Basin.

5. Cooperating Agencies. The U.S. Environmental Protection Agency and the Georgia Environmental Protection Division have been participating in the NEPA process as cooperating agencies (40 CFR 1501.6, 1508.5). Formal cooperating agency agreements were executed between the Corps and these two agencies.

6. Availability of the DEIS. The DEIS and appendices are available to the public for review in the following formats:

a. In the **Federal Register** dated October 30, 2015.

b. Online as PDF documents at *http://www.gladesreservoir.com/.*

c. As a CD upon written request to the Corps address listed above.

7. Public Review and Comment. The public comment period will commence with the publication of this notice and will end 60 days after its publication, on December 29, 2015. All persons and organizations that have an interest in the proposed action, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process by reviewing the DEIS and submitting comments for consideration. Further information regarding the DEIS, including all available documents, background and historical information, and updates is available online at *http://www.gladesreservoir.com/.*

8. Comments may be submitted via the following methods:

a. At the public hearing through comment forms.

b. Verbally through the court reporter at public hearing.

c. By emailing *Richard.M.Morgan@usace.army.mil.*

d. By letter addressed to the Corps address listed above.

e. Online at *http://www.gladesreservoir.com/.*

9. Open House and Public Hearing. The Corps will hold an open house and public hearing to allow for public presentation of comments. The open house and public hearing will be held on Tuesday, December 8, 2015 from 5:00–9:00 p.m., at the Hall County Board of Commissioners' Auditorium, located at 2875 Browns Bridge Road, Gainesville, Georgia 30504. The open house will be from 5:00 p.m. to 6:00 p.m., with public hearing to begin at 6:00 p.m. and end at 9:00 p.m.

David M. Lekson,

Chief, Regulatory Division.

[FR Doc. 2015–27736 Filed 10–29–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2015–HQ–0014]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Department of the Navy proposes to add a new system of records, N01000–6, entitled ''Strategic Programs (SP) 205 Training Records'' to provide support and track the training progress of naval personnel (commissioned officers and enlisted) who manage, operate, and maintain Strategic Weapons System (SWS) and Attack Weapon System (AWS). To document and track the completion of and/or validate the training courses. To provide the status of the training to the commands, DoD training managers, and to the Navy personnel.

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 20, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–6

SYSTEM NAME:

Strategic Programs (SP) 205 Training Records.

SYSTEM LOCATION:

Training records are located at multiple locations:

Chenega Logistics, 6506 Loisdale Road, Suite 200, Springfield, VA 22150–1815.

Trident Training Facility, 2000 Thresher Avenue, Silverdale, WA 9838–2004.

Trident Training Facility, 1040 Georgia Avenue, Kings Bay, GA 31547–2150.

EACH OF THE FOLLOWING NAVAL COMMANDS WILL ALSO RETAIN THE TRAINING RECORDS:

USS Ohio SSGN 726
USS Michigan SSGN 727
USS Florida SSGN 728
USS Georgia SSGN 729
USS Henry M. Jackson SSBN 730
USS Alabama SSBN 731
USS Alaska SSBN 732
USS Nevada SSBN 733
USS Tennessee SSBN 734
USS Pennsylvania SSBN 735
USS West Virginia SSBN 736
USS Kentucky SSBN 737
USS Maryland SSBN 738
USS Nebraska SSBN 739
USS Rhode Island SSBN 740
USS Maine SSBN 741
USS Wyoming SSBN 742
USS Louisiana SSBN 743

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty naval personnel who are responsible for managing, operating, or maintaining the Strategic Weapon System (SWS) and Attack Weapon System (AWS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number (SSN), DoD ID Number, date of birth, place of birth, rate/rank, military status, mailing/home address, role (*e.g.* student, afloat administrator, and Manager afloat) Unique Identification Code (UIC), command name or command group, Corporate Enterprise Training Activity Resource System Identification (CeTARS ID), student course assignment, and transcript.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 1510.10C, Corporate Enterprise Training Activity Resource System; DoDI 1322.26, Development, Management and Delivery of Distributed Learning; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Strategic Programs (SP) 205 Training Records system is designed to provide support and track the training progress of naval personnel (commissioned officers and enlisted) who manage, operate, and maintain Strategic Weapons System (SWS) and Attack Weapon System (AWS). To document and track the completion of and/or validate the training courses. To provide the status of the training to the commands, DoD training managers, and to the Navy personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Department of Navy's compilation of system of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, SSN, DoD ID Number, command name or command group, UIC, and/or CeTARS ID.

SAFEGUARDS:

Physical access to the system is provided on a need-to-know and to Common Access Card (CAC) authorized and authenticated personnel. CAC authorization, assignment and monitoring are the responsibility of the functional training managers.

RETENTION AND DISPOSAL:

SP–205 Training Records are permanent. Cutoff at end of calendar year and transferred to the Washington National Records Center when 4 years old, and then transferred to the National Archives when 30 years old.

All third-party requests for disclosure of data from the SP–205 Training Records will be retained on board and destroyed when 2 years old. Deletion of individual records will be accomplished by erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Strategic Systems Programs HQ, 1250 10th Street, Washington Navy Yard, DC 20347–5127.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address written inquiries to the Director, Strategic Systems Programs HQ, 1250 10th Street, Washington Navy Yard, DC 20347–5127.

The request should contain full name, date of birth, place of birth, SSN, DoD ID Number, mailing/home address and signature of the requester.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare [or certify, verify, or state] under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature]''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare [or certify, verify, or state] under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]''

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Strategic Systems Programs HQ, 1250 10th Street, Washington Navy Yard, DC 20347–5127.

The request should contain full name, date of birth, place of birth, SSN, DoD ID Number, mailing/home address and signature of the requester.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare [or certify, verify, or state] under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature]''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare [or certify, verify, or state] under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]''

CONTESTING RECORD PROCEDURES:

The Navy's rule for accessing records and for contesting contents and appealing initial agency determination are published in Secretary in the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, score reports, and Corporate Enterprise Training Activity Resource System Identification (CeTARS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–27713 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Quarterly Board Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the November 19–21, 2015 Quarterly Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments on the meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board meeting will be held on the following dates:

- November 19, 2015 from 3:00 p.m. to 6:00 p.m.
- November 20, 2015 from 8:30 a.m. to 5:00 p.m.
- November 21, 2015 from 7:30 a.m. to 12:00 p.m.

ADDRESSES: Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The National Assessment Governing Board is established under Title III—National Assessment of Educational Progress Authorization Act, Public Law 107–279. Information on the Board and its work can be found at *www.nagb.gov.*

The Board is established to formulate policy for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

November 19–21, 2015 Committee Meetings

The Board's standing committees will meet to conduct regularly scheduled work, based on agenda items planned for this quarterly Board meeting, and follow-up items as reported in the Board's committee meeting minutes available at *http://nagb.gov/what-we-do/board-committee-reports-and-agendas.html.*

Detailed Meeting Agenda: November 19–21, 2015

November 19: Informational Briefing and Executive Committee Meeting

What Gallup is Learning about Education: Open Session: 3:00 p.m.–4:00 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:15 p.m.; Closed Session: 5:15 p.m.–6:00 p.m.

November 20: Full Board Meeting

Full Board: Open Session: 8:30 a.m.–9:45 a.m.; Closed Session: 12:50 p.m.–2:20 p.m.; Open Session: 2:20 p.m.–5:00 p.m.

November 20: Committee Meetings

Reporting and Dissemination Committee (R&D) and Assessment

Development Committee (ADC): Joint Closed Session: 10:00 a.m.–11:00 a.m.

ADC: Open Session: 11:00 a.m.–11:30 a.m.; Closed Session: 11:30 a.m.–12:30 p.m.

R&D: Open Session: 11:00 a.m.–12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:00 a.m.–10:05 a.m.; Closed Session: 10:05 a.m.–12:10 p.m.; Open Session: 12:10 a.m.–12:30 p.m.

November 21: Full Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m.–8:15 a.m.

Full Board: Closed Session: 8:30 a.m.–9:35 a.m.; Open Session: 10:00 a.m.–12:00 p.m.

On November 19, 2015, from 3:00 p.m. to 4:00 p.m., the Board will receive a briefing in open session on *What Gallup is Learning About Education.* Thereafter, the Executive Committee will convene in open session from 4:30 p.m. to 5:15 p.m., and in closed session from 5:15 p.m. to 6:00 p.m.

During the closed session, the Executive Committee will receive and discuss cost estimates and implications for implementing NAEP's Assessment Schedule for 2014–2024. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On November 20, 2015, the Full Board will meet in open session from 8:30 a.m. to 9:45 a.m. The Board will review and approve the November 19–21, 2015 Board meeting agenda and meeting minutes from the August 2015 Quarterly Board meeting. This session will be followed by the Chairman's introduction of new Board members and remarks from new members. Thereafter, the Executive Director of the Governing Board, Bill Bushaw, will provide his report, followed by an update on the work of IES provided by Ruth Neild, Deputy Director for Policy and Research, IES. The NCES update will be provided by the Acting Commissioner of the NCES, Peggy Carr. The Board will recess for Committee meetings at 9:45 a.m. scheduled from 10:00 a.m. to 12:30 p.m.

The Assessment Development Committee (ADC) and the Reporting and Dissemination (R&D) Committee will meet in a joint closed session from 10:00 a.m. to 11:00 a.m. Thereafter R&D Committee will meet in open session from 11:00 a.m. to 12:30 p.m. The ADC will meet in open session from 11:00 a.m. to 11:30 a.m. and in closed session from 11:30 a.m. to 12:30 p.m. The purpose of the joint closed session is to review the embargoed reporting Web site content for the 2014 grade 8 Technology and Engineering Literacy (TEL) Report Card. This meeting is being conducted in closed session because the TEL results are embargoed and have not been released to the public. Public disclosure of the secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

The ADC will meet in open session from 11:00 a.m. to 11:30 a.m. to receive a briefing on NAEP digital-based assessments. From 11:30 a.m. to 12:30 p.m. the ADC will meet in closed session to receive a briefing on in-depth analyses of the 2015 Reading and Mathematics results at grades 4 and 8. This meeting must be closed because the briefing will include secure NAEP items from reading and math test results at grades 4 and 8. Public disclosure of

the secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

R&D will meet in open session from 11:00 a.m. to 12:30 p.m. to discuss NAEP Report Card releases and the Governing Board's ongoing work on reporting and dissemination.

The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 10:00 a.m. to 10:05 a.m. to introduce new Committee members and review the Committee meeting agenda. The Committee will meet in closed session from 10:05 a.m. to 12:10 p.m. and thereafter in open session from 12:10 p.m. to 12:30 p.m.

During the first part of the closed session COSDAM will discuss information regarding analyses of the 2015 bridge studies for paper-and-pencil and digital-based assessments, and discuss secure NAEP Reading and Mathematics data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP Reading and Mathematics assessments on digital-based platforms. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

During the second part of the closed session, COSDAM will discuss the proposed 2014 NAEP Technology and Engineering Literacy (TEL) achievement levels for grade 8, which includes secure NAEP TEL data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP TEL assessment. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C. COSDAM will meet in open session from 12:10 p.m. to 12:30 p.m. to take Committee action on achievement levels and discuss ongoing Committee work.

Following the Committee meetings, the Board will convene in closed session on November 20, 2015 from 12:50 p.m. to 2:20 p.m. to discuss the proposed 2014 NAEP Technology and Engineering Literacy (TEL) achievement levels for grade 8, which includes secure NAEP TEL data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP TEL assessment. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

Thereafter, the Board will meet in open session from 2:45 p.m. to 5:00 p.m. From 2:45 p.m. to 3:30 p.m., the Board will meet in open session to receive a briefing on the 2015 Trial Urban District Assessment (TUDA) Report Card in English and Mathematics. From 3:30 p.m. to 4:15 p.m., the Board will receive the annual briefing from the Council of Chief State School Officers and Governing Board Policy Task Force Vice Chair and Assistant Superintendent form the Virginia Department of Education, Shelly Loving-Ryder. From 4:15 p.m. to 4:30 p.m. the Governing Board members will be provided with the annual ethics briefing from Office of General Counsel staff.

The November 20, 2015 session of the Board meeting will adjourn at 5:00 p.m.

On November 21, 2015, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to discuss the final slate of candidates for seven Board vacancies for terms beginning on October 1, 2016. The Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code. Following the closed session, the Committee will meet in open session from 8:15 a.m. to 8:20 a.m. to discuss and take action on the slate of finalists in the Chief State School Officer category for 2015. The final slate of candidates for this open position will be brought before the Board for discussion and action on November 21, 2015.

The full Board will convene in closed session on Saturday, November 21, 2015 from 8:30 a.m. to 8:35 a.m. The purpose of the closed session is to receive and discuss the slate of finalists being recommended for action by the Nominations Committee for the Chief State School Officer position, to be appointed by the Secretary of Education in 2016. At 8:35 a.m., the Board will take action in open session on the slate of Chief State School Officer finalists for the vacancy.

The Board will meet in closed session from 8:45 a.m. to 9:35 a.m. to receive an update on the NAEP budget and planned changes to the NAEP Assessment Schedule. During the closed session, the Board will receive and discuss cost estimates and implications for implementing NAEP's Assessment Schedule for 2014–2024. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

The Board will take action on the NAEP Assessment Schedule from 9:35 a.m. to 9:45 a.m. in open session. Thereafter, from 10:00 a.m. to 11:00 a.m. the Board will receive updates on NCES' Future of NAEP Activities and the Governing Board's Strategic Planning Initiative.

From 11:30 a.m. to 12:00 p.m. the Board will receive reports from the standing committees and take action proposed by the Committee on Standards, Design and Methodology on the TEL Achievement Levels at Grade 8. The November 21, 2015 meeting is scheduled to adjourn at 12:00 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* on Thursday, November 19, 2015 by 7:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress section 301.

Dated: October 27, 2015.

William J. Bushaw,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2015–27720 Filed 10–29–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0126]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Full Scale Student Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 30, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0126. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at (202) 502–7411 or by email *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Full Scale Student Data Collection

OMB Control Number: 1850–0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 86,000.

Total Estimated Number of Annual Burden Hours: 75,811.

Abstract: The National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance postsecondary education, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. The next major data collection will occur in 2016 following a field test collection in 2015. This submission is for the ninth cycle in the series, NPSAS:16, which will also serve as the base year study for the 2016 Baccalaureate and Beyond Longitudinal Study (B&B) which provides data on the various paths of recent college graduates into employment and additional education. The NPSAS:16 sample will include about 2,000 institutions and about 128,000 students. Institution contacting began in October 2015 and student data collection will be conducted from January through September 2016. The NPSAS:16 full scale institution contacting and enrollment list collection was approved in July 2015 (OMB# 1850–0666 v.15–16). This submission covers NPSAS:16 full scale materials and procedures required for student record abstractions, student surveying, and matching data to administrative files. Because the institution contacting and enrollment list collection will still be ongoing at the time this request is approved, the burden and materials from the NPSAS:16 Full Scale Institution Contacting And Enrollment List Collection request (OMB# 1850–0666 v.15–16) are being carried over in this submission.

Dated: October 27, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–27727 Filed 10–29–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: This appointment is effective as of September 30, 2015.

Bremer, John
Brown, Fred
Cooper, Suzanne
Dickinson, Mark
Erhart, Steven
Gilbertson, Mark
Grose, Amy
Lee, Terri
Lenhard, Joseph
Livengood, Joanna
Mays, Cyndi

McMillian, Jimmy
Mefford, Penny
Mollot, Darren
Moore, Johnny
O'Konski, Peter
Pearson, Gina

Issued in Washington, DC, October 23, 2015.

Erin S. Moore,

Acting Director, Office of Corporate Executive Management, Office of the Chief Human Capital Officer.

[FR Doc. 2015–27757 Filed 10–29–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy. This listing supersedes all previously published lists of Performance Review Board Chair.

DATES: This appointment is effective as of September 30, 2015: Dennis M. Miotla.

Issued in Washington, DC: October 23, 2015.

Erin S. Moore,

Acting Director, Office of Corporate Executive Management, Office of the Chief Human Capital Officer.

[FR Doc. 2015–27724 Filed 10–29–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency Information Collection Activities: Information Collection Extension with Changes; Notice and Request for Comments.

SUMMARY: The EIA invites public comment on the proposed collection of information, EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research'' that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before December 29, 2015. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington DC 20585 or by fax at 202–586–0552 or by email at *jacob.bournazian@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585, phone: 202–586–5562, email: *jacob.bournazian@eia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Revision;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is planning to request a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data collected on EIA forms. This authority would allow EIA to conduct pretest surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus groups. Through the use of these methodologies, EIA will improve the quality of data being collected for measuring market activity and assessing supply conditions in energy markets, reduce or minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. This authority also improves EIA's ability to collect relevant and timely information that meets the data needs of EIA's customers.

The specific methods proposed for the coverage by this clearance are described below. Also outlined is the legal authority for these voluntary information gathering activities.

The following methods are proposed:

Field Testing. Field testing surveys conducted under this clearance will generally be methodological studies. The field testing samples drawn may not be representative of the survey respondent universe because they will be designed to clarify particular issues. Collection may be on the basis of fuel market coverage related to the issues that are the subject to the research, market size of the respondent, position of the respondent in the upstream and/or downstream market for a particular fuel group, and convenience, *e.g.,* limited to specific geographic locations. The sample sizes and designs will be determined at the time of development and will vary based on the content of the information collection or survey being tested.

Pilot Surveys. Pilot surveys conducted under this clearance will generally be methodological studies, but will always employ statistically representative samples. The pilot surveys will replicate all components of the methodological design, sampling procedures (where possible) and questionnaires of the full scale survey. Pilots will normally be utilized when EIA undertakes a complete redesign of a particular data collection methodology or when EIA undertakes data collection in new areas, such as greenhouse gases or alternative fueled motor vehicle transportation system studies.

Respondent Debriefings. Respondent debriefings conducted under this clearance will generally be methodological or cognitive research studies. The debriefing form is administered after a respondent completes a questionnaire either in paper format, electronically, or through in-person interviews. The debriefings contain probing questions to determine how respondents interpret the survey questions, how much time and effort was spent completing the questionnaire, and whether they have problems in completing the survey/questionnaire. Respondent debriefings also are useful in determining potential issues with data quality and in estimating respondent burden.

Cognitive Interviews. Cognitive interviews are typically one-on-one interviews in which the respondent is usually asked to ''think aloud'' or is asked ''retrospective questions'' as he or

she answers survey questions, reads survey materials, or completes other activities as part of a survey process. A number of different techniques may be involved, including asking respondents what specific words or phrases mean, and asking respondents probing questions to determine how they estimate or calculate specific data elements on a survey form. The objective of these interviews is to identify problems of ambiguity or misunderstanding, to identify other difficulties respondents have answering questions, reduce measurement error in a survey, and assess the burden for reporting energy information.

Usability Interviews. Usability interviews are similar to cognitive interviews in which a respondent is typically asked to ''think aloud'' or asked ''retrospective questions'' as he or she reviews an electronic questionnaire, Web site and/or associated materials, or hard copy form. The objective of a usability interview is to make sure that respondents can easily and intuitively navigate electronic questionnaires, Web sites and other associated materials, or other survey instruments.

Focus Groups. Focus groups involve group sessions guided by a moderator who follows a topic guide containing questions or topics focused on a particular issue rather than adhering to a standardized questionnaire. Focus groups are useful for surfacing and exploring issues with populations of interest, *e.g.,* a specific group of stakeholders.

(5) *Annual Estimated Number of Respondents:* 2,000;

(6) *Annual Estimated Number of Total Responses:* 2,000;

(7) *Annual Estimated Number of Burden Hours:* 2,000;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There are no additional costs associated with these survey methods other than the burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $143,940 (2,000 burden hours times $71.97 per hour), which represents a reduction of 1,006 burden hours from the prior renewal of this collection. Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on October 26, 2015.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2015–27721 Filed 10–29–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–18–000.
Applicants: Cedar Bluff Wind, LLC, Golden Hills Wind, LLC, Golden Hills Interconnection, LLC.
Description: Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action of Cedar Bluff Wind, LLC, et al.
Filed Date: 10/23/15.
Accession Number: 20151023–5400.
Comments Due: 5 p.m. ET 11/13/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2647–000.
Applicants: Tres Amigas, LLC.
Description: Supplement to September 11, 2015 Tres Amigas, LLC submits tariff filing.
Filed Date: 10/23/15.
Accession Number: 20151023–5396.
Comments Due: 5 p.m. ET 10/30/15

Docket Numbers: ER15–2676–000.
Applicants: Cedar Bluff Wind, LLC.
Description: Revision to September 18, 2015 Cedar Bluff Wind, LLC tariff filing.
Filed Date: 10/20/15.
Accession Number: 20151020–5264.
Comments Due: 5 p.m. ET 11/10/15.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–132–000.
Applicants: Hollingsworth & Vose Company.
Description: Form 556 of Hollingsworth & Vose Company.
Filed Date: 10/23/15.
Accession Number: 20151023–5135.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27672 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Staff Notice of Alleged Violations

Take notice [1] that in a nonpublic investigation pursuant to 18 CFR part 1b (2015), the staff of the Office of Enforcement of the Federal Energy Regulatory Commission has preliminarily determined that Berkshire Power Company LLC (Berkshire) and Powerplant Management Services LLC violated the Commission's Anti-Manipulation Rule, 18 CFR 1c.2 (2015) by engaging in a manipulative scheme to conceal maintenance work and associated outages beginning at least as early as January 2008 and continuing through March 2011.

Staff also has preliminarily determined that Berkshire violated Commission-approved reliability standards by failing to provide outage information to its Transmission Operator and failing to inform its Transmission Operator and Host Balancing Authority of all generation resources available for use.

Finally, Staff also has preliminarily determined that Berkshire violated Commission regulations 35.41(a) by failing to comply with various provisions of the ISO–New England (ISO–NE) Tariff and § 35.41(b) by making false and misleading statements to ISO–NE regarding its maintenance work and associated outages.

This notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

[1] *Enforcement of Statutes, Regulations, and Orders,* 129 FERC ¶ 61,247 (2009), *order on reh'g,* 134 FERC ¶ 61,054 (2011).

Dated: October 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27674 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–16–000.
Applicants: Entergy Rhode Island State Energy, L.P.
Description: Application of Entergy Rhode Island State Energy, L.P. for Section 203 approval and request for shortened notice period and expedited treatment.
Filed Date: 10/22/15.
Accession Number: 20151022–5294.
Comments Due: 5 p.m. ET 11/12/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–13–000.
Applicants: Marshall Wind Energy LLC.
Description: Self-Certification as an Exempt Wholesale Generator of Marshall Wind Energy LLC.
Filed Date: 10/23/15.
Accession Number: 20151023–5157.
Comments Due: 5 p.m. ET 11/13/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–137–000.
Applicants: Enserco Energy LLC.
Description: Tariff Cancellation: Cancellation to be effective 12/23/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5102.
Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER16–138–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement Addressing RAS Affecting Silver State Solar Power South LGIA to be effective 10/24/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5145.
Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER16–139–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Attachment W to Update Index of Grandfathered Agreements to be effective 1/1/2016.
Filed Date: 10/23/15.
Accession Number: 20151023–5165.
Comments Due: 5 p.m. ET 11/13/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–71–000.
Applicants: PPL Electric Utilities Corporation.
Description: Amendment to September 18, 2015 Application under Section 204 of the Federal Power Act of PPL Electric Utilities Corporation.
Filed Date: 10/22/15.
Accession Number: 20151022–5288.
Comments Due: 5 p.m. ET 11/2/15.

Docket Numbers: ES15–72–000.
Applicants: Interstate Power and Light Company.
Description: Amendment to September 18, 2015 Application under Section 204 of the Federal Power Act of Interstate Power and Light Company.
Filed Date: 10/22/15.
Accession Number: 20151022–5286.
Comments Due: 5 p.m. ET 11/12/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27676 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–5–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on October 13, 2015 Eastern Shore Natural Gas Company (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware, 19904, filed in the above referenced docket a prior notice application pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Eastern Shore's blanket certificate issued in Docket No. CP96–128–000. Eastern Shore seeks authorization to increase the certificated capacity of its Receipt Zone 1 facilities by 53,000 dekatherms per day, all as more fully set forth in the application, which is open to the public for inspection.

The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to William Rice, King & Spalding LLP, 1700 Pennsylvania Avenue NW., Suite 200, Washington, DC 20006, by phone 202–626–9602, by fax 202–626–3737, or by email *wrice@kslaw.com.*

Specifically, Eastern Shore's Receipt Zone 1 consists of eight-mile long sixteen-inch diameter pipeline and interconnect with Texas Eastern Transmission, LP (Texas Eastern) in Chester County, PA. Eastern Shore proposes to increase meter capacity and upgrade pressure and flow control equipment at the interconnect with Texas Eastern to accommodate additional capacity. Eastern Shore states that proposed project has been designed based on the customer requests received during an open season that Eastern Shore conducted in the month of June, 2015. Eastern Shore further states that the total estimated cost of the project is $1,375,038 and will be covered by the customer commitments.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: October 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27673 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Electric System Planning Working Group Meeting

October 29, 2015, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via Web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/services/planning/index.jsp*.

The New York Independent System Operator, Inc. Electric System Planning Working Group Meeting

November 10, 2015, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via Web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/services/planning/index.jsp*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.
ISO New England Inc., *et al.,* Docket Nos. ER13–1957, *et al.*
ISO New England Inc., Docket Nos. ER13–193 and ER13–196.
New York Independent System Operator, Inc., Docket No. ER15–2059.
New York Power Authority, Docket No. ER15–2102.
New York Transco, LLC, Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: October 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27675 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2137–014; ER14–2798–006; ER14–2799–006; ER12–161–013; ER12–164–013; ER15–1873–003; ER12–645–015; ER10–2130–014; ER10–2131–014; ER10–2138–014; ER10–2139–014; ER10–2140–014; ER10–2141–014; ER14–2187–008; ER11–4044–015; ER11–4046–014; ER10–2127–013; ER10–2125–014; ER14–25–010; ER15–1041–003; ER15–2205–002; ER10–2133–014; ER10–2124–013; ER11–3872–015; ER10–2764–013; ER10–2132–013; ER10–2128–013.

Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, Buckeye Wind Energy LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC.

Description: Notification of Change in Facts of Beech Ridge Energy LLC, *et al.*

Filed Date: 10/23/15.

Accession Number: 20151023–5271.

Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER15–13–003.

Applicants: Transource Wisconsin, LLC.

Description: Compliance filing: Transource Wisconsin Deficiency Compliance Filing to be effective 12/1/2014.

Filed Date: 10/23/15.

Accession Number: 20151023–5220.

Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER15–958–003.

Applicants: Transource Kansas, LLC.

Description: Compliance filing: Transource Kansas Deficiency Filing to be effective 4/3/2015.

Filed Date: 10/23/15.

Accession Number: 20151023–5320.

Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER16–140–000.

Applicants: PJM Interconnection, L.L.C., Pennsylvania Electric Company,

Jersey Central Power & Light, Metropolitan Edison Company.

Description: § 205(d) Rate Filing: Penelec, *et al.* submit SA Nos. 4221, 4222, 4223 with Reverse Power Flow Agreement to be effective 12/22/2015.

Filed Date: 10/23/15.

Accession Number: 20151023–5176.

Comments Due: 5 p.m. ET 11/13/15.

Docket Numbers: ER16–141–000.

Applicants: Conetoe II Solar, LLC.

Description: Baseline eTariff Filing: MBR Tariff and Application to be effective 10/26/2015.

Filed Date: 10/23/15.

Accession Number: 20151023–5326.

Comments Due: 5 p.m. ET 11/13/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27671 Filed 10–29–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9023–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 10/19/2015 Through 10/23/2015

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://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20150295, Draft, NPS, REG, Revision of 9B Regulations Governing Non-Federal Oil and Gas Activities, *Comment Period Ends:* 12/28/2015, *Contact:* Michael B. Edwards 303–969–2694.

EIS No. 20150296, Final, FEMA, OR, Southern Flow Corridor Project, *Review Period Ends:* 11/30/2015, *Contact:* Mark Eberlein 425–487–4735.

EIS No. 20150297, Final, USA, HI, Schofield Generating Station Project U.S. Army Garrison-Hawaii, *Review Period Ends:* 11/30/2015, *Contact:* Lisa Graham 808–656–3075.

EIS No. 20150298, Draft, USACE, MS, Proposed Port of Gulfport Expansion Project, *Comment Period Ends:* 12/14/2015, *Contact:* Philip Hegji 251–690–3222.

EIS No. 20150299, Final, NRC, WI, Construction Permit for the SHINE Medical Radioisotope Production Facility, Final Report, NUREG–2183, *Review Period Ends:* 11/30/2015, *Contact:* Michelle Moser 301–415–6509.

EIS No. 20150300, Draft, USACE, GA, Glades Reservoir Water Supply Project, *Comment Period Ends:* 12/29/2015, *Contact:* Richard W. Morgan 912–652–5139.

EIS No. 20150301, Draft, USFWS, CA, Delta Research Station Project: Estuarine Research Station and Fish Technology Center, *Comment Period Ends:* 12/14/2015, *Contact:* Barbara Beggs 916–930–5637.

EIS No. 20150302, Draft, NPS, WY, Moose-Wilson Corridor Draft Comprehensive Management Plan, *Comment Period Ends:* 12/29/2015, *Contact:* Chris Church 303–969–2276.

EIS No. 20150303, Final, AFS, BLM, NV, Greater Sage Grouse Bi-State Distinct Population Segment Forest Plan Amendment, *Review Period Ends:* 11/30/2015, *Contact:* James Winfrey 775–355–5308.

Dated: October 27, 2015.

Karin Leff,

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

[FR Doc. 2015–27732 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0103; FRL–9936–39–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Diesel Emissions Reduction Act (DERA) Rebate Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Diesel Emissions Reduction Act (DERA) Rebate Program'' (EPA ICR No. 2461.02, OMB Control No. 2060–0686) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through October 31, 2015. Public comments were previously requested via the **Federal Register** on August 25, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before November 30, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2012–0103, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tyler Cooley, Office of Transportation and Air Quality, (Mail Code: 6406A),

Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 415–972–3937; fax number: 202–343–2803; email address: *cooley.tyler@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The Diesel Emissions Reduction Act program (DERA) is authorized by Title VII, Subtitle G (Sections 791 to 797) of the Energy Policy Act of 2005 (Pub. L. 109–58), as amended by the Diesel Emissions Reduction Act of 2010 (Pub. L. 111–364), codified at 42 U.S.C. 16131 *et seq.* DERA provides the Environmental Protection Agency (EPA) with the authority to award grants, rebates or low-cost revolving loans on a competitive basis to eligible entities to fund the costs of projects that significantly reduce diesel emissions from mobile sources through implementation of a certified engine configuration, verified technology, or emerging technology. Eligible mobile sources include buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at ports or airports), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above. The objective of the assistance under this program is to achieve significant reductions in diesel emissions in terms of tons of pollution produced and reductions in diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas.

EPA uses approved procedures and forms to collect necessary information to operate its grant and rebate programs as authorized by Congress under the DERA program. EPA collects information from applicants to the DERA rebate program. Information collected is used to ensure eligibility of applicants and engines to receive funds under DERA, and to calculate estimated and actual emissions benefits that result from activities funded with rebates as required in DERA's authorizing legislation.

Form Numbers: 2060–0686.

Respondents/affected entities: Entities interested in applying for a rebate under EPA's Diesel Emission Reduction Act (DERA) Rebate Program and include but are not limited to the following NAICS (North American Industry Classification System) codes: 23 Construction; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 485 Transit and Ground Passenger Transportation; 48831 Port and Harbor Operations; 61111 Elementary and Secondary Schools; 61131 Colleges, Universities, and Professional Schools; 9211 Executive, Legislative, and Other Government Support; and 9221 Justice, Public Order, and Safety Activities.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 500–1,000 (total).

Frequency of response: Voluntary as needed.

Total estimated burden: 2,827 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $100,592.58 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 1,933 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to a higher level of interest in the rebate program than originally anticipated. The revised burden of 2,827 hours reflects an updated estimate of 771 applicants (respondents) and is based on the number of applications submitted under previous rebate funding opportunities. In the ICR currently approved by OMB, EPA estimated an annual burden of 894 hours for 120 applicants. EPA received over 1,000 applications for the 2012 pilot program and over 500 applications for the 2014 funding opportunity.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–27691 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9936–34–OARM]

Good Neighbor Environmental Board; Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public advisory committee teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (Board) will hold a public teleconference on November 30, 2015. For further information regarding the teleconference and background materials, please contact Ann-Marie Gantner at the number and email provided below.

DATES: The Board will hold a public teleconference on November 30, 2015 from 11 a.m. to 3 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background: The Good Neighbor Environmental Board is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. By statute, the Board is required to submit an annual report to the President on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss and approve the Board's advice letter to the President, which focuses on climate change resilience in the U.S.-Mexico border region.

General Information: The agenda and teleconference materials, as well as general information about the Board, can be found at *http://www2.epa.gov/faca/gneb.* If you wish to make oral comments or submit written comments to the Board, please contact Ann-Marie Gantner at least five days prior to the teleconference.

Meeting Access: For information on access or services for individuals with disabilities, please contact Ann-Marie Gantner at (202) 564–4330 or email at *gantner.ann-marie@epa.gov.* To request accommodation of a disability, please contact Ann-Marie Gantner at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 20, 2015.

Ann-Marie Gantner,

Acting Designated Federal Officer.

[FR Doc. 2015–27786 Filed 10–29–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0609]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 29, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal governments.

Number of Respondents and Responses: 20 respondents; 10 responses.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 4 hours.

Total Annual Burden: 80 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.934(e) states that small cable systems may obtain an extension of time to establish compliance with rate regulations provided that they can demonstrate that timely compliance would result in severe economic hardship. Requests for the extension of time should be addressed to the local franchising authorities (''LFAs'') concerning rates for basic service tiers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–27631 Filed 10–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 13, 2015.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the Title as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 19 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of

the FCC submission to OMB will be displayed.

OMB Control Number: 3060–XXXX.

Title: Application to Participate in a Reverse Incentive Auction, FCC Form 177.

Form Number: FCC Form 177.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 600 respondents and 600 responses.

Estimated Time per Response: 90 minutes.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C.s 4(i), 309(j)(5), and sections 1.2204 and 73.3700(h)(4)(i), (h)(4)(ii), and (h)(6) of the Commission's rules, 47 CFRs 1.2204, 73.3700(h)(4)(i), (h)(4)(ii), and (h)(6).

Estimated Total Annual Burden: 900 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: Certain information collected on FCC Form 177 will be treated as confidential for various periods of time during the course of the broadcast incentive auction (BIA) pursuant to 47 U.S.C. 1452(a)(3) and section 1.2206(b) of the Commission's rules, 47 CFR 1.2206(b). To the extent necessary, respondents may request confidential treatment of information collected on FCC Form 177 that is not already being treated as confidential pursuant to section 0.459 of the Commission's rules. *See* 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On February 22, 2012, the President signed the Spectrum Act, which, among other things, authorized the Commission to conduct incentive auctions, and directed that the Commission use this innovative tool for an incentive auction of broadcast television spectrum to help meet the Nation's growing spectrum needs. *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, sections 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act). The Commission's broadcast incentive auction (BIA) will have three main components: (1) A reverse auction in which broadcast television licensees will submit bids to voluntarily relinquish their spectrum usage rights in exchange for defined shares of proceeds from the forward auction; (2) a repacking of the broadcast television bands; and (3) a forward auction of initial licenses for flexible use of the newly available spectrum. The information collection requirements reported under this new collection are the result of various Commission actions in which the Commission adopted general rules to govern the auction—including various application disclosures and certifications that must be made by broadcast television licensees to establish their eligibility to participate in the reverse auction—in order to implement the new and novel incentive auction approach for use in the BIA.

Under this information collection, the Commission will collect information that will be used to determine whether an applicant is legally qualified to participate in a reverse incentive auction. To aid in collecting this information, the Commission has created FCC Form 177, which the public will use to participate in reverse incentive auctions, including the Commission's upcoming broadcast incentive reverse auction. The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing process, and enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest. The information collected on FCC Form 177 will be used by the Commission to determine if an applicant is legally qualified to participate in the reverse auction. Commission staff will review the information collected on FCC Form 177 as part of the pre-auction process, prior to the start of the reverse auction. Staff will determine whether each applicant satisfies the Commission's requirements to participate in the reverse auction. Without the information collected on FCC Form 177, the Commission will not be able to determine if an applicant is legally qualified to participate in the reverse auction and has complied with the various applicable regulatory and statutory auction requirements for such participation.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–27737 Filed 10–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0065]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 30, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0065.

Title: Applications for New Authorization or Modification of Existing Authorization Under Part 5 of the FCC Rules—Experimental Radio Service.

Form Number: FCC Form 442.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions, and Individuals or household.

Number of Respondents: 495 respondents; 560 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements; Recordkeeping requirements; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 302, 303, 307 and 306 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,049 hours.

Total Annual Cost: $41,600.

Nature and Extent of Confidentiality: There is no need for confidentiality, except for personally identifiable information individuals may submit, which is covered by a system of records, FCC/OET–1, ''Experimental Radio Station License Files,'' 71 FR 17234, April 6, 2006.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB), in order to obtain the full three year clearance from them. The Commission is requesting a revision (there has been a program change in the reporting, recordkeeping requirements and/or third party disclosure requirements, the number of respondents increased from 400 to 495, therefore, the annual burden hours increased from 2,240 to 3,049 and the cost has also increased from $32,400.00 to $41,600).

On January 31, 2013, the Commission adopted a Report and Order, in ET Docket No. 10–236 and 06–155; FCC 13–15, which updates Part 5 of the CFR—''Experimental Radio Service'' (ERS). The Commission's recent Report and Order revises and streamlines rules under for the Experimental Radio Service (ERS).[1] These rule changes update procedures used to obtain and use an experimental license.

The new rules provide additional license categories to potential licensees. The new license categories are:

- Program Experimental Radio License—This type of license is issued to qualified institutions to conduct an ongoing program of research and experimentation under a single experimental authorization. Program experimental radio licenses are available to colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions.
- Medical Program Experimental Radio License—This type of license is issued to hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring.
- Compliance testing experimental radio license—This type of license will be issued to laboratories recognized by the FCC to perform:

(i) Product testing of radio frequency equipment, and

(ii) Testing of radio frequency equipment in an Open Area Test Site.

To accomplish this transition, the Commission will updates the current ''Experimental Licensing Radio'' electronic filing system. The existing ELS Form 442 interface will require modification; and the ELS database will require modification to facilitate inter-operability with the new ELS notification Web site. There will are new screen shots for the Web site/licensees. Office of Engineering and Technology Web site *http://www.fcc.gov/els.*

[1] *See* In the Matter of Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10–236; 2006 Biennial Review of Telecommunications Regulations—Part 2, Administered by the Office of Engineering and Technology (OET), ET Docket No. 06–155; 28 FCC Rcd 758 (2013), FCC 13–15.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–27628 Filed 10–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0806]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 30, 2015. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program, FCC Forms 470 and 471.

Form Numbers: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal government public institutions, and other not-for-profit institutions.

Number of Respondents and Responses: 52,700 respondents, 82,090 responses.

Estimated Time per Response: 3.5 hours for FCC Form 470 (3 hours for response; 0.5 hours for recordkeeping); 4.5 hours for FCC Form 471 (4 hours for response; 0.5 hours for recordkeeping).

Frequency of Response: On occasion, annual reporting, and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–154, 201–205, 218–220, 254, 303(r), 403, and 405.

Total Annual Burden: 334,405 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission seeks to revise OMB 3060–0806 to conform this information collection to the program changes set forth in the *Second Report and Order and Order on Reconsideration* (*Second E-Rate Modernization Order*) (WC Docket No. 13–184, WC Docket No. 10–90, FCC 14–189; 80 FR 5961, February 4, 2015).

Collection of the information on FCC Forms 470 and 471 is necessary so that the Commission and the Universal Service Administrative Company (USAC) have sufficient information to determine if entities are eligible for funding pursuant to the schools and libraries support mechanism (the E-rate program), to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. In addition, the information is necessary for the Commission to evaluate the extent to which the E-rate program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's own performance goals established in the *Report and Order and Further Notice of Proposed Rulemaking* (*E-rate Modernization Order*) (WC Docket No. 13–184, FCC 14–99; 79 FR 49160, August 19, 2014) and *Second E-rate Modernization Order.* This information collection is being revised to modify FCC Form 471 pursuant to program and rule changes in the *Second E-rate Modernization Order* and to accommodate USAC's new online portal as well as the requirement that all FCC Forms 471 be electronically filed. On June 22, 2015, OMB approved an emergency request to revise OMB 3060–0806 which included revisions to the FCC Form 470 only. This revision does not propose changes to the FCC Form 470 but does seek to extend the six-month emergency extension to the full three years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–27629 Filed 10–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10089, Security Bank of North Fulton, Alpharetta, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10089, Security Bank of North Fulton, Alpharetta, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Security Bank of North Fulton (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 27, 2015.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27681 Filed 10–29–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10406, Community Capital Bank, Jonesboro, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10406, Community Capital Bank, Jonesboro, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Community Capital Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2015 the Receivership Estate has been terminated, the Receiver discharged,

and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 27, 2015.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27682 Filed 10–29–15; 8:45 am]

BILLING CODE 6714–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044; Docket 2015–0001; Sequence 11]

Public Buildings Service; Information Collection; Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453. A notice was published in the **Federal Register** at 80 FR 27308 on May 13, 2015. No comments were received.

DATES: Submit comments on or before: November 30, 2015.

ADDRESSES: Submit comments identified by Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453,'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

Instructions: Please submit comments only and cite Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Handsfield, Public Buildings Service, at telephone 202–208–2444, or via email to *Karen.handsfield@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.
Responses per Respondent: 1.
Hours per Response: 0.05.
Total Burden Hours: 400.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence.

Dated: October 27, 2015.

David A. Shive,

Acting Chief Information Officer.

[FR Doc. 2015–27807 Filed 10–29–15; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10415]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

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 December 29, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. 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*.

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–10415 Generic Clearance for the Collection Customer Satisfaction Surveys

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 Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Generic Clearance for the Collection Customer Satisfaction Surveys; *Use:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public Web sites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its Web sites though regular surveys developed from these pre-defined questions. Surveying the Agency Web sites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the Web sites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OMB control number: 0938–1185); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 35,000. (For policy questions regarding this collection contact John Booth at 410–786–6577.

Dated: October 26, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–27619 Filed 10–29–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Administration for Native Americans Annual Data Collection (Annual Data Report).

OMB No.: New collection.

Description: Content and formatting changes are being made to the Objective Progress Report (OPR). Content changes are being made to the OPR, now known as the Annual Data Report (ADR) previously approved under information collection OMB No. 0980–0204. ANA has determined that the requirement for ANA grantees to submit information about the project activities on quarterly basis creates undue burden for Grantees. Therefore, ANA has reformatted the OPR to require Grantees submit an annual report instead of quarterly report when reporting on partnerships, youth and elder engagement, impact indicators, community involvement etc. This will reduce the administrative burden on Grantees, especially the smaller organizations. The majority of content being requested from the grantees essentially remain same except for the frequency of reporting. The other sections of the document with reference to ''quarterly'' information will be changed to reflect the shift from four-times a year reporting requirement to once per year and once at the end of the project period.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities receiving ANA funding.

Annual Burden Estimates

The following is the hour of burden estimate for this information collection:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADR	275	2	2	275

Estimated Total Annual Burden Hours: 275.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–27666 Filed 10–29–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–D–0093 (Formerly Docket ID 2002D–0337)]

Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled ''Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.'' This revised draft guidance document replaces the draft of the same name that published on August 21, 2002. This revised draft guidance provides recommendations to applicants on the chemistry, manufacturing, and controls (CMC); pharmacokinetics and bioavailability; and labeling documentation for liposome drug products submitted in new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license applications (BLAs) reviewed by the Center for Drug Evaluation and Research (CDER).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 29, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2002–D–0093 (formerly docket ID 2002D–0337) for ''Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive

label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Richard T. Lostritto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4148, Silver Spring, MD 20993–0002, 301–796–1697.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA is announcing the availability of a revised draft guidance for industry entitled ''Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.'' This revised draft guidance provides recommendations to applicants on the CMC, human pharmacokinetics and bioavailability, and labeling documentation for liposome drug products submitted in NDAs, ANDAs, and BLAs reviewed by CDER. This revision adds BLAs and ANDAs. It also updates the discussions on liposome technology.

In the **Federal Register** of August 21, 2002 (67 FR 54220), FDA announced the availability of a draft version of this guidance. FDA received comments in response to the draft guidance, and this revised guidance reflects FDA's careful consideration of these comments. Most of the changes to the revised draft guidance were made to clarify statements in the 2002 draft guidance. In addition, FDA decided to publish a revised draft guidance because of changes in technology since the draft was first published in 2002, the addition of BLAs reviewed by CDER as a result of a CDER and Center for Biologics Evaluation and Research reorganization in 2003, and the addition of ANDAs.

The revised draft guidance does not provide recommendations on clinical efficacy and safety studies, nonclinical pharmacology and/or toxicology studies, liposome formulations of vaccine adjuvants or biologics, or drug-lipid complexes.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This revised draft guidance, when finalized, will represent the Agency's current thinking on liposome drug products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This revised draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the Internet may obtain the revised draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27744 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0503]

Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an Investigational New Drug Application; Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards; Partial Stay and Republication of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of administrative stay of action.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing a stay of portions of the final guidance for clinical investigators, sponsors, and institutional review boards (IRBs) entitled ''Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an IND.'' We are republishing the guidance with the portions that are being stayed clearly identified so readers can distinguish parts of the guidance that remain in effect from parts that are subject to this stay.

DATES: This stay is effective October 30, 2015 Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–D–0503 for ''Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an Investigational New Drug Application; Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards; Partial Stay and Republication of Guidance.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential

information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Philip L. Chao, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2112, email: *philip.chao@fda.hhs.gov;* or Ebla Ali-Ibrahim, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3691; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 14, 2010 (75 FR 63189), we announced the availability of a draft guidance entitled ''Guidance for Industry: Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies can be Conducted without an IND'' (''the draft guidance''). In the **Federal Register** of September 10, 2013 (78 FR 55262), we published a document announcing the availability of the final version of the guidance, now entitled ''Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards (IRBs) on Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an IND'' (''the final guidance''). We received multiple comments asking for a further opportunity to comment on subsections VI.C and VI.D of the final guidance, which discuss when an IND is needed for studies involving products marketed as cosmetics or foods, respectively. Accordingly, on February 6, 2014, we issued a document reopening the comment period on only those subsections of the final guidance that address the applicability of the IND regulations to clinical research studies involving products marketed as cosmetics or foods (including dietary supplements) (79 FR 7204) (''notice to reopen''). The comment period closed on April 7, 2014. We received comments from trade organizations, individual companies, scientific associations, public interest organizations, and individuals in response to our notice to reopen. These comments raised questions about application of the IND requirement to certain clinical studies of conventional foods, dietary supplements, and cosmetics being investigated for uses covered by the drug definition in section 201(g)(1)(B) or (C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(g)(1)(B) or (C)).

II. The Stay

FDA is staying part of the final guidance to allow for further consideration of issues raised by the comments submitted in response to the notice to reopen. Specifically, we are staying portions of subsection VI.D.2, ''Conventional Food,'' and all of subsection VI.D.3, ''Studies Intended to Support a Health Claim,'' except as to studies intended to evaluate whether a food substance reduces the risk of a disease in individuals less than 12 months old, those with altered immune systems, and those with serious or life-threatening medical conditions. Subsections VI.D.2 and VI.D.3 discuss, respectively, conventional food studies generally and studies intended to support a health claim for a conventional food or dietary supplement. The portions of subsection VI.D.2 that are being stayed are the third paragraph (which pertains to clinical studies intended to evaluate a food's effect on the structure or function of the body) and a sentence in the fourth paragraph concerning clinical studies intended to evaluate a non-nutritional effect on the structure or function of the body. In subsection VI.D.3, a text box inserted below the subsection heading explains that clinical investigations intended to evaluate whether a food substance may reduce the risk of a disease in three categories of medically vulnerable subjects (individuals less than 12 months old, those with altered immune systems, and those with serious or life-threatening medical conditions) are excluded from the stay, and that subsection VI.D.3 is in effect for such investigations.

The stay of portions of subsection VI.D.2 and all of subsection VI.D.3 (subject to the exclusion for studies in the medically vulnerable populations described in this document) of the final guidance is effective immediately. All other parts of the final guidance remain in effect. We are republishing the guidance with the stayed material clearly identified so readers can distinguish parts of the guidance that remain in effect from parts that are subject to the stay.

FDA generally does not intend to seek INDs for studies in the stayed categories while the stay is in effect. This stay does not, however, preclude enforcement of any provision of the FD&C Act or other relevant Federal statutes or regulations other than IND requirements (*e.g.,* human subject protection laws and regulations). This stay does not affect investigations of conventional foods or dietary supplements studied for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. Products intended for such uses meet the definition of a ''drug'' at section 201(g)(1)(B) of the FD&C Act; such investigations will continue to be subject to IND requirements. For example, dietary supplements containing bacteria have been given to infants born prematurely for prevention of necrotizing enterocolitis. The investigation of such use, and similar uses of conventional foods or dietary supplements to diagnose, cure, mitigate, treat, or prevent a disease, continues to require an IND.

In summary, while the partial stay of the final guidance is in effect, FDA does not consider clinical investigators or study sponsors to be under any

obligation to obtain an IND for the following types of studies evaluating the effects of a product marketed as a conventional food or dietary supplement:

For conventional foods:

- Clinical studies designed to evaluate whether a conventional food may reduce the risk of a disease, intended to support a new or expanded health claim, and conducted in a population that does not include individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions;
- Clinical studies designed to evaluate a non-nutritional effect of a conventional food on the structure or function of the body.

For dietary supplements:

- Clinical studies designed to evaluate whether a dietary supplement may reduce the risk of a disease, intended to support a new or expanded health claim, and conducted in a population that does not include individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions.

Further, as noted in the final guidance itself, no IND is required for clinical studies designed to evaluate the nutritional effects of a conventional food, clinical studies designed to evaluate a dietary supplement's effects on the structure or function of the body, or clinical studies designed to evaluate the relationship between a conventional food or dietary supplement and reduced risk of a disease, if there is already an authorized health claim for the substance-disease relationship.

The following types of studies do continue to require an IND for the reasons explained in the final guidance:

For conventional foods:

- Clinical studies designed to evaluate a conventional food's ability to diagnose, cure, mitigate, treat, or prevent a disease, except for studies designed to evaluate whether a conventional food reduces the risk of a disease, intended to support a health claim, and conducted in a population that does not include individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions;
- Clinical studies designed to evaluate whether a food substance reduces the risk of a disease, intended to support a new or expanded health claim, and conducted in a population that includes individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions.

For dietary supplements:

- Clinical studies designed to evaluate a dietary supplement's ability to diagnose, cure, mitigate, treat, or prevent a disease, except for studies designed to evaluate whether a dietary supplement reduces the risk of a disease, intended to support a health claim, and conducted in a population that does not include individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions;
- Clinical studies designed to evaluate whether a dietary supplement reduces the risk of a disease, intended to support a new or expanded health claim, and conducted in a population that includes individuals less than 12 months old, those with altered immune systems, or those with serious or life-threatening medical conditions.

For cosmetics:

- Clinical studies designed to evaluate a cosmetic's effect on the structure or function of the body or its ability to diagnose, cure, mitigate, treat, or prevent a disease.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27729 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3805]

Clinical Trials—Assessing Safety and Efficacy for Diverse Populations; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), in collaboration with the Johns Hopkins Center of Excellence in Regulatory Science and Innovation, is announcing a public workshop entitled ''Clinical Trials—Assessing Safety and Efficacy in Diverse Populations.'' The purpose of the meeting is to discuss approaches in clinical trial design and subgroup analyses for therapeutic product development and life-cycle management.

DATES: The meeting will be held on December 2, 2015, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–3805 for Clinical Trials—Assessing Safety and Efficacy for Diverse Populations; Public Meeting; Request for Comments. Received

comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Martin Mendoza, Office of Minority Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2306, Silver Spring, MD 20993–0002, *Martin.Mendoza@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this public workshop is to facilitate a unique opportunity for relevant stakeholders, including industry, academia, patients, and FDA, to discuss the importance of diversity in medical research and the incorporation of participant diversity in the design, analysis, and regulation of medical interventions. Medical interventions may have different benefits and harms for subgroups within a population. If clinical trials do not include an adequate number of participants who are representative of people likely to use an approved intervention, then the average results of clinical trials might not be replicated in practice. Even if clinical trials include representative participants, important subgroup differences might not be detectable if their representation is not adequate. For these reasons, regulators might use a combination of information from clinical trials and other data sources to address questions about heterogeneity across large and diverse populations. The use of data from patients in their usual care setting (''real-world'' data) may be particularly valuable for understanding this heterogeneity.

Agenda: The agenda is located at: *http://www.jhsph.edu/research/centers-and-institutes/center-of-excellence-in-regulatory-science-and-innovation/news-and-events/clinical-trials-assessing-safety-and-efficacy-for-diverse-population.html.* (FDA has verified the Web site addresses throughout this notice, but FDA is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**).

Registration: There is no registration fee to attend this meeting. Seats are limited, and registration will be on a first-come, first-served basis. To register, please complete registration online at *http://www.surveymonkey.com/r/ClinicalTrialsWorkshop120215.* (FDA has verified the Web address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Accommodations: Attendees are responsible for their own hotel accommodations. If you need special accommodations due to a disability, please contact Jill Zung at *Jill.Zung@fda.hhs.gov* at least 7 days in advance.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27728 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1167]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Controlled Correspondence Related to Generic Drug Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Controlled Correspondence Related to Generic Drug Development'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On July 9, 2015, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Controlled Correspondence Related to Generic Drug Development'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0797. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27741 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3894]

Determination That TENSILON and TENSILON Preservative Free (Edrophonium Chloride) Injectable and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6207, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book''. Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug	Applicant
NDA 007959	TENSILON and TENSILON Preservative Free (edrophonium chloride) Injectable; Intravenous, 10 milligrams/milliliter (mg/mL).	IGI Laboratories, Inc., 105 Lincoln Ave., Buena, NJ 08310.
NDA 013416	NORGESIC and NORGESIC FORTE (aspirin, caffeine, orphenadrine citrate) Tablet; Oral,385 mg/30 mg/25 mg; 770 mg/60 mg/50 mg.	Medicis Pharmaceuticals, Division of Valeant Pharmaceuticals North America, LLC, 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
NDA 018225	BUMEX (bumetanide) Tablet; Oral, 0.5 mg; 1 mg; 2 mg	Validus Pharmaceuticals, LLC, 119 Cherry Hill Rd., Suite 310, Parsippany, NJ 07054.
NDA 018343	CAPOTEN (captopril) Tablet; Oral, 12.5 mg; 25 mg; 50 mg; 100 mg.	Par Pharmaceutical Inc., 1 Ram Ridge Rd., Chestnut Ridge, NY 10977.
NDA 019322	TEMOVATE (clobetasol propionate) Cream; Topical, 0.05%	Fougera Pharmaceuticals Inc., 60 Baylis Rd., P.O. Box 2006, Melville, NY 11747.
NDA 020337	TEMOVATE (clobetasol propionate) Gel; Topical, 0.05%	Do.
NDA 020340	TEMOVATE E (clobetasol propionate) Cream; Topical, 0.05%	Do.
NDA 020638	VISTIDE (cidofovir) Injectable; Intravenous, 75 mg base/mL	Gilead Sciences, Inc., 333 Lakeside Dr., Foster City, CA 94404.
NDA 021700	AVANDARYL (glimepiride, rosiglitazone maleate) Tablet; Oral, 1 mg/4 mg; 2 mg/4 mg; 4 mg/4 mg; 2 mg/8 mg; 4 mg/8 mg.	SmithKline Beecham (Cork) Ltd., Ireland, 2301 Renaissance Blvd., Mail Code RN 0420, King of Prussia, PA 19406.
NDA 022411	OLEPTRO (trazodone HCl); Extended-Release Tablet; Oral, 150 mg; 300 mg.	Angelini Pharma Inc., 8322 Helgerman Ct., Gaithersburg, MD 20877.
NDA 050461	ANCEF (cefazolin sodium) Injectable; Intravenous, 1 gram (g)/vial; 10 g/vial.	GlaxoSmithKline, 1 Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101.
NDA 050495	AMIKIN (amikacin sulfate) Injectable; Intravenous, EQ 50 mg base/mL; 250 mg base/mL.	Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543.
ANDA 064169	Cefazolin Sodium Injectable; Intravenous, 500 mg base/vial; 1 g base/vial.	Fresenius Kabi USA, LLC, 3 Corporate Dr., Lake Zurich, IL 60047.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the

discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27740 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1794]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Impact of Ad Exposure Frequency on Perception and Mental Processing of Risks and Benefit Information in Direct-to-Consumer Prescription Drug Ads

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Impact of Ad Exposure Frequency on Perception and Mental Processing of Risks and Benefit Information in Direct-to-Consumer Prescription Drug Ads'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 29, 2015, the Agency submitted a proposed collection of information entitled ''Impact of Ad Exposure Frequency on Perception and Mental Processing of Risks and Benefit Information in Direct-to-Consumer Prescription Drug Ads'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0803. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27743 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1491]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patient Perceptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patient Perceptions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On May 28, 2015, the Agency submitted a proposed collection of information entitled ''Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patient Perceptions'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0801. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27742 Filed 10–29–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**.

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services.

Employee last name	Employee first name
Agrawal	Shantanu
Atkinson	Leslie
Boulanger	Jennifer
Bowers	Tonya
Burton	Adriane
Cannistra	Jennifer
Cantwell	Kathleen
Carter	Cathy
Cavanaugh	Sean
Cheatham	Tina
Cheever	Laura
Conway	Patrick
Counihan	Keven
Dammons	Cheryl
Devoss	Elizabeth
Espinosa	Diana
Etziner	Michael
Garcia	Alexandra
Garner	Jacqueline
Goldhaber	Ben
Goodman	Richard
Hamilton	Thomas
Hammarlund	John
Handley	Elisabeth
Hartstein	Marc
Haseltine	Amy
Hattery	Debbra
Heffler	Stephen
Hill	Timothy
Jackson	Karen
Kane	Daniel
Kavanagh	Laura
Kerr	James
Killoran	Beth
Kramer	Martin
Kretschmaier	Michon
Lewis	Lisa
Lodes	Lori
Lu	Michael
Macrae	James
Malcomson	Dennis
Mills	George
Montilla	Maria
Moody-Williams	Jean
Morris	Thomas
Murray	Renard

Employee last name	Employee first name
Nelson	David
Novy	Steve
O'Connor	Nancy
O'Rourke	Williams
Padilla	Luis
Ponton	Wendy
Rajkumar	Rahul
Reilly	Nanette Foster
Rice	Cheri
Richter	Elizabeth
Sayen	David
Shatto	John
Spitalnic	Paul
Spitzgo	Rebecca
Stroup	Patricia
Tabe-Bedward	H. Arrah
Taylor	Deborah
Tudor	Cynthia
Vogel	Janet
Wachino	Victoria
Wagner	Dennis
Wakefield	Mark
Wallace	Mary
Weber	Mark
Weber	James
Wilson	Laurence
Worstell	Megan
Ziegler-Ragland	Cheryl

Dated: October 23, 2015.

Charles McEnerney,

Director, Executive and Scientific Resources Division.

[FR Doc. 2015–27749 Filed 10–29–15; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Hooker Electrochemical Corporation in Niagara Falls, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

On September 22, 2015, as provided for under 42 U.S.C. 7384l(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the Hooker Electrochemical Corporation in Niagara Falls, New York, during the operational period from July 1, 1944, through December 31, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on October 22, 2015. Therefore, beginning on October 22, 2015, members of this class of employees, defined as reported in this notice, became members of the SEC.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2015–27701 Filed 10–29–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; A Generic Clearance for the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) Data and Specimen Hub (DASH)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the NICHD, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and forms, submit comments in writing, or request more information on the proposed project, contact: Rohan Hazra, M.D., Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), National Institutes of Health, 6100 Executive Blvd., Room 4B11, Bethesda, MD 20892–7510, or call non-toll-free number 301–435–6868 or Email your request, including your address to: *hazrar@mail.nih.gov.* Formal requests for additional plans and forms must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Data and Specimen Hub (DASH), 0925—NEW, Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Need and Use of Information Collection: The NICHD Data and Specimen Hub (DASH) is being established by NICHD as a data sharing mechanism for biomedical research investigators. It will serve as a centralized resource for investigators to store and access de-identified data from studies funded by NICHD. The potential for public benefit to be achieved through sharing research study data for secondary analysis is significant. NICHD DASH supports NICHD's mission to ensure that every person is born healthy and wanted, that women suffer no harmful effects from reproductive processes, and that all children have the chance to achieve their full potential for healthy and productive lives, free from disease or disability, and to ensure the health, productivity, independence, and well-being of all people through optimal rehabilitation. Data sharing and reuse will promote testing of new hypotheses from data already collected, facilitate trans-disciplinary collaboration, accelerate scientific findings and enable NICHD to maximize the return on its investments in research.

Anyone can access NICHD DASH to browse and view descriptive information about the studies and data archived in NICHD DASH without creating an account. Users who wish to submit or request research study data must register for an account.

Information will be collected from those wishing to create an account, sufficient to identify them as unique Users. Those submitting or requesting data will be required to provide additional supporting information to ensure proper use and security of NICHD DASH data. The information collected are limited to the essential data required to ensure that the management of Users in NICHD DASH is efficient and the sharing of data among investigators is effective. The primary uses of the information collected from Users by NICHD will be to:

- Communicate with the Users with regards to their data submission or requests
- Monitor data submissions and data requests
- Notify interested recipients of updates to data stored in NICHD DASH
- Help NICHD understand the use of NICHD DASH data by the research community

There is no plan to publish the data collected under this request.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 142.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hour
Request for Account	120	1	5/60	10
Submit De-identified Data	36	1	2	72
Request De-identified Data	60	1	1	60

Dated: October 23, 2015.

Sarah L. Glavin,

Project Clearance Liaison, NICHD, NIH.

[FR Doc. 2015–27717 Filed 10–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request Consumer Health Information in Public Libraries User Needs Survey (NLM)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: David Sharlip, Office of Administrative and Management Analysis Services,, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number (301) 402–9680, or Email your request, including your address to: *sharlipd@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Consumer Health Information in Public Libraries User Needs Survey (NLM)), 0925—New, National Library of Medicine (NLM), National Institutes of Health (NIH).

Need and Use of Information Collection: In 1994, the NLM was designated a ''Federal Reinvention Laboratory'' with a major objective of improving its methods of delivering information to the public.

NLM has become an international leader in health informatics research and development, especially in consumer health informatics. As a result, NLM needs to remain contemporary in consumer health informatics research by utilizing research methods that yield a better understanding of the predictors of consumer satisfaction. Without ongoing insights into the predictors of consumer satisfaction, NLM will lack the research findings to make evidence-based changes in the content, design and editorial management of its consumer Web sites and will not optimally serve the public.

Public libraries have been identified as a key resource for public information about the Patient Protection and Affordable Care Act (PPACA), which took full effect on October 1, 2013. A national anonymous survey of library staff will help us better understand the challenges and successes of information provision in this critical area of high information need. Research and funding into the challenges of health information in public libraries is, at present, almost nonexistent. In the present environment of health insurance reform and presumption of informed consumer choice, this is a critical knowledge gap. Information collection from library workers will supply much-needed feedback on the specific areas of challenge for information provision by public libraries. The results of this study will be used by the Principal Investigators' home institutions—the University of Wisconsin-Madison, an institution of higher education preparing future library workers, and the Specialized Information Services division of the National Library of Medicine—to inform preparation of outreach and training materials as well as advising other organizations and institutions providing PPACA information provision assistance to public libraries (*e.g.,* American Library Association). To improve our understanding of the challenges and gaps in information provision and

awareness around PPACA, the information we get from this survey will be used to inform and improve NLM's services to public libraries, as well as increase our understanding of the resource and education needs of public library workers.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 390.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Total burden hours
Library workers	779	1	30/60	390

Dated: October 27, 2015.

David Sharlip,

Project Clearance Liaison, NLM, NIH.

[FR Doc. 2015–27678 Filed 10–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0008]

Agency Information Collection Activities: Application for Identification Card

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

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Identification Card (CBP Form 3078). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 29, 2015 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Abstract: CBP Form 3078, *Application for Identification Card,* is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form collects biographical information and is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form is submitted to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section. Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.42, 118, 122.182, and 146.6. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%203078.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: October 26, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–27767 Filed 10–29–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* October 22, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Aiken and Dillon Counties for Public Assistance.

Calhoun and Greenwood Counties for Public Assistance (already designated for Individual Assistance).

Charleston and Lexington Counties for Public Assistance (Categories C–G)(already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–27771 Filed 10–29–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1545]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Jefferson	City of Birmingham (15–04–7923X).	The Honorable William A. Bell, Sr., Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	Planning and Engineering Office, 710 North 20th Street, Birmingham, AL 35203.	*http://www.msc.fema.gov/lomc*	Dec. 31, 2015	010116
Jefferson	City of Mountain Brook (15–04–7923X).	The Honorable Lawrence T. Oden, City of Mountain Brook, P.O. Box 130009, Mountain Brook, AL 35213.	City Hall, 3928 Montclair Road, Mountain Brook, AL 35213.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2015	010128
Shelby	Unincorporated areas of Shelby County (15–04–4263P).	The Honorable Rick Shepherd, Chairman, Shelby County Board of Commissioners 200 West College Street, Columbiana, AL 35051.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	*http://www.msc.fema.gov/lomc*	Dec. 31, 2015	010191
Colorado:						
Arapahoe	City of Centennial (15–08–0299P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*http://www.msc.fema.gov/lomc*	Dec. 11, 2015	080315
Arapahoe	City of Centennial (15–08–0563P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*http://www.msc.fema.gov/lomc*	Dec. 28, 2015	080315
Arapahoe	Unincorporated areas of Arapahoe County, (15–08–0299P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	Arapahoe County Public Works Department, 6924 South Lima Street, Centennial, CO 80112.	*http://www.msc.fema.gov/lomc*	Dec. 11, 2015	080011
Denver	City and County of Denver (15–08–0521P).	The Honorable Michael Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	*http://www.msc.fema.gov/lomc*	Dec. 28, 2015	080046
Adams and Jefferson.	City of Westminster (15–08–0180P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	*http://www.msc.fema.gov/lomc*	Nov. 27, 2015	080008
Broomfield	City and County of Broomfield (15–08–0180P).	The Honorable Randy Ahrens, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*http://www.msc.fema.gov/lomc*	Nov. 27, 2015	085073
Jefferson	City of Lakewood (14–08–1263P).	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	Public Works Department, 480 South Allison Parkway, Lakewood, CO 80226.	*http://www.msc.fema.gov/lomc*	Dec. 18, 2015	085075
Jefferson	Unincorporated areas of Jefferson County (14–08–1263P).	The Honorable Casey Tighe, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Dec. 18, 2015	080087
Jefferson	Unincorporated areas of Jefferson County (15–08–0180P).	The Honorable Casey Tighe, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Nov. 27, 2015	080087
Connecticut: Fairfield.	City of Norwalk (15–01–1793P).	The Honorable Harry W. Rilling, Mayor, City of Norwalk, 125 East Avenue, Norwalk, CT 06856.	Planning and Zoning Department, 125 East Avenue, Norwalk, CT 06856.	*http://www.msc.fema.gov/lomc*	Dec. 30, 2015	090012
Florida:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Charlotte	Unincorporated areas of Charlotte County (15–04–4023P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Department of Community Development, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Dec. 31, 2015	120061
Lee	Unincorporated areas of Lee County (15–04–4830P).	The Honorable Brian Hamman, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Administration Office, 1700 Monroe Street, 2nd Floor, Fort Myers, FL 33902.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2015	125124
Miami-Dade	City of Sunny Isles Beach (15–04–7479X).	The Honorable George "Bud" Scholl, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Building Department, 18070 Collins Ave., 3rd Floor, Sunny Isles Beach, FL 33160.	*http://www.msc.fema.gov/lomc*	Jan. 4, 2016	120688
Monroe	City of Key West (15–04–0697P).	The Honorable Craig Cates, Mayor, City of Key West, 3126 Flagler Avenue, Key West, FL 33040.	Planning Department, 605A Simonton Street, Key West, FL 33040.	*http://www.msc.fema.gov/lomc*	Aug. 20, 2015	120168
Orange	Unincorporated areas of Orange County (15–04–2752P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, 4200 South John Young Parkway, Orlando, FL. 32839.	*http://www.msc.fema.gov/lomc*	Dec. 31, 2015	120179
Orange	Unincorporated areas of Orange County (15–04–4919P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, 4200 South John Young Parkway, Orlando, FL. 32839.	*http://www.msc.fema.gov/lomc*	Dec. 24, 2015	120179
St. Johns	Unincorporated areas of St. Johns County (15–04–5124P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, District 1, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Growth Management Department, 4040 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2015	125147
Walton	Unincorporated areas of Walton County (15–04–4766P).	The Honorable Bill Imfeld, Chairman, Walton County Board of Commissioners, 6570 U.S. Highway 90 West, DeFuniak Springs, FL 32433.	Walton County Planning and Development Services Department, 31 Coastal Centre Boulevard, Santa Rosa Beach, FL 32459.	*http://www.msc.fema.gov/lomc*	Dec. 26, 2015	120317
Georgia: Forsyth	Unincorporated areas of Forsyth County (15–04–0696P).	The Honorable R.J. (Pete) Amos, Chairman, Forsyth County Board of Commissioners, 110 East Main Street, Suite 210, Cumming, GA 30040.	Forsyth County Department of Engineering, 110 East Main Street, Suite 120, Cumming, GA 30040.	*http://www.msc.fema.gov/lomc*	Nov. 19, 2015	130312
Massachusetts: Essex.	Town of Rockport (15–01–1271P).	The Honorable Erin M. Battistelli, Chair, Town of Rockport Board of Selectmen, 34 Broadway, Rockport, MA 01966.	Building Inspections Division, 26 Broadway, Rockport, MA 01966.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2015	250100
Mississippi: Lafayette.	City of Oxford (15–04–8440P).	The Honorable George Patterson, Mayor, City of Oxford, 107 Courthouse Square, Oxford, MS 38655.	City Hall, 107 Courthouse Square, Oxford, MS 38655.	*http://www.msc.fema.gov/lomc*	Jan. 4, 2016	280094
New Mexico: Bernalillo.	Unincorporated areas of Bernalillo County (14–06–4933P).	The Honorable Maggie Hart Stebbins, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc*	Nov. 23, 2015	350001
North Carolina: Union.	Unincorporated areas of Union County (15–04–4081P).	The Honorable Richard Helms, Chairman, Union County Board of Commissioners, 500 North Main Street, Room 921, Monroe, NC 28112.	Union County Planning Division, 500 North Main Street, Monroe, NC 28112.	*http://www.msc.fema.gov/lomc*	Nov. 5, 2015	370234
Texas:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bexar	City of San Antonio (15–06–1484P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Dec. 3, 2015	480045
Collin	City of Murphy (14–06–4329P).	The Honorable Eric Barna, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	Department of Public Works, 206 North Murphy Road, Murphy, TX 75094.	*http://www.msc.fema.gov/lomc*	Dec. 11, 2015	480137
Dallas	Town of Addison (15–06–1036P).	The Honorable Todd Meier, Mayor, Town of Addison, 5300 Belt Line Road, Dallas, TX 75254.	Town Service Center, 16801 Westgrove Drive, Dallas, TX 75001.	*http://www.msc.fema.gov/lomc*	Dec. 28, 2015	481089
Harris	Unincorporated areas of Harris County (15–06–1734P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	Jan. 11, 2016	480287
Hidalgo	Unincorporated areas of Hidalgo County (15–06–2601P).	The Honorable Ramon Garcia, Hidalgo County Judge, 100 East Cano Street, 2nd Floor, Edinburg, TX 78542.	Hidalgo County Drainage District, 902 North Doolittle Road, Edinburg, TX 78542.	*http://www.msc.fema.gov/lomc*	Dec. 24, 2015	480334
Utah:						
Carbon	City of Price (15–08–0486P).	The Honorable Joe Piccolo, Mayor, City of Price, 185 East Main Street, Price, UT 84501.	City Hall, 185 East Main Street, Price, UT 84501.	*http://www.msc.fema.gov/lomc*	Jan. 6, 2016	490036
Uintah	Unincorporated areas of Uintah County (15–08–0414P).	The Honorable Mike McKee, Chairman, Uintah County Board of Commissioners, 152 East 100 North, Vernal, UT 84078.	Uintah County Community Development Department, 152 East 100 North, Vernal, UT 84078.	*http://www.msc.fema.gov/lomc*	Dec. 16, 2015	490147

[FR Doc. 2015–27760 Filed 10–29–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 2, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Mohave County, Arizona, and Incorporated Areas Docket No.: FEMA–B–1440	
City of Lake Havasu	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.
Fort Mojave Indian Tribe	Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363.
Unincorporated Areas of Mohave County	County Administration Building, 700 West Beale Street, Kingman, AZ 86401.
Modoc County, California, and Incorporated Areas Docket No.: FEMA–B–1311	
City of Alturas	Director of Public Works, 200 West North Street, Alturas, CA 96101.
Unincorporated Areas of Modoc County	Modoc County Planning Department, 203 West 4th Street, Alturas, CA 96101.
Nye County, Nevada, and Incorporated Areas Docket No.: FEMA–B–1284	
Unincorporated Areas of Nye County	Nye County Department of Planning, 1114 Globe Mallow, P.O. Box 1531, Tonopah, NV 89049.
Bennington County, Vermont (All Jurisdictions) Docket No.: FEMA–B–1440	
Town of Arlington	Town Clerk Building, 3828 Vermont Route 7A, Arlington, VT 05250.
Town of Bennington	Zoning Office, 205 South Street, Bennington, VT 05201.
Town of Dorset	Zoning Office, 112 Mad Tom Road, East Dorset, VT 05253.
Town of Landgrove	Town Hall, 88 Landgrove Road, Landgrove, VT 05148.
Town of Manchester	Planning and Zoning Office, 6039 Main Street, Manchester, VT 05255.
Town of Peru	Town Center, 402 Main Street, Peru, VT 05152.
Town of Pownal	Town Office, 467 Center Street, Pownal, VT 05261.
Town of Readsboro	Town Hall, 301 Phelps Lane, Readsboro, VT 05350.
Town of Rupert	Town Office, 187 East Street, West Rupert, VT 05776.
Town of Sandgate	Town Hall, 3266 Sandgate Road, Sandgate, VT 05250.
Town of Searsburg	Town Hall, 18 Town Garage Road, Searsburg, VT 05363.
Town of Shaftsbury	Cole Hall, 61 Buck Hill Road, Shaftsbury, VT 05262.
Town of Stamford	Town Hall, 986 Main Road, Stamford, VT 05352.
Town of Sunderland	Town Clerk's Office, 104 Mountain View Road, Sunderland, VT 05250.
Town of Winhall.	Town Hall, 115 Vermont Route 30, Bondville, VT 05340.
Town of Woodford	Town Hall, 1391 Vermont Route 9, Woodford, VT 05201.
Village of Manchester	Village Office, 45 Union Street, Manchester, VT 05254.
Village of North Bennington	Train Station, Depot Street and Main Street, North Bennington, VT 05257.
Isle of Wight County, Virginia, and Incorporated Areas Docket No.: FEMA–B–1419	
Town of Smithfield	Planning, Engineering and Public Works Department, 310 Institute Street, Smithfield, VA 23430.
Unincorporated Areas of Isle of Wight County	Isle of Wight County Planning and Zoning Department, 17140 Monument Circle, Suite 201, Isle of Wight, VA 23397.

II. Non-watershed-based studies:

[FR Doc. 2015–27752 Filed 10–29–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4243–DR; Docket ID FEMA–2015–0002]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4243–DR), dated October 20, 2015, and related determinations.

DATES: *Effective Date:* October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 20, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from wildfires and mudslides during the period of August 9 to September 10, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Chelan, Ferry, Lincoln, Okanogan, Pend Oreille, Stevens, Whatcom, and Yakima Counties and the Confederated Tribes of the Colville Reservation for Public Assistance.

All areas within the State of Washington are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–27747 Filed 10–29–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1540]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 28, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1540 to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their

floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-Watershed-Based Studies

Community	Community map repository address
Contra Costa County, CA and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 09–09–3059S Preliminary Date: June 12, 2015	
City of Antioch	Engineering and Development, Services Division, 200 H Street, Antioch, CA 94509.
City of Brentwood	Community Development, Building Division, 150 City Park Way, Brentwood, CA 94513.
City of Clayton	C/O City Engineer, 1470 Civic Court, Suite 320, Concord, CA 94520.
City of Concord	C/O Floodplain Administrator/City Engineer, 1950 Parkside Drive MS/52, Concord, CA 94519.
City of Hercules	Engineering Department, 111 Civic Drive, Hercules, CA 94547.
City of Lafayette	Planning Office, 3675 Mount Diablo Boulevard, Suite 210, Lafayette, CA 94549.
City of Martinez	Engineering Department, 525 Henrietta Street, Martinez, CA 94553.
City of Oakley	Public Works and Engineering, 3231 Main Street, Oakley, CA 94561.
City of Pinole	Public Works Department, 2131 Pear Street, Pinole, CA 94564.
City of Pittsburg	Engineering Record Section, City Hall, 65 Civic Avenue, Pittsburg, CA 94565.
City of Richmond	Engineering Division, 450 Civic Center Plaza, Richmond, CA 94804.
City of San Pablo	Planning/Zoning, 13831 San Pablo Avenue, San Pablo, CA 94806.
City of Walnut Creek	Public Works Department, Engineering Division, 1666 North Main Street, Walnut Creek, CA 94596.
Town of Danville	Engineering Department, 510 La Gonda Way, Danville, CA 94526.
Unincorporated Areas of Contra Costa County	Public Works Department, 255 Glacier Drive, Martinez, CA 94553.
Adair County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0896S Preliminary Date: May 18, 2015	
City of Bridgewater	City Hall, 105 North Main Street, Bridgewater, IA 50837.
City of Fontanelle	City Hall, 313 Washington Street, Fontanelle, IA 50846.
City of Stuart	City Hall, 119 East Front Street, Stuart, IA 50250.
Unincorporated Areas of Adair County	Adair County Courthouse, 400 Public Square, Suite 5, Greenfield, IA 50849.
Adams County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0893S Preliminary Date: May 18, 2015	
City of Carbon	City Hall, 300 B Street, Carbon, IA 50839.

Community	Community map repository address
City of Corning	City Hall, 601 6th Street, Corning, IA 50841.
City of Nodaway	Community Building, 300 7th Avenue, Nodaway, IA 50857.
City of Prescott	City Hall, 607 2nd Street, Prescott, IA 50859.
Unincorporated Areas of Adams County	Adams County Courthouse, 500 9th Street, Corning, IA 50841.
Guthrie County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0899S Preliminary Date: May 18, 2015	
City of Bagley	City Hall, 207 Main Street, Bagley, IA 50026.
City of Bayard	City Hall, 403 Main Street, Bayard, IA 50029.
City of Casey	City Hall, 503 McPherson Street, Casey, IA 50048.
City of Guthrie Center	City Hall, 102 North 1st Street, Guthrie Center, IA 50115.
City of Jamaica	City Hall, Clerk's Office, 202 Van Nest Street, Jamaica, IA 50128.
City of Panora	City Hall, 102 Northwest 2nd Street, Panora, IA 50216.
Unincorporated Areas of Guthrie County	Guthrie County Courthouse, 200 North 5th Street, Guthrie Center, IA 50115.
Taylor County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0892S Preliminary Date: May 18, 2015	
City of Bedford	City Hall, 625 Court Avenue, Bedford, IA 50833.
City of Blockton	City Hall, 405 Division Street, Blockton, IA 50836.
City of Conway	City Hall, 308 Broad Street, Conway, IA 50833.
City of Gravity	City Hall, 405 Main Street, Gravity, IA 50848.
City of Lenox	City Hall, 200 South Main Street, Lenox, IA 50851.
Unincorporated Areas of Taylor County	Taylor County Courthouse, 405 Jefferson Street, Bedford, IA 50833.
Carson City, Nevada (Independent City)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–09–1031S Preliminary Date: May 22, 2015	
City of Carson City	Carson City Permit Center, 108 East Proctor Street, Carson City, N 89701.

[FR Doc. 2015–27755 Filed 10–29–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of November 4, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Maricopa County, Arizona, and Incorporated Areas Docket No.: FEMA–B–1418	
City of Avondale	Development and Engineering Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.
City of Chandler	Transportation and Delevopment, 215 East Buffalo Street, Chandler, AZ 85255.
City of Goodyear	Engineering Department, 14455 West Van Buren Street, Suite D 101, Goodyear, AZ 85338.
City of Mesa	Engineering Department, City Hall, 20 East Main Street, 5th Floor, Mesa, AZ 85211.
City of Phoenix	Street Transoportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.
City of Scottsdale	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.
Town of Gila Bend	Town Hall, 644 West Pima Street, Gila Bend, AZ 85337.
Town of Gilbert	Development Engineering, 90 East Civic Center Drive, Gilbert, AZ 85296.
Unincorporated Areas of Maricopa County	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.
Santa Barbara County, California, and Incorporated Areas Docket No.: FEMA–B–1404	
City of Santa Barbara	City Administrator, 630 Garden Street, Santa Barbara, CA 93101.
Unincorporated Areas of Santa Barbara County	Santa Barbara County Public Works Department, Water Resources Division 123 East Anapamu Street, Santa Barbara, CA 93101.
Maui County, Hawaii, and Incorporated Areas Docket No.: FEMA–B–1440	
Unincorporated Areas of Maui County	County of Maui Planning Department, 2220 Main Street, Suite 315, Wailuku, HI 96793.
Flathead County, Montana, and Incorporated Areas Docket No.: FEMA–B–1418	
City of Kalispell	Planning Director, Planning Department, 17 Second Street East, Suite 211, Kalispell, MT 59901.
City of Whitefish	Planning Director, Planning and Building Department, 1005C Baker Avenue, Whitefish, MT 59937.
Unincorporated Areas of Flathead County	Planning Director, Planning and Zoning Office, 1035 1st Avenue West, Kalispell, MT 59901.
Otero County, New Mexico, and Incorporated Areas Docket No.: FEMA–B–1429	
Unincorporated Areas of Otero County	Otero County Administration Building, 1101 New York Avenue, Room 105, Alamogordo, NM 88310.
Village of Tularosa	Otero County Administration Building, 1101 New York Avenue, Room 105, Alamogordo, NM 88310.

[FR Doc. 2015–27748 Filed 10–29–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–44]

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: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 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: *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; *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; *NASA:* Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202) 358–1124; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: October 22, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/30/2015

Suitable/Available Properties

Building

Illinois

(MED) Outer Marker (OM)
Facility
297 Spring Lake Drive
Itasca IL 60143
Landholding Agency: GSA
Property Number: 54201540006
Status: Surplus
GSA Number: 1–U–IL–805
Directions: Land Holding Agency: FAA; Disposal Agency: GSA
Comments: .441 acres; FAA tower site; contact GSA for more information.

Land

North Carolina

Swann Quarter Tower; N60191
Naval Air Station Oceana
Hyde Co. NC
Landholding Agency: Navy
Property Number: 77201540004
Status: Excess
Comments: 11.11 acres; contact Navy for more information.

Texas

Brownwood Vacant Land and Parcel
Morris Sheppard Dr. & Memorial Park
Brownwood TX 78601
Landholding Agency: GSA
Property Number: 54201540008
Status: Surplus
GSA Number: 7–D–TX–1163–AA
Directions: Landholding Agency: COE; Disposal Agency: GSA
Comments: 3.48 acres; contact GSA for more information.

District of Columbia

8 Buildings & 2 Lots of Land
Joint Base Anacostia-Bolling
Washington DC 20032

Landholding Agency: Navy
Property Number: 77201540003
Status: Underutilized
Directions: FAC#483; FAC#482; FAC#482A; FAC#479; FAC#390; FAC#455; FAC#399A; FAC#5160; 10.56 acres; 9.10 acres.
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Mississippi

2 Buildings
Stennis Space Center
Hancock County MS 39529
Landholding Agency: NASA
Property Number: 71201540002
Status: Unutilized
Directions: Building 4312 & 8304
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Ohio

Radio Building & Tower
23560 Jenkins Dam Road
Glouster OH 45732
Landholding Agency: COE
Property Number: 31201540001
Status: Unutilized
Directions: TJE–01–X01
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2015–27365 Filed 10–29–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FAC–2015–N163]; [FRFR48370810680–XXX–FF08F00000]

Delta Research Station, Sacramento, CA; Draft Environmental Impact Report/Environmental Impact Statement, and Announcement of Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Delta Research Station Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for public review and comment. The Draft EIR/EIS evaluates impacts regarding construction and operation of the Delta Research Station (DRS) in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta), California. The planned DRS would consist of two facilities, a proposed Estuarine Research Station (ERS) and Fish Technology Center (FTC). The U.S. Fish and Wildlife Service (USFWS) is the lead Federal agency responsible for coordinating the environmental analysis for the proposed action under the National Environmental Policy Act (NEPA). The California Department of Water Resources (DWR) is the lead State agency responsible for coordinating the environmental analysis under the California Environmental Quality Act (CEQA).

DATES: Comments on the Draft EIR/EIS must be received or postmarked by 5 p.m. Pacific Time on December 14, 2015. Two public meetings will be held to receive comments on the Draft EIR/EIS. See the **SUPPLEMENTARY INFORMATION** section for meeting dates and times. The public meetings are physically accessible to people with disabilities. Requests for reasonable accommodations (*e.g.,* auxiliary aids or sign language interpretation) should be directed to Michael Stevenson of Horizon Water & Environment at (510) 986–1852, at least 5 working days prior to the applicable meeting date.

ADDRESSES: To view or download the Draft EIR/EIS, or for a list of locations to view hard-bound copies, go to *www.deltaresearchstation.com.*

You may submit written comments by one of the following methods:

1. By email: Submit comments to *comments@deltaresearchstation.com.*

2. By hard-copy: Submit comments by U.S. mail or by hand-delivery, to USFWS, Attn: Barbara Beggs, 650 Capitol Mall Suite 8–300, Sacramento, CA 95814.

For how to view comments on the EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Beggs, USFWS, at 916–930–5603.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the process for developing a DRS, which we began by publishing a notice of intent for scoping in the **Federal Register** on December 10, 2014 (79 FR 73332). In addition to this notice of the draft EIR/EIS, EPA is publishing a notice announcing the draft EIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The publication of EPA's notice is the official start of the minimum requirement for a 45-day public comment period for an EIS (see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**).

Background

The proposed DRS would consolidate ongoing Interagency Ecological Program (IEP) research and monitoring activities throughout the Bay-Delta and provide facilities for study and production of endangered Delta fishes. Currently, the IEP has approximately 145 State and Federal employees who conduct research throughout the Bay-Delta. The IEP collaboratively monitors, researches, models, and synthesizes critical information for adaptive management water project operations, planning, and regulatory purposes relative to the aquatic ecosystem in the Bay-Delta. USFWS and DWR plan to construct the DRS in a centrally located area within the Bay-Delta, and the facilities are expected to enhance interagency coordination and collaboration.

Purpose

The purpose of the DRS is to enhance interagency coordination and collaboration by developing a shared research facility. Currently, Federal and State agency staff working on similar Bay-Delta issues are distributed among different locations that are often remote from the Bay-Delta. Construction and operation of the DRS would reduce travel times and costs and improve research and monitoring activity efficiency. The ERS would consolidate existing IEP programs currently located throughout the Delta, and the FTC would house a new program to develop and apply captive fish propagation technologies in support of population restoration.

The specific objectives of each component of the DRS are as follows:

▪ ERS—

—Establish a research station in a central location within the Bay-Delta to facilitate conducting monitoring and research; and
—Co-locate the research station with a facility capable of studying fish in captivity (*i.e.,* the FTC); and
—Provide facilities to conduct monitoring and research on the Bay-Delta's aquatic resources.

▪ FTC—

—Develop captive propagation technologies for the Bay-Delta's rare fish species;
—Test and refine the captive propagation techniques;
—Locate the facility where suitable water quality and quantity are available, and ability to discharge waste water is available, given the facility's various functions and operations; and
—Co-locate the FTC with a facility conducting conservation research on

Bay-Delta rare fish species (*i.e.,* the ERS).

Project Area

Two alternative locations are evaluated in the Draft EIR/EIS: The Rio Vista Army Reserve Center (RVARC) site in the City of Rio Vista and a site located at 845 Ryde Avenue in the City of Stockton (Ryde Avenue site).

Project Overview

The Draft EIR/EIS analyzes three action alternatives, as well as the No Project Alternative.

The No Project Alternative would be a continuation of existing conditions.

For the action alternatives, certain components would be the same for all alternatives. For the ERS, these include provision of office space; boat storage facilities, including a marina; a boat/equipment wash facility; laboratory facilities; shop space; and a storage building. For the FTC, common components include three buildings with aquaculture and research components for the study of individual fish species; an office and administrative building; a shop and vehicle storage building; a surface water intake and groundwater wells, a surface water treatment facility, and an effluent treatment system.

As required by NEPA, the Draft EIR/EIS identifies direct, indirect, and cumulative effects, and possible mitigation for those effects, on biological resources, land use, air quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with implementation of each alternative. A summary of each alternative is provided below.

No Project Alternative: Under this alternative, no DRS facilities would be built and existing IEP activities would continue at their current locations. Some of the existing IEP activities that would continue to operate from various offices are fish population estimates, net surveys, and estuarine and marine fish abundance and distribution surveys. No FTC would be built.

Alternative 2: This alternative would be located at the RVARC site on the southern edge of Rio Vista. Alternative 2 is the preferred alternative of DWR and USFWS, and would include all of the components described above for the action alternatives. Under Alternative 2, development of ERS and FTC facilities would be consolidated in the predominantly undeveloped portions of the site, and the marina would be established in the Sacramento River at the southeastern end of the site. The development footprint would be approximately 14 acres. Several existing buildings at the RVARC would be demolished.

Alternative 3: Alternative 3 would include all of the components described above, and would also be located at the RVARC site. The development footprint under Alternative 3 would be approximately 18 acres. Alternative 3 would demolish or repurpose some existing buildings situated adjacent to the Sacramento River. The marina and other ERS facilities would be constructed within the northern and northeastern portions of the site. In contrast with Alternative 2, the marina would be excavated in an upland portion of the site.

Alternative 4: Alternative 4 would be located at 845 Ryde Avenue in Stockton. This alternative would include all of the components described above. No existing buildings are located at the Ryde Avenue site, so no buildings would be demolished or repurposed. Similar to Alternative 3, the marina would be excavated in an upland portion of the site.

NEPA Compliance

We are conducting environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR part 1500 *et seq.*), other applicable regulations, and our procedures for compliance with those regulations. The Draft EIR/EIS discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, water quality, and other environmental resources. Measures to minimize adverse environmental effects are identified and discussed in the Draft EIR/EIS.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Meeting Information

Two public meetings will be held to provide an overview of the project and allow public comment and discussion. Meeting dates, times, and locations will be announced in local media and at *www.deltaresearchstation.com.*

Public Comments

This notice is provided pursuant to NEPA. Submitting timely comments to the email and hard-copy addresses identified in the **ADDRESSES** section of this notice will also constitute effective filing of the CEQA comments on the EIR portion of the Draft EIR/EIS. USFWS is publishing this notice to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record for this action. Comments on the Draft EIR/EIS should be submitted to the address listed in the **ADDRESSES** section of this document. Comments submitted to the above address will be reviewed and considered by all of the lead agencies.

Public Availability of Comments

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.

Next Steps

The lead agencies will compile and review all public comments on the Draft EIR/EIS submitted to them prior to preparation of a Final EIR/EIS.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Fish and Wildlife Service.

[FR Doc. 2015–27683 Filed 10–29–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2015–N080; BAC–4311–K9–S3]

Monomoy National Wildlife Refuge, Barnstable County, MA; Final Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; final comprehensive conservation plan and environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for review of our final comprehensive conservation plan (CCP) and environmental impact statement (EIS) for Monomoy National Wildlife Refuge (NWR). The CCP/EIS describes how we propose to manage the refuge for the next 15 years.

DATES: We will sign a record of decision (ROD) no sooner than 30 days after the publication of this notice.

ADDRESSES: You may view or obtain copies of the final CCP/EIS by any of the following methods. You may also request a hard copy or a CD–ROM.

Agency Web site: Download a copy of the document at *http://www.fws.gov/refuge/monomoy/what_we_do/conservation.html.*

Email: Send requests to *matthew_hillman@fws.gov,* and include ''Monomoy NWR CCP'' in the subject line of your email.

U.S. Mail: Matthew Hillman, Refuge Manager, Monomoy NWR, 30 Wikis Way, Chatham, MA 02633.

Fax: Attention: Matthew Hillman, 508–945–9559.

In-Person Viewing or Pickup: Call 508–945–0594 ext. 11 to make an appointment (necessary for view/pickup only) during regular business hours at Monomoy NWR, 30 Wikis Way, Chatham, MA 02633. Alternatively, call 978–443–4661 to make an appointment (necessary for view/pickup only) during regular business hours at Eastern Massachusetts NWR Complex headquarters office, 73 Weir Hill Road, Sudbury, MA 01776.

To view comments on the final CCP/EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Matthew Hillman, Refuge Manager, 508–945–0594, ext. 11 (phone); *matthew_hillman@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Monomoy NWR, which officially began on February 24, 1999, when we published a **Federal Register** notice (64 FR 9166) announcing our intent to prepare a CCP. The notice indicated that one draft CCP/EIS would be written for all eight refuges in the Eastern Massachusetts NWR Complex, of which Monomoy NWR is a part. However, as our work got under way to develop one CCP/EIS for eight refuges, we recognized that each had distinct issues and management concerns, and it became apparent that grouping the refuges into separate CCP/EISs would make sense. Thus, in two separate **Federal Register** notices—one published on February 15, 2001 (66 FR 10506), and a second one published on December 13, 2004 (69 FR 72210)—we explained our intent to reorganize our CCP planning effort for the eight refuges, including Monomoy NWR. For more information about the initial steps of the planning process and the history of this refuge, see the December 13, 2004, notice.

On April 10, 2014, we announced the release of the draft CCP/EIS to the public and requested comments in a notice of availability (NOA) in the **Federal Register** (79 FR 19920). We subsequently extended the public comment period in another notice in the **Federal Register** (79 FR 36554) on June 27, 2014. In addition, EPA published a notice announcing the draft CCP/EIS on April 18, 2014, as required under Section 309 of the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*). We now announce the final CCP/EIS. Under the CAA, EPA also will announce the final CCP/EIS via the **Federal Register**.

EPA's Role in the EIS Process

The EPA is charged under Section 309 of the CAA to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a NOA on Fridays in the **Federal Register**.

A NOA is published at the start of the 45-day public comment period for draft EISs, as well as at the start of the 30-day ''wait period'' for final EISs. With final EISs, agencies are generally required to wait 30 days before making a decision on a proposed action. For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

This notice announces the availability of the final CCP/EIS for Monomoy NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)). The final CCP/EIS includes a detailed description of the three management alternatives we considered to guide us in managing and administering the refuge for the next 15 years. The document also contains a thorough analysis of impacts predicted from implementing each of the alternatives on the surrounding natural and human environments. We propose that alternative B, the Service-preferred alternative, serve as the foundation for the final, stand-alone CCP. We highlight the modifications we made to alternative B between the draft and final CCP/EIS in Comments, below.

Our next planning step is to complete a ROD no sooner than 30 days after publication of this notice (40 CFR 1506.10(b)(2)).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each NWR. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and goals and contributing to the mission of the National Wildlife Refuge System (NWRS). CCPs should be consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies, as well as respond to key issues and public concerns. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years, in accordance with the Refuge Administration Act.

Monomoy NWR

In 1944, Monomoy NWR was established under the authority of the

Migratory Bird Conservation Act ''for use as an inviolate sanctuary, or any other management purpose, expressly for migratory birds.'' The lands and waters of the refuge were acquired via a 1944 Declaration of Taking filed with the Federal District Court for the District of Massachusetts. The refuge boundary is defined in the Declaration of Taking as following mean low water (MLW) along the eastern side of the refuge, and following a fixed line on the western side. Nearly half (47 percent) of the refuge, including most refuge land above the MLW mark, is federally designated as a wilderness area, currently the only wilderness area in southern New England. The 7,921-acre refuge is composed of natural terrestrial habitats dominated by intertidal sandflats, open sand, grassland-covered dunes, and salt marsh, interspersed with shrublands representative of coastal ecosystems. The majority (60 percent) of the refuge's vegetation cover types are shaped by the dynamic tidal processes and shifting sands associated with barrier beach habitats. The remaining 40 percent is composed of upland shrubland and forest with woody shrubs and small trees.

CCP Alternatives

During the scoping phase of the planning process, we identified a variety of major issues based on input from the public, State or Federal agencies, other Service programs, and our planning team. These issues included the present location of the refuge boundary and the extent of Service jurisdiction for regulating fishing (shellfishing, sport fishing, and commercial open water fishing), management of natural and wilderness resources, where to allow public access, the refuge's relationship with neighbors and the local community, and identifying compatible recreational and other public uses. We developed refuge management alternatives to address community concerns; achieve refuge goals, objectives, and purposes; and support the NWRS mission. Our draft CCP/EIS (79 FR 19920) and final CCP/EIS fully analyze three alternatives for the future management of the refuge: (1) Alternative A, Current Management; (2) Alternative B, Enhanced Management of Habitat and Public Uses (Service-preferred alternative); and (3) Alternative C, Natural Processes. Alternative A satisfies the NEPA requirement of a ''No Action'' alternative. Both the draft and final plans identify alternative B as the Service-preferred alternative. Please refer to the final CCP/EIS for more details on each of the alternatives.

Comments

We solicited comments on the draft CCP/EIS for Monomoy NWR from April 10, 2014, to October 10, 2014 (79 FR 19920; 79 FR 36554). During the comment period, we received 255 separate written responses and 39 oral comments from the public hearings. Of the 255 written comments, 41 were the same form letter. We also received two petitions: one signed by approximately 650 individuals (Petition A) and the other by approximately 1,576 individuals (Petition B). We also held one public hearing and five refuge open houses to answer questions about the draft CCP/EIS and collect oral and written comments. We evaluated all of the substantive comments we received, and include a summary of those comments, and our responses to them, as appendix K in the final CCP/EIS.

Changes to the Alternative B, the Service's Preferred Alternative

After considering the comments we received on our draft CCP/EIS, we have made several modifications to alternative B in the final plan, including adding or revising several management strategies. Below we present a brief overview of these changes; a full description of the changes is included in appendix K in the final CCP/EIS.

- In June 2015, we signed a new Memorandum of Understanding (see appendix L in the final CCP/EIS) with the town of Chatham (Town) Board of Selectman that administratively determines a management boundary line on Nauset/South Beach. To the east of the boundary line, the Town will manage lands; to the west of the boundary line, the refuge will manage lands. The agreement will be in effect for the next 15 years and has been incorporated into alternative B of the final CCP/EIS.
- We have changed our position on fin fishing with bottom disturbing gear, and use of fish weirs, and do not plan to add regulations to their use within the refuge boundary at this time as existing Federal, State, and Town regulations are adequate to protect refuge resources.
- We have changed our position on prohibiting shellfishing with mechanized equipment below MLW for softshell clams, scallops, quahogs, and sea clams and do not plan to add regulations to their use within the refuge boundary at this time as existing State and Town regulations are adequate to protect refuge resources. Above MLW, refuge regulations will continue to allow only hand-harvest of shellfish; but no salting or use of wheeled carts would be allowed. We would continue to not allow horseshoe crab and mussel harvesting across refuge lands and waters because of their importance as a food resource for migratory birds.
- We re-examined our position on dog walking and will continue to allow dogs on leash on Morris Island, from September 16 through April 30 only. This is consistent with Town regulations and is a time period when less wildlife is found on the Morris Island part of the refuge. We will not allow dogs on any other sections of the refuge at any time of the year.
- We have changed our position about the placement of boat moorings and will allow conservation boat moorings within the refuge boundary under certain stipulations. We will evaluate requests on a case-by-case basis to determine their appropriateness and compatibility.

Alternative B, with these changes, is still our preferred alternative in the final CCP/EIS for Monomoy NWR for several reasons. First, alternative B comprises a mix of actions that, in our professional judgment, work best towards achieving the refuge's purposes, vision, and goals, NWRS policies, and the goals of other State and Regional conservation plans. Second, we also believe that alternative B most effectively addresses key issues raised during the planning process.

Public Availability of Documents

In addition to any one method in **ADDRESSES**, you can view documents at the following location:

- Eldredge Public Library, 564 Main Street, Chatham, MA 02633 Telephone number: 508–945–5170.

Next Steps

We will document the final decision in a ROD, which will be published in the **Federal Register** after a 30-day ''wait period'' that begins when EPA announces this final CCP/EIS. For more information, see EPA's Role in the EIS Process.

Dated: October 7, 2015.

Deborah Rocque,

Acting Regional Director, Northeast Region.

[FR Doc. 2015–27439 Filed 10–29–15; 8:45 a.m.]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2015–N204; 91100–3740–GRNT 7C]

Announcement of Meetings: North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) also will meet. This meeting is also open to the public, and interested persons may present oral or written statements.

DATES:

Council: Meeting is December 2, 2015, from 8:30 a.m. to 4:30 p.m. The Council will consider Canadian, Mexican, and U.S. Standard grant proposals. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than November 25, 2015.

Advisory Group: Meeting is December 1, 2015, from 8:30 a.m. to 4:30 p.m. The Advisory Group will discuss the strategic direction and management of the NMBCA program. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than November 25, 2015.

ADDRESSES: The Council and Advisory Group meetings will take place at Francis Marion Hotel, 387 King Street, Charleston, South Carolina 29403.

FOR FURTHER INFORMATION CONTACT: Sarah Mott, Council Coordinator, by phone at 703–358–1784; by email at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 5275 Leesburg Pike MS: MB, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) also will meet. This meeting is also open to the public, and interested persons may present oral or written statements.

About the Council

In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission.

The North American Wetlands Conservation Act of 1989 provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico. These projects must involve long-term protection, restoration, and/or enhancement of wetlands and associated uplands habitats for the benefit of all wetlands-associated migratory birds. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *www.fws.gov/birds/grants/north-american-wetland-conservation-act.php.*

About the Advisory Group

In accordance with NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000), the Advisory Group will hold its meeting to discuss the strategic direction and management of the NMBCA program and provide advice to the Director of the Fish and Wildlife Service.

The Neotropical Migratory Bird Conservation Act of 2000 promotes long-term conservation of Neotropical migratory birds and their habitats through a competitive grants program by promoting partnerships, encouraging local conservation efforts, and achieving habitat protection in 36 countries. The goals of the Neotropical Migratory Bird Conservation Act include perpetuating healthy bird populations, providing financial resources for bird conservation, and fostering international cooperation. Because the greatest need is south of the U.S. border, at least 75 percent of NMBCA funding supports projects outside the United States.

Project proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at *http://www.fws.gov/birds/grants/neotropical-migratory-bird-conservation-act.php.*

Public Input

If you wish to:	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
(1) Attend the Council or Advisory Group meeting	November 25, 2015.
(2) Submit written information or questions before the Council or Advisory Group meeting for consideration during the meeting.	November 25, 2015.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions to be consider during the public meetings. If you wish to submit a written statement, so that the information may be made available to the Council or Advisory Group for their consideration prior to the meetings, you must contact the Council Coordinator by the date in Public Input. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meetings will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator by the date above, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for either of these meetings. Nonregistered public speakers will not be considered during the Council meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are invited to submit written statements to

the Council within 30 days following the meeting.

Meeting Minutes

Summary minutes of the Council and Advisory Group meetings will be maintained by the Council Coordinator at the address under **FOR FURTHER INFORMATION CONTACT**. Meeting notes will be available by contacting the Council Coordinator within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Jerome Ford,

Assistant Director, Migratory Birds.

[FR Doc. 2015–27699 Filed 10–29–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16BD009AV0100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection: Assessment of Effects of Climate on Waterfowl.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before December 29, 2015.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028—Assessment of Effects of Climate on Waterfowl' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Brad Griffith, Leader, USGS, Alaska Cooperative Fish and Wildlife Research Unit at (907) 474–5067 or *ffdbg@usgs.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS National Climate Change and Wildlife Science Center coordinates the research activities of 8 Regional Climate Science Centers. To increase efficiency of investigations, the relevance of research topics and the effectiveness of research it is critical to identify the types of information that are most critical for the development of a focused and integrated multi-regional research program. This is particularly true for wildlife species that migrate (*e.g.,* waterfowl) among regions in which the direction and strength of climate effects on wildlife populations and their habitats are expected to be quite variable. This collection seeks to identify (1) the most important habitat and harvest factors that affect waterfowl population size on breeding, migratory and winter ranges, (2) the demographic traits (fecundity or survival) that are affected by these factors, (3) the likely direction and magnitude of climate effects on the most important waterfowl habitat and harvest factors that affect waterfowl population size and (4) the highest priority research needs on breeding, migratory and wintering ranges. We are collecting this information with a questionnaire survey of a sample of professional waterfowl researchers and managers because scientific papers that present this information are not available. The information we collect will identify the most important research topics within and among Regional Climate Science Centers in regard to climate effects on migratory waterfowl. We will (1) summarize the results, (2) present them at a workshop at a national scientific meeting, (3) use this presentation to facilitate further discussion among professional waterfowl researchers and managers who attend the workshop regarding research priorities and (4) publish the results of the survey and the workshop discussion in a refereed scientific publication. The only Personally Identifiable Information (PII) that we will collect will be the name and employer (State, Federal or Non-governmental Organization research or management) of the respondents to the survey. We will use these names to keep track of which questionnaire recipients have responded and to summarize the proportional composition of the types of employment of respondents. We will mail paper forms to all respondents and give them the option of filling out a web form if they prefer. We will not associate the names of recipients with summarized responses. All paper form responses received will be kept in a locked cabinet and web form responses will be encrypted. After publication of the summarized results we will remove the name of respondents from both the paper forms and web forms.

II. Data

OMB Control Number: 1028—NEW.

Title: Assessment of Effects of Climate on Waterfowl.

Type of Request: New information collection.

Affected Public: Professional waterfowl researchers and managers that are employed by State or Federal government agencies or Non-governmental Organizations (NGO) such as the Migratory Bird Joint Ventures.

Respondent's Obligation: None, participation is voluntary.

Frequency of Collection: One time.

Estimated Annual Number of Respondents: 100; Public NGO 20, State and Local Govt. 20, Federal Govt. 60.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 60 minutes.

Estimated Annual Burden Hours: 100.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we

cannot guarantee that we will be able to do so.

John Thompson,

Deputy Chief, U.S. Geological Survey, Cooperative Research Units.

[FR Doc. 2015–27730 Filed 10–29–15; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–SSB–19672; PPWONRADE2, PMP00EI05.YP0000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Programmatic Clearance for NPS-Sponsored Public Surveys

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. The National Park Service (NPS) sponsors public surveys to provide park managers with information needed for park planning, management, operations and evaluation of performance related to protecting park resources and meeting the needs of the public. In consultation with the Office of Management and Budget (OMB) and the Department of the Interior (DOI), the NPS has developed a Programmatic Clearance Process for NPS-sponsored public surveys. It significantly streamlines the information collection review process. To comply with the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: You must submit comments on or before November 30, 2015.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB—OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email) and identify your submission as 1024–0224. Please also send a copy of your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection 1024–0224—Programmatic Clearance Renewal in the subject line.

FOR FURTHER INFORMATION CONTACT: *Bret_Meldrum@nps.gov* (email); or 970–267–7295 (phone) and Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection 1024–0224 Programmatic Clearance Renewal in the subject line. You may also access this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Programmatic Clearance for NPS-Sponsored Public Surveys applies to surveys designed to furnish usable information to NPS managers and planners concerning park visitors, visitor services, potential park visitors, and residents of communities near parks. This information is intended to provide NPS managers with data that can be used to improve the quality and utility of agency programs, services, and planning efforts. Questions asked under the programmatic review process must show a clear tie to NPS management and planning needs. The programmatic review may only be used for non-controversial surveys that are unlikely to attract or include topics of significant public interest in the programmatic review process.

To qualify for the NPS generic programmatic review process, all information collections must be directly tied to an area managed by the NPS or research that will benefit NPS management efforts. All collections must be reviewed by the NPS and approved by OMB before the survey can be initiated.

II. Data

OMB Control Number: 1024–0224.

Title: Programmatic Clearance for NPS-Sponsored Public Surveys.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individual households and general public.

Respondent's Obligation: Voluntary.

Frequency of Collection: Occasionally, one time.

Estimated Annual Number of Responses: 41,500.

	Annual responses
On-site surveys	20,000
Mail-back surveys	10,000
All non-response surveys	6,500
Telephone surveys	1,000
Focus Groups/In person interviews	1,500
Other	2,500
Total	41,500

Estimated Completion Time per Response: 15 minutes per mail back survey; 3 minutes per non response survey, 30 minutes per telephone survey; 60 minutes per focus group/interview 60 minutes; Other 15 minutes.

Estimated Total Annual Burden Hours: 11,283 hours.

Estimated Annual Non-hour Burden Cost: There are no non-hour burden costs associated with this collection.

III. Comments

On May 29, 2015, a 60-day **Federal Register** notice (80 FR 30720) was published announcing this information collection. Public comments were solicited for 60 days ending July 28, 2015. We received one public comment in response to that notice. The commenter did not support the renewal of the collection and stated that ''once every 5 years is often enough to take these surveys.'' In response to this comment, NPS contends that this renewal is not a single annual survey; rather it facilitates a set of independent surveys administered at multiples sites for a variety of NPS management needs. This process simplifies and streamlines the information collection requests to OMB in a manner that allows the NPS to submit more requests per year than we would through the regular submission route. Surveys are reviewed and approved in an expeditious manner allowing data collection to occur more frequently and in a timely manner—more specifically during the visitation season of interest. In the 16 years of the programmatic approval on average, 40 new surveys have been approved each year in support of NPS management and planning. This is nearly five times as many as we would expect going through the regular submission route.

We again invite comments concerning this information collection request on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of

public record. 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 or OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 26, 2015.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2015–27714 Filed 10–29–15; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02030700, XXXR0680R1, RR.17529652.MP70012]

Notice of Intent To Prepare an Environmental Impact Report/Environmental Impact Statement for the Sacramento Regional County Sanitation District South County Ag Water Recycling Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation, the lead Federal agency, and the Sacramento Regional County Sanitation District (Regional San), the lead state agency, will prepare a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the South County Ag Water Recycling Program (Project). The Project would deliver approximately 45,000 acre-feet per year of Title 22 disinfected tertiary treated recycled water to about 16,000 acres of irrigated lands in southern Sacramento County for agricultural and urban landscape uses and to the Stone Lakes National Wildlife Refuge. The Project could also provide an additional 5,000 acre-feet per year of recycled water for groundwater recharge, for a total recycled water delivery of 50,000 acre-feet per year.

DATES: Submit written comments on the scope of the EIR/EIS by November 30, 2015.

ADDRESSES: Send written comments on the scope of the EIR/EIS to Mr. Jose Ramirez, Project Manager, Sacramento County Regional Sanitation District (Regional San), 10060 Goethe Road, Sacramento, California 95827; or by email to *ramirezj@sacsewer.com.*

FOR FURTHER INFORMATION CONTACT: Mr. Jose Ramirez, Regional San at (916) 879–6059, email at *ramirezj@sacsewer.com;* or Mr. Douglas Kleinsmith, Bureau of Reclamation, (916) 978–5034, email at *dkleinsmith@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Project water comes from the Regional San Sacramento Regional Water Treatment Plant (SRWTP) located in Elk Grove, California. Presently, the SRWTP treats and discharges secondary effluent into the Sacramento River and operates a 5-million-gallon-per-day (mgd) Water Recycling Facility to produce tertiary effluent. In December 2010, the Central Valley Regional Water Quality Control Board adopted new Waste Discharge Requirements (WDRs) for Regional San. The new WDRs require treatment upgrades to be operational by December 2023, and have prompted Regional San to evaluate a multitude of technologies to produce up to 181 mgd of Title 22 disinfected tertiary recycled water or 'equivalent' quality effluent. Following a pilot study of various technologies, one technology has been selected to treat wastewater to Title 22 disinfected tertiary level, which is suitable for agriculture.

Title 22 disinfected tertiary recycled water generated at the SRWTP would be conveyed to agricultural and urban customers using a new pump station at the SRWTP and through a new network of recycled water pipelines (transmission, distribution, and laterals) located within public road rights-of-way, private roads, and agricultural land. The proposed Project would also include a potential recharge area to increase recycled water usage and benefit the local groundwater basin through increasing groundwater table levels and recharging the basin; with the potential recharge area, the delivery of recycled water could increase by approximately 5,000 acre-feet per year. In addition, the Project includes provision of recycled water to support wetland habitat at the Stone Lakes National Wildlife Refuge (NWR) to protect the sensitive resources at the refuge during drought conditions.

The average annual recycled water delivered to potential customers is approximately 50,000 acre-feet per year. Recycled water would be delivered to approximately 16,000 acres of irrigated lands (and some limited recharge areas) and to managed wetlands at Stone Lakes NWR. The actual monthly demand would vary seasonally with the maximum demand occurring during the irrigation season, from May through September. The project is designed to deliver up to two-thirds of the maximum month demand during the irrigation season. The remaining demand would be met by groundwater pumping, the existing source of water supply. As treated wastewater would be beneficially reused, there would be a commensurate reduction in the discharge of treated wastewater into the Sacramento River.

Project Objectives

The objectives of the proposed Project are as follows:

- Reduce groundwater pumping in the Central Basin by supplying recycled water to agricultural and urban customers in south Sacramento County.
- Minimize conveyance costs while maximizing demand served.
- Improve environmental resources and benefit habitats and ecosystems to
  - Reduce streamflow losses in the Cosumnes River by raising groundwater levels.
  - Support improved riparian habitat along the Cosumnes River as a result of elevated groundwater levels along the stream margins.
  - Provide recycled water to wetlands.

The proposed Project consists of the following proposed project elements and their level of environmental evaluation in the joint EIR/EIS:

- New pump station at the SRWTP (project-level evaluation)
- 30- to 60-inch transmission pipeline from the pump station to Twin Cities Road (project-level evaluation)
- Distribution mainlines from the transmission pipeline and lateral service connections to potential customers (agriculture and Stone Lakes NWR) (program-level evaluation)
- Potential Recharge Area and wells to produce water to the meet the dilution requirements for groundwater recharge (program-level evaluation)

The EIR/EIS will also evaluate the No Project Alternative, an alternative that does not include funding by Reclamation, and a smaller-scale project alternative that would supply less recycled water to a smaller area in South Sacramento County.

Previous Scoping

Regional San mailed a notice of preparation of a Draft EIR regarding the proposed Project to the public on January 30, 2015 and held a scoping meeting on February 18, 2015 at the Sacramento Farm Bureau in Elk Grove, California.

Public Disclosure

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.

Dated: September 21, 2015.

Jason Phillips,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2015–27716 Filed 10–29–15; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–968]

Certain Radiotherapy Systems and Treatment Planning Software, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 25, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Varian Medical Systems, Inc. of Palo Alto, California and Varian Medical Systems International AG of Switzerland. Supplements were filed on October 13, 2015. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radiotherapy systems and treatment planning software, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,945,021 (''the '021 patent''); U.S. Patent No. 8,116,430 (''the '430 patent''); U.S. Patent No. 8,867,703 (''the '703 patent''); U.S. Patent No. 7,880,154 (''the '154 patent''); U.S. Patent No. 7,906,770 (''the '770 patent''); and U.S. Patent No. 8,696,538 (''the '538 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *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*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 26, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radiotherapy systems and treatment planning software, and components thereof by reason of infringement of one or more of claims 1, 2, 4–9, 11–16, 53–56, and 58–62 of the '021 patent; claims 1–4, 6–10, 12, 18, and 19 of the '430 patent; claims 1–10, 12–15, and 17–21 of the '703 patent; claims 19–28 and 33–36 of the '154 patent; claims 61–63, 65, and 67–70 of the '770 patent; and claims 23, 25, 26, 39–42, 45, and 50 of the '538 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Varian Medical Systems, Inc., 3100 Hansen Way, Palo Alto, CA 94304.

Varian Medical Systems International AG, Hinterbergstrasse 14, 6330 Cham, ZG, Switzerland.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Elekta AB, Kungstensgatan 18, SE–103 93 Stockholm, Sweden.

Elekta Ltd., Linac House, Fleming Way, RH10 9RR Crawley, United Kingdom.

Elekta GmbH, Borsteler Chaussee 49, 22453 Hamburg, Germany.

Elekta Inc., 400 Perimeter Center Terrace, Suite 50, Atlanta, GA 30346.

IMPAC Medical Systems, Inc., 100 Mathilda Place, 5th Floor, Sunnyvale, CA 94086 .

Elekta Instrument (Shanghai) Limited, Room 3202 & 3203, Pangu Plaza, Office Building, Block A, No. 27 Fourth Ring Mid Road, Chaoyang District, 100101 Shanghai, China.

Elekta Beijing Medical Systems Co. Ltd., No. 21, Chuang Xin Road, Science, & Technology Park, Chang Ping, Beijing, 102200, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the

allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 26, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27668 Filed 10–29–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Fourth Review)]

Barium Chloride From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted this review on May 1, 2015 (80 FR 24973) and determined on August 4, 2015 that it would conduct an expedited review (80 FR 50869, August 21, 2015).

The Commission made this determination pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determination in this review on October 27, 2015. The views of the Commission are contained in USITC Publication 4574 (October 2015), entitled *Barium Chloride from China: Investigation No. 731–TA–149 (Fourth Review).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: October 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27739 Filed 10–29–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On October 26, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States* v. *Cleveland Thermal, LLC.,* Civil Action No. 1:15–cv–2198.

In the Complaint, the United States alleges that Cleveland Thermal, LLC, (''Cleveland Thermal'') violated, at a steam generating facility that it owns and operates in Cleveland, Ohio, the Prevention of Significant Deterioration regulations, the Nonattainment New Source Review regulations, and the Standards of Performance for New Stationary Sources, all promulgated under the Clean Air Act, 42 U.S.C. 7401 *et seq.*

Under the Consent Decree, Cleveland Thermal will retire all three of its coal-fired boilers; will retire three of its five fuel oil-fired boilers; and will operate its remaining two fuel oil-fired boilers as ''limited use'' boilers. Cleveland Thermal will install and operate new natural gas-fired boilers to replace the lost capacity. The new natural gas-fired boilers must be properly permitted. In addition, Cleveland Thermal may opt to install and operate a properly permitted new, natural gas-fired cogeneration facility. Cleveland Thermal will pay a civil penalty of $75,000 and perform an environmental mitigation project worth $350,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Cleveland Thermal, LLC,* D.J. Ref. No. 90–5–2–1–10579. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

Please enclose a check or money order for $24.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $15.50.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–27615 Filed 10–29–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Resource Justification Model

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Resource Justification Model,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 30, 2015.

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=201507-1205-002*

(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, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *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–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *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.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Resource Justification Model (RJM) information collection the ETA uses to collect actual unemployment insurance administrative cost data from a State's accounting records and projected expenditures for upcoming years. A State uses the RJM to submit detailed cost data electronically in a structured format (spreadsheet file). The information specifies salary and benefit rates, workloads, processing times, and non-personal services costs. The ETA uses RJM data to inform administrative funding allocations. ETA regional office data review and validation is also an important RJM component. This information collection has been classified as a revision, because of three (3) changes: (A) Reduced the number of categories of existing Non-Personal Services categories from eight (8) to three (3): (IT/Communications, Non IT and Personal Service Contracts); (B) discontinued the requirement to submit hard copy note books containing the supporting documentation; and (C) added a requirement to the breakout of Personal Services/Personal Benefits of IT expenditures. Social Security Act sections 303(a)(1) and (6) authorize this information collection. *See* 42 U.S.C. 503(a)(1) and (6).

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 1205–0430. The current approval is scheduled to expire on December 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2015 (80 FR 11230).

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 thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0430. 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–ETA.

Title of Collection: Resource Justification Model.

OMB Control Number: 1205–0430.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 5,804 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 26, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27702 Filed 10–29–15; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee Meeting

AGENCY: National Endowment for the Humanities, National Foundation On the Arts and The Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Wednesday, November 18, 2015, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.* Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after January 1, 2016. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of

objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993.

Dated: October 26, 2015.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2015–27642 Filed 10–29–15; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, November 19, 2015, from 10:30 a.m. until 12:30 p.m., and Friday, November 20, 2015, from 9:00 a.m. until adjourned.

ADDRESSES: The meeting will be held at Constitution Center, 400 7th Street, SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.* Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The Committee meetings of the National Council on the Humanities will be held on November 19, 2015, as follows: The policy discussion session (open to the public) will convene at 10:30 a.m. until approximately 11:30 a.m., followed by the discussion of specific grant applications and programs before the Council (closed to the public) from 11:30 a.m. until 12:30 p.m.

Challenge Grants/Education Programs: Room P003
Digital Humanities/Public Programs: Room P002
Federal/State Partnership: Room 4089
Preservation and Access: Room 2002
Research Programs: Room 4002

The plenary session of the National Council on the Humanities will convene on November 20, 2015, at 9:00 a.m. in the Conference Center at Constitution Center. The agenda for the morning session (open to the public) will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Chairman's Remarks
2. Deputy Chairman's Remarks
3. Presentation by guest speaker (TBA) about the history of NEH
4. Congressional Affairs Report
5. Budget Report
6. Reports on Policy and General Matters
a. Challenge Grants
b. Education Programs
c. Digital Humanities
d. Public Programs
e. Federal/State Partnership
f. Preservation and Access
g. Research Programs

The remainder of the plenary session will be for consideration of specific applications and therefore will be closed to the public.

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6) and 552b(c)(9)(b) of Title 5 U.S.C., as amended. The closed sessions will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Please note that individuals planning to attend the public sessions of the meeting are subject to security screening procedures. If you wish to attend any of the public sessions, please inform NEH as soon as possible by contacting Ms. Katherine Griffin at (202) 606–8322 or *kgriffin@neh.gov.* Please also provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: October 26, 2015.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2015–27643 Filed 10–29–15; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Strategy and Budget, Subcommittee on Facilities (SCF), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Monday, November 2, 2015 at 1:00 to 2:00 p.m. EST. Open session: 1:00 to 1:30 p.m.; closed session: 1:30 to 2:00 p.m.

SUBJECT MATTER: Open meeting subjects: Chairman's remarks; approval of the 2014 Annual Portfolio Review; and discussion of SCF role, processes and charge. Closed meeting subject: Review of May/June and July/August 2015 large facilities status reports.

STATUS: Partly open, partly closed.

This meeting will be held by teleconference. A public listening line will be available for the open portion of the meeting. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number. Please refer to the National Science Board Web site for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/.* The point of contact for this meeting is Elise Lipkowitz, *elipkowi@nsf.gov*).

Kyscha Slater-Williams,

Program Specialist.

[FR Doc. 2015–27865 Filed 10–29–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the NSB Class of 2016–2022, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, November 4, 2015 at 11:30–12:30 p.m. EST.

SUBJECT MATTER: Committee chair's remarks, discussion of change in committee members; discussion of the nomination submissions and next steps; and update timeline and discuss assignments.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Brandon Powell (*bjpowell@nsf.gov*), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Kyscha Slater-Williams,

Program Specialist.

[FR Doc. 2015–27866 Filed 10–29–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATES: November 2, 9, 16, 23, 30, December 7, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 2, 2015

There are no meetings scheduled for the week of November 2, 2015.

Week of November 9, 2015—Tentative

There are no meetings scheduled for the week of November 9, 2015.

Week of November 16, 2015—Tentative

Tuesday, November 17, 2015

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dia-Ichi Accident (Public Meeting). (Contact: Gregory Bowman: 301–415–2939)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, November 19, 2015

9:00 a.m. Hearing on Combined Licenses for South Texas Project, Units 3 and 4: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting). (Contact: Tom Tai: 301–415–8484)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of November 23, 2015—Tentative

There are no meetings scheduled for the week of November 23, 2015.

Week of November 30, 2015—Tentative

Thursday, December 3, 2015

9:30 a.m. Briefing on Equal Employment Opportunity and Civil Rights Outreach (Public Meeting). (Contact: Larniece McKoy Moore: 301–415–1942)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 7, 2015—Tentative

There are no meetings scheduled for the week of December 7, 2015.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: October 28, 2015.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–27825 Filed 10–28–15; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2015–0233]

Pacific Gas and Electric Company; Diablo Canyon Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has docketed a license amendment application from Pacific Gas and Electric Company (PG&E). PG&E is requesting a revision to the Technical Specifications utilized at the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) located in San Luis Obispo County, California to remove preferential loading references and improve the readability and human factors usage of the Technical Specifications. The NRC is evaluating whether approval of this request would be categorically excluded from the requirement to prepare an environmental assessment.

DATES: A request for a hearing or petition for leave to intervene must be filed by December 29, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0233 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at

http://www.nrc.gov/reading-rm/adams.html. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

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

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6877; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated September 16, 2015, a license amendment application from PG&E, requesting a revision to the Technical Specifications utilized at its Diablo Canyon ISFSI located in San Luis Obispo, California (ADAMS Accession No. ML15259A590). License No. SNM–2511 authorizes the licensee to receive, store, and transfer spent fuel from Diablo Canyon Nuclear Station Units 1 and 2. Specifically, the proposed amendment request seeks to remove preferential loading references and improve the readability and human factors usage of the Technical Specifications.

An NRC administrative completeness review, documented in a letter to PG&E dated September 30, 2015, found the application acceptable to begin a technical review (ADAMS Accession No. ML15275A361). The NRC's Office of Nuclear Materials Safety and Safeguards has docketed this application under docket number 72–26. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SNM–2511. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a safety evaluation report. In the amendment request, PG&E asserted that the proposed amendment satisfies the categorical exclusion criteria of 10 CFR 51.22(c)(11). The NRC will evaluate this assertion and make findings consistent with the National Environmental Policy Act and 10 CFR part 51.

II. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1–F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 29, 2015. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for

leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by December 29, 2015.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social

security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 21st day of October, 2015.

For the Nuclear Regulatory Commission.

Michele Sampson,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–27770 Filed 10–29–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–11 and CP2016–12; Order No. 2783]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 150 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 2, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 150 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–11 and CP2016–12 to consider the Request pertaining to the proposed Priority Mail Contract 150 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 2, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–11 and CP2016–12 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than November 2, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–27665 Filed 10–29–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 150 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. MC2016–10; Order No. 2781]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a notice of classification change to Country Price Lists for International Mail. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 3, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Summary of Changes
III. Notice of Commission Action
IV. Ordering Paragraphs

I. Introduction

On October 22, 2015, the Postal Service filed a notice of classification changes under Commission rule 39 CFR 3020.90.[1] The Postal Service seeks to make changes to the Country Price Lists for International Mail in Part D of the Mail Classification Schedule. The changes are intended to become effective on January 17, 2016. Notice at 1.

II. Summary of Changes

The first of the proposed changes is the creation of a separate country listing for Bonaire, St. Eustatius, and Saba due to a new designated operator for the three islands. *Id.* The new country listing falls within the following mailing services: Single-Piece First-Class Mail International service; First-Class Package International service; Global Express Guaranteed service; Priority Mail Express International service and Priority Mail International service; International Priority Airmail service; and International Surface Air Lift service. *Id.* at 1–2.

[1] Notice of United States Postal Service of Classification Changes, October 22, 2015 (Notice).

The new country listing also has mailing services and pricing groupings for Priority Mail Express International Flat Rate Envelope and Priority Mail International Flat Rate Envelopes and Boxes that the Postal Service states are in accordance with the competitive price change filed in Docket No. CP2016–9.[2] The Postal Service states that the addition of the Bonaire, St. Eustatius, and Saba country listing will be published in the December 10, 2015, *Postal Bulletin.* Notice at 2.

The second mail classification change is a revision of the country rate group for International Priority Airmail and International Surface Air Lift service for Curacao and Sint Maarten. *Id.* The Postal Service notes that this is consistent with Exhibits 292.45a and 293.45a of the International Mail Manual. *Id.*

Finally, the third classification change replaces the country name St. Kitts (St. Christopher) & Nevis with Saint Kitts & Nevis. *Id.* The Postal Service states that it published notice of the change in the February 5, 2015, *Postal Bulletin. Id.*

The Postal Service states that the proposed changes satisfy the requirements of 39 CFR 3020.90 because the changes should result in a more accurate representation of the Postal Service's offerings, the notice is filed more than 15 days prior to the intended effective date, and none of the three parts constitute a material change to the product descriptions. *Id.* at 2–3. The Postal service also asserts that the proposed changes are consistent with 39 U.S.C. 3642 because no products are being added or removed, or transferred between market dominant and competitive products designations. *Id.* at 3.

III. Notice of Commission Action

Pursuant to 39 CFR 3020.91, the Commission has posted the Notice on its Web site and invites comments on whether the Postal Service's filings are consistent with the policies of 39 U.S.C. 3642 and 39 CFR 3020 subpart E. Comments are due no later than November 3, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John F. Rosato to represent the interests of the general public (Public Representative) in this docket.

[2] *Id. See* Docket No. CP2016–9, Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 15–1, October 16, 2015.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2016–10 to consider matters raised by the Notice.
2. Pursuant to 39 U.S.C. 505, John F. Rosato is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due by November 3, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–27664 Filed 10–29–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76269; File No. SR–NYSE–2015–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures and Credits in Connection With the Re-Location of Equipment in the Exchange's Data Center

October 26, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 22, 2015, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish procedures and credits in connection with the re-location of equipment in the Exchange's Data Center. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey, from which it provides co-location services to Users.[4] The Exchange's co-location services allow Users to rent space in the Data Center so they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.[5] The Exchange proposes to establish procedures and waive certain fees in connection with the Exchange's re-location of Users' equipment in the Exchange's Data Center, operative beginning November 1, 2015.[6]

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[7] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand. However, much

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) ("2010 Release").

[5] Id. at 59310.

[6] As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59). The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2015–70 and SR–NYSEArca–2015–85.

[7] *See supra* note 4 at 59311.

of the space available now is available in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. At this time, the Exchange has determined that, in order to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, the Exchange must exercise its right to move some Users' equipment within the Data Center (the ''Migration'').

The Exchange proposes to put the following procedures in place to manage the process for the Migration.

First, the Exchange would identify Users that would be required to move in the Migration based on (a) the current location of the User and its current equipment and power requirements and (b) the availability of another location in the Data Center that would accommodate the equipment and power requirements for which such User currently subscribes. No User would be required to move more than once within any 12-month period.

Second, the Exchange would notify a User in writing (the ''Notice'') that the User's equipment and network connections in the Data Center are to be moved as part of the Migration. The Notice would identify the 90-day period during which the User must move its equipment, which period would commence at least 60 days from the date of the Notice. The exact date or dates for the move for each User would be agreed upon between the User and the Exchange. If a move date or dates cannot be agreed on, the Exchange would schedule the move for a date or dates no later than 180 days after the date of the Notice.

Third, each User's move would be facilitated by the Exchange in cooperation with the User, including the un-racking and re-racking of all of the User's equipment, and the re-installation of the User's networking connections, and the Exchange would make reasonable efforts to ensure that the moves take place outside of the Exchange's hours for business.[8]

Fourth, in connection with facilitating each User's move, the Exchange proposes to waive certain fees. Specifically, the Exchange proposes to waive the monthly recurring fees incurred in connection with the User's new space for the month during which the User's move commences. This waiver of the monthly recurring fees would mean that the User would not incur these fees for the period of overlapping use of the equipment and services in the old and the new locations, as long as the move is completed within one month.

In addition, the Exchange proposes to waive all service-related charges that the User would incur if such a move were to take place at a User's request with respect to the User's existing services and equipment. The service-related charges to be waived would be: (a) The Change Fee, Initial Install Services and Hot Hands Services; (b) The External Cabinet Cable Tray fee and the Custom External Cabinet Cable Tray fee, if the User has such equipment installed in its current location; (c) Shipping and Receiving fees relating to duplicate equipment for the User's new space; and (d) the Badge Request Fee and Visitor Security Escort fee with respect to User representative visits during the User's Migration Period (together, the ''Service-Related Fees'').

Finally, in consideration for the Migration, the Exchange proposes to waive, for the month following the completion of a User's move, the monthly recurring charges for that User, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice.

The Exchange proposes to modify the Exchange's Price List to reflect the fee waivers in connection with the Migration.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change. The representations that the Exchange made in the 2010 Release to the effect that any difference among the positions of a User's equipment within the Data Center does not create any material difference to Users in terms of access to the Exchange continue to apply.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and is 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Additionally, the proposed changes would be applied uniformly by the Exchange to comparable Users and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the Exchange's Data Center would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow the Exchange to have sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges is reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its Members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Pursuant to the proposed procedures for selecting which Users would be required to move within the Data Center, a User would be required to move only if the Exchange would be able to accommodate such User's current space and power requirements at the new location, so as to minimize the disruption to the User.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions

[8] *See* Rule 51.

[9] *See supra* note 4 at 59311.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed procedures for identifying the Users that would be moved and the proposed fee waivers are pro-competitive because they facilitate the Migration, which would in turn facilitate use of the Exchange's Data Center, and provide access to the Data Center to current and additional market participants.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change 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.* Please include File Number SR–NYSE–2015–42 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–42. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–2015–42 and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27654 Filed 10–29–15; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76268; File No. SR–NYSEMKT–2015–70]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures and Credits in Connection With the Re-Location of Equipment in the Exchange's Data Center

October 26, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 22, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish procedures and credits in connection with the re-location of equipment in the Exchange's Data Center. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey, from which it provides co-location services to Users.[4] The Exchange's co-location services allow Users to rent space in the Data Center so they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.[5] The Exchange proposes to establish procedures and waive certain fees in connection with the Exchange's re-location of Users' equipment in the Exchange's Data Center, operative beginning November 1, 2015.[6]

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[7] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand. However, much of the space available now is available in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. At this time, the Exchange has determined that, in order to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, the Exchange must exercise its right to move some Users' equipment within the Data Center (the ''Migration'').

The Exchange proposes to put the following procedures in place to manage the process for the Migration.

First, the Exchange would identify Users that would be required to move in the Migration based on (a) the current location of the User and its current equipment and power requirements and (b) the availability of another location in the Data Center that would accommodate the equipment and power requirements for which such User currently subscribes. No User would be required to move more than once within any 12-month period.

Second, the Exchange would notify a User in writing (the ''Notice'') that the User's equipment and network connections in the Data Center are to be moved as part of the Migration. The Notice would identify the 90-day period during which the User must move its equipment, which period would commence at least 60 days from the date of the Notice. The exact date or dates for the move for each User would be agreed upon between the User and the Exchange. If a move date or dates cannot be agreed on, the Exchange would schedule the move for a date or dates no later than 180 days after the date of the Notice.

Third, each User's move would be facilitated by the Exchange in cooperation with the User, including the un-racking and re-racking of all of the User's equipment, and the re-installation of the User's networking connections, and the Exchange would make reasonable efforts to ensure that the moves take place outside of the Exchange's hours for business.[8]

Fourth, in connection with facilitating each User's move, the Exchange proposes to waive certain fees. Specifically, the Exchange proposes to waive the monthly recurring fees incurred in connection with the User's new space for the month during which the User's move commences. This waiver of the monthly recurring fees would mean that the User would not incur these fees for the period of overlapping use of the equipment and services in the old and the new locations, as long as the move is completed within one month.

In addition, the Exchange proposes to waive all service-related charges that the User would incur if such a move were to take place at a User's request with respect to the User's existing services and equipment. The service-related charges to be waived would be: (a) The Change Fee, Initial Install Services and Hot Hands Services; (b) the External Cabinet Cable Tray fee and the Custom External Cabinet Cable Tray fee, if the User has such equipment installed in its current location; (c) Shipping and Receiving fees relating to duplicate equipment for the User's new space; and (d) the Badge Request Fee and Visitor Security Escort fee with respect to User representative visits during the User's Migration Period (together, the ''Service-Related Fees'').

Finally, in consideration for the Migration, the Exchange proposes to waive, for the month following the completion of a User's move, the monthly recurring charges for that User, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice.

The Exchange proposes to modify the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to reflect the fee waivers in connection with the Migration.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change. The representations that the Exchange made in the 2010 Release to the effect that any difference among the positions of a User's equipment within the Data Center does not create any material difference to Users in terms of access to the Exchange continue to apply.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and is designed to prevent fraudulent

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (''2010 Release'').

[5] *See id.* at 59299.

[6] As specified in the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67). The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2015–42 and SR–NYSEArca–2015–85.

[7] *See supra* note 4 at 59299.

[8] *See* NYSE MKT Equities Rule 51 and NYSE Amex Options Rule 900.2NY(15).

[9] *See supra* note 4 at 59299.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Additionally, the proposed changes would be applied uniformly by the Exchange to comparable Users and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the Exchange's Data Center would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow the Exchange to have sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges is reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its Members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Pursuant to the proposed procedures for selecting which Users would be required to move within the Data Center, a User would be required to move only if the Exchange would be able to accommodate such User's current space and power requirements at the new location, so as to minimize the disruption to the User.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed procedures for identifying the Users that would be moved and the proposed fee waivers are pro-competitive because they facilitate the Migration, which would in turn facilitate use of the Exchange's Data Center, and provide access to the Data Center to current and additional market participants.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change 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*. Please include File Number SR–NYSEMKT–2015–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–70. 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2015–70 and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27655 Filed 10–29–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76259; File No. SR–NASDAQ–2015–117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Testing Facility

October 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 16, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV to adopt a new Section 13, entitled ''Testing Facilities'' which describes fees in connection with the use of the Testing Facility (''NTF'') test environment located in Carteret, New Jersey.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 26, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend its Options Pricing at Chapter XV to adopt a new Section 13, entitled ''Testing Facilities'' to establish fees to subscribe for testing. Currently, Options Participants may test in a virtual trading environment for purposes of testing in Ashburn, Virginia (''Ashburn''), at no cost. The NTF provides subscribers a virtual System environment for testing upcoming Nasdaq releases and product enhancements, as well as testing firm software prior to implementation. The test environment closely approximates the production environment to enable subscribers to test their automated systems that integrate with the Exchange.

The Exchange is moving the options test environment from the Ashburn location to Carteret, NJ (''Carteret''), which is also the location of Nasdaq's primary trading System. While Options Participants will be able to continue to utilize the Ashburn facility at no cost until that facility is no longer in use, Options Participants will be able to subscribe to the Carteret test facility for future testing.[3]

The relatively large distance between the Ashburn Testing Facility and the majority of Nasdaq firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for NTF connectivity. In an effort to improve the utility of the NTF, Nasdaq is developing a test environment located in Carteret that will provide the same functionality as the testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades Nasdaq is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.

Nasdaq notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn,[4] provided the sole purpose for connecting to Ashburn is for testing and not also for co-location or disaster recovery. Such member firms may use an existing connection to Carteret to access the NTF through the use of a dedicated switch port and cross connect within the facility. Similar to the equities test facility,[5] the Exchange will assess a fee for the connection to this virtual trading environment for testing. Specifically, Nasdaq proposes a $1,000 per hand-off, per month fee for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of $1,000 per hand-off.

The connectivity provided under this rule also provides connectivity to the other test environments of NASDAQ OMX PHLX LLC and NASDAQ OMX BX, Inc. Additionally, the connectivity may be utilized for either equities or options testing. If for example a Phlx [sic] member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

Notwithstanding the foregoing, Nasdaq will also continue to offer certain limited testing capabilities free of charge at Carteret. Options Participants that connect to Cartert's [sic] NTF through a virtual private network (''VPN'') through the internet for site-to-site limited order routing

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange anticipates that it will sunset the Ashburn trading testing functionality on January 29, 2016.

[4] Today, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn.

[5] *See* Nasdaq Rule 7030, concerning equities pricing.

capability only will not be assessed a fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular. Nasdaq believes the proposal is consistent with Section 6(b)(4) of the Act[8] 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 the Exchange operates or controls.

The proposed fees are equitably allocated because all Options Participants desiring to connect to the Carteret test environment will be assessed a uniform fee for those services. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for Options Participants, including matching the capacity of each Options Participant's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. Nasdaq believes that charging a uniform fee will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment.

The proposed fees are reasonable because they are designed to cover the costs incurred by the Exchange to develop the test facility and the costs incurred by the Exchange to continue to offer the test environment. The proposed fee should allow the Exchange to recoup these costs and also make a profit, while providing Options Participants with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. Nasdaq believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Options Participants use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment.

Further, the connectivity provided under this rule also provides connectivity to the other test environments of NASDAQ OMX PHLX LLC and NASDAQ OMX BX, Inc. This connectivity may be utilized for either equities or options testing. If for example a Nasdaq member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. Nasdaq does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to Nasdaq may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. Nasdaq does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all Options Participants that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, Options Participants are able to subscribe to Carteret without regard to the cost of their switch port capacity election. Nasdaq believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on Nasdaq and the national market system by permitting Options Participants the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants.

Finally, the Exchange will continue to offer Options Participants certain limited testing capabilities free of charge at Carteret through VPN. While this feature offers limited capability in terms of functionality, the Exchange continues to offer a free of charge alternative to Options Participants desiring to utilize the NTF.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any intra-market or inter-market burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fees for access to the Carteret test environment more closely approximate the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment. Despite the fee that will now be assessed to Options Participants for testing, the Exchange believes that Options Participants utilizing this service will benefit from the move to Carteret because the test environment is designed to closely mirror the live trading environment for Options Participants, including matching the capacity of each Options Participant's live environment switch port. Subscribing to the test facility is optional.

Also, the connectivity provided under this rule also provides connectivity to the other test environments of NASDAQ OMX PHLX LLC and NASDAQ OMX BX, Inc. Members that are already connected for equities testing would not incur an additional charge. This connectivity may be utilized for either equities or options testing. Finally, subscribing to the test facility is optional.

Additionally, the Exchange does not believe that the move to Carteret and imposition of connectivity fees to the NTF creates an undue burden on competition because the Exchange will continue to offer Options Participants certain limited testing capabilities free of charge at Carteret through VPN.

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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

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.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–117. 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 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–2015–117, and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27650 Filed 10–29–15; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76258; File No. SR–BX–2015–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Testing Facility

October 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 16, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV to adopt a new Section 9, entitled ''Testing Facilities'' which describes fees in connection with the use of the Testing Facility (''NTF'') test environment located in Carteret, New Jersey.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 26, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to amend its Options Pricing at Chapter XV to adopt a new Section 9, entitled ''Testing Facilities'' to establish fees to subscribe for testing. Currently, Options Participants may test in a virtual trading environment for purposes of testing in Ashburn, Virginia (''Ashburn''), at no cost. The NTF provides subscribers a virtual System environment for testing upcoming BX releases and product enhancements, as well as testing firm software prior to implementation. The test environment closely approximates the production environment to enable subscribers to test their automated systems that integrate with the Exchange.

The Exchange is moving the options test environment from the Ashburn location to Carteret, NJ (''Carteret''), which is also the location of BX's primary trading System. While Options Participants will be able to continue to utilize the Ashburn facility at no cost until that facility is no longer in use, Options Participants will be able to subscribe to the Carteret test facility for future testing.[3]

The relatively large distance between the Ashburn Testing Facility and the majority of BX firms results in expensive connectivity costs for customers that connect via

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange anticipates that it will sunset the Ashburn trading testing functionality on January 29, 2016.

telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for NTF connectivity. In an effort to improve the utility of the NTF, BX is developing a test environment located in Carteret that will provide the same functionality as the testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades BX is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.

BX notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn,[4] provided the sole purpose for connecting to Ashburn is for testing and not also for co-location or disaster recovery. Such member firms may use an existing connection to Carteret to access the NTF through the use of a dedicated switch port and cross connect within the facility. Similar to the equities test facility,[5] the Exchange will assess a fee for the connection to this virtual trading environment for testing. Specifically, BX proposes a $1,000 per hand-off, per month fee for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of $1,000 per hand-off.

The connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC. Additionally, the connectivity may be utilized for either equities or options testing. If for example a BX member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

Notwithstanding the foregoing, BX will also continue to offer certain limited testing capabilities free of charge at Carteret. Options Participants that connect to Cartert's [sic] NTF through a virtual private network (''VPN'') through the internet for site-to-site limited order routing capability only will not be assessed a fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular. BX believes the proposal is consistent with Section 6(b)(4) of the Act[8] 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 the Exchange operates or controls.

The proposed fees are equitably allocated because all Options Participants desiring to connect to the Carteret test environment will be assessed a uniform fee for those services. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for Options Participants, including matching the capacity of each Options Participant's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. BX believes that charging a uniform fee will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment.

The proposed fees are reasonable because they are designed to cover the costs incurred by the Exchange to develop the test facility and the costs incurred by the Exchange to continue to offer the test environment. The proposed fee should allow the Exchange to recoup these costs and also make a profit, while providing Options Participants with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. BX believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Options Participants use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment.

Further, the connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC. This connectivity may be utilized for either equities or options testing. If for example a BX member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. BX does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to BX may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. BX does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all Options Participants that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, Options Participants are able to subscribe to Carteret without regard to the cost of their switch port capacity election. BX believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on BX and the national market system by permitting Options Participants the ability to accurately test changes prior to implementing them in the live trading environment, thereby

[4] Today, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn.

[5] *See* BX Rule 7030 concerning equities pricing.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants.

Finally, the Exchange will continue to offer Options Participants certain limited testing capabilities free of charge at Carteret through VPN. While this feature offers limited capability in terms of functionality, the Exchange continues to offer a free of charge alternative to Options Participants desiring to utilize the NTF.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any intra-market or inter-market burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fees for access to the Carteret test environment more closely approximate the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment. Despite the fee that will now be assessed to Options Participants for testing, the Exchange believes that Options Participants utilizing this service will benefit from the move to Carteret because the test environment is designed to closely mirror the live trading environment for Options Participants, including matching the capacity of each Options Participant's live environment switch port. Subscribing to the test facility is optional.

Also, the connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC. Members that are already connected for equities testing would not incur an additional charge. This connectivity may be utilized for either equities or options testing. Finally, subscribing to the test facility is optional.

Additionally, the Exchange does not believe that the move to Carteret and imposition of connectivity fees to the NTF creates an undue burden on competition because the Exchange will continue to offer Options Participants certain limited testing capabilities free of charge at Carteret through VPN.

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.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–059. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–059, and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27649 Filed 10–29–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76267; File No. SR–NYSEArca–2015–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto, Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform

October 26, 2015.

I. Introduction

On July 7, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new equity trading rules relating to Orders and Modifiers, and the Retail Liquidity Program, to reflect the implementation of Pillar, the Exchange's new trading technology platform. The proposed rule change was published for comment in the **Federal Register** on July 28, 2015.[3] On July 29, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 1,

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 75497 (July 21, 2015), 80 FR 45022 (''Notice'').

[4] Amendment No. 1 deletes references to IOC Routable Cross Orders and states that the Exchange

Continued

2015, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On October 15, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[7] The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt new equity trading rules relating to the implementation of Pillar, the Exchange's new trading technology platform. The Exchange proposes to adopt two new Pillar rules: 1) NYSE Arca Equities Rule 7.31P (''Rule 7.31P'') related to orders and modifiers; and 2) NYSE Arca Equities Rule 7.44P (''Rule 7.44P'') related to the Retail Liquidity Program (''RLP''). According to the Exchange, these rules would set forth the RLP for Pillar and describe how orders and modifiers in Pillar would be priced, ranked, traded, and/or routed, using the terminology and priority categories that were approved in the Pillar I Filing.[8]

A. Background

The Exchange represents that Pillar is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by Arca and its affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'').[9] On July 24, 2015, the Commission approved Pillar rules relating to Trading Sessions, Order Ranking and Display, and Order Execution.[10]

This filing is the second set of proposed rule changes to support Pillar implementation. As proposed, the new rules governing trading on Pillar would have the same numbering as current rules, but with the modifier ''P'' appended to the rule number. The Exchange proposes that rules with a ''P'' modifier would operate for symbols that are trading on the Pillar trading platform. If a symbol is trading on the Pillar trading platform, a rule with the same number as a rule with a ''P'' modifier would no longer operate for that symbol and the Exchange would announce by Trader Update when symbols are trading on the Pillar trading platform. Definitions that do not have a companion version with a ''P'' modifier would continue to operate for all symbols.

B. Proposed Modifications

As described in detail in the Notice, Rules 7.31P, and 7.44P incorporate much of the substance of current NYSE Arca Rules 7.31 and 7.44, respectively. However, with Pillar, the Exchange would introduce new terminology, reorganize and redraft certain provisions to improve clarity, and provide additional detail to other current provisions being redesignated. The Exchange also proposes to make several changes that are more substantive in nature, as follows:

- *Market Orders:* To reduce the potential for clearly erroneous executions, Market Order Trading Collars would prevent Market Orders from executing at the Trading Collar, which are based on the clearly erroneous execution numerical guidelines, and not just through the Trading Collar as under the current trading rules;[11]
- *Limit Orders:* Resting Limit Orders that would lock or cross a protected quotation if they become the best bid or offer (''BBO'') would be re-priced;[12]
- *Limit Order designated IOC:* A Limit Order designated with an immediate-or-cancel (''IOC'') modifier that is not eligible to route may be designated with an optional MTS. On entry, a Limit IOC Order with an MTS must have a minimum of one round lot and will be rejected on arrival if the MTS is larger than the size of the Limit IOC Order;[13]
- *Auction-Only Orders:* Market-on-Open (''MOO'') and Limit-on-Open (''LOO'') Orders would be eligible to participate in trading halt auctions and the Exchange would accept Auction-Only Orders in non-auction eligible symbols;[14]
- *Reserve Orders:* The displayed portion of Reserve Orders would be replenished following any execution that reduces the display quantity below the size designated to be displayed, at which point the replenished quantity would receive a new working time;[15]
- *Passive Liquidity Orders:* Passive Liquidity Orders would be renamed ''Limit Non-Displayed Orders,'' would no longer be ranked behind other non-displayed orders, and an optional Non-Display Remove Modifier would be available for this order type;[16]
- *MPL Orders:* Mid-point Passive Liquidity Orders would be renamed ''Mid-point Liquidity Orders'' (''MPL Order''). On arrival, MPL Orders (and MPL-Adding Liquidity Only (''ALO'' Orders) would be eligible to trade with resting non-displayed interest that provides price improvement over the midpoint of the protected best bid or offer (''PBBO''). As under current rules, an MPL Order may be designated with an MTS, but in Pillar, the MTS would have to be a minimum of a round lot instead of one share. In addition, an MPL with an MTS would be rejected if, on arrival, the MTS is larger than the size of the order and would be cancelled at any point the MTS is larger than the residual size of the order;[17]
- *Tracking Orders:* Tracking Orders would peg to the PBBO instead of the national best bid or offer (''NBBO'') and Self-Trade Prevention (''STP'') Modifiers for Tracking Orders would no longer be ignored;[18]
- *PNP Orders:* Post No Preference (''PNP'') Orders would no longer be offered;[19]
- *PNP Blind Orders:* PNP Blind Orders would be renamed ''Arca Only Orders'' and an optional Non-Display Remove Modifier would be available for this order type;[20]
- *ALO Orders:* The current form of ALO Orders, which are based on PNP Orders and are rejected on arrival if

has determined not to offer this order type when it implements Pillar.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 75801, 80 FR 53905 (September 8, 2015).

[7] In Amendment No. 2, the Exchange proposes to: (i) Correct a cross reference in proposed Rule 7.31P(a)(2)(B) from Rule 7.10 to Rule 7.10P; (ii) add a new sentence to proposed Rule 7.31P(b)(2)(A) to specify that an incoming Limit IOC Order with a minimum trade size (''MTS'') must be at least a round lot and, if the MTS is larger than the size of the Limit IOC Order, the order would be rejected on arrival; (iii) to add a hard paragraph return between proposed Rule 7.31P(i)(1) and 7.31P(i)(2); and (iv) remove an extraneous reference to ''500'' in the sixth paragraph in the first example of proposed Rule 7.44P(l).

[8] *See* Securities Exchange Act Release No. 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (''Pillar I Filing''); *see also* Notice at 45022.

[9] *See* Notice at 45022.

[10] *See* Pillar I Filing, supra note 8.

[11] *See* proposed Rule 7.31P(a)(1)(B). *See also* Notice at 45023.

[12] *See* proposed Rule 7.31P(a)(2). *See also* Notice at 45023.

[13] *See* proposed Rule 7.31P(b)(2)(A). *See also* Notice at 45023.

[14] *See* proposed Rule 7.31P(c). *See also* Notice at 45023.

[15] *See* proposed Rule 7.31P(d)(1). *See also* Notice at 45023.

[16] *See* proposed Rule 7.31P(d)(2). *See also* Notice at 45023.

[17] *See* proposed Rule 7.31P(d)(3). *See also* Notice at 45023.

[18] *See* proposed Rule 7.31P(d)(4). *See also* Notice at 45023.

[19] *See* Notice at 45023.

[20] *See* proposed Rule 7.31P(e)(1). *See also* Notice at 45023.

marketable, would no longer be offered. ALO Orders in Pillar would no longer be rejected on arrival if marketable and instead would be re-priced both on arrival and after updates to the PBBO. In addition, an ALO Order would trade with resting contra-side non-displayed orders that would provide price improvement; [21]

- *Intermarket Sweep Order:* Intermarket Sweep Orders (''ISO'') designated Day and IOC would be renamed ''Day ISO'' and ''IOC ISO,'' respectively, and ALO modifier functionality available for Day ISOs would be based on the proposed ALO Order in Pillar; [22]
- *Primary Only Orders:* Primary Only Orders designated for the Core Trading Session would be accepted and routed directly to the primary listing market on arrival and the Exchange would not validate whether the primary listing market would be accepting such orders. Primary Only Orders that are designated Day may be designated as a Reserve Order; [23]
- *Pegged Orders:* Pegged Orders would peg to the PBBO instead of the NBBO, would require a limit price, and would be accepted during a Short Sale Period, as defined in Rule 7.16(f). Market Pegged Orders would no longer be displayed and an offset value would no longer be required, and Primary Pegged Orders could not include an offset value. In addition, in Pillar, Pegged Orders would not be assigned a working price if the PBBO is locked or crossed; [24] and
- *Q Orders:* Auto Q Orders would be eliminated.[25]
- In the RLP, Retail Orders may not be designated with a ''No Midpoint Execution'' Modifier.[26]
- All orders in the RLP would be ranked based on their priority category, pursuant to Rule 7.36P, and would not have different ranking in the Program. Accordingly, odd-lot orders ranked Priority 2—Display Orders would have priority over orders ranked Priority 3—Non-Display Orders, and Limit Non-Displayed Orders would no longer be ranked behind other non-display orders.[27]
- Retail Price Improvement Orders (''RPIs'') would be accepted before the start of Core Trading Hours.[28]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange believes that the proposed rules would remove impediments to and perfect the mechanism of a free and open market because the proposed rule set would promote transparency by using consistent terminology governing equities trading, and by clearly denoting the rules that govern once a symbol has been migrated to the Pillar platform.[32]

With respect to proposed Rule 7.31P, the Exchange states that it believes that the proposed substantive differences to functionality being proposed for Pillar would remove impediments to and perfect the mechanism of a fair and orderly market for the following reasons: [33]

- *Market Orders:* The proposed substantive difference to prevent Market Orders from trading at the Trading Collar, and not just through the Trading Collar, would reduce the potential for Market Orders to trade at prices that would be considered clearly erroneous executions.
- *Limit Orders:* The proposed substantive difference to re-price resting Limit Orders would reduce the potential for the Exchange to publish a BBO that would lock or cross an Away Market PBBO that was locking or crossing a prior BBO of the Exchange.
- *Limit Order Designated IOC:* The proposed substantive difference to add optional MTS functionality for Limit IOC Orders would provide ETP Holders with greater certainty regarding the trade size of an IOC Order, and is based on existing order types available on another market.
- *Auction-Only Orders:* The proposed substantive difference to accept Auction-Only Orders in non-auction-eligible symbols and route them to the primary listing market would promote liquidity on the primary listing markets for their respective auctions. The proposed change would also protect investors and the public interest by enabling such orders to reach a destination where it is more likely to obtain an execution opportunity or participate in an auction. In addition, the proposed substantive difference to accept Auction-Only Orders for Trading Halt Auctions on the Exchange would promote liquidity for Exchange Trading Halt Auctions by adding additional order types that an ETP Holder could use that would participate only in an auction.
- *Reserve Orders:* The proposed substantive difference to replenish the display quantity of a Reserve Order after any trade that depletes the display quantity would promote the display of liquidity on the Exchange, because the Exchange would not wait for the display quantity to be depleted before replenishing from reserve interest. In addition, this proposed functionality is similar to how Reserve Orders function on another market.
- *Limit Non-Displayed Orders:* The proposed substantive difference to rank Limit Non-Displayed Orders with all other orders ranked Priority 3—Non-Display Orders would streamline the Exchange's priority and allocation methodology and eliminate a separate allocation category for a single order type. In addition, the proposed substantive difference to add an optional Non-Display Remove Modifier would provide ETP Holders with a tool to enable a Limit Non-Displayed Order to trade with an incoming ALO Order rather than have its working price be locked by the display price of an ALO Order. The proposed Non-Display Remove Modifier would also provide price improvement to the contra-side ALO Order with which it would trade.
- *MPL Orders:* The proposed substantive difference to provide that arriving MPL and MPL–ALO Orders

[21] *See* proposed Rule 7.31P(e)(2). *See also* Notice at 45023.

[22] *See* proposed Rule 7.31P(e)(3). *See also* Notice at 45023.

[23] *See* proposed Rule 7.31P(f)(1). *See also* Notice at 45023.

[24] *See* proposed Rule 7.31P(h). *See also* Notice at 45023.

[25] *See* Notice at 45023.

[26] *See* proposed Rule 7.44P(k); *see also* Notice at 45044.

[27] *See* proposed Rule 7.44P(l); *see also* Notice at 45044.

[28] *See* proposed Rule 7.44P(m); *see also* Notice at 45047.

[29] 15 U.S.C. 78f.

[30] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Notice at 45047.

[33] *See* Notice at 45047–45049

would trade with contra-side orders priced better than the midpoint of the PBBO would provide price improvement opportunities for MPL Orders and is consistent with how orders priced at the midpoint operate on other markets. In addition, the proposed substantive differences to the optional MTS functionality to cancel or reject an MPL Order with an MTS smaller than the size of the order would eliminate the possibility for an MPL Order to trade in a size smaller than the MTS. Finally, the proposed substantive difference to require a minimum of a round lot for the MTS would align the MTS functionality with the proposed MTS functionality for Limit IOC Orders, thereby streamlining the Exchange's rules and making the available modifiers consistent across multiple order types.

- *Tracking Orders:* The proposed substantive difference to price Tracking Orders based on the PBBO instead of the NBBO would conform how Tracking Orders are priced to how other orders at the Exchange are priced in Pillar, *e.g.,* Limit Orders, MPL Orders, and Pegged Orders. In addition, this proposed change may increase the opportunity for Tracking Orders to trade because by being priced based on the same-side PBBO, a Tracking Order would not be restricted from trading because a price based on the NBBO would trade-through the PBBO. The proposed substantive difference to allow STP Modifiers for Tracking Orders would provide additional tools for ETP Holders to prevent wash sales between orders entered from the same ETP ID.
- *Arca Only Orders:* The proposed substantive difference to add an optional Non-Display Remove Modifier for Arca Only Orders would provide ETP Holders with a tool to enable an Arca Only Order to trade with an incoming ALO Order rather than have its working price be locked by the display price of an ALO Order. The proposed Non-Display Remove Modifier would also provide price improvement to the contra-side ALO Order with which it would trade. The proposed substantive difference to not offer PNP Orders in Pillar would streamline the order types available at the Exchange.
- *ALO Orders:* The proposed substantive difference to re-price ALO Orders that would trade with the BBO or lock or cross the PBBO, rather than reject such orders if marketable, would promote additional displayed liquidity on a publicly registered exchange, and therefore promote price discovery. The Exchange further believes that the proposed re-pricing and re-displaying of an ALO Order would remove impediments to and perfect the mechanism of a free and open market because it assures that such order would meet its intended goal to be available on the Exchange's NYSE Arca Book as displayed liquidity without locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS.[34] The proposed re-pricing and re-displaying of ALO Orders is consistent with how other exchanges currently operate. In addition, any time the working price of an order changes, it receives a new working time.[35] The proposed re-pricing of ALO Orders would be subject to this general requirement, and therefore re-priced ALO Orders would not have time priority over orders in the same priority category that may have an earlier working time. The Exchange further believes that the proposed substantive differences for ALO Orders to trade on arrival with non-displayed orders that would provide price improvement over the limit price of the ALO Order, but not trade with non-displayed orders priced equal to the limit price of the ALO Order, is consistent with how other exchanges operate, and therefore offering this functionality in Pillar would promote competition.
- *ISO:* The proposed substantive difference to use the ALO Order functionality proposed for Pillar for ISOs would similarly promote additional displayed liquidity on the Exchange by allowing Day ISO ALO Orders to be re-priced for display rather than rejected if they are marketable against the BBO on arrival and is consistent with functionality on another exchange.
- *Primary Only Orders:* The proposed substantive difference to route all Primary Only Orders to the primary listing market would promote liquidity on the primary listing market and provide an opportunity for ETP Holders to participate in trading on the primary listing market. In addition, the proposed substantive difference to permit Primary Only Day Orders to be designated as a Reserve Order would provide ETP Holders with more options of order types that could be routed directly to the primary listing market, which would promote liquidity on the primary listing market.
- *Pegged Orders:* The proposed substantive difference to use the PBBO instead of the NBBO as the dynamic reference price for Pegged Orders would conform how Pegged Orders are priced consistent with how other orders are priced in Pillar, *e.g.,* Limit Orders, MPL Orders, and Tracking Orders. The proposed substantive differences for Market Pegged Orders in Pillar, to provide that they would be undisplayed and no longer require an offset, would be consistent with how other exchanges operate. Finally, the proposed substantive difference for Market Pegged Orders—not to assign a working price to such orders or have them eligible to trade when the PBBO is locked or crossed—would reduce the potential for a Market Pegged Order to trade when the market is locked or crossed. The proposed substantive difference for Primary Pegged Orders to no longer permit an offset value would promote the additional display of liquidity at the PBBO, rather than at prices inferior to the PBBO. The additional proposed substantive difference for Primary Pegged Orders to reject an arrival when the PBBO is locked or crossed, or to not assign a new working price to a resting Primary Pegged Order if the market becomes locked or crossed, would reduce the potential for the Exchange to display an order that would lock or cross the PBBO. Because Primary Pegged Orders would be displayed orders, the Exchange further proposes that if the PBBO locks or crosses, a resting Primary Pegged Order could remain displayed at its prior working price, which is consistent with how displayed orders that are locked or crossed by another market function on the Exchange.
- *Q Orders:* The proposed substantive difference to eliminate Auto Q Orders would streamline the Exchange's rules and reduce complexity regarding how orders and modifiers function on the Exchange.

With respect to proposed Rule 7.44P, the Commission notes that the Exchange represents that proposed substantive difference to the priority and allocation of orders that trade against Retail Orders in proposed Rule 7.44P(l) would remove impediments to and perfect the mechanism of a fair and orderly market because it would align the priority and allocation of orders in the RLP with the priority and allocation of orders outside of the RLP.[36] The Exchange further states the proposed substantive difference would therefore promote transparency in Exchange rules and reduce potential confusion because the RLP would no longer operate differently from the priority and allocation of orders outside the RLP.[37] The Exchange also states that the proposed substantive difference for proposed Rule 7.44P(m), to accept RPIs before the Core Trading Session begins, would remove

[34] 17 CFR 242.610(d).

[35] *See* Rule 7.36P(f)(2).

[36] *See* Notice at 45049.

[37] *Id.*

impediments to and perfect the mechanism and a free and open market by allowing the entry of RPIs to build a book of liquidity that would be available to provide price improvement to incoming Retail Orders as soon as the Core Trading Session begins.[38]

Based on the Exchange's representations, the Commission believes that the proposed rule change does not raise any novel regulatory considerations and should provide greater specificity with respect to the functionality available on the Exchange as symbols are migrated to the Pillar platform. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Accelerated Approval of Amendment Nos. 1 and 2

In Amendment No. 1, the Exchange proposes to delete references to IOC Routable Cross Orders because the Exchange has determined not to offer this order type when it implements Pillar. In Amendment No. 2, the Exchange proposes to: (i) Correct a cross reference in proposed Rule 7.31P(a)(2)(B) from Rule 7.10 to Rule 7.10P; (ii) add a new sentence to proposed Rule 7.31P(b)(2)(A) to specify that an incoming Limit IOC Order with a MTS must be at least a round lot and, if the MTS is larger than the size of the Limit IOC Order, the order would be rejected on arrival; (iii) to add a hard paragraph return between proposed Rule 7.31P(i)(1) and 7.31P(i)(2); and (iv) remove an extraneous reference to ''500'' in the sixth paragraph in the first example of proposed Rule 7.44P(l).

The Commission believes that the changes proposed in Amendment Nos. 1 and 2 are non-substantive and further clarify the operation of the proposed rules governing Pillar. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[39] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

V. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2015–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–56. 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 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–NYSEArca–2015–56, and should be submitted on or before November 20, 2015.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca–2015–56), as modified by Amendment Nos. 1 and 2 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27656 Filed 10–29–15; 8:45 am]

BILLING CODE 8011–01–P

[38] *Id.*

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76260; File No. SR–Phlx–2015–81]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Testing Facility

October 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 16, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Chapter VII to adopt a new Section E, entitled ''Testing Facilities'' which describes fees in connection with the use of the Testing Facility (''NTF'') test environment located in Carteret, New Jersey.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 26, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Chapter VII to adopt a new Section E, entitled ''Testing Facilities'' to establish fees to subscribe for testing. Currently, Options members may test in a virtual trading environment for purposes of testing in Ashburn, Virginia (''Ashburn''), at no cost. The NTF provides subscribers a virtual system environment for testing upcoming Phlx releases and product enhancements, as well as testing firm software prior to implementation. The test environment closely approximates the production environment to enable subscribers to test their automated systems that integrate with the Exchange.

The Exchange is moving the options test environment from the Ashburn location to Carteret, NJ (''Carteret''), which is also the location of Phlx's primary trading System. While Options members will be able to continue to utilize the Ashburn facility at no cost until that facility is no longer in use, Options members will be able to subscribe to the Carteret test facility for future testing.[3]

The relatively large distance between the Ashburn Testing Facility and the majority of Phlx firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for NTF connectivity. In an effort to improve the utility of the NTF, Phlx is developing a test environment located in Carteret that will provide the same functionality as the testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades Phlx is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.

Phlx notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn,[4] provided the sole purpose for connecting to Ashburn is for testing and not also for co-location or disaster recovery. Such member firms may use an existing connection to Carteret to access the NTF through the use of a dedicated switch port and cross connect within the facility. Similar to the equities test facility,[5] the Exchange will assess a fee for the connection to this virtual trading environment for testing. Specifically, Phlx proposes a $1,000 per hand-off, per month fee for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of $1,000 per hand-off.

The connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc. Additionally, the connectivity may be utilized for either equities or options testing. If for example a Phlx member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

Notwithstanding the foregoing, Phlx will also continue to offer certain limited testing capabilities free of charge at Carteret. Options members that connect to Cartert's [*sic*] NTF through a virtual private network (''VPN'') through the internet for site-to-site limited order routing capability only will not be assessed a fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular. Phlx believes the proposal is consistent with Section 6(b)(4) of the Act[8] 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 the Exchange operates or controls.

The proposed fees are equitably allocated because all Options members desiring to connect to the Carteret test environment will be assessed a uniform fee for those services. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for Options members, including matching the capacity of each Options member's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. Phlx believes that charging a uniform fee will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment.

The proposed fees are reasonable because they are designed to cover the costs incurred by the Exchange to develop the test facility and the costs incurred by the Exchange to continue to offer the test environment. The proposed fee should allow the Exchange to recoup these costs and also make a profit, while providing Options members with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. Phlx believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Options members use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment.

Further, the connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc. This connectivity may be utilized for either equities or options testing. If for example a Phlx member has already paid the $1,000 per hand-off, per month for connection to the Testing Facility in Carteret, there would be no need to pay this fee for options testing.

[3] The Exchange anticipates that it will sunset the Ashburn trading testing functionality on January 29, 2016.

[4] Today, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn.

[5] *See* Phlx's Pricing Schedule at Chapter VIII concerning equities pricing.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(4).

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. Phlx does not believe that the proposed fees are unfairly discriminatory to subscribers utilizing 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to Phlx may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. Phlx does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all Options members that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, Options members are able to subscribe to Carteret without regard to the cost of their switch port capacity election. Phlx believes that by not discriminating on this basis it will encourage members to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on Phlx and the national market system by permitting Options members the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants.

Finally, the Exchange will continue to offer Options members certain limited testing capabilities free of charge at Carteret through VPN. While this feature offers limited capability in terms of functionality, the Exchange continues to offer a free of charge alternative to Options Participants [*sic*] desiring to utilize the NTF.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any intra-market or inter-market burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fees for access to the Carteret test environment more closely approximate the live trading environment. Subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment. Despite the fee that will now be assessed to Options members for testing, the Exchange believes that Options members utilizing this service will benefit from the move to Carteret because the test environment is designed to closely mirror the live trading environment for Options members, including matching the capacity of each Options member's live environment switch port.

Also, the connectivity provided under this rule also provides connectivity to the other test environments of The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc. Members that are already connected for equities testing would not incur an additional charge. This connectivity may be utilized for either equities or options testing. Finally, subscribing to the test facility is optional.

Additionally, the Exchange does not believe that the move to Carteret and imposition of connectivity fees to the NTF creates an undue burden on competition because the Exchange will continue to offer Options members certain limited testing capabilities free of charge at Carteret through VPN.

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.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

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.* Please include File Number SR–Phlx–2015–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–81. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–81, and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27657 Filed 10–29–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76270; File No. SR–NYSEARCA–2015–85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures and Credits in Connection With the Re-location of Equipment in the Exchange's Data Center

October 26, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 22, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish procedures and credits in connection with the re-location of equipment in the Exchange's Data Center The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey, from which it provides co-location services to Users.[4] The Exchange's co-location services allow Users to rent space in the Data Center so they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.[5] The Exchange proposes to establish procedures and waive certain fees in connection with the Exchange's re-location of Users' equipment in the Exchange's Data Center, operative beginning November 1, 2015.[6]

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.[7] The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand. However, much of the space available now is available in smaller segments, resulting from an increasing number of Users, multiple moves within the Data Center, and changes to Users' space requirements—both increases and decreases—since 2010. At this time, the Exchange has determined that, in order to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, the Exchange must exercise its right to move some Users' equipment within the Data Center (the ''Migration'').

The Exchange proposes to put the following procedures in place to manage the process for the Migration.

First, the Exchange would identify Users that would be required to move in the Migration based on (a) the current location of the User and its current equipment and power requirements and (b) the availability of another location in the Data Center that would accommodate the equipment and power requirements for which such User currently subscribes. No User would be required to move more than once within any 12-month period.

Second, the Exchange would notify a User in writing (the ''Notice'') that the User's equipment and network connections in the Data Center are to be moved as part of the Migration. The Notice would identify the 90-day period during which the User must move its equipment, which period would commence at least 60 days from the date of the Notice. The exact date or dates for the move for each User would be agreed upon between the User and the Exchange. If a move date or dates cannot be agreed on, the Exchange would schedule the move for a date or dates no later than 180 days after the date of the Notice.

Third, each User's move would be facilitated by the Exchange in cooperation with the User, including the un-racking and re-racking of all of the User's equipment, and the re-installation of the User's networking connections, and the Exchange would make reasonable efforts to ensure that the moves take place outside of the Exchange's hours for business.[8]

Fourth, in connection with facilitating each User's move, the Exchange proposes to waive certain fees. Specifically, the Exchange proposes to waive the monthly recurring fees incurred in connection with the User's new space for the month during which the User's move commences. This waiver of the monthly recurring fees would mean that the User would not incur these fees for the period of overlapping use of the equipment and services in the old and the new locations, as long as the move is completed within one month.

In addition, the Exchange proposes to waive all service-related charges that the User would incur if such a move were to take place at a User's request with respect to the User's existing services and equipment. The service-related charges to be waived would be: (a) The

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (''2010 Release'').

[5] *See id.* at 70049.

[6] As specified in the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the NYSE Arca Options Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and New York Stock Exchange LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2015–42 and SR–NYSEMKT–2015–70.

[7] *See supra* note 4 at 70049.

[8] *See* NYSE Arca Equities Rule 1.1(j) and NYSE Arca Options Rule 6.1A(a)(3).

Change Fee, Initial Install Services and Hot Hands Services; (b) the External Cabinet Cable Tray fee and the Custom External Cabinet Cable Tray fee, if the User has such equipment installed in its current location; (c) Shipping and Receiving fees relating to duplicate equipment for the User's new space; and (d) the Badge Request Fee and Visitor Security Escort fee with respect to User representative visits during the User's Migration Period (together, the ''Service-Related Fees'').

Finally, in consideration for the Migration, the Exchange proposes to waive, for the month following the completion of a User's move, the monthly recurring charges for that User, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice.

The Exchange proposes to modify the NYSE Arca Options Fee Schedule and, through its wholly owned subsidiary NYSE Arca Equities, Inc., the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services, to reflect the fee waivers in connection with the Migration.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change. The representations that the Exchange made in the 2010 Release to the effect that any difference among the positions of a User's equipment within the Data Center does not create any material difference to Users in terms of access to the Exchange continue to apply.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and is 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Additionally, the proposed changes would be applied uniformly by the Exchange to comparable Users and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the Exchange's Data Center would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow the Exchange to have sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges is reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its Members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Pursuant to the proposed procedures for selecting which Users would be required to move within the Data Center, a User would be required to move only if the Exchange would be able to accommodate such User's current space and power requirements at the new location, so as to minimize the disruption to the User.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed procedures for identifying the Users that would be moved and the proposed fee waivers are pro-competitive because they facilitate the Migration, which would in turn facilitate use of the Exchange's Data Center, and provide access to the Data Center to current and additional market participants.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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

[9] *See supra* note 4 at 70049.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change 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.* Please include File Number SR–NYSEARCA–2015–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–85. 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEARCA–2015–85 and should be submitted on or before November 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett

Deputy Secretary.

[FR Doc. 2015–27653 Filed 10–29–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14513 and #14514]

Texas Disaster #TX–00455

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 10/22/2015.

Incident: Flooding.

Incident Period: 10/08/2015 through 10/09/2015.

Effective Date: 10/22/2015.

Physical Loan Application Deadline Date: 12/21/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/22/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Maverick.

Contiguous Counties:

Texas: Dimmit, Kinney, Uvalde, Webb, Zavala.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14513 6 and for economic injury is 14514 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59008)

Dated: October 22, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–27626 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14501 and #14502]

South Carolina Disaster Number SC–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of SOUTH CAROLINA (FEMA–4241–DR), dated 10/15/2015.

Incident: Severe Storms and Flooding.

Incident Period: 10/01/2015 and continuing.

Effective Date: 10/22/2015.

Physical Loan Application Deadline Date: 12/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of SOUTH CAROLINA, dated 10/15/2015, is

hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Aiken, Calhoun, Charleston, Dillon, Greenwood, Lexington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27634 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 29, 2015.

ADDRESSES: Send all comments to Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, Small Business Administration, 395 E Street, Patriots Plaza, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, *Daniel.upham@sba.gov* 202–205–7001, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Information collection is needed to ensure that Microloan Program activity meets the statutory goals of assisting mandated target market. The information is used by the reporting participants and the SBA to assist with portfolio management, risk management, loan servicing, oversight and compliance, data management and understanding of short and long term trends and development of outcome measures.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Microloan Program Electronic Reporting System (MPERS) (MPERsystem).

Description of Respondents: SBA reporting participants in the Microloan Program.

Form Number: N/A.

Total Estimated Annual Responses: 170.

Total Estimated Annual Hour Burden: 3,080.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–27756 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with such requirements.

DATES: Submit comments on or before December 29, 2015.

ADDRESSES: Send all comments to Brittany Borg, Contracting Officer Representative, Office of Entrepreneurial Development, U.S. Small Business Administration, 409 3rd Street, Room 6200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Brittany Borg, Contracting Officer Representative 202–401–1354, *oedsurvey@sba.gov,* or Curtis B. Rich, SBA PRA Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Emerging Leaders Initiative aims to assist established small businesses located in historically challenged communities with increasing their sustainability, attracting outside investment, and strengthening each community's economic base by creating jobs and providing valuable goods and services. These objectives are pursued by offering eligible business executives a 7-month intensive course focused on the skills essential to develop their companies, expand their resource networks, and increase their confidence and motivation. The course is designed to be hands-on and is composed of classroom sessions, out-of-class preparation work, and executive mentoring groups where participants can discuss their challenges. A broad range of topics is covered in the curriculum, including financial measures of business health, strategies for marketing, access to funding, and employee management and recruitment.

SBA plans to conduct annual performance-monitoring activities to assess the short- and intermediate-term outcomes of participants in the Emerging Leaders Initiative. The broad outcomes assessed will include satisfaction, changes in management behavior, and changes in economic outcomes, such as loans obtained and jobs created. Specifically, SBA plans to implement three instruments with the participants in each cohort: an intake assessment form at the start of the program to document baseline conditions, a satisfaction-oriented feedback form at the end of the program, and an annual outcome-oriented survey for 3 years after program completion. The latter instrument will document changes in key outcomes over a longer period, because job growth, revenue growth, profitability, and other economic outcomes of program participation are expected to manifest in the intermediate and long terms.

Solicitation of Public Comments: SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Emerging Leader's Initiative

Instrument	Anticipated response rate (%)	Participants across 48 sites			
		Total	Respondents	Non-respondents	Burden in hours
Intake form	100	960	960	0	448
Feedback form	87	960	838	122	336
Follow-up surveys (graduates):					
1st year	65	838	545	293	301
2nd year	39	838	327	511	225
3rd year	20	838	168	671	169

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–27754 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14495 and #14496]

South Carolina Disaster Number SC–00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4241–DR), dated 10/05/2015.

Incident: Severe Storms and Flooding.

Incident Period: 10/01/2015 and continuing.

Effective Date: 10/20/2015.

Physical Loan Application Deadline Date: 12/04/2015.

EIDL Loan Application Deadline Date: 07/05/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of SOUTH CAROLINA, dated 10/05/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Fairfield, Marion.

Contiguous Counties: (Economic Injury Loans Only):
South Carolina: Chester.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27633 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

U.S. SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14511 and #14512]

Washington Disaster #WA–00061

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4243–DR), dated 10/20/2015.

Incident: Wildfires and Mudslides.

Incident Period: 08/09/2015 through 09/10/2015.

Effective Date: 10/20/2015.

Physical Loan Application Deadline Date: 12/21/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/20/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/20/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chelan, Ferry, Lincoln, Okanogan, Pend Oreille, Stevens, Whatcom, Yakima, and the Confederated Tribes of the Colville Reservation.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 145115 and for economic injury is 145125.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27636 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14501 and #14502]

South Carolina Disaster Number SC–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4241–DR), dated 10/15/2015.

Incident: Severe Storms and Flooding.

Incident Period: 10/01/2015 and continuing.

Effective Date: 10/20/2015.

Physical Loan Application Deadline Date: 12/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated 10/15/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chesterfield, Clarendon, Dorchester, Horry, Lee, Marion, Orangeburg, Saluda, Sumter.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27624 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for First Quarter FY 2016

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after October 23, 2015.

Military Reservist Loan Program—4.000%

Dated: October 26, 2015.

James E. Rivera,

Associate Administrator For Disaster Assistance.

[FR Doc. 2015–27638 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: This form is a three-page questionnaire, principally in checklist form, designed to give SBA feedback from those who attend events which SBA cosponsors with other organizations. The form asks whether the event provided practical information which allowed them to manage their businesses more effectively and efficiently and gave them a good working knowledge of the subject. It asks whether the program was sufficient. It asks whether each speaker was well-organized, interesting, presented information at the appropriate level, and communicated well. It asks for suggestion for improvement, and for ideas for new topics.

The form asks some demographic information so that SBA can better understand the Community which these events serve. Where the event relates to government contracting, it asks whether the respondent has taken advantage of various government contracting programs which SBA offers. SBA may also use this form to help evaluate programs which it conducts by itself. Responding to the questionnaire is entirely voluntary.

This form is a three-page questionnaire, principally Solicitation of Public Comments:

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections:

Title: Outreach Event survey.

Description of Respondents: Those who attend events which SBA cosponsors with other organizations.

Form Number: SBA Form 20.

Estimated Annual Responses: 40,000.

Estimated Annual Hour Burden: 20 minutes.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–27758 Filed 10–29–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0063]

Cost-of-Living Increase and Other Determinations for 2016

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: There will be no cost-of-living increase in Social Security benefits effective December 2015. The national average wage index for 2014 is $46,481.52. The cost-of-living increase and national average wage index affect other program parameters as described below.

FOR FURTHER INFORMATION CONTACT: Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available on our Internet site at *www.socialsecurity.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 (TTY 1–800–325–0778), or visit our Internet site at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Under Title II of the Social Security Act (Act), there will be no cost-of-living increase effective December 2015. Because there is no increase, the following items will remain at current levels for 2016:

1. The Old-Age, Survivors, and Disability Insurance contribution and benefit base will remain $118,500 for remuneration paid in 2016 and self-employment income earned in taxable years beginning in 2016;

2. The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2016 will remain $1,310 for beneficiaries who will attain their

Normal Retirement Age after 2016 and $3,490 for those who attain such age in 2016;

3. The ''old-law'' contribution and benefit base under title II of the Act will remain $88,200 for 2016;

4. The monthly amount deemed to constitute substantial gainful activity (SGA) for statutorily blind persons in 2016 will remain $1,820;

5. The maximum Federal Supplemental Security Income (SSI) monthly benefit amounts for 2016 under title XVI of the Act will remain $733 for an eligible individual, $1,100 for an eligible individual with an eligible spouse, and $367 for an essential person;

6. The special benefit amount under title VIII of the Act for certain World War II veterans will remain $549.75 for 2016;

7. The student earned income exclusion under title XVI of the Act will remain $1,780 per month in 2016, but not more than $7,180 for all of 2016;

8. The dollar fee limit for services performed as a representative payee will remain $41 per month ($78 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2016; and

9. The dollar limit on the administrative-cost fee assessment charged to an appointed representative such as an attorney, agent, or other person who represents claimants will remain $91.

The national average wage index for 2014 is $46,481.52. This index affects the following amounts:

1. The dollar amounts (''bend points'') used in the primary insurance amount (PIA) benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2016 will be $856 and $5,157;

2. The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2016 will be $1,093, $1,578, and $2,058;

3. The taxable earnings a person must have to be credited with a quarter of coverage in 2016 will be $1,260;

4. The monthly amount deemed to constitute SGA for non-blind disabled persons will be $1,130 in 2016;

5. The earnings threshold establishing a month as a part of a trial work period will be $810 for 2016; and

6. Coverage thresholds for 2016 will be $2,000 for domestic workers and $1,700 for election officials and election workers.

The Act requires that we publish the following by November 1: The national average wage index for 2014 (215(a)(1)(D)), the earnings required to be credited with a quarter of coverage in 2016 (section 213(d)(2)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2016 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2016 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

There will be no cost-of-living increase for benefits under titles II and XVI of the Act.

Computation

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index produced by the Bureau of Labor Statistics. At the time the Act was amended to provide cost-of-living increases, only one Consumer Price Index existed, namely the Consumer Price Index for Urban Wage Earners and Clerical Workers. Although the Bureau of Labor Statistics has since developed other consumer price indices, we follow legal precedent by continuing to use the Consumer Price Index for Urban Wage Earners and Clerical Workers. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2014, was based on the CPI increase from the third quarter of 2013 to the third quarter of 2014. Therefore, the last computation quarter is the third quarter of 2014. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute any increase in the CPI from the third quarter of 2014 to the third quarter of 2015.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2014, is: For July 2014, 234.525; for August 2014, 234.030; and for September 2014, 234.170. The arithmetic mean for the calendar quarter ending September 30, 2014 is 234.242. The CPI for each month in the quarter ending September 30, 2015, is: For July 2015, 233.806; for August 2015, 233.366; and for September 2015, 232.661. The arithmetic mean for the calendar quarter ending September 30, 2015 is 233.278. The CPI for the calendar quarter ending September 30, 2015 is less than that for the calendar quarter ending September 30, 2014. Therefore, the calendar quarter ending September 30, 2015 is not a cost-of-living computation quarter and there is no cost-of-living increase.

Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts normally change based on the cost-of-living increase: (1) Title II benefits; (2) title XVI benefits; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment. Because there will be no cost-of-living increase, these program amounts will not increase in 2016 and will remain at their 2015 levels.

Program Amounts That Change Based on the National Average Wage Index, But Only When There Is a Cost-of-Living Increase

Certain other program amounts are adjusted annually based on the change in the national average wage index, rather than the CPI increase, but only if there also is a cost-of-living increase that year (as determined under section 215(i) of the Act). These amounts include (1) the OASDI contribution and benefit base, (2) the exempt amounts under the retirement earnings test, (3) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), and (4) the SGA amount applicable to statutorily blind individuals. Because there is no cost-of-living increase this year, these amounts will not increase in 2016 and will remain at their 2015 levels.

Program Amounts That Change Based on the National Average Wage Index, Without Regard to the Cost-of-Living Increase

Some program amounts are adjusted annually based on the change in the national average wage index whether there is a cost-of-living increase in that year or not. These include:

1. The dollar amounts, or bend points, in the PIA formula;

2. The bend points in the maximum family benefit formula;

3. The earnings required to credit a worker with a quarter of coverage;

4. The SGA amount for non-blind disabled individuals;

5. The earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries;

6. The coverage threshold for election officials and election workers; and

7. The domestic employee coverage threshold.

These amounts will increase in 2016 based on the change in the national average wage. In the sections that follow, we explain the calculation of the percentage change in the national average wage and the corresponding changes in each of these program amounts.

National Average Wage Index for 2014

Computation

We determined the national average wage index for calendar year 2014 based on the 2013 national average wage index of $44,888.16, published in the **Federal Register** on October 29, 2014 (79 FR 64455), and the percentage increase in average wages from 2013 to 2014, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were $43,041.39 for 2013 and $44,569.20 for 2014. To determine the national average wage index for 2014 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2013 national average wage index of $44,888.16 by the percentage increase in average wages from 2013 to 2014 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

National Average Wage Index Amount

Multiplying the national average wage index for 2013 ($44,888.16) by the ratio of the average wage for 2014 ($44,569.20) to that for 2013 ($43,041.39) produces the 2014 index, $46,481.52. The national average wage index for calendar year 2014 is about 3.55 percent higher than the 2013 index.

Primary Insurance Amount Benefit Formula

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the AIME the ''bend points'' of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2016, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2014 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1977 ($9,779.44) produces the amounts of $855.54 and $5,156.99. We round these to $856 and $5,157. Therefore, the portions of the AIME to be used in 2016 are the first $856, the amount between $856 and $5,157, and the amount over $5,157.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2016, or who die in 2016 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $856 of their AIME, plus

(b) 32 percent of their AIME over $856 and through $5,157, plus

(c) 15 percent of their AIME over $5,157

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2016, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2014 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1977 ($9,779.44) produces the amounts of $1,093.19, $1,577.99, and $2,058.04. We round these amounts to $1,093, $1,578, and $2,058. Therefore, the portions of the PIAs to be used in 2016 are the first $1,093, the amount between $1,093 and $1,578, the amount between $1,578 and $2,058, and the amount over $2,058.

Thus, for the family of a worker who becomes age 62 or dies in 2016 before age 62, we will compute the total benefits payable to them so that it does not exceed:

(a) 150 percent of the first $1,093 of the worker's PIA, plus
(b) 272 percent of the worker's PIA over $1,093 through $1,578, plus
(c) 134 percent of the worker's PIA over $1,578 through $2,058, plus
(d) 175 percent of the worker's PIA over $2,058

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are set out section 203(a) of the Act.

Quarter of Coverage Amount

General

The earnings required for a quarter of coverage in 2016 is $1,260. A quarter of coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages yearly instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year. The 1977 legislation also provided a formula for years after 1978.

Computation

Under the prescribed formula, the quarter of coverage amount for 2016 is the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2014 to that for 1976; or (2) the current amount of $1,220. Section 213(d) provides that if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1976 ($9,226.48) produces $1,259.46. We then round this amount to $1,260. Because $1,260 exceeds the current amount of $1,220, the quarter of coverage amount is $1,260 for 2016.

Substantial Gainful Activity Amounts for Non-Blind Disabled Individuals

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals. In a year where there is no cost-of-living increase, we only consider whether the SGA for non-blind disabled individuals will increase.

Computation

The monthly SGA amount for non-blind disabled individuals for 2016 is the larger of: (1) The amount for 2000 multiplied by the ratio of the national average wage index for 2014 to that for 1998; or (2) the amount for 2015. If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1998 ($28,861.44) produces $1,127.35. We then round this amount to $1,130. Because $1,130 exceeds the current amount of $1,090, the monthly SGA amount for non-blind disabled individuals is $1,130 for 2016.

Trial Work Period Earnings Threshold

General

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test the ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2016, any month in which earnings exceed $810 is considered a month of services for an individual's trial work period.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2016, used to determine whether a month is part of a trial work period, is the larger of (1) the amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2014 to that for 1999 or (2) the amount for 2015. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Trial Work Period Earnings Threshold Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1999 ($30,469.84) produces $808.51. We then round this amount to $810. Because $810 exceeds the current amount of $780, the monthly earnings threshold is $810 for 2016.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2016, this threshold is $2,000. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold for 2016 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2014 to that for 1993. If the resulting amount is not a multiple of $100, we round it to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold ($1,000) by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1993 ($23,132.67) produces $2,009.35. We then round this amount to $2,000. Therefore, the domestic employee coverage threshold amount is $2,000 for 2016.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2016, this threshold is $1,700. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold for 2016 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2014 to that for 1997. If the amount we determine is not a multiple of $100, it we round it to the nearest multiple of $100.

Election Official and Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2014 ($46,481.52) to that for 1997 ($27,426.00) produces $1,694.80. We then round this amount to $1,700. Therefore, the election official and election worker coverage threshold amount is $1,700 for 2016.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 26, 2015.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2015–27828 Filed 10–29–15; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0065]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2015–0065].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 29, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Child Relationship Statement—20 CFR 404.355 & 404.731—0960–0116. To help determine a child's entitlement to Social Security benefits, SSA uses criteria under section 216(h)(3) of the Social Security Act, deemed child provision. SSA may deem a child to an insured individual if: (1) The insured individual presents SSA with satisfactory evidence of parenthood, and was living with or contributing to the child's support at certain specified times; or (2) the insured individual (a) acknowledged the child in writing; (b) was court decreed as the child's parent; or (c) was court ordered to support the child. To obtain this information, SSA uses Form SSA–2519, Child Relationship Statement. The respondents are people with knowledge of the relationship between certain individuals filing for Social Security benefits and their alleged biological children.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2519	50,000	1	15	12,500

2. Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d—0960–0744. SSA uses Form SSA–372 to (1) inform previously entitled beneficiaries of the expedited reinstatement (EXR) requirements of Supplemental Security Income (SSI) payments under Title XVI of the Social Security Act (Act), and (2) document their requests for EXR. We require this application for reinstatement of benefits for respondents to obtain SSI disability payments for EXR. When an SSA claims representative learns of individuals whose medical conditions no longer permit them to perform substantial gainful activity as defined in the Act, the claims representative gives or mails the form to the previously entitled individuals if they request EXR over the phone. SSA employees collect this information whenever an individual files for EXR benefits. The respondents are applicants for EXR of SSI disability payments.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–372	2,000	1	2	67

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication.

To be sure we consider your comments, we must receive them no later than November 30, 2015. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Response to Notice of Revised Determination—20 CFR 404.913–404.914, 404.992(b), 416.1413–416.1414, and 416.1492(d)—0960–0347. When SSA determines: (1) Claimants for initial disability benefits do not actually have a disability, or (2) current disability recipients' records show their disability ceased, SSA notifies the disability claimants or recipients of this decision. In response to this notice, the affected claimants and disability recipients have the following recourse: (1) They may request a disability hearing to contest SSA's decision and (2) they may submit additional information or evidence for SSA to consider. Disability claimants, recipients, and their representatives use Form SSA–765 to accomplish these two actions. If respondents request the first option, SSA's Disability Hearings Unit uses the form to schedule a hearing; ensure an interpreter is present, if required; and ensure the disability recipients or claimants and their representatives receive a notice about the place and time of the hearing. If respondents choose the second option, SSA uses the form and other evidence to reevaluate the claimant's case and determine if the new information or evidence will change SSA's decision. The respondents are disability claimants, current disability recipients, or their representatives.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–765	1,925	1	30	963

Dated: October 27, 2015.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–27679 Filed 10–29–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35971]

Intermodal RR Transfer, LLC—Lease and Operation Exemption—JACJON Associates

Intermodal RR Transfer, LLC (IRRT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from JACJON Associates (JACJON) [1] and to operate 590 linear feet of railroad track extending from the terminus of the track at the Passaic River to the point of interchange with Consolidated Rail Corporation (Conrail), in Kearny, Hudson County, N.J. (the Line).[2] IRRT states that it intends to provide rail service over the Line and to interchange with Conrail, pursuant to an agreement to be reached with Conrail.

The transaction may be consummated on or after November 15, 2015, the effective date of the exemption (30 days after the exemption was filed).

IRRT certifies that, as a result of this transaction, its projected revenues will not exceed those of a Class III rail carrier and will not exceed $5 million annually.

IRRT states that the Line previously has been owned and operated as private track and might otherwise be considered spur, industrial, or switching track exempt from the Board's authority under 49 U.S.C. 10906, except that this is IRRT's initial rail acquisition and operation. IRRT certifies that the lease agreement contains no interchange commitment between the parties.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 6, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35971, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy must be served on Richard H. Streeter, 5255 Partridge Lane NW., Washington, DC 20016.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 27, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–27722 Filed 10–29–15; 8:45 am]

BILLING CODE 4915–01–P

[1] IRRT has filed a copy of the Lease Agreement between IRRT and JACJON, a noncarrier. *See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.,* FD 35296, slip op. at 3–4 (STB served Aug. 31, 2010).

[2] According to IRRT, there are no mileposts associated with the Line, but it is located on JACJON's property at 76 Central Avenue, Kearney, N.J.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-Day notice of intent to seek extension of approval: Waybill Compliance Survey.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the Waybill Compliance Survey. This information collection is described in detail below.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Waybill Compliance Survey.

OMB Control Number: 2140–0010.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Regulated railroads that did not submit carload waybill sample information to the STB in the previous year.

Number of Respondents: 523.

Estimated Time per Response: .5 hours.

Frequency: Annually.

Total Burden Hours (annually including all respondents): 60.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), the Board is responsible for the economic regulation of common carrier rail transportation, including the collection and administration of the Carload Waybill Sample. Under 49 CFR part 1244, a railroad terminating 4,500 or more carloads, or terminating at least 5% of the total revenue carloads that terminate in a particular state, in any of the three preceding years is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines. (The Waybill Sample collection is approved under OMB Control Number 2140–0015, which expires on June 30, 2017.) The information in the Waybill Sample is used to monitor traffic flows and rate trends in the industry.

In order to determine whether any of the surveyed railroads should be filing a Waybill Sample, the Board needs to collect the information in the Waybill Compliance Survey—information on the number of carloads of traffic terminated each year by U.S. railroads—from railroads that are not filing a Waybill Sample. In addition, information collected in the Waybill Compliance Survey, on a voluntary basis, about the total operating revenue of each railroad helps to determine whether respondents are subject to other statutory or regulatory requirements. Because many of the Board's reporting requirements apply only to railroads with large operating revenues, accurate determinations regarding the size of a railroad's operating revenues help the Board minimize the reporting burden for smaller railroads. The Board has authority to collect this information under 49 U.S.C. 11144–45, and under 49 CFR 1244.2.

DATES: Comments on this information collection should be submitted by December 29, 2015.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.dot.gov.* When submitting comments, please refer to ''Waybill Compliance Survey.'' For further information regarding this collection or to obtain a copy of this collection form, the ''Annual Waybill Compliance Survey,'' contact Pedro Ramirez at (202) 245–0333 or at *pedro.ramirez@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 27, 2015.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–27726 Filed 10–29–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35967]

SteelRiver Infrastructure Fund North America LP, SteelRiver Devco Holdings LLC and SR Transportation Holdings LLC—Control Exemption—Georgia Northeastern Railroad Company, Inc. and Blue Ridge Scenic Excursions, Inc.

SteelRiver Infrastructure Fund North America LP (SteelRiver), SteelRiver Devco Holdings LLC (Devco), and SR Transportation Holdings LLC (SRTH) (collectively, Applicants), all noncarriers, have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Georgia Northeastern Railroad Company, Inc. (GNRR) and its subsidiary, Blue Ridge Scenic Excursions, Inc. (BRSE).[1]

Applicants state that SRTH intends to acquire the shares of GNRR on or after November 15, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

SRTH is owned by Devco, which in turn is owned by SteelRiver. Devco and SRTH do not control any carriers. SteelRiver is owned by a diverse group of U.S. and foreign pension funds, insurance companies, and other investors. SteelRiver controls PRC Funding LLC, a noncarrier, which controls Patriot Funding LLC, a noncarrier, which controls PRC Holdings LLC, a noncarrier, which controls PRC Midco LLC, a noncarrier, which controls Patriot Rail Company LLC, (Patriot), a noncarrier. Patriot controls 13 Class III railroads (collectively, the Subsidiary Railroads). For a complete list of these rail carriers, and the states in which they operate, see the notice of exemption filed on October 16, 2015, in this proceeding. The notice is available on the Board's web at *WWW.STB.DOT.GOV.*

GNRR operates approximately 105.92 miles of railroad between Marietta and Mineral Bluff, Ga. GNRR owns about 48 miles, leases about 32.74 miles from the CSX Transporation, Inc., and leases about 25.18 miles from the Georgia Department of Transportation, including industrial, spur and other track.

According to Applicants, SRTH entered into a Stock Purchase Agreement (the Agreement)[2] dated October 16, 2015, with GNRR; BRSE; Wilds L. Pierce; Kevin F. O'Gara, Sr.; Carolyn T. McAfee; Estate of Charles C. Schoen, III; Michael L. Pierce; Stephen K. Slayden; Kevin S. Slayden; The John Randolph Seckman Residuary Trust; Donnie L. Plumley; James A. Day; B. Thomas Lockett; and Joy F. Hardin. Under the Agreement, SRTH will acquire all of the common stock of GNRR. The notice therefore seeks exemption for SRTH to acquire control, and for Devco and SteelRiver to indirectly acquire control, of GNRR and BRSE.

Applicants state that: (1) The Subsidiary Railroads will not connect with GNRR and BRSE; (2) the proposed transaction is not part of a series of anticipated transactions that would connect the railroads with each other or

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[1] Applicants seek to acquire control of GNRR, a Class III carrier, and BRSE, which, according to Applicants, ''operates a scenic excursion train service over track leased from GNRR during March through December between Blue Ridge and Copperhill, Ga.'' BRSE does not appear to be a Class III carrier, and, if it is not, the exemption will apply only to GNRR.

[2] A redacted version of the Agreement was filed with the notice of exemption. Applicants simultaneously filed a motion for protective order to protect the confidential and commercially sensitive information contained in the unredacted version of the Agreement, which Applicants submitted under seal. That motion will be addressed in a separate decision.

with any railroads in the corporate family; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Applicants state that the proposed transaction is intended to promote the investment objectives of SteelRiver, Devco, and SRTH and to improve the efficiency, financial strength, and ability of GNRR and BRSE to meet the needs of shippers. There are no current plans to make substantial changes in the day-to-day operations of GNRR or BRSE, to sell GNRR or BRSE, or to abandon rail lines in connection with the proposed transaction. Applicants state that they do not contemplate making significant changes in the current workforces at GNRR or BRSE.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 to stay must be filed by November 6, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35967 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at: ''*WWW.STB.DOT.GOV''.*

Decided: October 27, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2015–27731 Filed 10–29–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2015–0211]

60-Day Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew a collection. This collection renewal request includes one Short Term Lending Program (STLP) application used for both new loan guarantee applicants and renewal loan guarantee applicants. The information collected in the STLP application will determine the applicant's eligibility and is necessary to approve or deny a loan. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by December 29, 2015.

ADDRESSES: You may submit your comments identified by DOT–OST–2015–0211 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Ralston, Manager, Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Routing Symbol S–40, 202–366–5577 (phone) or *john.ralston@dot.gov* (email).

Supplementary Information:

Title: Short Term Lending Program Application for a Loan Guarantee.

OMB Control No.: 2105–0555.

Background: OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other certified Small Businesses (8a, women-owned, small disadvantaged, HUBZone, veteran owned, and service disabled veteran owned) the opportunity to obtain short term working capital at variable interest rates for transportation-related projects. The STLP provides Participating Lenders (PLs) a guarantee, up to 75%, on a revolving line of credit up to a $750,000 maximum. These loans are provided through lenders that serve as STLP PLs. The term on the line of credit is up to one (1) year, which may be renewed for five (5) years. A potential or renewal STLP participant must submit a guaranteed loan application package. The guaranteed loan application includes the STLP application, checklist, and instructions. Respondents: Certified Disadvantaged Business Enterprises (DBEs) and other certified Small Businesses (8a, women-owned, small disadvantaged, HUBZone, veteran owned, and service disabled veteran owned) interested in financing their transportation-related contracts.

DOT Form 2301–1(REV.1): Short Term Lending Program Application for Loan Guarantee: A potential or renewal STLP participant must submit a guaranteed loan application package. The guaranteed loan application includes the STLP application and supporting documentation to be collected from the checklist in the application. The application may be obtained directly from OSDBU, the Regional Small Business Transportation Resource Centers, from a PL, or online from the agency's Web site, currently at *http://www.transportation.gov/osdbu/financial-assistance/short-term-lending-program*.

Respondents: Small Businesses, 100.

Frequency: Once.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden Hours: 200 hours.

Supporting documentation: Required documentation shall include, but is not limited to, the following items:

a. Business, trade, or job performance reference letters;

b. DBE or other eligible certification letters;

c. Aging report of receivables and payables;

d. Business tax returns;

e. Business financial statements;

f. Personal income tax returns;

g. Personal financial statements;

h. Schedule of work in progress (WIP);

i. Signed and dated copy of transportation-related contracts;

j. Business debt schedule;

k. Cash flow projections;

l. Owner(s) and key management resumes.

Respondents: Small Businesses, 100.
Frequency: Once.
Estimated Average Burden per Response: 12 hours.
Estimated Total Annual Burden Hours: 1200 hours.
Summary: The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments on our intention to request the Office of Management and Budget's (OMB) approval to renew a collection of the STLP Participating Lender (PL) forms. The collection involves the use of the ''Short Term Lending Program Bank Verification Loan Activation Form''; ''Short Term Lending Program Bank Acknowledgement Extension Request Form''; ''Short Term Lending Program Bank Acknowledgement Loan Close-Out Form''; ''Guaranty Loan Status Report''; ''Pending Loan Status Report''; ''Drug-Free Workplace Act Certification for a Grantee Other than an Individual''; ''Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements''; ''Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension''; ''Cooperative Agreement between the U.S. Department of Transportation and the Participating Lender''; and ''U.S. Department of Transportation Office of Small and Disadvantaged Utilization Short Term Lending Program Guarantee Agreement''. The information collected administers the loans guaranteed under the STLP. The information collected keeps the Participating Lender's (PLs) in compliance with the terms established in the Cooperative Agreement between DOT and the PLs. OMB Control No: 2105–0555.

Supplementary Information:
Titles: STLP—Participating Lender (PL) forms.
OMB Control No.: 2105–0555.
Background: STLP loans are provided through lenders that serve as STLP participating Lenders (PL). The STLP provides PLs a guarantee, up to 75%, on a revolving line of credit up to a $750,000 maximum. As part of the requirements for approval as a PL, lenders must submit the following certifications: Drug-Free Workplace Act Certification for a Grantee Other Than An Individual; Certification Regarding Lobbying for Contracts, Grants, Loans, & Cooperative Agreement; Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension. The STLP is subject to budgeting and accounting requirements of the Federal Credit Reform Act of 1990 (FCRA). The PL must carry out processes to activate, monitor, service and close out STLP loans. To fulfill the requirements of FCRA, the PL submits reports and the following forms to OSDBU.
Respondents: Participating Lenders that are in the process or have entered into cooperative agreements with DOT's OSDBU under 49 CFR part 22 DOT–OST–2008–0236 entitled, ''Short Term Lending Program''.
DOT Form 2303–1: Short Term Lending Program Bank Verification Loan Activation Form. The PL must submit a Loan Activation Form to OSDBU that indicates the date in which the loan has been activated.
Respondents: 100.
Frequency: Annually, up to five years.
Estimated Average Burden per Response: ½ hour.
Estimated Total Annual Burden Hours: 50 hours.
DOT Form 2310–1: Short Term Lending Program Bank Acknowledgement Extension Request Form. An extension of the original loan guarantee for a maximum period of ninety (90) days may be requested, in writing, by the PL using the STLP Extension Request Form.
Respondents: 100.
Frequency: Annually.
Estimated Average Burden per Response: ½ hour
Estimated Total Annual Burden Hours: 50 hours.
DOT Form 2304–1: Short Term Lending Program Bank Acknowledgement Loan Close-Out Form. The PL must submit the Loan Close-Out Form to OSDBU upon full repayment of the STLP loan or when the loan guarantee expires.
Respondents: 100.
Frequency: Annually.
Estimated Average Burden per Response: ½ hour.
Estimated Total Annual Burden Hours: 50 hours.
DOT Form 2305–1: Guaranty Loan Status Report. The PL submits a monthly status of active guaranteed loans to OSDBU.
Respondents: 100.
Frequency: Monthly.
Estimated Average Burden per Response: 1 hour.
Estimated Total Annual Burden Hours: 100 hours.
DOT Form 2306–1: Pending Loan Status Report. The PL submits a monthly loan(s) in process report to OSDBU.
Respondents: 100.
Frequency: Monthly.
Estimated Average Burden per Response: 1 hour.
Estimated Total Annual Burden Hours: 100 hours.
DOT Form 2307–1: Drug-Free Workplace Act Certification for a Grantee Other than an Individual. The PL certifies it is a drug-free workplace by executing this certification.
Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.
DOT Form 2308–1. Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreement. The PL certifies that no Federal funds will be utilized for lobbying by executing this form.
Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.
DOT Form 2309–1. Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension. The PL must not currently be debarred or suspended from participation in a government contract or delinquent on a government debt by submitting this form.
Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

Issued in Washington, DC, on October 26, 2015.

John Ralston,
Manager, Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

[FR Doc. 2015–27677 Filed 10–29–15; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: ACH Vendor/Miscellaneous Payment Enrollment Form

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the ACH Vendor/Miscellaneous Payment Enrollment Form.

DATES: Written comments should be received on or before December 29, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, EFT Strategy Division; 401 14th Street SW., Room 303, Washington, DC 20227, (202) 874–6624

SUPPLEMENTARY INFORMATION:

Title: ACH Vendor/Miscellaneous Payment Enrollment Form.

OMB Number: 1510–0056.

Form Number: SF 3881.

Abstract: The form is used to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Bureau of the Fiscal Service, will use the information to electronically transmit payment to vendors' financial institutions.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 70,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 17,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 26, 2015.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2015–27623 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by email at *PRA@treasury.gov* or the entire information collection request may be found at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

OMB Number: 1545–0022.

Type of Review: Extension without change of a previously approved collection.

Title: Life Insurance Statement.

Form: 712.

Abstract: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,120,200.

OMB Number: 1545–0202.

Type of Review: Extension without change of a previously approved collection.

Title: Form 5310, Application for Determination for Terminating Plan; Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

Form: 5310, 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,718,300.

OMB Number: 1545–0770.

Type of Review: Extension without change of a previously approved collection.

Title: Transfers of Securities Under Certain Agreements.

Abstract: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify no recognition treatment of gain or loss on the exchange of the securities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 9,781.

OMB Number: 1545–1049.

Type of Review: Revision of a previously approved collection.

Title: Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

Form: 8725.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 8,321,755.

OMB Number: 1545–1120.
Type of Review: Extension without change of a previously approved collection.
Title: TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531 (Final) Final Regulations Under Section 382.
Abstract: (CO–69–87 and CO–68–87) These regulations require reporting by a corporation after it undergoes an ''ownership change'' under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under IRC section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 220,575.

OMB Number: 1545–1233.
Type of Review: Extension without change of a previously approved collection.
Title: Adjusted Current Earnings (IA–14–91)(Final).
Abstract: This regulation affects business and other for profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 1,000.

OMB Number: 1545–1254.
Type of Review: Extension without change of a previously approved collection.
Title: TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91).
Abstract: Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 50.

OMB Number: 1545–1347.
Type of Review: Revision of a previously approved collection.
Title: Arbitrage Bond Restrictions under section 148.
Abstract: Section 148 was enacted to minimize the arbitrage benefits from investing gross proceeds of tax-exempt bonds in higher yielding investments and to remove the arbitrage incentives to issue more bonds, to issue bonds earlier, or to leave bonds outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds were issued. To accomplish these purposes, section 148 restricts the direct and indirect investment of bond proceeds in higher yielding investments and requires that certain earnings on higher yielding investments be rebated to the United States. Violation of these provisions causes the bonds in the issue to become arbitrage bonds, the interest on which is not excludable from the gross income of the owners under section 103(a). The regulations in §§ 1.148–1 through 1.148–11 apply in a manner consistent with these purposes.

Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on non-purpose investments acquired with the bond proceeds. Issuers are required to file a Form 8038–T and remit the rebate. Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. The scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 56,684.

OMB Number: 1545–1412.
Type of Review: Revision of a previously approved collection.
Title: FI–54–93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.
Abstract: This information is required by the Internal Revenue Service to verify compliance with section 446 of the Internal Revenue Code. This information will be used to determine that the amount of tax has been computed correctly.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 20,000.

OMB Number: 1545–1503.
Type of Review: Revision of a previously approved collection.
Title: Revenue Procedure 2015–41 (Formerly 2006–9)—Section 482—Allocation of Income and Deductions Among Taxpayers.
Abstract: The information requested is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.
Affected Public: Private Sector: Not-for-profit institutions; Individuals or Households.
Estimated Annual Burden Hours: 10,900.

OMB Number: 1545–1504.
Type of Review: Extension without change of a previously approved collection.
Title: Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).
Form: 911.
Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.
Affected Public: Individuals or Households.
Estimated Annual Burden Hours: 46,500.

OMB Number: 1545–1510.
Type of Review: Extension without change of a previously approved collection.
Title: Revenue Procedure 2004–53; Procedure for filing Forms W–2 is certain Acquisitions (Rev Proc 96–60).
Abstract: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 110,700.

OMB Number: 1545–1516.
Type of Review: Extension without change of a previously approved collection.
Title: Entity Classification Election.
Form: 8832.
Abstract: An eligible entity uses Form 8832 to elect how it will be classified for federal tax purposes, as a corporation, a partnership, or an entity disregarded as

separate from its owner. An eligible entity is classified for federal tax purposes under the default rules unless it files Form 8832 or Form 2553, Election by a Small Business Corporation. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for federal tax purposes.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 35,900.

OMB Number: 1545–1530.

Type of Review: Extension without change of a previously approved collection.

Title: Rev. Proc. 2007–32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.

Form: 8832.

Abstract: Tip Rate Determination Agreement (Gaming Industry) Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers. Gaming Industry Tip Compliance Agreement Program Taxpayers who operate gaming establishments may enter into an agreement with the Internal Revenue Service to establish tip rates and occupational categories for all tipped employees of the taxpayer. The agreements will require substantiation of the tip rates as well.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 10,467.

OMB Number: 1545–1540.

Type of Review: Extension without change of a previously approved collection.

Title: REG–125071–06 (TD 9308) Reporting Requirements for Widely Held Fixed Investment Trusts.

Abstract: The regulations clarify the reporting requirements of trustees and middlemen involved with widely held fixed investment trusts.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 2,400.

OMB Number: 1545–1667.

Type of Review: Extension without change of a previously approved collection.

Title: Revenue Procedure 99–50, Combined Information Reporting.

Abstract: The revenue procedure permits combined information reporting by a successor ''business entity'' (*i.e.,* a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 500.

OMB Number: 1545–1676.

Type of Review: Extension without change of a previously approved collection.

Title: REG–113572–99 (TD 8933) Qualified Transportation Fringe Benefits.

Abstract: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 12,968,728.

OMB Number: 1545–1678.

Type of Review: Extension without change of a previously approved collection.

Title: REG–161424–01 (Final), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; REG–105316–98 (Final) Information.

Abstract: These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 1.

OMB Number: 1545–1810.

Type of Review: Extension without change of a previously approved collection.

Title: Credit for Small Employer Pension Plan Startup Costs.

Abstract: Qualified small employers use Form 8881 to request a credit for start-up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement related education of employees with respect to the plan. The credit is 50 percent of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 235,335.

OMB Number: 1545–1815.

Type of Review: Revision of a previously approved collection.

Title: Coverdell ESA Contribution Information.

Form: 5498–ESA.

Abstract: Form 5498–ESA is used by trustees and issuers of Coverdell Education Savings accounts to report contributions made to these accounts to beneficiaries.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 46,392.

OMB Number: 1545–1820.

Type of Review: Extension without change of a previously approved collection.

Title: Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections.

Abstract: Pursuant to Sec. 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in Sec. 338(a) or Sec. 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 300.

OMB Number: 1545–1843.

Type of Review: Extension without change of a previously approved collection.

Title: TD 9207 (final)—Assumptions of Partner Liabilities; REG–106736–00 (NPRM).

Abstract: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic

performance of the contingent liability from the partnership or other partner assuming the liability.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 125.

OMB Number: 1545–1980.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2007–70—Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes; Reporting requirements under Sec. 170(f)(12)(D).

Abstract: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Service. The purpose of is to prevent donors from taking inappropriate deductions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 21,930.

OMB Number: 1545–1982.

Type of Review: Extension without change of a previously approved collection.

Title: Distilled Spirits Credit.

Form: 8906.

Abstract: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The new form provides a means for the eligible taxpayer to compute the amount of credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 21,930.

OMB Number: 1545–1994.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2008–36—Amplification of Notice 2006–28, Energy Efficient Homes Credit; Manufactured Homes.

Abstract: This notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 60.

OMB Number: 1545–2109.

Type of Review: Revision of a previously approved collection.

Title: Notice of Election of an Agreement to Special Lien Under Internal Revenue Code Section 6324A and Regulations.

Abstract: Under IRC section 6166, an estate may elect to pay the estate tax in installments over 14 years if certain conditions are met. If the IRS determines that the government's interest in collecting estate tax is sufficiently at risk, it may require the estate provide a bond. Alternatively, the executor may elect to provide a lien in lieu of bond. Under section 6324A(c), to make this election the executor must submit a lien agreement to the IRS. Form 13925 is a form lien agreement that executors may use for this purpose.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 500.

OMB Number: 1545–2131.

Type of Review: Revision of a previously approved collection.

Title: Form 1127—Application for Extension of Time for Payment of Tax Due to Undue Hardship.

Form: 1127.

Abstract: Under IRC 6161, individual taxpayers and business taxpayers are allowed to request an extension of time for payment of tax shown or required to be shown on a return or for a tax due on a notice of deficiency. In order to be granted this extension, they must file Form 1127, providing evidence of undue hardship, inability to borrow, and collateral to ensure payment of the tax.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 7,470.

Dated: October 26, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–27651 Filed 10–29–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (FS)

OMB Number: 1530–0003.

Type of Review: Extension without change of a currently approved collection.

Title: Notice of Reclamation.

Form: FMS–133.

Abstract: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used to notify the financial institution. If the financial institution does not respond to the FMS–133, a debit request (Form 135) is sent to the Federal Reserve Bank.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 29,750.

OMB Number: 1530–0004.

Type of Review: Extension without change of a currently approved collection.

Title: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor.

Form: SF 1055.

Abstract: This form is required to determine who is entitled to funds of a deceased Postal Savings depositor or deceased award holder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 180.

OMB Number: 1530–0009.

Type of Review: Extension without change of a currently approved collection.

Title: States Where Licensed for Surety.

Form: FMS 2208; FS 2208.

Abstract: Information collected from insurance companies provides Federal bond approving officers with a listing of states, by company, in which they are licensed to write Federal bonds. This information appears in Treasury's Circular 570.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 262.

OMB Number: 1530–0017.

Type of Review: Extension without change of a currently approved collection.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

Form: FS Form 5902; 5903.

Abstract: These forms are used to give authority to financial institutions to become a depositary of the Federal Government. They also execute an agreement from the financial institutions they are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 8.

OMB Number: 1530–0032.

Type of Review: Extension without change of a currently approved collection.

Title: Application for disposition of Retirement Plan/Individual Retirement Bonds Without Administration of Deceased Owners Estate.

Form: FS Form 3565.

Abstract: Used by heirs of deceased owners of Retirement Plan and/or Individual Retirement Bonds to request disposition.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 117.

Dated: October 27, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–27662 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov* or viewing the entire information collection request at *www.reginfo.gov*.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0022.

Type of Review: Revision of a currently approved collection.

Title: Customer Identification Programs for Futures Commission Merchants and Introducing Brokers.

Abstract: Futures commission merchants and introducing brokers are required to develop and maintain a customer identification program. A copy of the program must be maintained for five years. See 31 CFR 1026.100 and 31 CFR 1026.220.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 14,608.

Dated: October 27, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–27659 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0087.

Type of Review: Revision of a currently approved collection.

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

Form: TTB F 5200.14.

Abstract: Under the Federal Alcohol Administration Act (FAA Act), at 27 U.S.C. 205(e) and (f), TTB has issued regulations regarding the labeling and advertising of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. Under these

regulations, bottlers and importers of alcohol beverages must provide certain mandatory information and adhere to certain performance standards for statements made on labels and in advertisements of alcohol beverages to ensure that consumers are not deceived or mislead about a product's identity and quality.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 9,552.

OMB Number: 1513–0114.

Type of Review: Revision of a currently approved collection.

Title: Beer for Exportation.

Form: TTB F 5120.12.

Abstract: Federal excise tax is imposed under 26 U.S.C. 5051 on beer removed from domestic breweries for consumption or sale. However, under provisions of 26 U.S.C. 5053, beer may be removed from the brewery without payment of tax for export or for use as supplies on certain vessels and aircraft, subject to the prescribed regulations TTB requires brewers to give notice of such removals on TTB F 5130.12. The form is also used by Customs officers to certify the exportation (or by Armed Forces officers to acknowledge receipt) of beer removed without payment of tax TTB requires this information to ensure that exportation of the beer took place as claimed and that untaxpaid beer does not reach the domestic market and causing loss of revenue.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 9,933.

OMB Number: 1513–0115.

Type of Review: Revision of a currently approved collection.

Title: Usual and Customary Business Records Relating to Wine, TTB REC 5120/1.

Abstract: Under 26 U.S.C. 5367, 5369, 5370, and 5555, TTB regulations require wineries, taxpaid wine bottling houses, and vinegar plants to keep usual and customary business records relating to wine, including purchase invoices, sales invoices, and internal records, in order to document the flow of ingredients and materials through fermenting, processing, packaging, storing and shipping operations. TTB routinely inspects these records to ensure the proper payment of Federal wine excise taxes by these businesses.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1513–0116.

Type of Review: Revision of a currently approved collection.

Title: Bond for Drawback Under 26 U.S.C. 5111.

Form: TTB F 5154.3

Abstract: The Internal Revenue Code, at 26 U.S.C. 5111–5114, authorizes ''drawback'' (similar to a refund) of all but $1.00 per gallon of the Federal excise tax already paid on distilled spirits, if the spirits are subsequently used in the manufacture of certain nonbeverage products such as medicines, food products, flavors, and perfumes. Persons making such products must file claims proving their eligibility for drawback. Claims may be filed on either a monthly or a quarterly basis, and 26 U.S.C. 5114(b) authorizes the Secretary of the Treasury to require persons filing monthly claims to file a bond in order to protect the revenue. Monthly claimants file their bond using TTB F 5154.3.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 8.

Dated: October 27, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–27660 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov* or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices, Office of Foreign Assets Control (OFAC)

OMB Number: 1505–0243.

Type of Review: Extension without change of a currently approved collection.

Title: Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

Abstract: This application is submitted to extend the information collection authority pertaining to the Iranian Financial Sanctions Regulations set forth in 31 CFR part 561 (the ''Regulations''). Section 561.504(b) of the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the ''IFSR''), specifies that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the Part 561 List on OFAC's Web site (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable through accounts for foreign financial institutions listed on the Part 561 List.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Burden Hours: 2.

Dated: October 27, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–27663 Filed 10–29–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Agency Information Collection (Supplement to VA Form 21P–4703) Activity Under OMB Review

AGENCY: Veterans Benefits 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 Benefits

Administration (VBA), 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; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 30, 2015.

ADDRESSES: Submit written comments on the collection of information through *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 *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0319'' 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*. Please refer to ''OMB Control No. 2900–0319.''

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Form 21P–4703.

OMB Control Number: 2900–0319.

Type of Review: Revision of a currently approved collection.

Abstract: VA maintains supervision of the distribution and use of VA benefits paid to fiduciaries on behalf of VA claimants who are incompetent, a minor, or under legal disability. This form is used as a legal contract between VA and a federal fiduciary. It outlines the responsibilities of the fiduciary with respect to the uses of VA funds.

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 at 80 FR 46388 on August 4, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,917.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 47,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management Department of Veterans Affairs.

[FR Doc. 2015–27670 Filed 10–29–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Reconfiguration of VA Black Hills Health Care System (BHHCS)

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of availability.

SUMMARY: VA proposes to reconfigure health care services throughout the 100,000-square mile VA BHHCS service area, including the addition of purchased care for Veterans from community providers to improve geographic access to care. In accordance with the National Environmental Policy Act (NEPA), VA has prepared a Draft EIS that analyzes the potential impacts of six alternatives for changes to VA's facilities in Hot Springs and Rapid City, South Dakota, to support the proposed services reconfiguration. The Draft EIS uses the substitution approach for integrating compliance with Section 106 of the National Historic Preservation Act into the EIS process. The Draft EIS is available for review on the agency Web site and at public libraries in the service area.

DATES: Interested parties are invited to submit comments in writing on the VA BHHCS Reconfiguration Draft EIS by January 5, 2016.

ADDRESSES: Submit written comments on the VA BHHCS Reconfiguration Draft EIS online through *www.blackhillseis.com,* by email to *vablackhillsfuture@va.gov,* or by regular mail to Staff Assistant to the Director, VA Black Hills Health Care System, 113 Comanche Road, Fort Meade, SD 57741. Please refer to ''BHHCS Reconfiguration Draft EIS'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Staff Assistant to the Director, VA Black Hills Health Care System, 113 Comanche Road, Fort Meade, SD 57741 or by email to *vablackhillsfuture@va.gov.*

SUPPLEMENTARY INFORMATION: VA proposes to reconfigure health care services throughout the VA BHHCS service area including, under Alternatives A through D, the addition of purchased care for Veterans from community providers; this reconfiguration would improve the system's compliance with VA's ''Geographic Access to Care'' guidelines.

Six alternatives are considered in detail in the Draft EIS, as well as a supplement to four of the alternatives. The alternatives propose different locations and combinations of facilities serving as a community-based outpatient clinic (CBOC), a multi-specialty outpatient clinic (MSOC), and a residential rehabilitation treatment program (RRTP) facility; expanding, renovating, or vacating existing facilities; and taking no action:

A. Hot Springs—new CBOC, cease services at existing VA campus; Rapid City—new MSOC (replacing leased CBOC) and 100-bed RRTP.

B. Hot Springs—new CBOC and 100-bed RRTP, cease services at existing VA campus; Rapid City—new MSOC (replacing leased CBOC).

C. Hot Springs—renovations for new CBOC in Building 12 and 100-bed RRTP in domiciliary at existing VA campus; Rapid City—new MSOC (replacing leased CBOC).

D. Hot Springs—new CBOC and 24-bed RRTP, cease services at existing VA campus; Rapid City—new MSOC (replacing leased CBOC) and 76-bed RRTP.

E. Save the VA Proposal.

Hot Springs—renovations and construction to continue and expand inpatient and outpatient services at existing VA campus, including 200-bed RRTP; Rapid City—services from existing leased CBOC.

F. No Action.

G. Supplemental alternative to A, B, C, or D for re-use of part or all of existing Hot Springs campus.

The analysis uses the substitution procedures defined in the regulations for implementing Section 106 of the National Historic Preservation Act, by which agencies can develop an integrated NEPA analysis to substitute the NEPA process for effects analysis and consultation under Section 106. Formal consultation and identification and resolution of effects to historic properties are documented throughout the EIS.

Environmental topics that are addressed in the Draft EIS include aesthetics, air quality, cultural resources and historic properties, geology and soils, hydrology and water quality, wildlife and habitat, noise, land use, floodplains and wetlands, socioeconomics, community services, solid waste and hazardous materials, transportation and parking, utilities, and environmental justice. Best management practices and mitigation measures that could alleviate environmental effects

have been considered and are included where relevant within the Draft EIS.

The VA BHHCS Reconfiguration Draft EIS is available for viewing on the VA BHHCS Web site *www.blackhills.va.gov/vablackhillsfuture/* and at the Hot Springs, Rapid City Downtown, Sturgis, Chadron, Alliance, Lied Scottsbluff, and Pierre (Rawlins Municipal) public libraries; as well as in Pine Ridge at the Oglala Lakota College Pine Ridge Center library on the high school campus.

Information related to the EIS process is also available for viewing on the VA BHHCS Web site *www.blackhills.va.gov/vablackhillsfuture/.*

Meetings

Interested parties are invited to participate in any of six public meetings summarizing the results of the Draft EIS. These meetings will be held in Rapid City, SD; Hot Springs, SD; Pine Ridge, SD; Chadron, NE; Alliance, NE; and Scottsbluff, NE. The dates, times, and locations for these meetings will be published online at *www.blackhills.va.gov/vablackhillsfuture/.*

At the public meetings, interested parties will also have the opportunity to comment regarding the National Historic Preservation Act Section 106 process, which has been integrated into this NEPA process.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 26, 2015, for publication.

Dated: October 27, 2015.

Michael Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–27684 Filed 10–29–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, December 9, 2015, at 810 Vermont Ave. NW., Conference Room 730, Washington, DC 20420. The meeting will convene at 9:00 a.m. and end at 4:00 p.m., and is open to the public. Anyone attending must show a valid photo ID to building security and be escorted to the meeting. Please allow 15 minutes before the meeting begins for this process.

The agenda will include a review of the Million Veteran Program and a joint meeting with the Association of American Medical Colleges.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, or needing further information may contact Pauline Cilladi-Rehrer, Designated Federal Officer, ORD (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5607, or by email at *pauline.cilladi-rehrer@va.gov,* at least 5 days prior to the meeting date.

Dated: October 27, 2015.

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2015–27680 Filed 10–29–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Prepare an Environmental Impact Statement for a Replacement Robley Rex Veterans Affairs Medical Center, Louisville, Kentucky

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), VA intends to prepare an Environmental Impact Statement (EIS) for constructing and operating a new campus to replace the existing VA Medical Center, Veterans Benefits Administration office, and three community-based outpatient clinics in Louisville, Kentucky. VA seeks public scoping input on the EIS.

DATES: Interested parties are invited to submit scoping comments for the Replacement Louisville VAMC EIS by Monday, November 30, 2015.

ADDRESSES: Submit scoping comments online through *www.Louisville-EIS.com,* by email to *LouisvilleReplacementHospitalComments@va.gov,* or by regular mail to Robley Rex VAMC, Attn: Replacement VAMC Activation Team Office, 800 Zorn Avenue, Louisville, KY 40206.

FOR FURTHER INFORMATION CONTACT: Robley Rex VAMC, Attn: Replacement VAMC Activation Team Office, 800 Zorn Avenue, Louisville, KY 40206 or by email to *LouisvilleReplacementHospitalComments@va.gov*.

SUPPLEMENTARY INFORMATION: VA proposes to construct and operate a new 104-bed hospital, which will include diagnostic and treatment facilities, a Veterans Benefits Administration (VBA) regional office, and required site amenities and improvements on a new campus. This proposed project would replace the existing Robley Rex VA Medical Center (VAMC), three community-based outpatient clinics, and the existing VBA regional office with new facilities of sufficient capacity to meet the current and projected future healthcare needs of Veterans in the Louisville service area. The proposed project is needed because the existing Louisville VAMC facilities on Zorn Avenue have reached the end of their serviceable lives. The building conditions and site configuration at the existing 63-year old VAMC are inadequate to effectively and efficiently meet the expanding needs of VA's health care mission and VBA services in the region. Within the Louisville service area, 60,943 Veterans were enrolled to receive care in Fiscal Year 2014. Enrollment is expected to increase to more than 68,000 by FY 2024. During this same time period, outpatient clinic stops are expected to increase from 763,104 to over 963,000. The existing Louisville VAMC facility is insufficient to meet the current and the increasing future needs of VA's health care mission in the region. Therefore, VA conducted studies beginning in 2009 that recommended new facilities be constructed on a new site that would be better suited to meet future needs.

VA has identified two potential action alternatives to be analyzed in detail in this EIS: Construction and operation of a replacement VAMC campus at the ''Brownsboro Site'' at 4906 Brownsboro Road, Louisville; and construction and operation of a replacement VAMC campus at the ''St. Joseph Site,'' on a parcel located east of I–265 and south of Factory Lane in Louisville. The Brownsboro and St. Joseph Sites were identified through a site selection process conducted by VA in 2011. The Brownsboro Site was acquired by VA in 2012 as the proposed location for the replacement VAMC. In addition to these two action alternatives, the EIS also will evaluate the impacts associated with No Action or ''status quo'' as required by the National Environmental Policy Act (NEPA) and its implementing regulations. The three community-based outpatient clinics and the existing VBA

regional office are currently located in leased spaces, for which the leases would not be renewed under either action alternative. VA has tentatively determined that renovating the existing Robley Rex VAMC is not a reasonably foreseeable alternative and would adversely affect VA's ability to provide needed services to Veterans.

Environmental topics that will be addressed in the EIS include aesthetics, air quality, cultural resources and historic properties, geology and soils, hydrology and water quality, wildlife and habitat, noise, land use, floodplains and wetlands, socioeconomics, community services, solid waste and hazardous materials, transportation and traffic, utilities, and environmental justice. Best management practices and mitigation measures that could alleviate any identified environmental effects will be included where relevant.

Two prior environmental assessments (EAs) addressed aspects of VA's proposal. In June 2012, VA completed a *Programmatic EA of the Proposed Site Selection, Construction, and Operation of a Replacement Louisville VA Medical Center*. This analysis concluded with a Finding of No Significant Impact for selecting and acquiring the Brownsboro Site for the replacement Louisville VAMC, with the provision that mitigation measures would be identified in a subsequent site-specific EA to ensure that impacts would not be significant. In December 2014, VA published a *Draft Site-Specific EA: Proposed Replacement VA Medical Center Campus, Louisville, Kentucky*. However, upon further review before publishing a Final Site-Specific EA, VA concluded that an EIS was the appropriate level of NEPA documentation for evaluating the potential for adverse impacts from constructing and operating a replacement campus at the Brownsboro Site. This Notice of Intent initiates the EIS for the replacement Louisville VAMC campus.

Extensive public input was provided by Veterans, elected officials, residents near the proposed new locations, and other interested members of the public throughout the scoping and public draft reviews for the two EAs. These comments remain in the project record and are being incorporated as identified scoping issues for this EIS.

VA does not intend to hold a public scoping event specific to this EIS, anticipating that any input would largely reiterate issues that have been previously identified. Upon specific request, VA will consider whether an additional in-person scoping event would enhance public involvement in this EIS. The event would be at a Louisville venue at which a project fact sheet would be available in hard copy, posters summarizing the EIS process would be available for viewing, and members of the public could submit written comments using either comment forms or their own written format. There would be no formal presentation by VA or verbal public comment opportunity. The comment form (this form is not a required format for submitting scoping comments), the fact sheet, and the two previous EAs are available online at *www.louisville.va.gov/newmedicalcenter/,* along with other information related to the EIS process.

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 22, 2015, for publication.

Dated: October 27, 2015.

Michael Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–27658 Filed 10–29–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Commission on Care Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C., App. 2, the Commission on Care gives notice that it will meet on Monday, November 16, 2015, and Tuesday, November 17, 2015, at the J.W. Marriott, Jr. ASAE Conference Center, 1575 I St. NW., Washington, DC 20005. The meeting will convene at 8:30 a.m. and end at 12:30 p.m. on both days. The meeting is open to the public.

The purpose of the Commission, as described in section 202 of the Veterans Access, Choice, and Accountability Act of 2014, is to examine the access of Veterans to health care from the Department of Veterans Affairs and strategically examine how best to organize the Veterans Health Administration, locate health care resources, and deliver health care to Veterans during the next 20 years.

On the mornings of November 16 and 17, the Commission will hear from experts who will provide insights on work to be done by the Commission. On the afternoons of November 16 and 17, and the morning of November 18, the Committee will convene closed sessions in accordance with The Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (c)(9)(B).

No time will be allocated at this meeting for receiving oral presentations from the public. The public may submit written statements for the Commission's review to Sharon Gilles or John Goodrich, Designated Federal Officers, Commission on Care, at *sharon.gilles@va.gov* or *john.goodrich@va.gov,* respectively. Any member of the public wanting to attend may contact Ms. Gilles or Mr. Goodrich.

Dated: October 26, 2015.

Sharon Gilles,

Designated Federal Officer, Commission on Care.

[FR Doc. 2015–27589 Filed 10–29–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Friday,
No. 210 October 30, 2015

Part II

Federal Deposit Insurance Corporation

Privacy Act of 1974, as Amended; System of Records; Notice

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974, as Amended; System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Privacy Act of 1974: Republication of Notice of Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and OMB Circular A–130, the Federal Deposit Insurance Corporation (''FDIC'') is republishing in full a notice of the existence and character of each FDIC system of records. FDIC is making minor editorial and stylistic revisions to make the notices clearer, more accurate, and up-to-date.

DATES: This notice shall become final and effective on October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Counsel, FDIC, 550 17th Street NW., Washington, DC 20429, (703) 562–2677.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, the FDIC publishes in the **Federal Register** and posts on its Web site a system of records notice for each system of records about individuals that the FDIC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Each system of records notice describes the records maintained in that particular system, the categories of individuals that the records in the system are about, the purpose for the system, the intended use of the information in the system including any routine disclosures outside the FDIC, the safeguards used to prevent misuse of the information, and how individuals may exercise their rights under the Privacy Act to determine if the system contains information about them. FDIC last published a complete list of its system notices in the **Federal Register** on October 23, 2013, Volume 78, Number 205 (78 FR 63320). This publication may be viewed at *http://www.fdic.gov/about/privacy/* on the FDIC's Privacy Web page. With the present notice, the FDIC is publishing the complete text of all of its system notices to incorporate minor administrative and editorial revisions and to provide a current, easily accessible compilation. Information about the administrative revisions is noted below.

The Attorney and Legal Intern Applicant Records (FDIC 30–64–0001) system was used to manage applications for the positions of honors attorney or legal intern with the Legal Division of the FDIC. Due to the implementation of the Pathways Program (Exec. Order No. 13562), applications for the position of legal intern are now received through USAJOBS and processed directly by the Human Relations Branch of the Division of Administration. The System Name has been revised to reflect the new title, Honors Attorney Applicant Records (FDIC 30–64–0001), and the Purpose and Categories of Individuals Covered by the System have been revised to delete reference to applicants for the position of legal intern.

The Employee Confidential Financial Disclosure Records (FDIC 30–64–0006) system is used to process and maintain information to ensure compliance with applicable Federal Ethics Regulations and supplemental FDIC Standards of Ethical Conduct. The Categories of Individuals Covered by the System has been revised to clarify that the system also includes prospective employees.

The Online Ordering Request Records (FDIC 30–64–0031) system is used to process orders for FDIC publications and products. The Categories of Records has been revised to delete the collection of debit and/or credit card payment information because all available products are now provided at no cost to the public. The Routine Uses of the records has also been revised to delete the routine disclosure of information to Pay.gov formerly required in order to process debit or credit card transactions.

The Investigative Files of the Office of Inspector General (FDIC 30–64–0010) system is used to document investigations by the OIG or other investigative agencies regarding FDIC programs and operations. The Categories of Records in the System has been revised to clarify that correspondence maintained in the system may include payroll, telephone, and email records.

The System Manager and/or System Location has been revised to reflect current administrative responsibility for the following systems of records: Employee Training Information Records (FDIC 30–64–0007); Safety and Security Incident Records (FDIC 30–64–0009); Financial Information Management Records (FDIC 30–64–0012); Transit Subsidy Program Records (FDIC 30–64–0026); Parking Program Records (FDIC 30–64–0027); and Identity, Credential and Access Management Records (FDIC 30–64–0035).

The FDIC is not adding any new systems, or making any system alternations that would require prior public comment or notice to the Office of Management and Budget and Congress. See 5 U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–130, Appendix I at § 4(c)(1). More detailed information on the revised systems of records may be viewed in the complete text below.

Index of FDIC Privacy Act Systems of Records in This Publication

FDIC 30–64–0001 Honors Attorney Applicant Records
FDIC 30–64–0002 Financial Institution Investigative and Enforcement Records
FDIC 30–64–0003 Administrative and Personnel Action Records
FDIC 30–64–0004 Changes in Financial Institution Control Ownership Records
FDIC 30–64–0005 Consumer Complaint and Inquiry Records
FDIC 30–64–0006 Employee Confidential Financial Disclosure Records
FDIC 30–64–0007 FDIC Learning and Development Records
FDIC 30–64–0008 Chain Banking Organizations Identification Records
FDIC 30–64–0009 Safety and Security Incident Records
FDIC 30–64–0010 Investigative Files of the Office of Inspector General
FDIC 30–64–0011 Corporate Applicant Recruiting, Evaluating, and Electronic Referral Records
FDIC 30–64–0012 Financial Information Management Records
FDIC 30–64–0013 Insured Financial Institution Liquidation Records
FDIC 30–64–0014 Personnel Benefits and Enrollment Records
FDIC 30–64–0015 Personnel Records
FDIC 30–64–0016 Professional Qualification Records for Municipal Securities Dealers, Municipal Securities Representatives and U.S. Government Securities Brokers/Dealers
FDIC 30–64–0017 Employee Medical and Health Assessment Records
FDIC 30–64–0018 Grievance Records
FDIC 30–64–0019 Potential Bidders List
FDIC 30–64–0020 Telephone Call Detail Records
FDIC 30–64–0021 Fitness Center Records
FDIC 30–64–0022 Freedom of Information Act and Privacy Act Request Records
FDIC 30–64–0023 Affordable Housing Program Records
FDIC 30–64–0024 Unclaimed Deposit Account Records
FDIC 30–64–0025 Beneficial Ownership Filings (Securities Exchange Act)
FDIC 30–64–0026 Transit Subsidy Program Records
FDIC 30–64–0027 Parking Program Records
FDIC 30–64–0028 Office of the Chairman Correspondence Records
FDIC 30–64–0029 Congressional Correspondence Records
FDIC 30–64–0030 Legislative Information Tracking System Records
FDIC 30–64–0031 Online Ordering Request Records
FDIC 30–64–0032 (Reserved)
FDIC 30–64–0033 Emergency Notification Records
FDIC 30–64–0034 Office of Inspector General Inquiry Records
FDIC 30–64–0035 Identity, Credential and

Access Management Records

FDIC–30–64–0001

SYSTEM NAME:

Honors Attorney Applicant Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; and Atlanta Regional Office, FDIC, 10 Tenth Street, Suite 800, Atlanta, Georgia 30309.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the position of honors attorney with the Legal Division of the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence from the applicants and individuals whose names were provided by the applicants as references; applicants' resumes; application forms; and in some instances, comments of individuals who interviewed applicants; documents relating to an applicant's suitability or eligibility; writing samples; and copies of academic transcripts and class ranking.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The information in this system is used to evaluate the qualifications of individuals who apply for honors attorney positions in the Legal Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To individuals or concerns whose names were supplied by the applicant as references and/or past or present employers in requesting information about the applicant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are retrieved by name. Records of unsuccessful applicants are indexed first by job position category and year and then by name.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel. Some paper records may be maintained in a locked room accessible only to authorized personnel during a finite initial review period.

Retention and Disposal: Records of unsuccessful applicants are retained two years after their submission; records of successful applicants become a part of the Personnel Records system of records (FDIC 30–64–0015) and are retained two years after the applicant leaves the employ of the FDIC.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Open Bank Regional Affairs Section, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the applicants; references supplied by the applicants; current and/or former employers of the applicants; and FDIC employees who interviewed the applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 12 CFR part 310.13(b), investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for FDIC employment may be withheld from disclosure to the extent that disclosure of such material would reveal the identity of a source who furnished information to the FDIC under an express promise of confidentiality.

FDIC–30–64–0002

SYSTEM NAME:

Financial Institution Investigative and Enforcement Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who participate or have participated in the conduct of or who are or were connected with financial institutions, such as directors, officers, employees, and customers, and who have been named in suspicious activity reports or administrative enforcement orders or agreements. Financial institutions include banks, savings and loan associations, credit unions, other similar institutions, and their affiliates whether or not federally insured and whether or not established or proposed.

(2) Individuals, such as directors, officers, employees, controlling shareholders, or persons who are the subject of background checks designed to uncover criminal activities bearing on the individual's fitness to be a director, officer, employee, or controlling shareholder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains interagency or intra-agency correspondence or memoranda; criminal referral reports; suspicious activity reports; newspaper clippings; Federal, State, or local criminal law enforcement agency investigatory reports, indictments and/or arrest and conviction information; and administrative enforcement orders or agreements. Note: Certain records contained in this system (principally criminal investigation reports prepared by the Federal Bureau of Investigation, Secret Service, and other federal law enforcement agencies) are the property of federal law enforcement agencies. Upon receipt of a request for such records, the FDIC will notify the proprietary agency of the request and seek guidance with respect to disposition. The FDIC may forward the request to that agency for processing in accordance with that agency's regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5, 6, 7, 8, 9, 18, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1815, 1816, 1817, 1818, 1819, 1828, 1829).

PURPOSE:

The information is maintained to support the FDIC's regulatory and supervisory functions by providing a centralized system of information (1) for conducting and documenting investigations by the FDIC or other financial supervisory or law enforcement agencies regarding conduct within financial institutions by directors, officers, employees, and customers, which may result in the filing of suspicious activity reports or criminal referrals, referrals to the FDIC Office of the Inspector General, or the initiation of administrative enforcement actions; and (2) to identify whether an individual is fit to serve as a financial institution director, officer, employee or controlling shareholder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To a financial institution affected by enforcement activities or reported criminal activities;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To other Federal, State or foreign financial institutions supervisory or regulatory authorities; and

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third Parties authorized by law, for the purpose of collecting or assisting in the collection

of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of the individual.

Safeguards: Electronic files are password protected and accessible only by authorized persons. File folders are maintained in lockable metal file cabinets.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Financial institutions; financial institution supervisory or regulatory authorities; newspapers or other public records; witnesses; current or former FDIC employees; criminal law enforcement and prosecuting authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of the records in this system of records were compiled for law enforcement purposes and are exempt from disclosure under 12 CFR part 310.13 and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

FDIC–30–64–0003

SYSTEM NAME:

Administrative and Personnel Action Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Legal Division, Executive Secretary Section, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of administrative enforcement actions or other personnel actions by the FDIC Board of Directors or by standing committees of the FDIC and individuals who have been the subject of administrative actions by FDIC officials under delegated authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Minutes of the meetings of the FDIC Board of Directors or standing committees and orders of the Board of Directors, standing committees, or other officials as well as annotations of entries into the minutes and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 8, 9, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1819, 1829).

PURPOSE:

The system is maintained to record the administrative and personnel actions taken by the FDIC Board of Directors, standing committees, or other officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To the U.S. Office of Personnel Management, General Accounting Office, the Office of Government Ethics, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media, microfilm, and paper format within individual file folders, minute book ledgers and index cards.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format, index cards, and minute book ledgers are stored in lockable metal file cabinets or vault accessible only by authorized personnel. A security copy of certain microfilmed portions of the records is retained at another location.

Retention and Disposal: Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Legal Division, Executive Secretary Section, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Intra-agency records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0004

SYSTEM NAME:

Changes in Financial Institution Control Ownership Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who acquired or disposed of voting stock in an FDIC-insured financial institution resulting in a change of financial institution control or ownership; and

(2) Individuals who filed or are included as a member of a group listed in a ''Notice of Acquisition of Control'' of an FDIC-insured financial institution. Note: The information is maintained only for the period 1989 to 1995. Commencing in 1996 the records were no longer collected nor maintained on an individual name or personal identifier basis and are not retrievable by individual name or personal identifier. Beginning in 1996, information concerning changes in financial institution control is collected and maintained based upon the name of the FDIC-insured financial institution or specialized number assigned to the FDIC-insured financial institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the name of proposed acquirer; statement of assets and liabilities of acquirer; statement of income and sources of income for each acquirer; statement of liabilities for each acquirer; name and location of the financial institution; number of shares to be acquired and outstanding; date ''Change in Control Notice'' or ''Notice of Acquisition of Control'' was filed; name and location of the newspaper in which the notice was published and date of publication. For consummated transactions, names of sellers/transferors; names of purchasers/transferees and number of shares owned after transaction; date of transaction on institution's books, number of shares acquired and outstanding. If stock of a holding company is involved, the name and location of the holding company and the institution(s) it controls.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

PURPOSE:

The system maintains information on individuals involved in changes of control of FDIC-insured financial institutions for the period 1989 to 1995 and is used to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest

in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State financial institution supervisory authorities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records for the period 1989 to 1995 are indexed and retrieved by name of the individual.

Safeguards: Electronic files are password protected and accessible only by authorized persons. File folders are maintained in lockable metal file cabinets.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Persons who acquired control of an FDIC-insured financial institution; the insured financial institution or holding company in which control changed; filed ''Change in Control Notice'' form and ''Notice of Acquisition of Control'' form during the period 1989 to 1995; federal and state financial institution supervisory authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0005

SYSTEM NAME:

Consumer Complaint and Inquiry Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Depositor and Consumer Protection, FDIC, 550 17th Street NW., Washington, DC 20429, and FDIC regional offices for complaints or inquiries originating within or involving an FDIC-insured depository institution located in an FDIC region. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted complaints or inquiries concerning activities or practices of FDIC-insured depository institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and records of other communications between the FDIC and the individual submitting a complaint or making an inquiry, including copies of supporting documents and contact information supplied by the individual. This system may also contain regulatory and supervisory communications between the FDIC and the FDIC-insured depository institution in question and/or intra-agency or inter-agency memoranda or correspondence relevant to the complaint or inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and Section 202(f) of Title II of the Federal Trade Improvement Act (15 U.S.C. 57a(f)).

PURPOSE:

The system maintains correspondence from individuals regarding complaints or inquiries concerning activities or practices of FDIC-insured depository institutions. The information is used to identify concerns of individuals, to manage correspondence received from individuals and to accurately respond to complaints, inquiries, and concerns expressed by individuals. The information in this system supports the FDIC regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for

investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the insured depository institution which is the subject of the complaint or inquiry when necessary to investigate or resolve the complaint or inquiry;

(11) To authorized third-party sources during the course of the investigation in order to resolve the complaint or inquiry. Information that may be disclosed under this routine use is limited to the name of the complainant or inquirer and the nature of the complaint or inquiry and such additional information necessary to investigate the complaint or inquiry; and

(12) To the Federal or State supervisory/regulatory authority that has direct supervision over the insured depository institution that is the subject of the complaint or inquiry.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Electronic media is indexed and retrieved by unique identification number which may be cross referenced to the name of complainant or inquirer.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Division of Depositor and Consumer Protection, FDIC, 550 17th Street NW., Washington, DC 20429, or the Regional Director, Division of Supervision and Consumer Protection for records maintained in FDIC regional offices (See *Appendix A* for the location of FDIC Regional Offices).

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained; FDIC-insured depository institutions that are the subject of the complaint; the appropriate agency, whether Federal or State, with supervisory authority over the institution; congressional offices that may initiate the inquiry; and other parties providing information to the FDIC in an attempt to resolve the complaint or inquiry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0006

SYSTEM NAME:

Employee Confidential Financial Disclosure Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Records are located in component divisions, offices and regional offices to which individuals covered by the system are assigned. Duplicate copies of the records are located in the Legal Division, Executive Secretary Section, Ethics Unit, FDIC, 550 17th Street NW., Washington, DC 20429. (See *Appendix A* for a list of the FDIC regional offices and their addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officers and employees, prospective employees, and special government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains statements of personal and family financial holdings and other interests in business enterprises and real

property; listings of creditors and outside employment; opinions and determinations of ethics counselors; information related to conflict of interest determinations; relevant personnel information and ethics training records; and information contained on the following forms:

(1) Confidential Financial Disclosure Report—contains listing of personal and family investment holdings, interests in business enterprises and real property, creditors, and outside employment for covered employees.

(2) Confidential Report of Indebtedness—contains information on extensions of credit to employees, including loans and credit cards, by FDIC-insured depository institutions or their subsidiaries; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured financial institutions or subsidiaries thereof.

(3) Confidential Report of Interest in FDIC-Insured Depository Institution Securities—contains a brief description of an employee's direct or indirect interest in the securities of an FDIC-insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; a brief description of an employee's direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC-insured depository institution, affiliate, or depository institution holding company; and a certification acknowledging that the employee has read and understands the rules governing the ownership of securities in FDIC-insured depository institutions.

(4) Employee Certification and Acknowledgment of Standards of Conduct Regulation—contains employee's certification and acknowledgment that he or she has received a copy of the Standards of Ethical Conduct for Employees of the FDIC.

(5) Public Financial Disclosure Form—contains a description of an employee's personal and family investment holdings, including interests in business enterprises or real property, non-investment income, creditors, former or future employer information, outside positions, and other affiliations for political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Ethics in Government Act of 1978 (5 U.S.C. 7301 and App.); Section 9 and 12(f) of the Federal Deposit Insurance Act (12 U.S.C. 1819(a), 1822(f)); 26 U.S.C. 1043; Executive Order Nos. 12674 (as modified by 12731), 12565, and 11222; 5 CFR part 2634, 2635, and 3201.

PURPOSE:

The records are maintained to assure compliance with the standards of conduct for Government employees contained in the Executive Orders, Federal Statutes and FDIC regulations and to determine if a conflict of interest exists between employment of individuals by the FDIC and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections; and

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of individual. Electronic media and paper format do not index the names of prospective employees who are not selected for employment.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format copies are maintained in lockable file cabinets.

Retention and Disposal: Records concerning prospective employees who are not selected for employment are retained for one year and then destroyed, except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. All other records are retained for six years and then destroyed. Entries maintained in electronic media are deleted, except that paper format documents and electronic media entries needed in an ongoing investigation will be retained until no longer needed for the investigation.

Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Program Manager, Executive Secretary Section, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual or a person or entity designated by the individual; FDIC employees designated as Ethics Counselors or Deputy Ethics Counselors; FDIC automated personnel records system; and other employees or individuals to whom the FDIC has provided information in connection with evaluating the records maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0007

SYSTEM NAME:

FDIC Learning and Development Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Corporate University, 3501 Fairfax Drive, Arlington, VA 22226, and FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees and other individuals that have attended training conducted or sponsored by the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the schedule of the individual's training classes and other educational programs attended, dates of attendance, continuing education credits earned, tuition fees and expenses, and related information. Also contains information on career development, certifications, commissions, and learner skills and competencies. The system used by the Office of Inspector General may also contain information on educational degrees or professional memberships and other similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Sections 4(b) and 6(e) of the Inspector General Act of 1978, as amended (5 U.S.C. app).

PURPOSE:

The system is used to record and manage comprehensive learning and development information that is available to learners, training administrators, and management. The system is also used to schedule training events, enroll students, launch online training, and run reports. The system is used to track training, career development, certifications, commissions, continuing education and learner skills and competencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To educational institutions for purposes of enrollment and verification of employee attendance and performance;

(11) To vendors, professional licensing boards or other appropriate third parties, for the purpose of verification, confirmation, and substantiation of training or licensing requirements;

(12) To the U.S. Office of Personnel Management for purposes of tracking and analyzing training and related information of FDIC employees; and

(13) To other Federal Offices of Inspector General or other entities for purposes of conducting quality assessments or peer reviews of the OIG or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Electronic media are accessible by unique identifier or name. File folders are indexed and retrieved by name of individual.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper records within individual file folders are maintained in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: Permanent retention.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Director, Educational Support Services, Corporate University, FDIC, 3501 Fairfax Drive, Arlington, VA 22226; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the employee about whom the record is maintained, employee supervisors, training administrators, the training facility or institution attended, and FDIC automated personnel records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0008

SYSTEM NAME:

Chain Banking Organizations Identification Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429, and FDIC regional offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who directly, indirectly, or in concert with others, own or control two or more insured depository institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the names of and contact information for individuals who, either alone or in concert with others, own or control two or more insured depository institutions as well as the insured depository institutions names, locations, stock certificate numbers, total asset size, and percentage of outstanding stock owned by the controlling individual or group of individuals; charter types and, if applicable, name of intermediate holding entity and percentage of holding company held by controlling individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 7(j) and 9 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j), 1819).

PURPOSE:

This system identifies and maintains information of possible linked FDIC-insured depository institutions or holding companies which, due to their common ownership, present a concentration of resources that could be susceptible to common risks. The information in this system is used to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State financial institution supervisory authorities for: (a) Coordination of examining resources when the chain banking organization is composed of insured depository institutions subject to multiple supervisory jurisdictions; (b) coordination of evaluations and analysis of the condition of the consolidated chain organization; and (c) coordination of supervisory, corrective or enforcement actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Indexed and retrieved by name of controlling individual(s) or assigned identification number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: Certain records are archived in off-line storage and all records are periodically updated to reflect changes. These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ‘‘Notification Procedure’’ above.

CONTESTING RECORD PROCEDURES:

See ‘‘Notification Procedure’’ above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Examination reports and related materials; regulatory filings; and Change in Financial Institution Control Notices filed pursuant to 12 U.S.C. 1817(j).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0009

SYSTEM NAME:

Safety and Security Incident Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Division of Administration, 550 17th Street NW., Washington, DC 20429, and the FDIC regional or area offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and past FDIC employees, contractors, volunteers, visitors, and others involved in the investigation of accidents, injury, criminal conduct, and related civil matters involving the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains investigative reports, correspondence and other communications that may include, without limitation, name, home and office address and phone numbers, physical characteristics, vehicle information, and associated information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to support the administration and maintenance of a safety and security incident investigation, tracking and reporting system involving FDIC facilities, property, personnel, contractors, volunteers, or visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project; and

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, or case number.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: Paper records and electronic media are retained for five years after their creation in accordance with FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Operations, Security and Emergency Preparedness Section, Corporate Services Branch, Division of Administration, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include current FDIC employees, contractors, members of the public, witnesses, law enforcement officials, medical providers, and other parties providing information to the FDIC to facilitate an inquiry or resolve the complaint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(c)(3), (d)(5), (e)(1), (e)(4)(G), (H), and (I), (f) and (k).

FDIC–30–64–0010

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Office of Inspector General (OIG), 3501 Fairfax Drive, Arlington, VA 22226. In addition, records are maintained in OIG field offices. OIG field office locations can be obtained by contacting the Assistant Inspector General for Investigations at said address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC employees and individuals involved in or associated with FDIC programs and operations including contractors, subcontractors, vendors and other individuals associated with investigative inquiries and investigative cases, including, but not limited to, witnesses, complainants, suspects and those contacting the OIG Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files, including memoranda, computer-generated background information, correspondence including payroll records, call records, email records, electronic case management and tracking files, reports of investigations with related exhibits, statements, affidavits, records or other pertinent documents, reports from or to other law enforcement bodies, pertaining to violations or potential violations of criminal laws, fraud, waste, and abuse with respect to administration of FDIC programs and operations, and violations of employee and contractor Standards of Conduct as set forth in section 12(f) of the Federal Deposit Insurance Act (12 U.S.C. 1822(f)), 12 CFR parts 336, 366, and 5 CFR parts 2634, 2635, and 3201. Records in this system may contain personally identifiable information such as names, social security numbers, dates of birth and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. app.).

PURPOSE:

Pursuant to the Inspector General Act, the system is maintained for the purposes of (1) conducting and documenting investigations by the OIG or other investigative agencies regarding FDIC programs and operations in order to determine whether employees or other individuals have been or are engaging in waste, fraud and abuse with respect to the FDIC's programs or operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other FDIC components or divisions for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act or those of other federal instrumentalities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To the appropriate Federal, State, local, foreign or international agency or authority which has responsibility for

investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order to assist such agency or authority in fulfilling these responsibilities when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal (collectively referred to as the adjudicative bodies) in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings (collectively, the litigative proceedings)when the FDIC or OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary in order for the adjudicatory bodies, or any of them, to perform their official functions in connection with the presentation of evidence relative to the litigative proceedings;

(3) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, OIG or any employee thereof is a party to litigation or administrative proceeding or has a significant interest in the litigation or proceeding to assist those representatives by providing them with information or evidence for use in connection with such litigation or proceedings;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury;

(6) To the subjects of an investigation and their representatives during the course of an investigation and to any other person or entity that has or may have information relevant or pertinent to the investigation to the extent necessary to assist in the conduct of the investigation;

(7) To third-party sources during the course of an investigation only such information as determined to be necessary and pertinent to the investigation in order to obtain information or assistance relating to an audit, trial, hearing, or any other authorized activity of the OIG;

(8) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;

(9) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for the FDIC to obtain information concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit;

(10) To a Federal agency responsible for considering suspension or debarment action where such record is determined to be necessary and relevant to that agency's consideration of such action;

(11) To a consultant, person or entity who contracts or subcontracts with the FDIC or OIG, to the extent necessary for the performance of the contract or subcontract. The recipient of the records shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(12) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for OIG, FDIC or the Federal Government in order to assist those entities or individuals in carrying out their obligation under the related contract, grant, agreement or project;

(13) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by OIG, issuing a security clearance, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter;

(14) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(15) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(16) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(17) To a financial institution affected by enforcement activities or reported criminal activities authorities to ascertain the knowledge of or involvement in matters that have been developed during the course of the investigation;

(18) To the Internal Revenue Service and appropriate State and local taxing authorities for their use in enforcing the relevant revenue and taxation law and related official duties;

(19) To other Federal, State or foreign financial institutions supervisory or regulatory authorities for their use in administering their official functions, to include examination, supervision, litigation, and resolution authorities with respect to financial institutions, receiverships, liquidations, conservatorships, and similar functions;

(20) To appropriate Federal agencies and other public authorities for use in records management inspections;

(21) To a governmental, public or professional or self-regulatory licensing organization for use in licensing or related determinations when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(22) To the Department of the Treasury, federal debt collection

centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC or to obtain information in the course of an investigation (to the extent permitted by law). Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt; and

(23) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the OIG, or its investigative components, or for statistical purposes.

Note: In addition to the foregoing, a record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the published notice of the system of records from which the record is derived.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of individual, unique investigation number assigned, referral number, social security number, or investigative subject matter.

Safeguards: The electronic system files are accessible only by authorized personnel and are safeguarded with user passwords and authentication, network/database permission, and software controls. File folders are maintained in lockable metal file cabinets and lockable offices accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity. Note: This system contains records that are exempt under 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). See ''Exemptions Claimed for the System'' below.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310. Note: This system contains records that are exempt under 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). See ''Exemptions Claimed for the System'' below.

RECORD SOURCE CATEGORIES:

Official records of the FDIC; current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants. Records in this system may have originated in other FDIC systems of records and subsequently transferred to this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5); (e)(8); (e)(12); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of investigatory material compiled: (A) For other law enforcement purposes (except where an individual has been denied any right, privilege, or benefit for which he or she would otherwise be entitled to or eligible for under Federal law, so long as the disclosure of such information would not reveal the identity of a source who furnished information to the FDIC under an express promise that his or her identity would be kept confidential); or (B) solely for purposes of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the FDIC on a confidential basis, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), respectively. Note, records in this system that originated in another system of records shall be governed by the exemptions claimed for this system as well as any additional exemptions claimed for the other system.

FDIC–30–64–0011

SYSTEM NAME:

Corporate Applicant Recruiting, Evaluating and Electronic Referral Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Human Resources Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226, and FDIC Office of Inspector General (OIG), 3501 Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing applications for employment with the FDIC or OIG in response to advertised position vacancy announcements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position vacancy announcement information such as position title, series and grade level(s), office and duty location, opening and closing date of the announcement, and dates of referral and return of lists of qualified candidates; applicant personal data such as name, address, other contact information, social security number, sex, veterans' preference and federal competitive status; and applicant qualification and processing information such as qualifications, grade level eligibility, reason for ineligibility, referral status, and dates of notification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); 5 U.S.C. 1104; and Section 8C(b) of the Inspector General Act, as amended (5 U.S.C. app.).

PURPOSE:

The records are collected and maintained to monitor and track individuals filing employment applications with the FDIC or OIG and to assess recruiting goals and objectives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project; and

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format.

Retrievability: Indexed and retrieved by name and truncated social security number of individual applicant.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Network servers are located in a locked room with physical access limited to authorized personnel. Paper files are stored in lockable offices.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Information Systems and Services Section, Human Resources Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from position vacancy announcements, applications for employment submitted by individuals, and the applicant qualification and processing system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0012

SYSTEM NAME:

Financial Information Management Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Finance, FDIC, 3501 Fairfax Drive, Arlington, VA 22226. Records concerning garnishments, attachments, wage assignments and related records concerning FDIC employees are located with the Legal Division, FDIC, 3501 Fairfax Drive, Arlington, VA 22226. Some information, including travel and lodging reservations is collected and maintained, on behalf of the FDIC by SatoTravel Services at 4601 N. Fairfax Drive, Suite 170, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees; current and former vendors and contractors providing goods and/or services to the FDIC; current and former employees, advisory committee members and others who travel for the FDIC; current and former FDIC customers; and individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver. Note: Only

records reflecting personal information are subject to the Privacy Act. This system also contains records concerning failed financial institution receiverships, corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains (1) employee payroll, benefit, and disbursement-related records; (2) contractor and vendor invoices and other accounts payable records; (3) customer records related to accounts receivables; (4) payment records for individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver; and (5) accounting and financial management records. The payroll and/or disbursement records include, without limitation, employees' mailing addresses and home addresses; dependents' names and dates of birth; financial institution account information; social security number and unique employee identification number; rate and amount of pay; tax exemptions; tax deductions for employee payments; and corporate payments information for tax reporting. Records relating to employee, advisory committee and other claims for reimbursement of official travel expenses include, without limitation, travel authorizations, vouchers showing amounts claimed, medical certification and narratives with information about the traveler's medical or physical conditions, exceptions taken as a result of audit, and amounts paid. Other records maintained on employees include reimbursement claims for relocation expenses consisting of authorizations, advances, vouchers of amounts claimed and amounts paid; reimbursement for educational expenses or professional membership dues and licensing fees and similar reimbursements; awards, bonuses, and buyout payments; advances or other funds owed to the FDIC; and garnishments, attachments, wage assignments or related records. Copies of receipts/invoices provided to the FDIC for reimbursement may contain credit card or other identifying account information. Contractor, vendor, and other accounts payable records consist of all documents relating to the purchase of goods and/or services from those individuals including contractual documents, vendor addresses and financial institution account information, vendor invoice statements; amounts paid, and vendor tax identification number. Copies of documentation supporting vendor invoice statements may contain identifying data, such as account number. Customer information is also captured as necessary for the collection of accounts receivable. Payment records for individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver include name, address, and payment amount; tax id numbers or social security numbers are also included for depositors or claimants when an informational tax return must be filed. The records also include general ledger and detailed trial balances and supporting data. Note: This system includes only records maintained by the FDIC. Associated records maintained by the government travel card issuer are described and covered by the government-wide system of records GSA/GOVT–3 (Travel Charge Card Program).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9 and 10(a) of the Federal Deposit Insurance Act (12 U.S.C. 1819 and 1820(a)).

PURPOSE:

The records are maintained for the FDIC and the failed financial institution receiverships managed by the FDIC. The records are used to manage and account for financial transactions and financial activities of the FDIC. The records and associated databases and subsystems provide a data source for the production of reports and documentation for internal and external management reporting associated with the financial operations of the FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To auditors employed by the U.S. Government Accountability Office;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To vendors, carriers, or other appropriate third parties by the FDIC Office of Inspector General for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations; and

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format in file folders.

Retrievability: Electronic media are indexed and retrievable by social security number or specialized identifying number; paper format records are generally indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are maintained in secure areas.

Retention and Disposal: Financial records are retained by the FDIC for ten years in electronic format and then transferred to the Federal Records Center or destroyed. The retention period for records relating to garnishments, attachments and wage assignments is three years after termination. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Finance, FDIC, 3501 Fairfax Drive, Arlington, VA 22226. For records about FDIC employees concerning garnishments, attachments, wage assignments and related records, the system manager is the Legal Division, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual upon whom the record is maintained; other government agencies; contractors; or from another FDIC office maintaining the records in the performance of their duties. Where an employee is subject to a tax lien, a bankruptcy, an attachment, or a wage garnishment, information also is obtained from the appropriate taxing or judicial authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0013

SYSTEM NAME:

Insured Financial Institution Liquidation Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street, Dallas, Texas 75201; and at secure sites and on secure servers maintained by third-party service providers for the FDIC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were obligors, obligees, or subject to claims of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator of FDIC-insured financial institutions that were provided assistance by the FDIC and the FDIC is acting as receiver or conservator of certain of the financial institution's assets. Note: Only records reflecting personal information are subject to the Privacy Act. This system also contains records concerning failed financial institution receiverships, corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the individual's files held by the closed or assisted financial institution, including loan or contractual agreements, related documents, and correspondence. The system also contains FDIC asset files, including judgments obtained, restitution orders, and loan deficiencies arising from the liquidation of the obligor's loan asset(s) and associated collateral, if any; information relating to the obligor's financial condition such as financial statements and income tax returns; asset or collateral verifications or searches; appraisals; and potential sources of repayment. FDIC asset files also include intra- or inter-agency memoranda, as well as notes, correspondence, and other documents relating to the liquidation of the loan obligation or asset. FDIC's receivership claims files may include all information related to claims filed with the receivership estate by a failed financial institution's landlords, creditors, service providers or other obligees or claimants. Note: Records held by the FDIC as receiver are a part of this system only to the extent that the state law governing the receivership is not inconsistent or does not otherwise establish specific requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1823) and applicable State laws governing the liquidation of assets and wind-up of the affairs of failed financial institutions.

PURPOSE:

The records are maintained to: (a) Identify and manage loan obligations and assets acquired from failed FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or from FDIC-insured financial institutions that were provided assistance by the FDIC; (b) identify, manage and discharge the obligations to creditors, obligees and other claimants of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or of FDIC-

insured financial institutions that were provided assistance by the FDIC; and (c) assist with financial and management reporting. The records support the receivership and conservatorship functions of the FDIC required by applicable Federal and State statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors or entities performing services for the FDIC in connection with the liquidation of an individual's obligation(s), including judgments and loan deficiencies or in connection with the fulfillment of a claim filed with the FDIC as receiver or liquidator. Third party contractors include, but are not limited to, asset marketing contractors; loan servicers; appraisers; environmental contractors; attorneys retained by the FDIC; collection agencies; auditing or accounting firms retained to assist in an audit or investigation of FDIC's liquidation activities; grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To prospective purchaser(s) of the individual's obligation(s), including judgments and loan deficiencies, for the purpose of informing the prospective purchaser(s) about the nature and quality of the loan obligation(s) to be purchased;

(11) To Federal or State agencies, such as the Internal Revenue Service or State taxation authorities, in the performance of their governmental duties, such as obtaining information regarding income, including the reporting of income resulting from a compromise or write-off of a loan obligation;

(12) To participants in the loan obligation in order to fulfill any contractual or incidental responsibilities in connection with the loan participation agreement;

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

(14) To Federal or State agencies or to financial institutions where information is relevant to an application or request by the individual for a loan, grant, financial benefit, or other entitlement;

(15) To Federal or State examiners for the purposes of examining borrowing relationships in operating financial institutions that may be related to an obligation of an individual covered by this system; and

(16) To the individual, the individual's counsel or other representatives, insurance carrier(s) or underwriters of bankers' blanket bonds or other financial institution bonds for failed or assisted FDIC-insured financial institutions in conjunction with claims made by the FDIC or litigation instituted by the FDIC or others on behalf of the FDIC against former officers, directors, accountants, lawyers, consultants, appraisers, or underwriters of bankers' blanket bonds or other financial institution bonds of a failed or assisted FDIC-insured financial institution.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed by financial institution number, name of failed or assisted insured institution, name of individual, social security number, and loan number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records maintained in individual file folders are stored in lockable file cabinets and/or in secured vaults or warehouses and are accessible only by authorized personnel.

Retention and Disposal: Credit/loan files or files concerning the obligors, obligees, or individuals subject to claims of the failed or assisted financial institution are maintained until the receivership claim, loan obligation, judgment, loan deficiency or other asset or liability is sold or otherwise disposed

of, or for the period of time provided under applicable Federal or State laws pursuant to which the FDIC liquidates the assets, discharges the liabilities or processes the claims. FDIC asset files will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; and Deputy Director, Field Operations Branch, FDIC, 1601 Bryan Street, Dallas, Texas 75201.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on whom the record is maintained; appraisers retained by the originating financial institution or the FDIC; investigative and/or research companies; credit bureaus and/or services; loan servicers; court records; references named by the individual; attorneys or accountants retained by the originating financial institution or the FDIC; participants in the obligation(s) of the individual; officers and employees of the failed or assisted financial institution; congressional offices that may initiate an inquiry; and other parties providing services to the FDIC in its capacity as liquidator or receiver.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0014

SYSTEM NAME:

Personnel Benefits and Enrollment Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429. For administrative purposes, duplicate systems may exist within the FDIC at the duty station of each employee. (See Appendix A for a list of the FDIC regional offices.) The FDIC also has an interagency agreement with the U.S. Department of Agriculture, National Finance Center in New Orleans, Louisiana, to provide and maintain payroll, personnel, and related services and systems involving FDIC employees. The FDIC also has agreements with T. Rowe Price, Benefit Allocation Systems, and other benefit plan contractors to provide employee benefits and related administrative services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FDIC employees and their dependents who are enrolled in the FDIC-sponsored Savings Plan, health, life, and other insurance or benefit programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains general personnel and enrollment information for the FDIC-sponsored Savings Plan, flexible spending account (FSA) plans and insurance plans (life, dental, vision, or long-term disability). This may include information such as an individual's name, earnings, number and name of dependents, gender, date of birth, home address, social security number, employee locator information (including email and office addresses), claims for FSA reimbursements, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and Executive Order 9397.

PURPOSE(S):

The records are collected, maintained and used to support the administration and management of the FDIC personnel benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FDIC personnel;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States;

(13) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System;

(14) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

(15) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return;

(16) To Benefit Allocation Systems, T. Rowe Price, and other benefit providers, carriers, vendors, contractors, and agents to process claims and provide related administrative services involving FDIC personnel.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name, social security number, or system-specific assigned number of the employee.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Human Resources Branch, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information retrieved from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0015

SYSTEM NAME:

Personnel Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429, and FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226. For administrative purposes, duplicate systems may exist within the FDIC at the duty station of each employee. (See Appendix A for a list of the FDIC regional offices.) The FDIC also has an interagency agreement with the U.S. Department of Agriculture, National Finance Center in New Orleans, Louisiana, to provide and maintain payroll, personnel, and related services and systems involving FDIC employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FDIC or OIG employees, contractors, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to personnel actions and determinations made about individuals while employed or seeking employment. These records may contain information about an individual relating to name, birth date, Social Security Number (SSN), personal telephone numbers and addresses, employment applications, background, identity verification and credentials, duty station telephone numbers and addresses, compensation, performance, separation, Internal Revenue Service (IRS) or court-ordered levies, emergency contacts, and related records and correspondence. These records may also contain Equal Employment Opportunity (EEO) group information about FDIC employees, such as race, national origin, sex and disability information. NOTE: Records maintained by the FDIC in the official personnel file are described in the government-wide Privacy Act System Notice known as OPM/GOVT–1 and other government-wide system notices published by the Office of Personnel Management, and are not included within this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819),

Executive Order 9397; and Section 8C(b) of the Inspector General Act, as amended (5 U.S.C. app.).

PURPOSE(S):

The records are collected, maintained and used to support the administration and management of the FDIC personnel and benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FDIC personnel;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States;

(13) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System;

(14) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

(15) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name or social security number of the individual..

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Human Resources Branch, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such

information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information retrieved from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0016

SYSTEM NAME:

Professional Qualification Records for Municipal Securities Dealers, Municipal Securities Representatives, and U.S. Government Securities Brokers/Dealers.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, Risk Management Policy and Exam Oversight Branch, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons who are or seek to be associated with municipal securities brokers or municipal securities dealers which are FDIC-insured, state-chartered financial institutions (including insured state-licensed branches of foreign financial institutions), not members of the Federal Reserve System, or are subsidiaries, departments, or divisions of such financial institutions;

(2) Persons who are or seek to be persons associated with U.S. Government securities dealers or brokers which are FDIC-insured state-chartered financial institutions, other than members of the Federal Reserve System.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain identifying information, detailed educational and employment histories, examination information, disciplinary information, if any, and information concerning the termination of employment of individuals covered by the system. Identifying information includes name, address, date and place of birth, and may include social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 15B(c), 15C, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4, 78o–5, and 78q and 78w); and Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The records are maintained to comply with the registration requirements of municipal securities dealers, municipal securities representatives, and U.S. Government securities brokers or dealers and associated persons contained in the Securities Exchange Act of 1934 and to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the appropriate Federal, State, local, or foreign agency or authority or to the appropriate self-regulatory organization, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(26)), to the extent disclosure is determined to be necessary and pertinent for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information by itself or together with additional information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or regulation, rule or order issued pursuant thereto;

(11) To assist in any proceeding in which the Federal securities or banking laws are in issue or a proceeding involving the propriety of a disclosure of information contained in this system, in which the FDIC or one of its past or present employees is a party, to the extent that the information is relevant to the proceeding;

(12) To a Federal, State, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to an FDIC inquiry concerning a person who is or seeks to be associated with a municipal securities dealer as a municipal securities principal or representative or a U.S. Government securities broker or a U.S. Government securities dealer;

(13) To a Federal, State, local, or foreign governmental authority or a self-

regulatory organization in connection with the issuance of a license or other benefit to the extent that the information is relevant and necessary; and

(14) To a registered dealer, registered broker, registered municipal securities dealer, U.S. Government securities dealer, U.S. Government securities broker, or an insured financial institution that is a past or present employer of an individual that is the subject of a record, or to which such individual has applied for employment, for purposes of identity verification or for purposes of investigating the qualifications of the subject individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Indexed by name and dealer registration number or FDIC financial institution certificate number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in file folders in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Examination Specialist, Risk Management Policy and Exam Oversight Branch, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ‘‘Notification Procedure’’ above.

CONTESTING RECORD PROCEDURES:

See ‘‘Notification Procedure’’ above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained, municipal securities dealers and U.S. Government securities dealers and brokers (as such dealers are described in ‘‘Categories of Individuals Covered by the System’’ above), and Federal, State, local, and foreign governmental authorities and self-regulatory organizations or agencies which regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0017

SYSTEM NAME:

Employee Medical and Health Assessment Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Health Unit, Corporate Services Branch, Division of Administration, FDIC, located at the following addresses: 550 17th Street NW., Washington, DC 20429; 3501 Fairfax Drive, Arlington, VA 22226; 1310 Courthouse Road, Arlington VA 22226; and Health Units located in FDIC regional offices; and FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former FDIC and OIG employees and other individuals who seek information, treatment, medical accommodations, participate in health screening programs administered by the FDIC, or file claims seeking benefits under the Federal Employees' Compensation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of the employee, including name, age, height, weight, history of certain medical conditions, health screening records; dates of visits to the FDIC Health Unit, diagnoses, and treatments administered; ergonomic reviews and assessments; the name and telephone number of the person to contact in the event of a medical emergency involving the employee; and reports of injury or illness while in the performance of duty. The system used by the Office of Inspector General contains the results of physical and other medical examinations of OIG employees. Note: This system includes only records maintained by the FDIC. Associated records, if any, are described and covered by the Office of Personnel Management government-wide system of records OPM/GOVT–10 (Employee Medical File System Records) or the Department of Labor government-wide system of records DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); and Sections 4(b), 6(e), and 8C(b) of the Inspector General Act, as amended (5 U.S.C. app.).

PURPOSE:

The records are collected and maintained to identify potential health issues and concerns of an individual, to identify and collect information with respect to claims for injury or illness while in the performance of duty, medical conditions reported by an individual to the FDIC Health Unit, and to identify necessary contacts in the event of a medical emergency involving the covered individual. The records collected and maintained by the Office of Inspector General are used to determine compliance with Office of Inspector General policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the

proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the appropriate Federal, State or local agency when necessary to adjudicate a claim (filed by or on behalf of the individual) under the Federal Employees Compensation Act, 5 U.S.C. 8101 *et seq.,* or a retirement, insurance or health benefit program;

(11) To a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease;

(12) To health or life insurance carriers contracting with the FDIC to provide life insurance or to provide health benefits plan, such information necessary to verify eligibility for payment of a claim for life or health benefits;

(13) To a Health Unit or occupational safety and health contractors, including contract nurses, industrial hygienists, and others retained for the purpose of performing any function associated with the operation of the Health Unit; and

(14) To the person designated on the appropriate form as the individual to contact in the event of a medical emergency of the employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: The records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in lockable metal file cabinets. Access is limited to authorized employees and contractors responsible for servicing the records in the performance of their duties.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Health, Safety and Environmental Program Manager, Corporate Services Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The records are compiled during the course of a visit to the Health Unit for treatment, participation in a health screening program, in the performance of accident/incident investigations, or if the individual requests an ergonomic assessment or health or medical accommodation. OIG employees also provide the results of physical and other medical examinations required for compliance with Office of Inspector General policies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0018

SYSTEM NAME:

Grievance Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Human Resources Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226; and FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226. Records at the regional level generated through grievance procedures negotiated with recognized labor organizations are located in the FDIC regional office where originated (See Appendix A for a list of the FDIC regional offices and their addresses). For non-headquarters employees, duplicate copies may be maintained by the Human Resources Branch, Division of Administration, Arlington, VA for the purpose of coordinating grievance and arbitration proceedings.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FDIC or OIG employees who have submitted grievances in accordance with part 771 of the United States Office of Personnel Management's regulations (5 CFR part 771) or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by FDIC employees

under Part 771 of the United States Office of Personnel Management's regulations, or under 5 U.S.C. 7121. Case files contain documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the final decision, and related correspondence and exhibits. This system includes files and records of internal grievance procedures that FDIC may establish through negotiations with recognized labor organizations. The system used by the Office of Inspector General contains records related to grievances filed by OIG employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act, as amended (5 U.S.C. app.); 5 U.S.C. 7121; 5 CFR part 771.

PURPOSE:

The information contained in this system is used to make determinations and document decisions made on filed grievances and settle matters of dissatisfaction or concern of covered individuals. Information from this system may be used for preparing statistical summary or management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To any source during the course of an investigation only such information as determined to be necessary and pertinent to process a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: The records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of Personnel, Human Resources Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 Fairfax Drive, Arlington, VA 22226. The appropriate FDIC Regional Director for records maintained in FDIC regional offices (see Appendix A for a list of the FDIC regional offices and their addresses).

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information in this system is provided: (1) By the individual on whom the record is maintained; (2) by

testimony of witnesses; (3) by agency officials; and (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0019

SYSTEM NAME:

Potential Bidders List.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; and Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street, Dallas, Texas 75201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have purchased or submitted written notice of an interest in purchasing loans, owned real estate, securities, or other assets from the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, address, telephone number and electronic mail address, if available; information as to the kind or category and general geographic location of loans or owned real estate that the individual may be interested in purchasing; and information relating to whether any bids have been submitted on prior sales.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11 and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821 and 1823).

PURPOSE:

The system collects, identifies and maintains information about potential purchasers of assets (primarily loans and owned real estate) from the FDIC. The information is utilized by the FDIC in the marketing of assets, to identify qualified potential purchasers and to solicit bids for assets. The information in this system is used to support the FDIC's liquidation/receivership functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State agencies and to contractors to assist in the marketing and sale of loans, real estate, or other assets held by the FDIC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format in file folders.

Retrievability: Electronic media and paper format are indexed and retrieved by name of prospective purchaser or unique identification number assigned to the prospective purchaser.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Hard copy printouts are maintained in lockable metal file cabinets or offices.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual about whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0020

SYSTEM NAME:

Telephone Call Detail Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Information Technology, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned telephone numbers by the FDIC, including current and former FDIC employees and contractor personnel, who make local and long distance telephone calls and individuals who receive telephone calls placed from or charged to FDIC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, including telephone number, location, dates and duration of telephone calls relating to use of FDIC telephones to place or receive long distance and local calls, and records indicating assignment of telephone numbers to individuals covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSES:

The records in this system are maintained to identify and make a record of all telephone calls placed to or from FDIC telephones and enable the FDIC to analyze call detail information for verifying call usage; to determine responsibility for placement of specific long distance calls; and for detecting possible abuse of the FDIC-provided long distance telephone network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To current and former FDIC employees and other individuals currently or formerly provided telephone services by the FDIC to determine their individual responsibility for telephone calls;

(11) To a telecommunications company providing telecommunications support to permit servicing the account; and

(12) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Records are indexed and retrieved by telephone number and office location.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: Records are destroyed after the close of the fiscal year in which they are audited or after three years from the date the record was created, whichever occurs first.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Infrastructure Services Branch, Division of Information Technology, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records

or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Telephone assignment records and call detail listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0021

SYSTEM NAME:

Fitness Center Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Fitness Centers, Corporate Services Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226, and 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDIC employees who apply for membership and participate in the Fitness Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, gender, age; fitness assessment results; identification of certain medical conditions; and the name and phone number of the individual's personal physician and emergency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The records are collected and maintained to control access to the fitness center; to enable the Fitness Centers' contractor to identify any potential health issues or concerns and the fitness level of an individual; and to identify necessary contacts in the event of a medical emergency while the individual is participating in a fitness activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the individuals listed as emergency contacts or the individual's personal physician, in the event of a medical emergency; and

(11) To a Health Unit or occupational safety and health contractors, including contract nurses, industrial hygienists, and others retained for the purpose of performing any function associated with the operation of the Fitness Centers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

Storage: Records are stored in paper format within individual file folders. Information recorded on index cards is stored in a card file box.

Retrievability: Individual file folders and cards are indexed and retrieved by name.

Safeguards: Records are maintained in lockable metal file cabinets. Access is limited to authorized employees of the contractor responsible for servicing the records in the performance of their duties. Note: In the future, all or some portion of the records may be stored in electronic media. These records will be indexed and retrieved by name and will be password protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Health, Safety and Environmental Program Manager, Acquisition and Corporate Services Branch, Division of Administration, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is principally obtained from the individual who has applied for membership and Fitness Center personnel. Some information may be provided by the individual's personal physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0022

SYSTEM NAME:

Freedom of Information Act and Privacy Act Request Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit requests and administrative appeals pursuant to the provisions of the Freedom of Information Act (FOIA) or the Privacy Act; individuals whose requests, appeals or other records have been referred to FDIC by other agencies; attorneys or other persons authorized to represent individuals submitting requests and appeals; individuals who are the subjects of such requests; and FDIC personnel assigned to process such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain requesters' and their attorneys' or representatives' names, addresses, email addresses, telephone numbers; online identity verification information (username and password); and any other information voluntarily submitted, such as an individual's social security number; tracking numbers; correspondence with the requester or others representing the requester; internal FDIC correspondence and memoranda to or from other agencies having a substantial interest in the determination of the request; responses to the request and appeals; and copies of responsive records. These records may contain personal information retrieved in response to a request. Note—FOIA and Privacy Act case records may contain inquiries and requests regarding any of the FDIC's other systems of records subject to the FOIA and Privacy Act, and information about individuals from any of these other systems may become part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), 12 CFR parts 309 and 310.

PURPOSES:

The records are collected and maintained to process requests made under the provisions of the FOIA and Privacy Act and to assist the FDIC in carrying out any other responsibilities relating to the FOIA and Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(7) To another Federal government agency having a substantial interest in the determination of the request or for the purpose of consulting with that agency as to the propriety of access or correction of the record in order to complete the processing of requests; and

(8) To a third party authorized in writing to receive such information by the individual about whom the information pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Electronic media and paper format records are indexed and retrieved by the requester's name or by

unique number assigned to the request. Records sometimes are retrieved by reference to the name of the requester's firm, if any, or the subject matter of the request.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. File folders are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: Records for Freedom of Information Act requests which are granted, withdrawn or closed for non-compliance or similar reason, are destroyed two years after the date of the reply. Records for all other Freedom of Information Act requests (*e.g.,* requests denied in part, requests denied in full, and requests for which no responsive information was located) are destroyed six years after the date of the reply, unless the denial is appealed, in which case the request and related documentation are destroyed six years after the final agency determination or three years after final adjudication by the courts, whichever is later. Records maintained for control purposes are destroyed six years after the last entry. Records maintained for processing Privacy Act requests are disposed of in accordance with established disposition schedules for individual records, or five years after the date of the disclosure was made, whichever is later. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER AND ADDRESS:

Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Requesters and persons acting on behalf of requesters, FDIC offices and divisions, other Federal agencies having a substantial interest in the determination of the request, and employees processing the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The FDIC has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5) and 12 CFR part 310.13. During the processing of a Freedom of Information Act or Privacy Act request, exempt records from these other systems of records may become part of the case record in this system of records. To the extent that exempt records from other FDIC systems of records are entered or become part of this system, the FDIC has claimed the same exemptions, and any such records compiled in this system of records from any other system of records continues to be subject to any exemption(s) applicable for the records as they have in the primary systems of records of which they are a part.

FDIC–30–64–0023

SYSTEM NAME:

Affordable Housing Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Purchasers and prospective purchasers of residential properties offered for sale through the FDIC's Affordable Housing Program. Note: To be considered a prospective purchaser for purposes of this record system, the individual must have: (1) Completed and signed an FDIC ''Certification of Income Eligibility;'' and (2) delivered the form to an authorized representative of the FDIC's Affordable Housing Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the purchaser's or prospective purchaser's income qualification form and substantiating documents (such as personal financial statements, income tax returns, asset or collateral verifications, appraisals, and sources of income); copies of sales contracts, deeds, or other recorded instruments; intra-agency forms, memoranda, or notes related to the property and purchaser's participation in the FDIC's Affordable Housing Program; correspondence; and other documents related to the FDIC's Affordable Housing Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, 13, and 40 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, 1823, 1831q).

PURPOSE:

The records are collected and maintained to determine and verify eligibility of individuals' to participate in the FDIC Affordable Housing Program and to monitor compliance by individuals with purchaser income restrictions. The information in the system supports the FDIC's liquidation of qualifying residential housing units and the FDIC's goal to provide home ownership for low-income and moderate-income families.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of

information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To mortgage companies, financial institutions, federal agencies (such as the Federal Housing Administration, the Housing and Urban Development Agency, the Farm Service Agency, and the Veterans Administration), or state and local government housing agencies where information is determined to be relevant to an application or request for a loan, grant, financial benefit, or other type of assistance or entitlement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Electronic media and paper format are accessible by name of purchaser or prospective purchaser and by address of the property purchased.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. File folders are maintained in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Resolutions and Receiverships Specialist, Operations Branch, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual seeking to participate in the FDIC's Affordable Housing Program. Information pertaining to an individual may, in some cases, be supplemented with reports from credit bureaus and/or similar credit reporting services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0024

SYSTEM NAME:

Unclaimed Deposit Account Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, Field Operations Branch, FDIC, 1601 Bryan Street, Dallas, Texas 75201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified as deposit account owners of unclaimed insured deposits of a closed insured depository institution for which the FDIC was appointed receiver after January 1, 1989.

CATEGORIES OF RECORDS IN THE SYSTEM:

Deposit account records, including signature cards, last known home address, social security number, name of insured depository institution, relating to unclaimed insured deposits or insured transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 12 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1822).

PURPOSE:

The information in this system is used to process inquiries and claims of individuals with respect to unclaimed insured deposit accounts of closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989, and to assist in complying with the requirements of the Unclaimed Deposits Amendments Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the

information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project; and

(10) To the appropriate State agency accepting custody of unclaimed insured deposits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format.

Retrievability: Electronic media and paper format are indexed and retrieved by depository institution name, depositor name, depositor social security number, or deposit account number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Hard copy printouts are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: If the appropriate State has accepted custody of unclaimed deposits, a record of the unclaimed deposits will be retained by the FDIC during the custody period of ten years. Such records will subsequently be destroyed in accordance with the FDIC's records retention policy in effect at the time of return of any deposits to the FDIC from the State. If the appropriate State has declined to accept custody of the unclaimed deposits of the closed insured depository institution, the FDIC will retain the unclaimed deposit records and upon termination of the receivership of the closed insured depository institution, the records will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from deposit records of closed insured depository institutions and claimants. Records of unclaimed transferred deposits are provided to the FDIC from assuming depository institutions to which the FDIC transferred deposits upon closing of the depository institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0025

SYSTEM NAME:

Beneficial Ownership Filings (Securities Exchange Act).

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934, and (2) Any person who is directly or indirectly the beneficial owner of greater than 10% of a class of equity securities issued by an FDIC-insured depository institution that are registered under section 12 of the Securities Exchange Act of 1934; including any trust, trustee, beneficiary or settlor required to report pursuant to Securities and Exchange Commission Rule 16a–8.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reporting persons submit electronically or on paper reports on any of the following three forms: ''Initial Statement of Beneficial Ownership of Securities,'' ''Statement of Changes in Beneficial Ownership of Securities'' and ''Annual Statement of Beneficial Ownership of Securities.'' Reporting persons are required to use these forms to disclose ownership and transactional information relative to their beneficial ownership of securities of FDIC-insured depository institutions with securities registered under the Securities Exchange Act of 1934. Under section 403 of the Sarbanes-Oxley Act of 2002, these forms must be submitted in electronic form and must be made available to the public on a Federal agency's external internet Web site. The forms require disclosure of the name of the financial institution, relationship of reporting person to the financial institution, reporting person's name and

street address, date of form or amendment, and filer's signature and date. A description of the securities' terms and transactional information including transaction date, type of transaction, amount of securities acquired or disposed, price, aggregate amount of securities beneficially owned, and form and nature of beneficial ownership must also be disclosed on the forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 12(i) and 16(a) of the Securities Exchange Act of 1934 (respectively, 15 U.S.C. 78l(i) and 78p(a)).

PURPOSE:

In accordance with Section 16(a) of the Securities Exchange Act of 1934, as amended by section 403 of the Sarbanes-Oxley Act of 2002, this information is being made available to the public on the FDIC's external internet Web site in order to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and financial institution regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project; and

(10) To the appropriate governmental or self-regulatory organizations when relevant to the organization's regulatory or supervisory responsibilities or if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or on paper format in file folders.

Retrievability: Electronically filed reports are indexed and retrieved by the name of the reporting party. Paper-filed reports are indexed by the name of the depository institution issuing the securities being reported, with sub-indexing by the filer's name.

Safeguards: Access to the information in this electronic system of records is unrestricted. The filing and amendment of electronic records is restricted to authorized users who have been issued non-transferable user ID's and passwords.

Retention and Disposal: These records will be maintained for fifteen years from the date of filing, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounting & Securities Disclosure Section, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from (1) any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934; and (2) any beneficial owner of greater than 10% of an FDIC-insured depository institution with a class of equity securities registered under the Securities Exchange Act of 1934, including any trust, trustee, beneficiary or settlor required to report pursuant to SEC Rule 16a–8.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0026

SYSTEM NAME:

Transit Subsidy Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429 and the FDIC regional or area offices. (See Appendix A for a list of the FDIC regional offices.) Records for FDIC Headquarters and all regional and area offices are also housed electronically at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees who apply for and receive transit subsidy program benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed transit subsidy application forms (FDIC Form 3440). The applications include, but are not limited to, the applicant's name, home address, title, grade, Division, Office, work hours, room and telephone numbers, commuting schedule, and transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The records are used to administer the FDIC transit subsidy program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name of the transit subsidy program participant.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Unit, Security and Emergency Preparedness Section, Corporate Services Branch, Division of Administration, 3501 Fairfax Dr., Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information taken from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0027

SYSTEM NAME:

Parking Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429 and regional offices with FDIC parking facilities. (See Appendix A for a list of the FDIC regional offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees and others who have applied for and/or been issued a parking permit for the use of FDIC parking facilities; individuals who car-pool with employees holding such permits; and employees interested in joining a car pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed parking application forms (FDIC Forms 3410), car pool information, disability parking applications, special parking authorizations, and visitor parking requests. The information includes, but is not limited to, the applicant's name, home address, title, grade, make, year and license number of vehicle, Division, Office, work hours, room and telephone numbers, and arrival/departure times.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The records are used to administer the parking program, to allocate the limited number of parking spaces in the FDIC parking facilities among employees and visitors, to facilitate the formation of car pools with employees who have been issued parking permits, and to provide for the safe use of FDIC facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy At, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name of the permit holder, employee identification number, or license tag number.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Unit, Security and Emergency Preparedness Section, Corporate Services Branch, Division of Administration, 3501 Fairfax Dr., Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain, information retrieved from official FDIC records, or information from other agency parking records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0028

SYSTEM NAME:

Office of the Chairman Correspondence Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who correspond to, or receive correspondence from, the Office of the Chairman; and individuals who are the subject of correspondence to or from the Office of the Chairman.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence, memoranda, Email, and other communications with the Office of the Chairman that may include, without limitation, name and contact information supplied by the individual as well as information concerning subject matter, internal office assignments, processing, and final response or other disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to correspondence addressed to the FDIC, Office of the Chairman.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint; and

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ‘‘Notification Procedure’’ above.

CONTESTING RECORD PROCEDURES:

See ‘‘Notification Procedure’’ above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence to the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0029

SYSTEM NAME:

Congressional Correspondence Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Members of the U.S. Congress and Congressional staff; and individuals whose inquiries relating to FDIC activities are forwarded by Members of Congress or Congressional staff to the FDIC for response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence from Members of the U.S. Congress or Congressional staff making inquiries or transmitting inquiries, correspondence or documents from constituents that may include, without limitation, name and contact information as well as information concerning subject matter, internal office assignments, processing, and final response or other disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to constituent and other inquiries forwarded by Members of the U.S. Congress or Congressional staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint; and

(11) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence to the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0030

SYSTEM NAME:

Legislative Information Tracking System Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Members of the U.S. Congress and Congressional staff; and individuals who contact, or are contacted by the FDIC Office of Legislative Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains memoranda, email and other communications with the Office of Legislative Affairs that may include without limitation, name and contact information supplied by the individual as well as information related to the inquiry that was developed by FDIC staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to inquiries regarding FDIC's views on proposed legislation, facilitate Congressional briefings, and coordinate preparation of FDIC responses to constituent inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint; and

(11) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who contact the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0031

SYSTEM NAME:

Online Ordering Request Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

These electronic records are collected in a web-based system located at a secure site and on secure servers maintained by a contractor for the FDIC, Division of Administration, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make an online order for publications, products, or other materials from the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains names, business or organization affiliations, addresses, phone numbers, fax numbers, email addresses, order history, login information (username, user ID, and password), fulfillment information (shipping and delivery instructions), and other contact information provided by individuals covered by this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to organize and process orders for publications, products, or other materials offered by the FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media at a secure site and on secure servers maintained by a contractor.

Retrievability: Records are indexed and retrieved by name, order number, and date.

Safeguards: Electronic transmission records are password-protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Library & Public Information Center, Corporate Services Branch, Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who contact the FDIC, FDIC personnel, and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0033

SYSTEM NAME:

Emergency Notification Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429; FDIC regional or area offices (See Appendix A for a list of the FDIC regional offices and their addresses); and at a secure site and on secure web-based servers maintained by a contractor for the FDIC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FDIC employees, contractors, and other registered users.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes individual contact information including name, personal telephone numbers, personal email addresses, official business phone number, and official business email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The system provides for multiple communication device notification to registered FDIC personnel during and after local, regional or national emergency events and security incidents, disseminates time sensitive information, provide personnel accountability and status during emergency events, and conduct communication tests. The system also provides for the receipt of real-time message acknowledgements and related management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project; and

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media at a secure site and on secure servers maintained by a contractor.

Retrievability: Records are indexed and retrieved by groups and individual name.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, FDIC Division of Administration, Security and Emergency Preparedness Section, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information taken from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0034

SYSTEM NAME:

Office of Inspector General Inquiry Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Office of Inspector General (OIG), 3501 Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals—including, but not limited to, members of the public, the media, contractors and subcontractors, Congressional sources, and employees of the FDIC or of other governmental agencies—who communicate with the Office of Inspector General (OIG) through written or electronic correspondence or telephonically including the OIG Hotline. The system also includes individuals who receive correspondence from OIG and those who are the subject of correspondence to or from OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains communications such as correspondence, memoranda, email records, call records, voicemail, faxes, other electronic or digital communications, and additional documentation supplied by the source of the records to include other FDIC, congressional, and other executive branch sources. Records provided by the source may include personally identifiable information including name, addresses, email addresses, telephone numbers, and any other information voluntarily submitted such as Social Security Number, as well as information developed by OIG, such as

the date the matter was received by OIG, the date the matter was closed, and the manner of disposition. Records that involve law enforcement matters are transferred to the OIG investigative function, whose applicable system of records is covered by FDIC–30–64–0010, Investigative Files of the Office of Inspector General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. app.).

PURPOSE:

This system of records is used to document and respond to correspondence addressed or directed to FDIC OIG; to track the receipt and disposition of correspondence; and to act as a means of referring allegations of illegality, fraud and abuse to the OIG investigative function.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To the appropriate Federal, State, local, foreign or international agency or authority which has responsibility for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order to assist such agency or authority in fulfilling these responsibilities when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal (collectively referred to as the adjudicative bodies) in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings (collectively, the litigative proceedings) when the FDIC or OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary in order for the adjudicatory bodies, or any of them, to perform their official functions in connection with the presentation of evidence relative to the litigative proceedings;

(3) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, OIG or any employee thereof is a party to litigation or administrative proceeding or has a significant interest in the litigation or proceeding to assist those representatives by providing them with information or evidence for use in connection with such litigation or proceedings;

(6) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(7) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals if needed in the performance of these or other authorized duties;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the OIG, FDIC or Federal Government in order to assist those entities or individuals in carrying out their obligations under the related contract, grant, agreement or project;

(10) To a financial institution (whether or not FDIC-insured, but subject to the FDIC's examination, supervision and/or resolution authority) which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(11) To the primary Federal or State financial regulator of a financial institution (whether or not FDIC-insured, but subject to the FDIC's examination, supervision and/or resolution authority) that is the subject of an inquiry or complaint in order to resolve the inquiry or complaint;

(12) To third-party sources, as authorized by OIG or the FDIC, during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint;

(13) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by OIG, issuing a security clearance, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter;

(14) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the OIG, or its investigative components, or for statistical purposes; and

(15) To a Federal agency responsible for considering suspension or debarment action where such a record is determined to be necessary and relevant.

Note: In addition to the foregoing: (1) A record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the published notice of the system of records from which the record is derived; and (2) records contained in this system that are subsequently transferred to OIG's investigative function may be disclosed as a routine use as specified in FDIC–30–64–0010,

Investigative Files of the Office of Inspector General.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date received or closed, and/or subject.

Safeguards: The electronic system files are accessible only by authorized personnel on a need-to-know basis. File folders are maintained in lockable metal file cabinets and lockable offices accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods. For records transferred from this system to OIG investigative function, the retention period and manner of destruction will be governed by the applicable investigative-records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

FDIC Inspector General, 3501 Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity. Note: Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General. See ''Exemptions Claimed for the System'' below.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310. Note: Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General. See ''Exemptions Claimed for the System'' below.

RECORD SOURCE CATEGORIES:

Official records of the FDIC; current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General.

FDIC–30–64–0035

SYSTEM NAME:

Identity, Credential and Access Management Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

The Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429, and the FDIC regional or area offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.) Duplicate systems may exist, in whole or in part, at secure sites and on secure servers maintained by third-party service providers for the FDIC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers all FDIC employees, contractors, and other individuals who have applied for, been issued, and/or used a Personal Identity Verification (PIV) card for access to FDIC or other federal facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes all information submitted during application for the PIV card and any resulting investigative and adjudicative documentation required to establish and verify the identity and background of each individual issued a PIV card. The system includes, but is not limited to, the applicant's name, social security number, date and place of birth, hair and eye color, height, weight, ethnicity, status as Federal or contractor employee, employee ID number, email, biometric identifiers including fingerprints, digital color photograph, user access rights, and data from source documents used to positively identify the applicant, including passport and Form I–9 documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Executive Order 9397; and Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors.

PURPOSE:

The primary purpose of the system is to manage the safety and security of FDIC and other federal facilities, as well as the occupants of those facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act, 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, and local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of

information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(10) To notify another Federal agency when, or verify whether, a PIV card is no longer valid.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, social security number, other ID number, PIV card serial number, and/or by any other unique individual identifier.

Safeguards: Electronic records are password protected and accessible only by authorized personnel. Paper format records maintained in individual file folders are stored in lockable file cabinets and/or in secured vaults or warehouses and are accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with FDIC Records Retention Schedules and the National Archives and Records Administration. Disposal is by shredding or other appropriate disposal methods. PIV cards are deactivated within 18 hours of cardholder separation, loss of card, or expiration. PIV cards are destroyed by shredding no later than 90 days after deactivation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Operations, Security and Emergency Preparedness Section, Corporate Services Branch, Division of Administration, 3501 Fairfax Dr., Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, those authorized by the subject individuals to furnish information, and the FDIC's personnel records. Information regarding entry and egress from FDIC facilities or access to information technology systems is obtained from use of the PIV card.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A

FDIC Atlanta Regional Office, 10 Tenth Street NE., Suite 800, Atlanta, GA 30309–3906.

FDIC Boston Regional Office, 15 Braintree Hill Office Park, Suite 200, Braintree, MA 02184–8701.

FDIC Chicago Regional Office, 300 South Riverside Plaza, Suite 1700, Chicago, IL 60606.

FDIC Dallas Regional Office, 1601 Bryan Street, Suite 1410, Dallas, TX 75201–3479.

FDIC Kansas City Regional Office, 1100 Walnut Street, Suite 2100, Kansas City, MO 64106.

FDIC Memphis Area Office, 6060 Primacy Parkway, Suite 300, Memphis, TN 38119–5770.

FDIC New York Regional Office, 350 Fifth Avenue, Suite 1200, New York, NY 10118–0110

FDIC San Francisco Regional Office, 25 Jessie Street at Ecker Square, Suite 2300, San Francisco, CA 94105–2780.

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of October 2015.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27288 Filed 10–29–15; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife Species; Listing 10 Freshwater Fish and 1 Crayfish; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AY69

[Docket No. FWS–HQ–FAC–2013–0095; FXFR13360900000–156–FF09F14000]

Injurious Wildlife Species; Listing 10 Freshwater Fish and 1 Crayfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend its regulations to add to the list of injurious fish the following freshwater fish species: Crucian carp (*Carassius carassius*), Eurasian minnow (*Phoxinus phoxinus*), Prussian carp (*Carassius gibelio*), roach (*Rutilus rutilus*), stone moroko (*Pseudorasbora parva*), Nile perch (*Lates niloticus*), Amur sleeper (*Perccottus glenii*), European perch (*Perca fluviatilis*), zander (*Sander lucioperca*), and wels catfish (*Silurus glanis*). In addition, the Service also proposes to amend its regulations to add the freshwater crayfish species common yabby (*Cherax destructor*) to the list of injurious crustaceans. These listings would prohibit the importation of any live animal, gamete, viable egg, or hybrid of these 10 fish and 1 crayfish into the United States, except as specifically authorized. These listings would also prohibit the interstate transportation of any live animal, gamete, viable egg, or hybrid of these 10 fish and 1 crayfish between the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, except as specifically authorized. As proposed, these species are injurious to human beings, to the interests of agriculture, or to wildlife or the wildlife resources of the United States, and the listing will prevent the purposeful or accidental introduction and subsequent establishment of these 10 fish and 1 crayfish into ecosystems of the United States. We are also making available for public review and comment the associated draft environmental assessment and draft economic analysis for this action.

DATES: Comments will be considered if received on or before December 29, 2015.

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

• *Federal eRulemaking Portal: http://www.regulations.gov*. In the Search box, enter the docket number for the proposed rule, which is FWS–HQ–FAC–2013–0095. Click on ''Comment Now!'' to submit a comment. Please ensure that you have found the correct rulemaking before submitting your comment.

• *U.S. mail or hand delivery:* Public Comments Processing, Attn: FWS–HQ–FAC–2013–0095; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Comments will not be accepted by email or faxes. All comments will be posted on *http://www.regulations.gov*. This generally means that any personal information provided will be posted (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Susan Jewell, U.S. Fish and Wildlife Service, MS–FAC, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2416. If a telecommunications device for the deaf (TDD) is required, please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

The U.S. Fish and Wildlife Service (Service) proposes to amend its regulations to add to the list of injurious fish the following nonnative freshwater fish species: Crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, and wels catfish. In addition, the Service proposes to amend its regulations to add the common yabby, a nonnative freshwater crayfish species, to the list of injurious crustaceans. These listings would prohibit the importation of any live animal, gamete, viable egg, or hybrid of these 10 fish and 1 crayfish (11 species) into the United States, except as specifically authorized. These listings would also prohibit the interstate transportation of any live animal, gamete, viable egg, or hybrid of these 10 fish and 1 crayfish, except as specifically authorized. If the proposed rule is made final, importation and interstate transportation of any live animal, gamete, viable egg, or hybrid of these 10 fish and 1 crayfish could be authorized only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use. This action is necessary to protect human beings and the interests of agriculture, wildlife, or wildlife resources from the purposeful or accidental introduction and subsequent establishment of these 11 species into ecosystems of the United States.

The need for the proposed action to add 11 nonnative species to the list of injurious wildlife under the Lacey Act developed from the Service's concern that, through our rapid screen process, these 11 species were categorized as ''high risk'' for invasiveness. All 11 species have a high climate match in parts of the United States, a history of invasiveness outside their native ranges, and, except for one fish species in one lake, are not currently found in U.S. ecosystems. Nine of the freshwater fish species (Amur sleeper, crucian carp, Eurasian minnow, European perch, Prussian carp, roach, stone moroko, wels catfish, and zander) have been introduced to and established populations within Europe and Asia, where they have spread and are causing harm. The Nile perch has been introduced to and become invasive in central Africa. The freshwater crayfish, the common yabby, has been introduced to western Australia and to Europe where it has established invasive populations. Most of these species were originally introduced for aquaculture, recreational fishing, or ornamental purposes. Two of these fish species (the Eurasian minnow and stone moroko) were accidently introduced when they were unintentionally transported in shipments with desirable fish species stocked for aquaculture or fisheries management.

A species does not have to be currently imported or present in the United States for the Service to list it as injurious. The objective of this listing is to utilize the Lacey Act's major strength by prohibiting importation and interstate transportation and thus preventing the species' likely introduction and establishment in the wild and likely injuriousness to human beings, the interests of agriculture, or to wildlife or wildlife resources. Based on our evaluation of the injurious nature of all 11 species, the Service seeks to prevent these introductions and establishment within the United States, consistent with the Lacey Act.

We evaluated the 10 fish and 1 crayfish species using the Service's Injurious Wildlife Evaluation Criteria. The criteria include the likelihood and magnitude of release or escape, of survival and establishment upon release or escape, and of spread from origin of release or escape. The criteria also examine the effect on wildlife resources and ecosystems (such as through hybridizing, competition for food or habitat, predation on native species, and pathogen transfer), on endangered and threatened species and their respective habitats, and on human beings, forestry, horticulture, and agriculture. Additionally, criteria evaluate the likelihood and magnitude of wildlife or

habitat damages resulting from control measures. The analysis using these criteria serves as a basis for the Service's regulatory decision regarding injurious wildlife species listings. The objective of such a listing would be to prohibit importation and interstate transportation and thus prevent each of the species' likely introduction and establishment in the wild, thereby preventing injurious effects consistent with the Lacey Act.

Each of these 11 species has a well-documented history of invasiveness outside of its native range, but not in the United States. When released into the environment, these species have survived and established, expanded their nonnative range, preyed on native wildlife species, and competed with native species for food and habitat. Since it would be difficult to eradicate, manage, or control the spread of these 11 species; it would be difficult to rehabilitate or recover habitats disturbed by these species; and because introduction of these 11 species would negatively affect agriculture, human beings, and native wildlife or wildlife resources, the Service is proposing to amend its regulations to add these 11 species as injurious under the Lacey Act. This listing would prohibit the importation and interstate transportation of any live animal, gamete, viable egg, or hybrid in the United States, except as specifically authorized.

This proposed rule is not significant under Executive Order (E.O.) 12866. E.O. 12866 Regulatory Planning and Review (Panetta 1993) and the subsequent document, Economic Analysis of Federal Regulations under E.O. 12866 (U.S. Office of Management and Budget 1996) require the Service to ensure that proper consideration is given to the effect of this proposed action on the business community and economy. With respect to the regulations under consideration, analysis that comports with the Circular A–4 would include a full description and estimation of the economic benefits and cost associated with the implementation of the regulations. The economic effects to three groups would be addressed: (1) Producers; (2) consumers; and (3) society. Of the 11 species, only one population of one species (zander) is found in the wild in the United States. Of the 11 species, 1 species (yabby) is in the aquarium trade in the United States; 3 species (crucian carp, Nile perch, and wels catfish) have been imported in small numbers since 2011; and 7 species are not in U.S. trade. Therefore, the economic effect in the United States is negligible or nil. The draft economic analysis that the Service prepared supports this conclusion (USFWS Draft Economic Analysis 2015).

Background

The regulations contained in 50 CFR part 16 implement the Lacey Act (the Act; 18 U.S.C. 42, as amended). Under the terms of the Act, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. The lists of injurious wildlife species are found in title 50 of the Code of Federal Regulations (CFR) at §§ 16.11 through 16.15.

The purpose of listing the crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, and wels catfish and the common yabby (hereafter ''11 species'') as injurious wildlife is to prevent the harm that these species could cause to the interests of agriculture, human beings, wildlife, and wildlife resources through their accidental or intentional introduction and establishment into the wild in the United States.

The Service evaluated each of the 11 species individually and determined them to be injurious. Therefore, for these 11 species, their importation into, or transportation between, the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of live animals, gametes, viable eggs, or hybrids, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. The rule would not prohibit intrastate transport of the listed fish or crayfish species. Any regulations pertaining to the transport or use of these species within a particular State would continue to be the responsibility of that State.

How the 11 Species Were Selected for Consideration as Injurious Species

While the Service recognizes that not all nonnative species become invasive, it is important to have some understanding of the risk that nonnative species pose to the United States. Therefore, the Service utilizes a rapid screening process to provide a prediction of the invasive potential of nonnative species. Rapid screens categorize risk as either high, low, or uncertain and have been produced for hundreds of foreign aquatic fish and invertebrates for use by the Service and other entities. Each rapid screen is summarized in an Ecological Risk Screening Summary (ERSS; see ''Rapid Screening'' for explanation regarding how these summaries were done). The Service selected 11 species with a rapid screen result of ''high risk'' to consider for listing as injurious. These 11 species have a high climate match (see Rapid Screening) in parts of the United States, a history of invasiveness outside of their native range (see *Need for the Proposed Rule*), are not yet found in U.S. ecosystems (except for one), and have a high degree of certainty regarding these results. Other species meet these criteria and will be considered in subsequent rules. The ERSS reports for each of the 11 species are available on the Service's Web site (*http://www.fws.gov/injuriouswildlife*).

Except for one species in one lake, these 11 species are not currently present in U.S. ecosystems. All 11 species are documented to be highly invasive internationally (see Species Information for each species). Nine of the freshwater fish species (Amur sleeper, crucian carp, Eurasian minnow, European perch, Prussian carp, roach, stone moroko, wels catfish, and zander) have been introduced and established populations within Europe and Asia. The Prussian carp was recently found to be established in waterways in southern Alberta, Canada (Elgin *et al.* 2014), near the U.S. border. Another freshwater fish species, the Nile perch, has been introduced to and become invasive in central Africa. The freshwater crayfish, the common yabby, has been introduced to and established populations within Australia and Europe. Most of the 11 species were originally intentionally introduced for aquaculture, recreational fishing, or ornamental purposes. The Eurasian minnow and the stone moroko were accidently mixed with and introduced with shipments of fish stocked for other intended purposes. Consistent with 18 U.S.C. 42, the Service aims to prevent the introduction and establishment of all 11 species within the United States due to concerns regarding the potential injurious effects of the 11 species on human beings, the interests of agriculture, or to wildlife or wildlife resources of the United States.

Need for the Proposed Rule

The threat posed by these 11 species is evident in their history of invasiveness in other countries and have a high risk of establishment as demonstrated by a high climate match within the United States. Invasive species means ''an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health'' (Executive Order 13112 on Invasive Species, 1999). A history of invasiveness means that a species has been introduced (either intentionally or unintentionally) to an area or areas where it is not native and has subsequently been scientifically documented to have caused harm to the environment.

Based on the results of rapid screening assessments and our injurious wildlife evaluation, we anticipate that these 11 species would become invasive if they are introduced and become established in waters of the United States. All of these species have wide distribution ranges (where they are native and where they are invasive), suggesting they are highly adaptable and tolerant of new environments and opportunistic when expanding from their native range. Under the Act, the Service has the ability to prevent the introduction of injurious wildlife that poses a threat to the United States. Preventing injurious wildlife from entering the United States is widely considered the most economically effective and efficient management approach for avoiding the adverse ecological effects and economic costs often caused by invasive species.

Listing Process

The Service promulgates regulations under the Act in accordance with the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*). We are publishing a proposed rule for public notice and comment. We also solicit peer review under Office of Management and Budget (OMB) guidelines ''Final Information Quality Bulletin for Peer Review'' (OMB 2004). We also make available to the public an economic analysis (including analysis of potential effects on small businesses) if appropriate. We also follow National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements, which may include preparing an environmental assessment or environmental impact statement, also available to the public. For this proposed rule, we prepared a draft economic analysis and a draft environmental assessment.

This proposed rule is based on an evaluation using the Service's Injurious Wildlife Evaluation Criteria (see Injurious Wildlife Evaluation Criteria, below, for more information). We use these criteria to evaluate whether a species does or does not qualify as injurious under the Act. These criteria include the likelihood and magnitude of release or escape, of survival and establishment upon release or escape, and of spread from origin of release or escape. These criteria also examine the impact on wildlife resources and ecosystems (such as through hybridizing, competition for food or habitat, predation on native species, and pathogen transfer), on endangered and threatened species and their respective habitats, and on human beings, forestry, horticulture, and agriculture. Additionally, criteria evaluate the likelihood and magnitude of wildlife or habitat damages resulting from measures to control the proposed species. The analysis using these criteria serves as a basis for the Service's regulatory decision regarding injurious wildlife species listings. The objective of such a listing would be to prohibit importation and interstate transportation and thus prevent the species' likely introduction and establishment in the wild, thereby preventing injurious effects consistent with 18 U.S.C. 42.

We are evaluating each of the 11 species individually and will list only those species that we determine to be injurious. If a determination is made to not finalize a listing, the Service will publish notice in the **Federal Register** announcing that it is withdrawing the proposed rule with respect to any such species. If a determination is made to finalize the listing of a species as injurious after evaluating the comments we receive during this proposed rule's comment period, a final rule would be published. The final rule would contain responses to comments we receive on the proposed rule, state the final decision, and provide the justification for that decision. If listed, species determined to be injurious will be identified in the Code of Federal Regulations.

Introduction Pathways for the 11 Species

The primary potential pathways for the 11 species into the United States are through commercial trade in the live animal industry, including aquaculture, recreational fishing, bait, and ornamental display. Some could arrive unintentionally in water used to carry other aquatic species. Aquatic species may be imported into many designated ports of entry, including Miami, Los Angeles, Baltimore, Dallas-Fort Worth, Detroit, Chicago, and San Francisco. Once imported, these species may be transported throughout the country for aquaculture, recreational and commercial fishing, aquaculture, bait, display, and other possible uses.

Aquaculture is the farming of aquatic organisms, such as fish, crustaceans, mollusks, and plants for food, pets, stocking for fishing, and other purposes. Aquaculture usually occurs in a controlled setting where the water is contained, as a pond or in a tank, and is separate from lakes, ponds, rivers, and other natural waters. The controlled setting allows the aquaculturist to maintain proper conditions for each species being raised, which promotes optimal feeding and provides protection from predation and disease. However, Bartley (2011) states that aquaculture is the primary reason for the deliberate movement of aquatic species outside of their range, and Casal (2006) states that many countries are turning to aquaculture for human consumption, and that has led to the introduction and establishment of these species in local ecosystems. Although the farmed species are normally safely contained, outdoor aquaculture ponds have often flooded from major rainfall events and merged with neighboring natural waters, allowing the farmed species to escape by swimming or floating to nearby watersheds. Once a species enters a watershed, it has the potential to establish and spread throughout the watershed, which then increases the risk of spread to neighboring watersheds through further flooding. Other pathways for aquaculture species to enter natural waters include intentional stocking programs, and through unintentional stocking when the species is inadvertently included in a shipment with an intended species for stocking (Bartley 2011), release of unwanted ornamental fish, and release of live bait by fishermen.

Stocking for recreational fishing is a common pathway for invasive species when an aquatic species is released into a water body where it is not native. Often it takes repeated releases before the fish (or other animal) becomes established. The type of species that are typically selected and released for recreational fishing are predatory, grow quickly and to large sizes, reproduce abundantly, and are adaptable to many habitat conditions (Fuller *et al.* 1999). These are often the traits that also contribute to the species becoming invasive (Copp *et al.* 2005c; Kolar and Lodge 2001, 2002). Live aquatic species, such as fish and crayfish, are frequently used as bait for recreational and commercial fishing. Generally, bait

animals are kept alive until they are needed, and leftover individuals may be released into convenient waterbodies (Litvak and Mandrak, 1993; Ludwig and Leitch, 1996). For example, Kilian *et al.* (2012) reported that 65 and 69 percent of Maryland anglers using fishes and crayfishes, respectively, released their unused bait, and that a nonnative, potentially invasive species imported into the State as bait is likely to be released into the wild. Often, these individuals survive, establish, and cause harm to that waterbody (Fuller *et al.* 1999; Kilian *et al.* 2012). Litvak and Mandrak (1993) found that 41 percent of anglers released live bait after use. Their survey found nearly all the anglers who released their bait thought they were doing a good thing for the environment. When the authors examined the purchase location and the angling destination, they concluded that 18 of the 28 species found in the dealers' bait tanks may have been used outside their native range. Therefore, it is not surprising that so many species are introduced in this manner; Ontario, Canada alone has more than 65 legal baitfish species, many of which are not native to some or all of Ontario (Cudmore and Mandrak 2005). Ludwig and Leitch (1996) concluded that the probability of at least 1,000 bait release events from the Mississippi Basin to the Hudson Bay Basin in one year is close to 1 (a certainty).

Ornamental aquatic species are species kept in aquaria and aquatic gardens for display for entertainment or public education. The most sought-after species frequently are not native to the display area. Ornamental species may accidentally escape from outdoor ponds into neighboring waterbodies (Andrews 1990; Fuller *et al.* 1999; Gherardi 2011b). They may also be released outdoors intentionally when owners no longer wish to maintain them, despite laws in most States prohibiting release into the wild. The first tropical freshwater fish became available in trade in the United States in the early 1900s (Duggan 2011), and there is currently a large variety of freshwater and saltwater fish in the ornamental trade. The trade in ornamental crayfish species is more recent but is growing rapidly (Gherardi 2011b).

The invasive range of many of the species in this proposed rule has expanded through intentional release for commercial and recreational fishing (European perch, Nile perch, Prussian carp, roach, wels catfish, zander, and common yabby), as bait (Eurasian minnow, roach, common yabby), and as ornamental fish (Amur sleeper, stone moroko), and unintentionally (Amur sleeper, crucian carp, Eurasian minnow, and stone moroko) with shipments of other aquatic species. All 11 species have proven that they are capable of naturally dispersing through waterways.

More importantly, the main factors influencing the chances of these 11 species establishing in the wild would be the propagule pressure, defined as the frequency of release events (propagule number) and numbers of individuals released (propagule size) (Williamson 1996; Colautti and MacIsaac 2004; Duncan 2011). This increases the odds of both genders being released and finding mates and of those individuals being healthy and vigorous. After a sufficient number of unintentional or intentional releases, a species may establish in those regions suitable for its survival and reproduction. Thus, allowing the importation and unregulated interstate transport of these 11 species subsequently increases the risk of any of these species becoming established within the United States.

An additional factor contributing to an invasive species' successful establishment is a documented history of these same species successfully establishing elsewhere outside of their native ranges. All 11 species have been introduced, become established, and been documented as causing harm in countries outside of their native ranges. For example, the stone moroko's native range includes southern and central Japan, Taiwan, Korea, China, and the Amur River basin (Copp *et al.* 2010). Since the stone moroko's original introduction to Romania in the early 1960s, this species has invaded nearly every European country and additional regions of Asia (Welcomme 1988; Copp *et al.* 2010; Froese and Pauly 2014). Thus, a high climate and habitat match between the species' native range and its introduced range has contributed significantly to its successful establishment.

As mentioned above, a species does not have to be currently imported or present in the United States for the Service to list it as injurious. The objective of this listing is to utilize the Act's major strength to prohibit importation and interstate transportation and thus prevent the species' likely introduction and establishment in the wild and likely harm to human beings, the interests of agriculture, or wildlife or wildlife resources, thereby preventing injurious effects consistent with the Lacey Act.

Public Comments

The Service is soliciting substantive public comments and supporting data on the draft environmental assessment, the draft economic analysis, and this proposed rule to add the 11 species to the list of injurious wildlife under the Act. This proposed rule and supporting materials will be available on *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2013–0095.

Comments and materials concerning this rule may be submitted by one of the methods listed in **ADDRESSES**. Comments sent by email or fax or to an address not listed in **ADDRESSES** will not be accepted.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that this information will not be published.

Those comments and materials that we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public review at *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2013–0095, or by appointment, during normal business hours at U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

We are soliciting public comments and supporting data to gain additional information, and we specifically seek comment regarding the crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, and wels catfish and the common yabby on the following questions:

(1) What regulations does your State or Territory have pertaining to the use, possession, sale, transport, or production of any of the 11 species in this proposed rule? What are relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the proposed Federal regulation?

(2) Are any of the 11 species currently found in the wild in any of the States or Territories? If so, which species and where?

(3) Are any of the 11 species currently in production for wholesale or retail sale, and in which States?

(4) What would it cost to eradicate individuals or populations of any of the 11 species, or similar species, if found in the United States? What methods are effective?

(5) What State-protected species would be adversely affected by the introduction of any of the 11 species?

(6) What provisions in the proposed rule should the Service consider with

regard to: (a) The effect of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Service should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect the proposed rule would have on small entities?

(7) How could the proposed rule be modified to reduce any costs or burdens for small entities consistent with the Service's requirements?

(8) Should we include or not include hybrids of the species analyzed in this proposed rule, and would the hybrids be likely to possess the same biological characteristics as the parent species?

Species Information

We obtained our information on a species' biology, history of invasiveness, and climate matching from a variety of sources, including the U.S. Geological Survey Nonindigenous Aquatic Species (NAS) database, Centre for Agricultural Bioscience International's Invasive Species Compendium (CABI ISC), ERSS reports, and primary literature. We queried the NAS database (*http://nas.er.usgs.gov/*) to confirm that 10 of the 11 species are not currently established in U.S. ecosystems. The zander is established in a lake in North Dakota (Fuller 2009). The CABI ISC (*http://www.cabi.org/isc/*) is a constantly developing, encyclopedic resource containing datasheets on more than 1,500 invasive species and animal diseases. The Service contracted with CABI for many of the species-specific datasheets that we used in preparation of this proposed rule. The datasheets were prepared by world experts on the species, and each datasheet was reviewed by expert peer reviewers. The datasheets served as sources of compiled information that allowed us to prepare this proposed rule efficiently.

Crucian Carp (Carassius carassius)

The crucian carp was first described and cataloged by Linnaeus in 1758, and is part of the order Cypriniformes and family Cyprinidae. The family Cyprinidae, or the carp and minnow family, is a large and diverse group that includes 2,963 freshwater species (Froese and Pauly 2014).

Native Range and Habitat

The crucian carp inhabits a temperate climate (Riehl and Baensch 1991). The native range includes much of north and central Europe, extending from the North Sea and Baltic Sea basins across northern France and Germany to the Alps and through the Danube River basin and eastward to Siberia (Godard and Copp 2012). The species inhabits freshwater lakes, ponds, rivers, and ditches (Godard and Copp 2012). This species can survive in water with low dissolved oxygen levels, including aquatic environments with greatly reduced oxygen (hypoxic) or largely devoid of dissolved oxygen (anoxic) (Godard and Copp 2012).

Nonnative Range and Habitat

Crucian carp have been widely introduced to and established in Croatia, Greece, southern France (Holčík 1991; Godard and Copp 2012), Italy, and England (Kottelat and Freyhof 2007), Spain, Belgium, Israel, Switzerland, Chile, India, Sri Lanka, Philippines (Holčík 1991; Froese and Pauly 2014), and Turkey (Innal and Erk'akan 2006). In the United States, crucian carp may have been established within Chicago (Illinois) lakes and lagoons in the early 1900s (Meek and Hildebrand 1910; Schofield *et al.* 2005), but apparently died out because currently no such population exists (Welcomme 1988; Schofield *et al.* 2005; Schofield *et al.* 2013).

Several other fish species, including the Prussian carp, a brown variety of goldfish (*Carassius auratus*), and the common carp (*Cyprinus carpio*), have been misidentified as crucian carp (Godard and Copp 2012). Crucian carp may have been accidently introduced to some regions in misidentified shipments of ornamental fish (Wheeler 2000; Hickley and Chare 2004). However, no known populations of crucian carp currently exist in the United States.

Biology

Crucian carp generally range from 20 to 45 centimeters (cm) (8 to 18 inches (in)) long with a maximum of 50 cm (19.5 in) (Godard and Copp 2012). Specimens have been reported to weigh up to 3 kilograms (kg) (6.6 pounds (lb)) (Froese and Pauly 2014). These fish have an olive-gray back that transitions into brassy green along the sides and brown on the body (Godard and Copp 2012).

Crucian carp can live up to 10 years (Kottelat and Freyhof 2007) and reach sexual maturity at one and a half years but may not begin spawning until their third year (Godard and Copp 2012). Crucian carp are batch spawners (release multiple batches of eggs per season) and may spawn one to three times per year (Aho and Holopainen 2000, Godard and Copp 2012).

Crucian carp feed during the day and night on plankton, benthic (bottom-dwelling) invertebrates, plant materials, and detritus (organic material) (Kottelat and Freyhof 2007).

Crucian carp can harbor the fish disease spring viraemia of carp (SVC) (Ahne *et al.* 2002) and several parasitic infections (*Dactylogyrus* gill flukes disease, Trichodinosis, skin flukes, false fungal infection, and turbidity of the skin) (Froese and Pauly 2014). SVC is a disease that, when found, is required to be reported to the Office International des Epizooties (OIE) (World Organisation of Animal Health) (Ahne *et al.* 2002). The SVC virus infects carp species but may be transmitted to other fish species. The virus is shed with fecal matter and urine, and often infects through waterborne transmission (Ahne *et al.* 2002). Additionally, SVC may result in significant morbidity and mortality with an approximate 70 percent fatality among juvenile fish and 30 percent fatality in adult fish (Ahne *et al.* 2002). Thus, the spread of SVC may have serious effects on native fish stocks. OIE-notifiable diseases affect animal health internationally.

OIE-notifiable diseases meet certain criteria for consequences, spread, and diagnosis. For the consequences criteria, the disease must have either been documented as causing significant production losses on a national or multinational (zonal or regional) level, or have scientific evidence that indicates that the diseases will cause significant morbidity or mortality in wild aquatic animal populations, or be an agent of public health concern. For the spread criteria, the disease's infectious etiology (cause) must be known or an infectious agent is strongly associated with the disease (with etiology unknown). In addition for the spread criteria, there must be a likelihood of international spread (via live animals and animal products) and the disease must not be widespread (several countries or regions of countries without specific disease). For the diagnosis criteria, there must be a standardized, proven diagnostic test for disease detection (OIE 2012). These internationally-accepted standards, including those that document the consequences (harm) of certain diseases, offer supporting evidence of injuriousness.

Invasiveness

This species demonstrates many of the strongest traits for invasiveness. The crucian carp is capable of securing and ingesting a wide range of food, has a broad native range, and is highly adaptable to different environments (Godard and Copp 2012). Crucian carp can increase turbidity (cloudiness of water) in lakes, rivers, and streams with soft bottom sediments while scavenging along the substrate. Increased turbidity

reduces light availability to submerged plants and can result in harmful ecosystem changes, such as to phytoplankton survival and nutrient cycling. Crucian carp can breed with other carp species, including the common carp (Wheeler 2000). Hybrids of crucian carp and common carp can affect fisheries, because such hybrids, along with the introduced crucian carp, may compete with native species for food and habitat resources (Godard and Copp 2012).

Eurasian Minnow (Phoxinus phoxinus)

The Eurasian minnow was first described and cataloged by Linnaeus in 1758, and belongs to the order Cypriniformes and family Cyprinidae (ITIS 2014). Although Eurasian minnow is the preferred common name, this fish species is also referred to as the European minnow.

Native Range and Habitat

The Eurasian minnow inhabits a temperate climate, and the native range includes much of Eurasia within the basins of the Atlantic, North and Baltic Seas, and the Arctic and the northern Pacific Oceans (Froese and Pauly 2014).

Eurasian minnows can be found in a variety of habitats ranging from brackish (estuarine; slightly salty) to freshwater streams, rivers, ponds, and lakes located within the coastal zone to the mountains (Sandlund 2008). In Norway, they are found at elevations up to 2,000 m (6,562 ft). These minnows prefer shallow lakes or slow-flowing streams and rivers with stony substrate (Sandlund 2008).

Nonnative Range and Habitat

The Eurasian minnow's nonnative range includes parts of Sweden and Norway, United Kingdom, and Egypt (Sandlund 2008), as well as other drainages juxtaposed to native waterways. The Eurasian minnow was initially introduced as live bait, which was the main pathway of introduction throughout the 1900s (Sandlund 2008). The inadvertent inclusion of this minnow species in the transport water of brown trout (*Salmo trutta*) that were intentionally stocked into lakes for recreational angling has contributed to their spread (Sandlund 2008). From these initial stockings, minnows have swum downstream and established in new waterways, and have spread to new waterways through tunnels constructed for hydropower development. These minnows have also been purposely introduced as food for brown trout and to control the Tune fly (in Simuliidae) (Sandlund 2008).

The Eurasian minnow is expanding its nonnative range by establishing populations in additional waterways bordering the native range. Waterways near where the minnow is already established are most at risk (Sandlund 2008).

Biology

The Eurasian minnow has a torpedo-shaped body measuring 6 to 10 cm (2.3 to 4 in) with a maximum of 15 cm (6 in). Size and growth rate are both highly dependent on population density and environmental factors (Lien 1981; Mills 1987, 1988; Sandlund 2008). These minnows have variable coloration but are often brownish-green on the back with a whitish stomach and brown and black blotches along the side (Sandlund 2008).

The Eurasian minnow's life-history traits (age, size at sexual maturity, growth rate, and life span) may be highly variable (Mills 1988). Populations residing in lower latitudes often have smaller body size and younger age of maturity than those populations in higher altitudes and latitudes (Mills 1988). Maturity ranges from less than 1 year to 6 years of age, with a lifespan as long as 13 to 15 years (Sandlund 2008). The Eurasian minnow spawns annually with an average fecundity between 200 to 1,000 eggs (Sandlund 2008).

This minnow usually cohabitates with salmonid fishes (Kottelat and Freyhof 2007). The Eurasian minnow feeds mostly on invertebrates (crustaceans and insect larvae) as well as some algal and plant material (Lien 1981).

Invasiveness

The Eurasian minnow demonstrates many of the strongest traits for invasiveness. The species is highly adaptable to new environments and is difficult to control (Sandlund 2008). The species can become established within varying freshwater systems, including lowland and high alpine areas, as well as in brackish water (Sandlund 2008). Introductions of the Eurasian minnow can cause major changes to nonnative ecosystems by affecting the benthic community (decreased invertebrate diversity) and disrupting trophic level structure (Sandlund 2008). This affects the ability of native fish to find food as well as disrupts native spawning. The Eurasian minnow has been shown to reduce recruitment of brown trout by predation (Sandlund 2008). Although brown trout are not native to the United States, they are closely related to our native trout and salmon, and thus Eurasian minnows could be expected to reduce the recruitment of native trout.

In addition, Eurasian minnows are carriers of parasites and have increased the introduction of parasites to new areas. Such parasites affected native snails, mussels, and different insects within subalpine lakes in southern Norway following introduction of the Eurasian minnows (Sandlund 2008). Additionally, Zietara *et al.* (2008) used molecular methods to link the parasite *Gyrodactylus aphyae* from Eurasian minnows to the new hosts of Atlantic salmon (*Salmo salar*) and brown trout.

Prussian Carp (Carassius gibelio)

The Prussian carp was first described and catalogued by Bloch in 1782, and belongs to the order Cypriniformes and family Cyprinidae (ITIS 2014).

Native Range and Habitat

The Prussian carp inhabits a temperate climate (Baensch and Riehl 2004). The species is native to regions of central Europe and eastward to Siberia. It is also native to several Asian countries, including China, Georgia, Kyrgyzstan, Mongolia, Turkey, and Turkmenistan (Britton 2011). The Prussian carp resides in a variety of fresh stillwater bodies and rivers. This species also inhabits warm, shallow, eutrophic (high in nutrients) waters with submerged vegetation or regular flooding events (Kottelat and Freyhof 2007). This species can live in polluted waters with pollution and low oxygen concentrations (Britton 2011).

Nonnative Range and Habitat

The Prussian carp has been introduced to many countries within central and Western Europe. This species was first introduced to Belgium during the 1600s and is now prevalent in Belgian freshwater systems. The Prussian carp was also introduced to Belarus and Poland during 1940s for recreational fishing and aquaculture. This carp species has dispersed and expanded its range using the Vistula and Bug River basins (Britton 2011). During the mid to late 1970s, this carp species invaded the Czech Republic river system from the Danube River via the Morava River. Once in the river system, the fish expanded into tributary streams and connected watersheds. Throughout its nonnative range, this species has been stocked with common carp and misidentified as crucian carp (Britton 2011). From the original stocked site, the Prussian carp has dispersed both naturally (swimming) and with human involvement.

The Prussian carp's current nonnative range includes the Asian countries of

Armenia, Turkey, and Uzbekistan and the European countries of Belarus, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Poland, and Switzerland (Britton 2011). The species has recently invaded the Iberian Peninsula (Ribeiro *et al.* 2015). The species was recently found to be established in waterways in southern Alberta, Canada (Elgin *et al.* 2014).

Biology

The Prussian carp has a silvery-brown body with an average length of 20 cm (7.9 in) and reported maximum length of 35 cm (13.8 in) (Kottelat and Freyhof 2007, Froese and Pauly 2014). This species has a reported maximum weight of 3 kilograms (kg; 6.6 pounds (lb) (Froese and Pauly 201b).

The Prussian carp lives up to 10 years (Kottelat and Freyhof 2007). This species can reproduce in a way very rare among fish. Introduced populations often include, or are solely composed of, triploid females that can undergo natural gynogenesis, allowing them to reproduce from unfertilized eggs (Britton 2011). Thus, the eggs are viable without being fertilized by males.

The Prussian carp is a generalist omnivore and consumes a varied diet that includes plankton, benthic invertebrates, plant material, and detritus (Britton 2011).

The parasite *Thelohanellus wuhanensis* (Wang *et al.* 2001) and black spot disease (Posthodiplostomatosis) have been found to affect the Prussian carp (Markovíc *et al.* 2012).

Invasiveness

The Prussian carp is a highly invasive species in freshwater ecosystems throughout Europe and Asia. This fish species grows rapidly and can reproduce from unfertilized eggs (Vetemaa *et al.* 2005). Prussian carp have been implicated in the decline in both the biodiversity and population of native fish (Vetemaa *et al.* 2005, Lusk *et al.* 2010). The presence of this fish species has been linked with increased water turbidity (Crivelli 1995), which in turn alters both the ecosystem's trophic level structure and nutrient availability.

Roach (Rutilus rutilus)

The roach was first described and cataloged by Linnaeus in 1758, and belongs to the order Cypriniformes and family Cyprinidae (ITIS 2014).

Native Range and Habitat

The roach inhabits temperate climates (Riehl and Baensch 1991). The species' native range includes regions of Europe and Asia. Within Europe, it is found north of the Pyrenees and Alps and eastward to the Ural River and Eya drainages (Caspian Sea basin) and within the Aegean Sea basin and watershed (Kottelat and Freyhof 2007). In Asia, the roach's native range extends from the Sea of Marmara basin and lower Sakarya Province (Turkey) to the Aral Sea basin and Siberia (Kottelat and Freyhof 2007).

This species often resides in nutrient-rich lakes, medium to large rivers, and backwaters. Within rivers, the roach is limited to areas with slow currents.

Nonnative Range and Habitat

This species has been introduced to several countries for recreational fishing. Once introduced, the roach has moved into new water bodies within the same country (Rocabayera and Veiga 2012). In 1889, the roach was brought from England to Ireland for use as bait fish. Some of these fish accidently escaped into Cork Blackwater system. After this initial introduction, this fish species was deliberately stocked in nearby lakes. The roach has continued its expansion throughout Ireland watersheds, and by 2000, had invaded every major river system within Ireland (Rocabayera and Veiga 2012).

This species has been reported as invasive in north and central Italy, where it was introduced for recreational fishing (Rocabayera and Veiga 2012). The roach was also introduced to Madagascar, Morocco, Cyprus, Portugal, the Azores, Spain, and Australia (Rocabayera and Veiga 2012).

Biology

The roach has an average body length of 25 cm (9.8 in) and reported maximum length of 50 cm (19.7 in) (Rocabayera and Veiga 2012). The maximum published weight is 1.84 kg (4 lb) (Froese and Pauly 2014).

The roach can live up to 14 years (Froese and Pauly 2013). Male fish are sexually mature at 2 to 3 years and female fish at 3 to 4 years. A whole roach population typically spawns within 5 to 10 days, with each female producing 700 to 77,000 eggs (Rocabayera and Veiga 2012). Eggs hatch approximately 12 days later (Kottelat and Freyhoff 2007).

The roach has a general, omnivorous diet, including benthic invertebrates, zooplankton, plants, and detritus (Rocabayera and Veiga 2012). Of the European cyprinids (carps, minnows, and their relatives), the roach is one of the most efficient molluscivores (Winfield and Winfield 1994).

Parasitic infections, including worm cataracts (*Diplostomum spathaceum*), black spot disease (diplostomiasis), and tapeworm (*Ligula intestinalis*), have all been found associated with the roach (Rocabayera and Veiga 2012), as has the pathogen bacterium *Aeromonas salmonicida,* which causes furunculosis (skin ulcers) in several fish species (Wiklund and Dalsgaard 1998).

Invasiveness

The main issues associated with invasive roach populations include competition with native fish species, hybridization with native fish species, and altered ecosystem nutrient cycling (Rocabayera and Veiga 2012). The roach is a highly adaptive species and adapts to a different habitat or diet to avoid predation or competition (Winfield and Winfield 1994).

The roach also has a high reproductive rate and spawns earlier than some other native fish (Volta and Jepsen 2008, Rocabayera and Veiga 2012). This allows larvae to have a competitive edge over native fish larvae (Volta and Jepsen 2008).

The roach can hybridize with other cyprinids, including rudd (*Scardinius erythrophthalmus*) and bream (*Abramis brama*), in places where it has invaded. The new species (roach-rudd cross and roach-bream cross) then compete for food and habitat resources with both the native fish (rudd, bream) and invasive fish (roach) (Rocabayera and Veiga 2012).

Within nutrient-rich lakes or ponds, large populations of roach create adverse nutrient cycling. High numbers of roach consume large amounts of zooplankton, which results in algal blooms, increased turbidity, and changes in nutrient availability and cycling (Rocabayera and Veiga 2012).

Stone Moroko (Pseudorasbora parva)

The stone moroko was first described and cataloged by Temminick and Schlegel in 1846 and belongs to the order Cypriniformes and family Cyprinidae (ITIS 2014). Although the preferred common name is the stone moroko, this fish species is also called the topmouth gudgeon (Froese and Pauly 2014).

Native Range and Habitat

The stone moroko inhabits a temperate climate (Baensch and Riehl 1993). Its native range is Asia, including southern and central Japan, Taiwan, Korea, China, and the Amur River basin. The stone moroko resides in freshwater lakes, ponds, rivers, streams, and irrigation canals (Copp 2007).

Nonnative Range and Habitat

The stone moroko was introduced to Romania in the early 1960s with a

Chinese carp shipment (Copp *et al.* 2010). By 2000, this fish species had invaded nearly every other European country and additional countries in Asia (Copp 2007). This species was primarily introduced unintentionally with fish shipped purposefully. Secondary natural dispersal also occurred in most countries (Copp 2007).

Within Asia, the stone moroko has been introduced to Afghanistan, Armenia, Iran, Kazakhstan, Laos, Taiwan, Turkey, and Uzbekistan (Copp 2007). In Europe, this fish species' nonnative range includes Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Lithuania, Moldova, Montenegro, Netherlands, Poland, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom (Copp 2007). The stone moroko has also been introduced to Algeria and Fiji (Copp 2007).

Biology

The stone moroko is a small fish with an average body length of 8 cm (3.1 in), maximum reported length of 11 cm (4.3 in) (Froese and Pauly 2014g), and average body mass of 17 to 19 grams (g; 0.04 lb) (Witkowski 2011). This fish species is grayish black with a lighter belly and sides. Juveniles have a dark stripe along the side that disappears with maturity (Witkowski 2011).

This fish species can live up to 5 years (Froese and Pauly 2014). The stone moroko becomes sexually mature and begins spawning at 1 year (Witkowski 2011). Females release several dozen eggs per spawning event and spawn several times per year. The total number of eggs spawned per female ranges from a few hundred to a few thousand eggs (Witkowski 2011). Male fish aggressively guard eggs until hatching (Witkowski 2011).

The stone moroko maintains an omnivorous diet of small insects, fish, mollusks, planktonic crustaceans, fish eggs, algae (Froese and Pauly 2014g), and plants (Kottelat and Freyhof 2007).

The stone moroko is an unaffected carrier of the pathogenic parasite *Sphaerothecum destruens* (Gozlan *et al.* 2005, Pinder *et al.* 2005). This parasite is transferred to water from healthy stone morokos. Once in the water, this parasite has infected Chinook salmon (*Oncorhynchus tshawytscha*), Atlantic salmon, sunbleak (*Leucaspius delineatus*), and fathead minnows (*Pimephales promelas*) (Gozlan *et al.* 2005). *Sphaerothecum destruens* infects the internal organs, resulting in spawning failure, organ failure, and death (Gozlan *et al.* 2005).

Invasiveness

The stone moroko has proven to be a highly invasive fish, establishing invasive populations in nearly every European country over a 40-year span (Copp 2007, Copp *et al.* 2010). This fish species has proven to be adaptive and tolerant of a variety of habitats, including those of poorer quality (Beyer *et al.* 2007). This species' invasiveness is further aided by multiple spawning events and the guarding of eggs by the male until hatching (Kottelat and Freyhof 2007).

In many areas of introduction and establishment (for example, United Kingdom, Italy, China, and Russia), the stone moroko has been linked to the decline of native freshwater fish populations (Copp 2007). The stone moroko has been found to dominate the fish community when it becomes established. Native fishes have exhibited decreased growth rate and reproduction, and they shifted their diet as a result of food competition (Britton *et al.* 2010b).

Additionally, this species is a vector of *Sphaerothecum destruens,* which is a documented pathogen of native salmonids (Gozlan *et al.* 2005, Gozlan *et al.* 2009, Andreou *et al.* 2011). *Sphaerothecum destruens* has caused mortalities in cultured North American salmon (Andreou *et al.* 2011)

Nile Perch (Lates niloticus)

The Nile perch was first described and cataloged by Linnaeus in 1758 and is in the order Perciformes and family Centropomidae (ITIS 2014). Although its preferred common name is the Nile perch, it is also referred to as the African snook and Victoria perch (Witte 2013).

Native Range and Habitat

The Nile perch inhabits a tropical climate with an optimal water temperature of 28 °C (82 °F) and an upper lethal temperature of 38 °C (100 °F) (Kitchell *et al.* 1997). The species' native distribution includes much of central, western, and eastern Africa. The species is common in the Nile, Chad, Senegal, Volta, and Zaire River basins and brackish Lake Mariout near Alexandria, Egypt (Witte 2013). Nile perch reside in brackish lakes and freshwater lakes, rivers, stream, reservoirs, and irrigation channels (Witte 2013).

Nonnative Range and Habitat

The Nile perch, which is not native to Lake Victoria in Africa, was first introduced to the lake in 1954 from nearby Lake Albert. This species was introduced on the Ugandan side and spread to the Kenyan side. A breeding population existed in the lake by 1962 (Witte 2013). Additional introductions of Nile perch occurred in 1962 and 1963, in Kenyan and Ugandan waters to promote a commercial fishery. The increase in Nile perch population was first noted in Kenyan waters in 1979, in Ugandan waters 2 to 3 years later, and in Tanzanian waters 4 to 5 years later (Witte 2013).

The Nile perch was also introduced to Lake Kyoga (1954 and 1955) to gauge the effects of Nile perch on fish populations similar to that of Lake Victoria. At the time of introduction, people were unaware that this species had already been introduced to Lake Victoria (Witte 2013). Since its initial introduction to Lakes Victoria and Kyoga, this fish species has been accidently and deliberately introduced to many of the neighboring lakes and waterways (Witte 2013). There are currently only a few lakes in the area without a Nile perch population (Witte 2013).

The Nile perch was also introduced into Cuba for aquaculture and sport in 1982 and 1983 (Welcomme 1988), but we have no information on the subsequent status.

Nile perch were stocked in Texas waters in 1978, 1979, and 1984 (88, 14, and 26 fish respectively in Victor Braunig Lake); in 1981 (68,119 in Coleto Creek Reservoir); and in 1983 (1,310 in Fairfield Lake) (Fuller *et al.* 1999, Texas Parks and Wildlife Department 2013a). These introductions were unsuccessful at establishing a self-sustaining population (Howells 1992, Howells 2001). The fish were unable to survive in the cold water temperatures (Howells 2001). Today, Nile perch are a prohibited exotic species in Texas (Texas Parks and Wildlife Department 2013b).

Biology

The Nile perch has a perch-like body with average body length of 100 cm (3.3 ft), maximum length of 200 cm (6.6 ft) (Ribbink 1987, Froese and Pauly 2013), and maximum weight of 200 kg (441 lb) (Ribbink 1987). The Nile perch is gray-blue on the dorsal side with gray-silver along the flank and ventral side (Witte 2013).

The age of sexual maturity varies with habitat location. Most male fish become sexually mature before females (1 to 2 years versus 1 to 4 years of age) (Witte 2013). This species spawns throughout the year with increased spawning during the rainy season (Witte 2013). The Nile perch produce 3 million to 15 million eggs per breeding cycle (Asila and Ogari 1988). This high fecundity

allows the Nile perch to quickly establish in new regions with favorable habitats (Ogutu-Ohwayo 1988). Additionally, the Nile perch's reproductive rate in introduced habitats is much greater than that of its prey, haplochromine cichlids (fish from the family Cichlidae), which have a reproductive rate of 13 to 33 eggs per breeding cycle (Goldschmidt and Witte 1990).

Nile perch less than 5 cm eat zooplankton (cladocerans and copepods) (Witte 2013). Juvenile Nile perch (35 to 75 cm long) feed on invertebrates, primarily aquatic insects, crustaceans, and mollusks (Ribbink 1987). Adult Nile perch are piscivorous (fish eaters), they also consume large crustaceans (*Caridina* and *Macrobrachium* shrimp) and insects (Witte 2013).

The Nile perch is host to a number of parasites capable of causing infections and diseases in other species, including sporozoa infections (*Hennegya* sp.), *Dolops* infestation, *Ergasilus* disease, gonad nematodosis disease (*Philometra* sp.), and *Macrogyrodactylus* and *Diplectanum* infestation (Paperna 1996, Froese and Pauly 2014f).

Invasiveness

The Nile perch has been listed as one of the 100 ''World's Worst'' Invaders by the Global Invasive Species Database (*http://www.issg.org*) (Snoeks 2010, ISSG 2015). During the 1950s and 1960s, this fish was introduced to several East African lakes for commercial fishing. This fish is now prevalent in Lake Victoria and contributes to over 90 percent of demersal (bottom-dwelling) fish mass within this lake (Witte 2013). Since its introduction, native fish populations have declined or disappeared (Witte 2013). Approximately 200 native haplochromine cichlid species have become locally extinct due to predation and competition (Snoeks 2010, Witte 2013). Consequently, this has resulted in significant shifts to the trophic level structure and loss of biodiversity of this lake's ecosystem.

Amur Sleeper (Perccottus glenii)

The Amur sleeper was first described and cataloged by B.I. Dybowski in 1877, as part of the order Perciformes and family Odontobutidae (Bogutskaya and Naseka 2002, ITIS 2014). The Amur sleeper is the preferred common name of this freshwater fish, but this fish is also called the Chinese sleeper or rotan (Bogutskaya and Naseka 2002, Froese and Pauly 2014). In this proposed rule, we will refer to the species as the Amur sleeper.

Native Range and Habitat

The Amur sleeper inhabits a temperate climate (Baensch and Riehl 2004). The species' native distribution includes much of the freshwater regions of northeastern China and northern North Korea, the Far East of Russia (Reshetnikov 2004), and South Korea (Grabowska 2011). Within China, this species is predominately native to the lower to middle region of the Amur River watershed, including the Zeya, Sunguri, and Ussuri tributaries (Bogutskaya and Naseka 2002, Grabowska 2011) and Lake Khanka (Courtenay 2006). The Amur sleeper's range extends northward to the Tugur River (Siberia) (Grabowska 2011) and southward to the Sea of Japan (Bogutskaya and Naseka 2002, Grabowska 2011). To the west, the species does not occur in the Amur River upstream of Dzhalinda (Bogutskaya and Nasaka 2002).

The Amur sleeper inhabits freshwater lakes, ponds, canals, backwaters, flood plains, oxbow lakes, and marshes (Grabowska 2011). This fish is a poor swimmer, thriving in slow-moving waters with dense vegetation and muddy substrate and avoiding main river currents (Grabowska 2011). The Amur sleeper can live in poorly oxygenated water and can also survive in dried out or frozen water bodies by burrowing into and hibernating in the mud (Bogutskaya and Nasaka 2002, Grabowska 2011).

Although the Amur sleeper is a freshwater fish, there are limited reports of it appearing in saltwater environments (Bogutskaya and Naseka 2002). These reports seem to occur with flood events and are likely a consequence of these fish being carried downstream into these saltwater environments (Bogutskaya and Naseka 2002).

Nonnative Range and Habitat

This species' first known introduction was in western Russia. In 1912, Russian naturalist I.L. Zalivskii brought four Amur sleepers to the Lisiy Nos settlement (St. Petersburg, Russia) (Reshetnikov 2004, Grabowska 2011). These four fish were held in aquaria until 1916, when they were released into a pond, where they subsequently established a population before naturally dispersing into nearby water bodies (Reshetnikov 2004, Grabowska 2011). In 1948, additional Amur sleepers were introduced to Moscow for use in ornamental ponds by members of an expedition (Bogutskaya and Naseka 2002, Reshetnikov 2004). These fish escaped the ponds they were stocked into and spread to nearby waters in the city of Moscow and Moscow Province (Reshetnikov 2004).

Additionally, Amur sleepers were introduced to new areas when they were unintentionally shipped to fish farms in fish stocks such as silver carp (*Hypophthalmichthys molitrix*) and grass carp (*Ctenopharyngodon idella*). From these initial introductions, the Amur sleepers were able to expand from their native range through escape, release, and transfer between fish farms (Reshetnikov 2004). Additionally, Amur sleepers tolerate being transported well, so anglers use them as bait and move them from one waterbody to another (Reshetnikov 2004).

The Amur sleeper is an invasive species in western Russia and 14 additional countries: Mongolia, Belarus, Ukraine, Lithuania, Latvia, Estonia, Poland, Hungary, Romania, Slovakia, Serbia, Bulgaria, Moldova, and Croatia (Froese and Pauly 2014, Grabowska 2011). The Amur sleeper is established within the Baikal, Baltic, and Volga water basins of Europe and Asia (Bogutskaya and Naseka 2002). The species' nonnative range extends northward to Lake Plestsy in Arkhangelsk province (Russia), southward to Bulgaria, and westward to the Kis-Balaton watershed in Hungary (Grabowska 2011).

Biology

The Amur sleeper is a small- to medium-sized fish with a maximum body length of 25 cm (9.8 in) (Grabowska 2011) and weight of 250 g (0.6 lb) (Reshetnikov 2003). As with other fish species, both body length and weight vary with food supply, and larger Amur sleeper specimens have been reported from the nonnative range (Bogutskaya and Naseka 2002).

Body shape is fusiform with two dorsal fins, short pelvic fins, and rounded caudal fin (Grabowska 2011). The Amur sleeper has dark coloration of greenish olive, brownish gray, or dark green with dark spots and pale yellow to blue-green flecks (Grabowska 2011). Males are not easily discerned from females except during breeding season. Breeding males are darker (almost black) with bright blue-green spots and also have inflated areas on the head (Grabowska 2011).

The Amur sleeper lifespan is from 7 to 10 years. Within native ranges, the fish rarely lives more than 4 years, whereas in nonnative ranges, the fish generally lives longer (Bogutskaya and Naseka 2002, Grabowska 2011). The fish reaches maturity between 2 and 3 years of age (Grabowska 2011) and has at least two spawning events per year.

The number of eggs per spawning event varies with female size. In the Wloclawski Reservoir, which is outside of the Amur sleeper's native range, the females produced an average of 7,766 eggs per female (range 1,963 to 23,479 eggs) (Grabowska *et al.* 2011). Male Amur sleepers are active in prenatal care by guarding eggs and aggressively defending the nest (Bogutskaya and Naseka 2002, Grabowska *et al.* 2011).

The Amur sleeper is a voracious, generalist predator that eats invertebrates (such as freshwater crayfish, shrimp, mollusks, and insects), amphibian tadpoles, and small fish (Bogutskaya and Naseka 2002). Reshetnikov (2003) found that the Amur sleeper significantly reduced species diversity of fishes and amphibians where it was introduced. In some small water bodies, Amur sleepers considerably decrease the number of species of aquatic macroinvertebrates, amphibian larvae, and fish species (Reshetnikov 2003, Pauly 2014, Kottelat and Freyhof 2007).

The predators of Amur sleepers include pike, perch, snakeheads (*Channa* spp.), and gulls (Laridae) (Bogutskaya and Naseka 2002). In their native range, it is believed that this species is primarily controlled by snakeheads. Eggs and juveniles are fed on by a variety of insects (Bogutskaya and Naseka 2002).

The Amur sleeper reportedly has high parasitic burdens of more than 40 parasite species (Grabowska 2011). The host-specific parasites, including *Nippotaenia mogurndae* and *Gyrodactylus perccotti,* have been transported to new areas along with the introduced Amur sleeper (Košuthová *et al.* 2004, Grabowska 2011). The cestode (tapeworm) *Nippotaenia mogurndae* was first reported in Europe in the River Latorica in east Slovakia in 1998, after this same river was invaded by the Amur sleeper (Košuthová *et al.* 2004). This parasite may be able to infect other fish species (Košuthová *et al.* 2008). Thus, the potential for the Amur sleeper to function as a parasitic host could aid in the transmission of parasites to new environments and potentially to new species (Košuthová *et al.* 2008, Košuthová *et al.* 2009).

Invasiveness

The Amur sleeper is considered one of the most widespread, invasive fish in European freshwater ecosystems within the last several decades (Copp *et al.* 2005a, Grabowska 2011, Reshetnikov and Ficetola 2011). Reshetnikov and Ficetola (2011) indicate that there are 13 expansion centers for this fish outside of its native range. Once this species has been introduced, it has proven to be capable of establishing sustainable populations (Reshetnikov 2004). Within the Vistula River (Poland), the Amur sleeper has averaged an annual expansion of its range by 88 kilometers (54.5 miles) per year (Grabowska 2011). A recent study (Reshetnikov and Ficetola 2011) suggests many other regions of Europe and Asia, as well as northeastern United States and southeastern Canada, have suitable climates for the Amur sleeper and are at risk for an invasion.

The Amur sleeper demonstrates many of the strongest traits for invasiveness: It consumes a highly varied diet, is fast growing with a high reproductive potential, easily adapts to different environments, and has an expansive native range and proven history of increasing its nonnative range by itself and through human-mediated activities (Grabowska 2011). Where it is invasive, the Amur sleeper competes with native species for similar habitat and diet resources (Reshetnikov 2003, Kottelat and Freyhof 2007). This fish has also been associated with the decline in populations of the European mudminnow (*Umbra krameri*), crucian carp, and belica (*Leucaspius delineates*) (Grabowska 2011). This species hosts parasites that may be transmitted to native fish species when introduced outside of its native range (Košuthová *et al.* 2008, Košuthová *et al.* 2009).

European Perch (Perca fluviatilis)

The European perch was first described and cataloged by Linnaeus in 1758, and is part of the order Perciformes and family Percidae (ITIS 2014). European perch is the preferred common name, but this species may also be referred to as the Eurasian perch or redfin perch (Allen 2004, Froese and Pauly 2014).

Native Range and Habitat

The European perch inhabits a temperate climate (Riehl and Baensch 1991, Froese and Pauly 2014). This species' native range extends throughout Europe and regions of Asia, including Afghanistan, Armenia, Azerbaijan, Georgia, Iran, Kazakhstan, Mongolia, Turkey, and Uzbekistan (Froese and Pauly 2014). The fish resides in a range of habitats that includes estuaries and freshwater lakes, ponds, rivers, and streams (Froese and Pauly 2014).

Nonnative Range and Habitat

The European perch has been intentionally introduced to several countries for recreational fishing, including Ireland (in the 1700s), Australia (in 1862), South Africa (in 1915), Morocco (in 1939), and Cyprus (in 1971) (FAO 2014, Froese and Pauly 2014). This species was introduced intentionally to Turkey for aquaculture (FAO 2004) and unintentionally to Algeria when it was included in the transport water with carp intentionally brought into the country (Kara 2012, Froese and Pauly 2014). European perch have also been introduced to China (in the 1970s), Italy (in 1860), New Zealand (in 1867), and Spain (no date) for unknown reasons (FAO 2014). In Australia, this species was first introduced as an effort to introduce wildlife familiar to European colonizers (Arthington and McKenzie 1997). The European perch was first introduced to Tasmania in 1862, Victoria in 1868, and to southwest Western Australia in 1892 and the early 1900s (Arthington and McKenzie 1997). This species has now invaded western Victoria, New South Wales, Tasmania, Western Australia, and South Australian Gulf Coast (NSW DPI 2013). In the 1980s, the European perch invaded the Murray River in southwestern Australia (Hutchison and Armstrong 1993).

Biology

The European perch has an average body length of 25 cm (10 in) with a maximum length of 60 cm (24 in) (Kottelat and Freyhof 2007, Froese and Pauly 2014j) and an average body weight of 1.2 kg (2.6 lb) with a maximum weight of 4.75 kg (10.5 lb) (Froese and Pauly 2014). European perch color varies with habitat. Fish in well-lit shallow habitats tend to be darker, whereas fish residing in poorly lit areas tend to be lighter. These fish may also absorb carotenoids (nutrients that cause color) from their diet (crustaceans), resulting in reddish-yellow color (Allen 2004). Male fish are not easily externally differentiated from female fish (Allen 2004).

The European perch lives up to 22 years (Froese and Pauly 2014), although the average is 6 years (Kottelat and Freyhof 2007). This fish may participate in short migrations prior to spawning in February through July, depending on latitude and altitude (Kottelat and Freyhof 2007). Female fish are sexually mature at 2 to 4 years and males at 1 to 2 years (Kottelat and Freyhof 2007).

The European perch is a generalist predator with a diet of zooplankton, macroinvertebrates (such as copepods and crustaceans), and small fish (Kottelat and Freyhof 2007, Froese and Pauly 2014).

The European perch can also carry the OIE-notifiable disease epizootic haematopoietic necrosis (EHN) virus

(NSW DPI 2013). Several native Australian fish (including the silver perch (*Bidyanus bidyanus*) and Murray cod (*Maccullochella peelii*)) are extremely susceptible to the virus and have had significant population declines over the past decades with the continued invasion of European perch (NSW DPI 2013).

Invasiveness

The European perch has been introduced to many new regions through fish stocking for recreational use. The nonnative range has also expanded as the fish has swum to new areas through connecting waterbodies (lakes, river, and streams within the same watershed). In New South Wales, Australia, these fish are a serious pest and are listed as Class 1 noxious species (NSW DPI 2013). These predatory fish have been blamed for the local extirpation of the mudminnow (*Galaxiella munda*) (Moore 2008, ISSG 2010) and depleted populations of native invertebrates and fish (Moore 2008). This species reportedly consumed 20,000 rainbow trout (*Oncorhynchus mykiss*) fry from an Australian reservoir in less than 3 days (NSW DPI 2013). The introduction of these fish in New Zealand and China has severely altered native freshwater communities (Closs *et al.* 2003). European perch form dense populations, forcing them to compete amongst each other for a reduced food supply. This results in stunted fish that are less appealing to the recreational fishery (NSW DPI 2013).

Zander (Sander lucioperca)

The zander was first described and catalogued by Linnaeus in 1758, and belongs to the order Perciformes and family Percidae (ITIS 2014). Although its preferred common name in the United States is the zander, this fish species is also called the pike-perch and European walleye (Godard and Copp 2011, Froese and Pauly 2014).

Native Range and Habitat

The zander's native range includes the Caspian Sea, Baltic Sea, Black Sea, Aral Sea, North Sea, and Aegean Sea basins. In Asia, this fish is native to Afghanistan, Armenia, Azerbaijan, Georgia, Iran, Kazakhstan, and Uzbekistan. In Europe, the zander is native to much of eastern Europe (Albania, Austria, Czech Republic, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia, Slovakia, Ukraine, and Serbia and Montenegro) and the Scandinavian Peninsula (Finland, Norway, and Sweden) (Godard and Copp 2011, Froese and Pauly 2014). The northernmost records of native populations are in Finland up to 64 °N (Larsen and Berg 2014).

The zander resides in brackish coastal estuaries and freshwater rivers, lakes, and reservoirs. The species prefers turbid, slightly eutrophic waters with high dissolved oxygen concentrations (Godard and Copp 2011). The zander can survive in salinities up to 20 parts per thousand (ppt), but prefers environments with salinities less than 12 ppt and requires less than 3 ppt for reproduction (Larsen and Berg 2014).

Nonnative Range and Habitat

The zander has been repeatedly introduced outside of its native range for recreational fishing and aquaculture and also to control cyprinids (Godard and Copp 2011, Larsen and Berg 2014). This species has been introduced to much of Europe, parts of Asia (China, Kyrgyzstan, and Turkey), and northern Africa (Algeria, Morocco, and Tunisia). Within Europe, the zander has been introduced to Belgium, Bulgaria, Croatia, Cyprus, Denmark, France, Italy, the Netherlands, Portugal, the Azores, Slovenia, Spain, Switzerland, and the United Kingdom (Godard and Copp 2011, Froese and Pauly 2014). In Denmark, although the zander is native, stocking is not permitted to prevent the species from being introduced into lakes and rivers where it is not presently found and where introduction is not desirable (Larsen and Berg 2014).

The zander has been previously introduced to the United States. Juvenile zanders were stocked into Spiritwood Lake (North Dakota) in 1989 for recreational fishing (Fuller *et al.* 1999, Fuller 2009, USGS NAS 2014). Although previous reports indicated that zanders did not become established in Spiritwood Lake, there have been documented reports of captured juvenile zanders from this lake (Fuller 2009). In 2009, the North Dakota Game and Fish Department reported a small, established population of zanders within Spiritwood Lake (Fuller 2009), and a zander caught in 2013 was considered the State record (North Dakota Game and Fish 2013).

Biology

The zander has an average body length of 50 cm (1.6 ft) and maximum body length of 100 cm (3.3 ft). The maximum published weight is 20 kg (44 lb) (Froese and Pauly 2013). The zander has a long slender body with yellow-gray fins and dark bands running from the back down each side (Godard and Copp 2011).

The zander's age expectancy is inversely correlated to its body growth rate. Slower-growing zanders may live up to 20 to 24 years, whereas faster-growing fish may live only 8 to 9 years (Godard and Copp 2011). Female zanders typically spawn in April and May and produce approximately 150 to 400 eggs per gram of body mass. After spawning, male zanders protect the nest and fan the eggs with the pectoral fins (Godard and Copp 2011).

The zander is piscivorous, and its diet includes smelt (*Osmerus eperlanus*), ruffe (*Gymnocephalus cernuus*), European perch, vendace (*Coregonus albula*), roach, and other zanders (Kangur and Kangur 1998).

Several studies have found that zanders can be hosts for multiple parasites (Godard and Copp 2011). The nematode *Anisakis,* which is known to infect humans through fish consumption, has been documented in the zander (Eslami and Mokhayer 1977, Eslami *et al.* 2011). A study in the Polish section of Vistula Lagoon found 26 species of parasites associated with the zander, which was more than any of the other 15 fish species studied (Rolbiecki 2002, 2006).

Invasiveness

The zander has been intentionally introduced numerous times for aquaculture, recreational fishing, and occasionally for biomanipulation to remove unwanted cyprinids (Godard and Copp 2011). Biomanipulation is the management of an ecosystem by adding or removing species. The zander also migrates for spawning, further expanding its invasive range. It is a predatory fish that is well-adapted to turbid water and low-light habitats (Sandström and Karås 2002). The zander competes with and preys on native fish populations. The zander is also a vector for the trematode *Bucephalus polymorphus,* which has been linked to a decrease in native French cyprinid populations (Kvach and Mierzejewska 2011).

Wels Catfish (Silurus glanis)

The wels catfish was first described and cataloged by Linnaeus in 1758, and belongs to the order Siluriformes and family Siluridae (ITIS 2014). The preferred common name is the wels catfish, but this fish is also called the Danube catfish, European catfish, and sheatfish (Rees 2012, Froese and Pauly 2014).

Native Range and Habitat

The wels catfish inhabits a temperate climate (Baensch and Riehl 2004). The species is native to eastern Europe and

western Asia, including the North Sea, Baltic Sea, Black Sea, Caspian Sea, and Aral Sea basins (Rees 2012, Froese and Pauly 2014). The species resides in slow-moving rivers, backwaters, shallow floodplain channels, and heavily vegetated lakes (Kottelat and Freyhof 2007). The wels catfish has also been found in brackish water of the Baltic and Black Seas (Froese and Pauly 2014). The species is a demersal (bottom dwelling) species that prefers residing in crevices and root habitats (Rees 2012).

Nonnative Range and Habitat

The wels catfish was introduced to the United Kingdom and western Europe during the 19th century. The species was first introduced to England in 1880 for recreational fishing at the private Bedford manor estate of Woburn Abbey. Since then, wels catfish have been stocked both legally and illegally into many lakes and are now widely distributed throughout the United Kingdom (Rees 2012). This species was introduced to Spain, Italy, and France for recreational fishing and aquaculture (Rees 2012). Wels catfish were introduced to the Netherlands as a substitute predator to control cyprinid fish populations (De Groot 1985) after the native pike were overfished. The wels catfish has also been introduced to Algeria, Belgium, Bosnia-Hercegovina, China, Croatia, Cyprus, Denmark, Finland, Portugal, Syria, and Tunisia, although they are not known to be established in Algeria or Cyprus (Rees 2012).

Biology

The wels catfish commonly grows to 3 m (9.8 ft) in body length with a maximum length of 5 m (16.4 ft) and is Europe's largest freshwater fish (Rees 2012). The maximum published weight is 306 kg (675 lb) (Rees 2012).

This species has a strong, elongated, scaleless, mucus-covered body with a flattened tail. The body color is variable but is generally mottled with dark greenish-black and creamy-yellow sides. Wels catfishes possess six barbels; two long ones on each side of the mouth, and four shorter ones under the jaw (Rees 2012).

Although the maximum reported age is 80 years (Kottelat and Freyhof 2007), the average lifespan of a wels catfish is 15 to 30 years. This species becomes sexually mature at 3 to 4 years of age. Nocturnal spawning occurs annually and aligns with optimal temperature and day length between April and August (Kottelat and Freyhof 2007, Rees 2012). The number of eggs produced per female, per year is highly variable, and depends on age, size, geographic location, and other factors. Studies in Asia have documented egg production of a range of approximately 8,000 to 467,000 eggs with the maximum reported being 700,000 eggs (Copp *et al.* 2009). Male fish will guard the nest, repeatedly fanning their tails to ensure proper ventilation until the eggs hatch 2 to 10 days later (Copp *et al.* 2009). Young catfish develop quickly and, on average, achieve a 38- to 48-cm (15- to 19-in) total length within their first year (Copp *et al.* 2009).

This species is primarily nocturnal and will exhibit territorial behavior (Copp *et al.* 2009). The wels catfish is a solitary ambush predator but is also an opportunistic scavenger of dead fish (Copp *et al.* 2009). Juvenile catfish typically eat invertebrates. Adult catfish are generalist predators with a diet that includes fish (at least 55 species), crayfish, small mammals (such as rodents), and waterfowl (Copp *et al.* 2009, Rees 2012). Wels catfish have been observed beaching themselves to prey on land birds located on river banks (Cucherousset 2012).

Juvenile wels catfish can carry the highly infectious SVC (Hickley and Chare 2004). This disease is recognized worldwide and is classified as a notifiable animal disease by the World Organisation for Animal Health (OIE 2014). The wels catfish is also a host to at least 52 parasites, including: *Trichodina siluri, Myxobolus miyarii, Leptorhynchoides plagicephalus* and *Pseudotracheliastes stellifer,* all of which may be detrimental to native fish survival (Copp *et al.* 2009).

Invasiveness

The wels catfish is a habitat-generalist that tolerates poorly oxygenated waters and has been repeatedly introduced to the United Kingdom and western Europe for aquaculture, research, pest control, and recreational fishing (Rees 2012). Although this species has been intentionally introduced for aquaculture and fishing, it has also expanded its nonnative range by escaping from breeding and stocking facilities (Rees 2012). This species is tolerant of a variety of warm-water habitats, including those with low dissolved oxygen levels. The invasive success of the wels catfish will likely be further enhanced with the predicted increase in water temperature with climate change (2 to 3 °C by 2050) (Rahel and Olden 2008, Britton *et al.* 2010a).

The major risks associated with invasive wels catfish to the native fish population include disease transmission (SVC) and competition for habitat and prey species (Rees 2012). This fish species also excretes large amounts of phosphorus and nitrogen (estimated 83- to 286-fold and 17- to 56-fold, respectively) (Boulêtreau *et al.* 2011) into the ecosystem and consequently greatly disrupts nutrient cycling and transport (Schaus *et al.* 1997, McIntyre *et al.* 2008, Boulêtreau *et al.* 2011). Because of their large size, multiple wels catfish in one location magnify these effects and can greatly increase algae and plant growth (Boulêtreau *et al.* 2011), which reduces water quality.

Common Yabby (Cherax destructor)

Unlike the 10 fish in this rule, the yabby is a crayfish. Crayfish are invertebrates with hard shells. They can live and breathe underwater, and they crawl along the substrate on four pairs of walking legs (Holdich and Reeve 1988); the pincers are considered another pair of walking legs. The common yabby was first described and cataloged by Clark in 1936 and belongs to the phylum Arthropoda, order Decapoda, and family Parastacidae (ITIS 2014). This freshwater crustacean may also be called the yabby or the common crayfish. The term ''yabby'' is also commonly used for crayfish in Australia.

Native Range and Habitat

The common yabby is native to eastern Australia and extends from South Australia, northward to southern parts of the Northern Territory, and eastward to the Great Dividing Range (Eastern Highlands) (Souty-Grosset *et al.* 2006, Gherardi 2011a).

The common yabby inhabits temperate and tropical climates. In aquaculture, the yabby tolerates the wide range of water temperatures from 1 to 35 °C (34 to 95 °F) and with an optimal water temperature range of 20 to 25 °C (68 to 77 °F) (Withnall 2000). Growth halts below 15 °C (59 °F) and above 34 °C (93 °F), partial hibernation (decreased metabolism and feeding) occurs below 16 °C (61 °F), and death occurs when temperatures rise above 36 °C (97 °F) (Gherardi 2011a). The yabby can also survive drought for several years by sealing itself in a deep burrow (burrows well over 5 meters (m; 16.4 feet (ft)) have been found) and aestivating (the crayfish's respiration, pulse, and digestion nearly cease) (NSW DPI 2015).

This species can tolerate a wide range of dissolved oxygen concentrations and salinities (Mills and Geddes 1980) but prefers salinities less than 8 ppt (Withnall 2000, Gherardi 2011a). Growth ceases at salinities above 8 ppt (Withnall 2000). This correlates with Beatty's (2005) study where all yabbies

found in waters greater than 20 ppt were dead. Yabbies have been found in ponds where the dissolved oxygen was below 1 percent saturation (NSW DPI 2015).

The common yabby resides in a variety of habitats, including desert mound springs, alpine streams, subtropical creeks, rivers, billabongs (small lake, oxbow lake), temporary lakes, swamps, farm dams, and irrigation channels (Gherardi 2011a). The yabby is found in mildly turbid waters and muddy or silted bottoms. The common yabby digs burrows that connect to waterways (Withnall 2000). Burrowing can result in unstable and collapsed banks (Gherardi 2011a).

Nonnative Range and Habitat

The common yabby is commercially valuable and is frequently imported by countries for aquaculture, aquariums, and research (Gherardi 2011a); it is raised in aquaculture as food for humans (NSW DPI 2015). This species has spread throughout Australia, and its nonnative range extends to New South Wales east of the Great Dividing Range, Western Australia, and Tasmania. This crayfish species was introduced to Western Australia in 1932 for commercial aquaculture from where it escaped and established in rivers and irrigation dams (Souty-Grosset *et al.* 2006). Outside of Australia, this species has been introduced into Italy and Spain where it has become established (Gherardi 2011a). The common yabby has been introduced to China, South Africa, and Zambia for aquaculture (Gherardi 2011a) but has not become established in the wild in those countries. The first European introduction occurred in 1983, when common yabbies were transferred from a California farm to a pond in Girona, Catalonia, Spain (Souty-Grosset *et al.* 2006). This crayfish species became established in Zaragoza Province, Spain after being introduced in 1984 or 1985 (Souty-Grosset *et al.* 2006).

Biology

The common yabby has been described as a ''baby lobster'' because of its relatively large body size for a crayfish and because of its unusually large claws. Yabbies have a total body length up to 15 cm (6 in) with a smooth external carapace (exoskeleton) (Souty-Grosset *et al.* 2006, Gherardi 2011a). Body color can vary with geographic location, season, and water conditions (Withnall 2000). Most captive cultured yabbies are blue-gray, whereas wild yabbies may be green-beige to black (Souty-Grosset *et al.* 2006,Withnall 2000). Yabbies in the aquarium trade can be blue or white and go by the names blue knight and white ghost (LiveAquaria.com 2014a, b).

Most common yabbies live 3 years with some living up to 6 years (Souty-Grosset *et al.* 2006, Gherardi 2011a). Females can be distinguished from males by the presence of gonopores at the base of the third pair of walking legs; while males have papillae at the base of the fifth pair of walking legs (Gherardi 2011a). The female yabby becomes sexually mature before it is 1 year old (Gherardi 2011a). Spawning is dependent on day length and water temperatures. When water temperatures rise above 15 °C (59 °F), the common yabby will spawn from early spring to mid-summer. When the water temperature is consistently between 18 and 20 °C (64 to 68 °F) with daylight of more than 14 hours, the yabby will spawn up to five times a year (Gherardi 2011a). Young females produce 100 to 300 eggs per spawning event, while older (larger) females can produce up to 1,000 eggs (Withnall 2000). Incubation is also dependent on water temperature and typically lasts 19 to 40 days (Withnall 2000).

The common yabby grows through molting, which is shedding of the old carapace and then growing a new one (Withnall 2000). A juvenile yabby will molt every few days, whereas, an adult yabby may molt only annually or semiannually (Withnall 2000).

The common yabby is an opportunistic omnivore with a carnivorous summer diet and herbivorous winter diet (Beatty 2005). The diet includes fish (*Gambusia holbrooki*), plant material, detritus, and zooplankton. The yabby is also cannibalistic, especially where space and food are limited (Gherardi 2011a).

The common yabby is affected by at least ten parasites (Jones and Lawrence 2001), including the crayfish plague (caused by *Aphanomyces astaci*), burn spot disease, *Psorospermium* sp. (a parasite), and thelohaniasis (Jones and Lawrence 2001, Souty-Grosset *et al.* 2006, Gherardi 2011a). The crayfish plague is an OIE-reportable disease. Twenty-three bacteria species have been found in the yabby as well (Jones and Lawrence 2001).

Invasiveness

The common yabby has a quick growth and maturity rate, high reproductive rate, and generalist diet. These attributes, in addition to the species' tolerance for a wide range of freshwater habitats, make the common yabby an efficient invasive species. Additionally, the invasive range of the common yabby is expected to expand with climate change (Gherardi 2011a). Yabbies can also live on land and travel long distances by walking between water bodies (Gherardi 2011b:129).

The common yabby may reduce biodiversity through competition and predation with native species. In its nonnative range, the common yabby has proven to out-compete native crayfish species for food and habitat (Beatty 2006, Gherardi 2011a). Native freshwater crayfish species are also at risk from parasitic infections from the common yabby (Gherardi 2011a).

Summary of the Presence of the 11 Species in the United States

Only one of the 11 species, the zander, is present in the wild within the United States. There has been a small established population of zander within Spiritwood Lake (North Dakota) since 1989. Crucian carp were reportedly introduced to Chicago lakes and lagoons during the early 1900s. Additionally, Nile perch were introduced to Texas reservoirs between 1978 and 1985. However, neither the crucian carp nor the Nile perch established populations, and these two species are no longer present in the wild in U.S. waters. These examples demonstrate that the interest may exist for future attempts at introductions into the United States for these and the other species. Because these species are not yet present in the United States, except for one species in one lake, but have been introduced, become established, and been documented as causing harm in countries outside of their native ranges, regulating them now to prohibit importation and interstate transportation and thus prevent the species' likely introduction and establishment in the wild and likely harm to human beings, to the interests of agriculture, or to wildlife or wildlife resources is critical to preventing their injurious effects in the United States.

Rapid Screening

The first step that the Service performed in selecting species to evaluate for listing as injurious was to prepare a rapid screen. We asked, without doing a full risk assessment on each potential species, how could we quickly assess which species out of thousands of foreign species not yet found in the United States should be categorized as high-risk of invasiveness? Our method was to conduct rapid screenings and compile the information in Ecological Risk Screening Summaries (ERSS) for each species to determine the Overall Risk Assessment of each species. More information on the ERSS process and its peer review is posted online at *http://www.fws.gov/*

injuriouswildlife/Injurious_prevention.html, http://www.fws.gov/science/pdf/ERSS-Process-Peer-Review-Agenda-12-19-12.pdf, and *http://www.fws.gov/science/pdf/ERSS-Peer-Review-Response-report.pdf.* The ERSS reports also served to subsequently provide some of the information for the injurious wildlife evaluation criteria. This procedure incorporates scores for the history of invasiveness, climate matching between the species' range (native and invaded ranges) and the United States, and certainty of assessment to determine an Overall Risk Assessment score.

For the 11 species under consideration, all species have a high risk for history of invasiveness.

For the 11 species considered, overall climate match ranged from medium for the Nile perch, to high for the remaining nine fish and one crayfish species. The climate match analysis (Australian Bureau of Rural Sciences 2010) incorporates 16 climate variables to calculate climate scores that can be used to calculate a Climate 6 ratio (see USFWS 2014 for additional details). Using the Climate 6 ratio, species can be categorized as having a low (0.000 to 0.005), medium (greater than 0.005 to less than 0.103), or high (greater than 0.103) climate match (Bomford 2008; USFWS 2014). This climate matching method is used by some projects funded under the Great Lakes Restoration Initiative to direct efforts to prevent the invasion of aquatic species in the Great Lakes. For this proposed rule, the Service expanded the source ranges (native and nonnative distribution) of several species for the climate match from those listed in the ERSSs. The revised source ranges included additional locations referenced in FishBase (Froese and Pauly 2010), the CABI ISC, and the *Handbook of European Freshwater Fishes* (Kottelat and Freyhof 2007). Additional source points were also specifically selected for the stone moroko's distribution within the United Kingdom (Pinder *et al.* 2005). There were no revisions to the climate match for the Nile perch, Amur sleeper, or common yabby. The target range for the climate match included the States, District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

For the 11 species under consideration, the certainty of assessment (with sufficient and reliable information) was high for all species.

The Overall Risk Assessment, which is determined from a combination of scores for history of invasiveness, climate match, and certainty of assessment, was found to be high for all 11 species. A high score for the Overall Risk Assessment indicates that the assessed species would be a greater threat of invasiveness than a species with a low score. The Amur sleeper, crucian carp, Eurasian minnow, European perch, Nile perch, Prussian carp, roach, stone moroko, wels catfish, zander, and common yabby are high-risk species.

Injurious Wildlife Evaluation Criteria

Once we determined that the 11 species were good candidates for evaluating because of their invasive risk, we used the criteria below to evaluate whether a species qualifies as injurious under the Act. The analysis using these criteria serve as a general basis for the Service's regulatory decision regarding all injurious wildlife listings. Biologists within the Service evaluated both the factors that contribute to and the factors that reduce the likelihood of injuriousness. These factors were developed by the Service.

(1) Factors that contribute to being considered injurious:

- The likelihood of release or escape;
- Potential to survive, become established, and spread;
- Impacts on wildlife resources or ecosystems through hybridization and competition for food and habitats, habitat degradation and destruction, predation, and pathogen transfer;
- Impacts to endangered and threatened species and their habitats;
- Impacts to human beings, forestry, horticulture, and agriculture; and
- Wildlife or habitat damages that may occur from control measures.

(2) Factors that reduce the likelihood of the species being considered as injurious:

- Ability to prevent escape and establishment;
- Potential to eradicate or manage established populations (for example, making organism sterile);
- Ability to rehabilitate disturbed ecosystems;
- Ability to prevent or control the spread of pathogens or parasites; and
- Any potential ecological benefits to introduction.

For this proposed rule, a hybrid is defined as any progeny (offspring) from any cross involving a parent from one of the 11 species. These progeny would likely have the same or similar biological characteristics of the parent species (Ellstrand and Schierenbeck 2000, Mallet 2007), which, according to our analysis, would indicate that they are injurious to human beings, to the interests of agriculture, or to wildlife or wildlife resources of the United States.

Factors That Contribute to Injuriousness for Crucian Carp

Current Nonnative Occurrences

This species is not currently found within the United States. The crucian carp has been introduced and become established in Croatia, Greece, France, Italy, and England (Crivelli 1995, Kottelat and Freyhof 2007).

Potential Introduction and Spread

Potential pathways of introduction into the United States include stocking for recreational fishing and through misidentified shipments of ornamental fish (Wheeler 2000, Hickley and Chare 2004, Innal and Erk'ahan 2006, Sayer *et al.* 2011). Additionally, crucian carp may be misidentified as other carp species, such as the Prussian carp or common carp, and thus they are likely underreported (Godard and Copp 2012).

The crucian carp prefers a temperate climate (as found in much of the United States) and tolerates high summer air temperatures (up to 35 °C (95 °F)) and can survive in poorly oxygenated waters (Godard and Copp 2012). The crucian carp has an overall high climate match with a Climate 6 ratio of 0.355. This species has a high climate match throughout much of the Great Lakes region, southeastern United States, and southern Alaska and Hawaii. Low matches occur in the desert Southwest.

If introduced, the crucian carp is likely to spread and become established in the wild due to its ability to be a habitat and diet generalist and adapt to new environments, to its long life span (maximum 10 years), and to its ability to establish outside of the native range.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

As mentioned previously, the crucian carp can compete with native fish species, alter the health of freshwater habitats, hybridize with other invasive and injurious carp species, and serve as a vector of the OIE-reportable fish disease SVC (Ahne *et al.* 2002, Godard and Copp 2012). The introduction of crucian carp to the United States could result in increased competition with native fish species for food resources (Welcomme 1988). The crucian carp consumes a variety of food resources, including plankton, benthic invertebrates, plant materials, and detritus (Kottelat and Freyhof 2007). With this varied diet, crucian carp would directly compete with numerous native species.

The crucian carp has a broad climate match throughout the country, and thus its introduction and establishment

could further stress the populations of numerous endangered and threatened amphibian and fish species through competition for food resources.

The ability of crucian carp to hybridize with other species of Cyprinidae (including common carp) may exacerbate competition over limited food resources and ecosystem changes, and thus, further challenge native species (including native threatened or endangered fish species).

Crucian carp harbor the fish disease SVC and additional parasitic infections. Although SVC also infects other carp species, this disease can also be transmitted through the water column to native fish species causing fish mortalities. Mortality rates from SVC have been documented up to 70 percent among juvenile fish and 30 percent among adult fish (Ahne *et al.* 2002). Therefore, as a vector of SVC, this fish species may also be responsible for reduced wildlife diversity. Crucian carp may outcompete native fish species, thus replacing them in the trophic scheme. Large populations of crucian carp can result in considerable predation on aquatic plants and invertebrates. Changes in ecosystem cycling and wildlife diversity may have negative effects on the aesthetic, recreational, and economic benefits of the environment.

Potential Impacts to Humans

We have no reports of the crucian carp being directly harmful to humans.

Potential Impacts to Agriculture

The introduction of crucian carp is likely to affect agriculture by contaminating commercial aquaculture. This fish species can harbor Spring Viremia of Carp (SVC), which can infect numerous fish species, including common carp, koi (*C. carpio*), crucian carp, bighead carp (*Hypophthalmichthys nobilis*), silver carp, and grass carp (Ahne *et al.* 2002). This disease can cause serious fish mortalities, and thus can detrimentally affect the productivity of several species in commercial aquaculture facilities, including grass carp, goldfish, koi, fathead minnows (*Pimephales promelas*), and golden shiner (*Notemigonus crysoleucas*) (Ahne *et al.* 2002, Goodwin 2002).

Factors That Reduce or Remove Injuriousness for Crucian Carp

Control

Lab experiments indicate that the piscicide rotenone (a commonly used natural fish poison) could be used to control a crucian carp population (Ling 2003). However, rotenone is not target-specific (Wynne and Masser 2010). Depending on the applied concentration, rotenone kills other aquatic species in the water body. Some fish species are more susceptible than others, and the use of this piscicide may result in killing native species. Control measures that would harm other wildlife are not recommended as mitigation plans to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

No other control methods are known for the crucian carp, but several other control methods are currently being used or are in development for introduced and invasive carp species of other genera. For example, the U.S. Geological Survey (USGS) is developing a method to orally deliver a piscicide (Micromatrix) specifically to invasive bighead carp (*Hypophthalmichthys nobilis*) and silver carp (Luoma 2012). This developmental control measure is expensive and not guaranteed to prove effective for any carps.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of crucian carp.

Factors That Contribute to Injuriousness for Eurasian Minnow

Current Nonnative Occurrences

This species is not currently found within the United States. The Eurasian minnow was introduced to new waterways in its native range of Europe and Asia (Sandlund 2008). This fish species has been introduced to new locations in Norway outside of its native range there (Sandlund 2008, Hesthagen and Sandlund 2010).

Potential Introduction and Spread

Likely pathways of introduction include release or escape when used as live bait, unintentional inclusion in the transport water of intentionally stocked fish (often with salmonids), and intentional introduction for vector (insect) management (Sandlund 2008). Once introduced, this species can spread and establish in nearby waterways.

The Eurasian minnow prefers a temperate climate (Froese and Pauly 2013). This minnow is capable of establishing in a variety of aquatic ecosystems ranging from freshwater to brackish water (Sandlund 2008). The Eurasian minnow has an overall high climate match with a Climate 6 ratio of 0.397. The highest climate matches are in the northern States, including Alaska. The lowest climate matches are in the Southeast and Southwest.

If introduced to the United States, the Eurasian minnow is highly likely to spread and become established in the wild due to this species' traits as a habitat generalist and generalist predator, with adaptability to new environments, high reproductive potential, long life span, extraordinary mobility, social nature, and proven invasiveness outside of the species' native range.

Potential Impacts to Native Species (Including Endangered and Threatened Species)

Introduction of the Eurasian minnow can affect native species through several mechanisms, including competition over resources, predation, and parasite transmission. Introduced Eurasian minnows have a more serious effect in waters with fewer species than those waters with a more developed, complex fish community (Museth *et al.* 2007). In Norway, dense populations of the Eurasian minnow have resulted in an average 35 percent reduction in recruitment and growth rates in native brown trout (Museth *et al.* 2007). In the United States, introduced Eurasian minnow populations would likely compete with and adversely affect Atlantic salmon, State-managed brown trout, and other salmonid species.

Eurasian minnow introductions have also disturbed freshwater benthic invertebrate communities (Næstad and Brittain 2010). Increased predation by Eurasian minnows has led to shifts in invertebrate populations and changes in benthic diversity (Hesthagen and Sandlund 2010). Many of the invertebrates consumed by the Eurasian minnow are also components of the diet of the brown trout, thus exacerbating competition between the introduced Eurasian minnow and brown trout (Hesthagen and Sandlund 2010). Additionally, Eurasian minnows have been shown to compete with brown trout (Hesthagen and Sandlund 2010) and to consume vendace (a salmonid) larvae (Huusko and Sutela 1997). If introduced, the Eurasian minnow's diet may include the larvae of U.S. native salmonids, including Atlantic salmon, sockeye salmon (*Oncorhynchus nerka*), and trout species (*Salvelinus* spp.).

The Eurasian minnow serves as a host to parasites, such as *Gyrodactylus aphyae,* that it can transmit to other fish species, including salmon and trout (Zietara *et al.* 2008). Once introduced, these parasites would likely spread to native salmon and trout species.

Depending on pathogenicity, parasites of the *Gyrodactylus* species may cause high fish mortality (Bakke *et al.* 1992).

Potential Impacts to Humans

We have no reports of the Eurasian minnow being harmful to humans.

Potential Impacts to Agriculture

The Eurasian minnow may impact agriculture by affecting aquaculture. This species harbors a parasite that may infect other fish species and can cause high fish mortality (Bakke *et al.* 1992). Eurasian minnow populations can adversely impact both recruitment and growth of brown trout. Reduced recruitment and growth rates can reduce the economic value associated with brown trout aquaculture and recreational fishing.

Factors That Reduce or Remove Injuriousness for Eurasian Minnow

Control

Once introduced, it is difficult and costly to control a Eurasian minnow population (Sandlund 2008). Eradication may be possible from small water bodies in cases where the population is likely to serve as a center for further spread, but no details are given on how to accomplish that (Sandlund 2008). Control may also be possible using habitat modification or biocontrol (introduced predators); however, we know of no published accounts of long-term success by either method. Both control measures of habitat modification and biocontrol cause wildlife or habitat damages and are expensive mitigation strategies, and therefore, are not recommended or considered appropriate under the Injurious Wildlife Evaluation Criteria as a risk management plan for this species.

Potential Ecological Benefits for Introduction

There has been one incidence where the Eurasian minnow was introduced as a biocontrol for the Tune fly (Simuliidae) (Sandlund 2008). However, we do not have information on the success of this introduction. We are not aware of any other documented ecological benefits associated with the Eurasian minnow.

Factors That Contribute to Injuriousness for Prussian Carp

Current Nonnative Occurrences

This species is not found within the United States. However, it was recently reported to be established in waterways in southern Alberta, Canada, which is the first confirmed record in the wild in North America (Elgin *et al.* 2014). The Prussian carp has been introduced to many countries of central and Western Europe. This species' current nonnative range includes the Asian countries of Armenia, Turkey, and Uzbekistan and the European countries of Belarus, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Poland, and Switzerland (Britton 2011); it also includes the Iberian Peninsula (Ribeiro *et al.* 2015).

Potential Introduction and Spread

Potential pathways of introduction include stock enhancement, recreational fishing, and aquaculture. Once introduced, the Prussian carp will naturally disperse to new waterbodies.

The Prussian carp prefers a temperate climate and resides in a variety of freshwater environments, including those with low dissolved oxygen concentrations and increased pollution (Britton 2011). The Prussian carp has an overall high climate match with a Climate 6 ratio of 0.414. This fish species has a high climate match to the Great Lakes region, northern Plains, some western mountain States, and parts of California. The Prussian carp has a medium climate match to much of the United States, including southern Alaska and regions of Hawaii. This species has a low climate match to the southeastern United States, especially Florida and along the Gulf Coast. This species is not found within the United States but has been recently discovered as established in Alberta, Canada (Elgin *et al.* 2014); the climate match was run prior to this new information, so the results do not include any actual locations in North America.

If introduced, the Prussian carp is likely to spread and establish as a consequence of its tolerance to poor quality environments, rapid growth rate, very rare ability to reproduce from unfertilized eggs (gynogenesis), and proven invasiveness outside of the native range.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

The Prussian carp is closely related and behaviorally similar to the crucian carp (Godard and Copp 2012). As with crucian carp, introduced Prussian carp may compete with native fish species, alter freshwater ecosystems, and serve as a vector for parasitic infections. Introduced Prussian carp have been responsible for the decreased biodiversity and overall populations of native fish (including native Cyprinidae), invertebrates, and plants (Anseeuw *et al.* 2007, Lusk *et al.* 2010). Thus, if introduced to the United States, the Prussian carp will likely affect numerous native Cyprinid species, including chub, dace, shiner, and minnow fish species (Froese and Pauly 2013). Several of these native Cyprinids, such as the laurel dace (*Chrosomus saylori*) and humpback chub (*Gila cypha*) are listed as endangered or threatened under the Endangered Species Act.

Prussian carp can alter freshwater habitats. This was documented in Lake Mikri Prespa (Greece), where scientists correlated increased turbidity with increased numbers of Prussian carp (Crivelli 1995). This carp species increased turbidity levels by disturbing sediment during feeding. These carp also intensively fed on zooplankton, thus resulting in increased phytoplankton abundance and phytoplankton blooms (Crivelli 1995). Increased turbidity results in imbalances in nutrient cycling and ecosystem energetics. If introduced to the United States, Prussian carp could cause increased lake and pond turbidity, increased phytoplankton blooms, imbalances to ecosystem nutrient cycling, and altered freshwater ecosystems.

Several different types of parasitic infections, such as black spot disease (Posthodiplostomatosis) and from *Thelohanellus,* are associated with the Prussian carp (Ondračková *et al.* 2002, Markovíc *et al.* 2012). Black spot disease particularly affects young fish and can cause physical deformations, decreased growth, and decrease in body condition (Ondračková *et al.* 2002). These parasites and the respective diseases may infect and decrease native fish stocks.

Prussian carp may compete with native fish species and may replace them in the trophic scheme. Large populations of Prussian carp can cause heavy predation on aquatic plants and invertebrates (Anseeuw *et al.* 2007). Changes in ecosystem cycling and wildlife diversity may have negative effects on the aesthetic, recreational, and economic benefits of the environment.

Potential Impacts to Humans

We have no reports of the Prussian carp being harmful to humans.

Potential Impacts to Agriculture

The Prussian carp may impact agriculture by affecting aquaculture. As mentioned in the *Potential Impacts to Native Species* section, Prussian carp harbor several types of parasites that may cause physical deformations, decreased growth, and decrease in body condition (Ondračková *et al.* 2002).

Impaired fish physiology and health detract from the productivity and value of commercial aquaculture.

Factors That Reduce or Remove Injuriousness for Prussian Carp

Control

We are not aware of any documented control methods for the Prussian carp. The piscicide rotenone has been used to control the common carp and crucian carp population (Ling 2003) and may be effective against Prussian carp. However, rotenone is not target-specific (Wynne and Masser 2010). Depending on the applied concentration, rotenone kills other aquatic species in the water body. Some fish species are more susceptible than others, and, even if effective against Prussian carp, the use of this piscicide may result in killing native species (Allen *et al.* 2006). Control measures that would harm other wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the Prussian carp.

Factors That Contribute to Injuriousness for Roach

Current Nonnative Occurrences

This species is not found in the United States. The roach has been introduced and become established in England, Ireland, Italy, Madagascar, Morocco, Cyprus, Portugal, the Azores, Spain, and Australia. (Rocabayera and Veiga 2012:Dist. table).

Potential Introduction and Spread

Potential introduction pathways include stocking for recreational fishing and use as bait fish. Once introduced, released, or escaped, the roach naturally disperses to new waterways within the watershed.

This species prefers a temperate climate and can reside in a variety of freshwater habitats (Riehl and Baensch 1991). Hydrologic changes, such as weirs and dams that extend aquatic habitats that are otherwise scarce, enhance the potential spread of the roach (Rocabayera and Veiga 2012). The roach has an overall high climate match to the United States with a Climate 6 ratio of 0.387. Particularly high climate matches occurred in southern and central Alaska, the Great Lakes region, and the western mountain States. The Southeast and Southwest have low climate matches.

If introduced, the roach is likely to spread and establish due to its highly adaptive nature toward habitat and diet choice, high reproductive rate, ability to reproduce with other cyprinid species, long life span, and extraordinary mobility. This species has also proven invasive outside of its native range.

Potential Impacts to Native Species (Including Endangered and Threatened Species)

Potential effects to native species from the introduction of the roach include competition over food and habitat resources, hybridization, altered ecosystem nutrient cycling, and parasite and pathogenic bacteria transmission. The roach is a highly adaptive species and will switch between habitats and food sources to best avoid predation and competition from other species (Winfield and Winfield 1994:385–6). The roach consumes an omnivorous generalist diet, including benthic invertebrates (especially mollusks), zooplankton, plants, and detritus (Rocabayera and Veiga 2012). With such a varied diet, the roach would likely compete with numerous native fish species from multiple trophic levels. Such species may include shiners, daces, chubs, and stonerollers, several of which are federally listed as endangered or threatened.

Likewise, introduction of the roach would likely detrimentally affect native mollusk species (including mussels and snails), some of which may be federally endangered or threatened. One potentially affected species is the endangered Higgins' eye pearly mussel (*Lampsilis higginsii*), which is native to the upper Mississippi River watershed, where there is high climate match for the roach species. Increased competition with and predation on native species may alter trophic cycling and diversity of native aquatic species.

In Ireland, the roach has hybridized with the rudd (*Scardinius erythrophtalmus*) and the bream (*Abramis brama*). Although the bream is not found in the United States, the rudd is already considered invasive in the Great Lakes (Fuller *et al.* 1999, Kapuscinski *et al.* 2012). Hybrids of roaches and rudds could exacerbate the potential adverse effects (competition) of each separate species (Rocabayera and Veiga 2012).

Large populations of the roach may alter nutrient cycling in lake ecosystems. Increased populations of roach may prey heavily on zooplankton, thus resulting in increased phytoplankton communities and algal blooms (Rocabayera and Veiga 2012). These changes alter nutrient cycling and can consequently affect native aquatic species that depend on certain nutrient balances.

Several parasitic infections, including worm cataracts, black spot disease, and tapeworms, have been associated with the roach (Rocabayera and Veiga 2012). The pathogenic bacterium *Aeromonas salmonicida* also infects the roach, causing furunculosis (Wiklund and Dalsgaard 1998). This disease causes skin ulcers and hemorrhaging. The disease can be spread through a fish's open sore. This disease affects both farmed and wild fish. The causative bacteria *A. salmonicida* has been isolated from fish in United States freshwaters (USFWS 2011). The roach may spread these parasites and bacteria to new environments and native fish species.

Potential Impacts to Humans

We have no reports of the roach being harmful to humans.

Potential Impacts to Agriculture

The roach may affect agriculture by decreasing aquaculture productivity. Roach can hybridize with other fish species of the subfamily Leuciscinae, including rudd and bream (Pitts *et al.* 1997, Kottelat and Freyhof 2007). Hybridization can reduce the reproductive success and productivity of the commercial fisheries.

Roaches harbor several parasitic infections (Rocabayera and Veiga 2012) that can impair fish physiology and health. The pathogenic bacterium *Aeromonas salmonicida* infects the roach, causing furunculosis (Wiklund and Dalsgaard 1998). The disease can be spread through a fish's open sore and can infect farmed fish. Introduction and spread of parasites and pathogenic bacterium to an aquaculture facility can result in increased incidence of fish disease and mortality and decreased productivity and value.

Factors That Reduce or Remove Injuriousness for Roach

Control

An introduced roach population would be difficult to control (Rocabayera and Veiga 2012). Application of the piscicide rotenone may be effective for limited populations of small fish. However, rotenone is not target-specific (Wynne and Masser 2010). Depending on the applied concentration, rotenone kills other aquatic species in the water body. Some fish species are more susceptible than others, and the use of this piscicide may

result in killing native species. Control measures that would harm other wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the roach.

Factors That Contribute to Injuriousness for Stone Moroko

Current Nonnative Occurrences

This fish species is not found within the United States. The stone moroko has been introduced and become established throughout Europe and Asia. Within Asia, this fish species is invasive in Afghanistan, Armenia, Iran, Kazakhstan, Laos, Taiwan, Turkey, and Uzbekistan (Copp 2007). In Europe, this fish species' nonnative range includes Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Lithuania, Moldova, Montenegro, the Netherlands, Poland, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom (Copp 2007). The stone moroko's nonnative range also includes Algeria and Fiji (Copp 2007).

Potential Introduction and Spread

The primary introduction pathways are as unintentional inclusion in the transport water of intentionally stocked fish shipments for both recreational fishing and aquaculture, released or escaped bait, and released or escaped ornamental fish. Once introduced, the stone moroko naturally disperses to new waterways within a watershed. Since the 1960s, this fish has invaded nearly every European country and many Asian countries (Copp *et al.* 2005).

The stone moroko inhabits a temperate climate (Baensch and Riehl 1993) and a variety of freshwater habitats, including those with poor dissolved oxygen concentrations (Copp 2007). The stone moroko has an overall high climate match with a Climate 6 ratio of 0.557. This species has a high or medium climate match to most of the United States. The highest matches are in the Southeast, Great Lakes, central plains, and West Coast.

If introduced, the stone moroko is highly likely to spread and establish. This fish species is a habitat generalist, diet generalist, quick growing, highly adaptable to new environments, and highly mobile. Additionally, the stone moroko has proven invasive outside of its native range (Copp 2007, Kottelat and Freyhof 2007, Witkowski 2011).

Potential Impacts to Native Species (Including Endangered and Threatened Species)

In much of the stone moroko's nonnative range, the introduction of this species has been linked to the decline of native freshwater fish species (Copp 2007). The stone moroko could potentially adversely affect native species through predation, competition, disease transmission, and altering freshwater ecosystems (Witkowski 2011).

Stone moroko introductions have mostly originated from unintentional inclusion in the transport water of intentionally stocked fish species. In many stocked ponds, the stone moroko actually outcompetes the farmed fish species for food resources, which results in decreased production of the farmed fish (Witkowski 2011). The stone moroko's omnivorous diet includes insects, fish, fish eggs, molluscs, planktonic crustaceans, algae (Froese and Pauly 2014), and plants (Kottelat and Freyhof 2007). With this diet, the stone moroko would compete with many native U.S. freshwater fish, including minnow, dace, sunfish, and darter species.

In the United Kingdom, Italy, China, and Russia, the introduction of the stone moroko correlates with dramatic declines in native fish populations and species diversity (Copp 2007). The stone moroko first competes with native fish for food resources and then predates on the eggs, larvae, and juveniles of these same native fish species (Pinder 2005, Britton *et al.* 2007).

The stone moroko is a vector of the pathogenic, rosette-like agent *Sphaerothecum destruens* (Gozlan *et al.* 2005, Pinder *et al.* 2005), which is a documented pathogen of farmed and wild European fish. The stone moroko is a healthy host for this deadly, nonspecific pathogen that could threaten aquaculture trade, including that of salmonids (Gozlan *et al.* 2009). This pathogen infects a fish's internal organs causing spawning failure, organ failure, and death (Gozlan *et al.* 2005). This pathogen has been documented as infecting the sunbleak (*Leucaspius delineatus*), which are native to eastern Europe, and Chinook salmon (*Oncorhynchus tshawytscha*), Atlantic salmon, and the fathead minnow (*Pimephales promelas*), which are native to the United States (Gozlan *et al.* 2005).

The stone moroko consumes large quantities of zooplankton. The declines in zooplankton population results in increased phytoplankton populations, which in turn causes algal blooms and unnaturally high nutrient loads (eutrophication). These changes can cause imbalanced nutrient cycling, decrease dissolved oxygen concentrations, and adversely impact the health of native aquatic species.

Potential Impacts to Humans

We have no reports of the stone moroko being harmful to humans.

Potential Impacts to Agriculture

The stone moroko may affect agriculture by decreasing aquaculture productivity. This species often contaminates farmed fish stocks and competes with the farmed species for food resources, resulting in decreased aquaculture productivity (Witkowski 2011). The stone moroko is an unaffected carrier of the pathogenic, rosette-like agent *Sphaerothecum destruens* (Gozlan *et al.* 2005, Pinder *et al.* 2005). This pathogen is transmitted through water and causes reproductive failure, disease, and death to farmed fish. This pathogen is not species-specific and has been known to infect cyprinid and salmonid fish species. *Sphaerothecum destruens* is responsible for disease outbreaks in North American salmonids and causes mortality in both juvenile and adult fish (Gozlan *et al.* 2009). If this pathogen was introduced to an aquaculture facility, it is likely to spread and infect numerous fish, resulting in high mortality. Further research is needed to ascertain this pathogen's prevalence in the wild environment (Gozlan *et al.* 2009).

Factors That Reduce or Remove Injuriousness for Stone Moroko

Control

An established, invasive stone moroko population would be both difficult and costly to control (Copp 2007). Additionally, this fish species has a higher tolerance for the piscicide rotenone than most other fish belonging to the cyprinid group (Allen *et al.* 2006). Applications of rotenone for stone moroko control is likely to adversely impact native aquatic fish species. Control measures that would harm other wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the stone moroko.

Factors That Contribute to Injuriousness for Nile Perch

Current Nonnative Occurrences

This species is not currently found within the United States. The Nile perch is invasive in the Kenyan, Tanzanian, and Ugandan watersheds of Lake Victoria and Lake Kyoga (Africa). This species has also been introduced to Cuba (Welcomme 1988).

Potential Introduction and Spread

This species was stocked in Texas reservoirs, although this population failed to establish (Fuller *et al.* 1999, Howells 2001). However, with continued release events, we anticipate that the Nile perch is likely to establish. Likely introduction pathways include use for aquaculture and recreational fishing. Over the past 60 years, the Nile perch has invaded, established, and become the dominant fish species within this species' nonnative African range (Witte 2013).

The Nile perch prefers a tropical climate and can inhabit a variety of freshwater and brackish habitats (Witte 2013). The Nile perch has an overall medium climate match with a Climate 6 ratio of 0.038. Of the 11 species in this rule, the Nile perch has the only overall medium climate match to the United States. However, this fish species has a high climate match to the Southeast (Florida and Gulf Coast), Southwest (California), Hawaii, Puerto Rico, and the U.S. Virgin Islands.

If introduced into the United States, the Nile perch is likely to spread and establish due to this species' nature as a habitat generalist and generalist predator, long life span, quick growth rate, high reproductive rate, extraordinary mobility, and proven invasiveness outside of the species' native range (Witte 2013, Asila and Ogari 1988, Ribbinick 1982).

Potential Impacts to Native Species (Including Endangered and Threatened Species)

Potential impacts of introduction of the Nile perch include outcompeting and preying on native species, altering habitats and trophic systems, and disrupting ecosystem nutrient cycling. The Nile perch can produce up to 15 million eggs per breeding cycle (Asila and Ogari 1988), likely contributing to this species' efficiency and effectiveness in establishing an introduced population.

Historical evidence from the Lake Victoria (Africa) basin indicate that the Nile perch outcompeted and preyed on at least 200 species endemic fish species, leading to their extinction (Kaufman 1992, Snoeks 2010, Witte 2013). Many of the affected species were haplochromine cichlid fish species, and the populations of native lung fish (*Protopterus aethiopicus*) and catfish species (*Bagrus docmak, Xenoclarias eupogon, Synodontis victoria*) also witnessed serious declines (Witte 2013). By the late 1980s, only three fish species, including the cyprinid *Rastrineobolas argentea* and the introduced Nile perch and Nile tilapia (*Oreochromis niloticus*) were common in Lake Victoria (Witte 2013).

The haplochromine cichlid species comprised 15 subtrophic groups with varied food (detritus, phytoplankton, algae, plants, mollusks, zooplankton, insects, prawns, crabs, fish, and parasites) and habitat preferences (Witte and Van Oijen 1990, Van Oijen 1996). The depletion of so many fish species has drastically altered the Lake Victoria ecosystem's trophic level structure and biodiversity. These changes resulted in abnormally high lake eutrophication and frequency of algal blooms (Witte 2013).

The depletion of the native fish species in Lake Victoria by Nile perch led to the loss of income and food for local villagers. Nile perch are not a suitable replacement for traditional fishing. Fishing for this larger species requires equipment that is prohibitively more expensive, requires processing that cannot be done by the wife and children, requires the men to be away for extended periods, and decreases the availability of fish for household consumption (Witte 2013).

If introduced to the United States, the Nile perch are expected to prey on small native fish species, such as mudminnows, cyprinids, sunfishes, and darters. Nile perch would likely prey on, compete with, and decrease the species diversity of native cyprinid fish. Nile perch are expected to compete with larger native fish species, including largemouth bass, blue catfish (*Ictalurus furcatus*), channel catfish (*Ictalurus punctatus*), and flathead catfish (*Pyodictis olivaris*). These native fish species are not only economically important to both commercial and recreational fishing, but are integral components of freshwater ecosystems.

Potential Impacts to Humans

We have no reports of the Nile perch being harmful to humans.

Potential Impacts to Agriculture

We are not aware of any reported effects to agriculture. However, Nile perch may affect aquaculture if they are unintentionally introduced into aquaculture operations in the United States, such as when invaded watersheds flood aquaculture ponds or by accidentally being included in a shipment of fish, by outcompeting and preying on the aquacultured fish.

Factors That Reduce or Remove Injuriousness for Nile Perch

Control

Nile perch grow to be large fish with a body length of 2 m (6 ft) and maximum weight of 200 kg (440 lb) (Ribbinick 1987). Witte (2013) notes that this species would be difficult and costly to control. We are not aware of any documented reports of successfully controlling or eradicating an established Nile perch population.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the Nile perch.

Factors That Contribute to Injuriousness for the Amur Sleeper

Current Nonnative Occurrences

This species has not been reported within the United States. The Amur sleeper is invasive in Europe and Asia in the countries of Belarus, Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Serbia, Slovakia, Ukraine, Russia, and Mongolia (Froese and Pauly 2014, Grabowska 2011).

Potential Introduction and Spread

Although the Amur sleeper has not yet been introduced to the United States, the likelihood of introduction, release, or escape is high as evidenced by the history of introduction over a broad geographic region of Eurasia. Since its first introduction outside of its native range in 1916, the Amur sleeper has invaded 15 Eurasian countries and become a widespread, invasive fish throughout European freshwater ecosystems (Copp *et al.* 2005, Grabowska 2011). The introduction of the Amur sleeper has been attributed to release and escape of aquarium and ornamental fish, unintentional and intentional release of Amur sleepers used for bait, and the unintentional inclusion in the transport water of intentionally stocked fish (Reshetnikov 2004, Grabowska 2011, Reshetnikov and Ficetola 2011).

Once this species has been introduced, it has proven to be capable of establishing (Reshetnikov 2004). The established populations can have rapid rates of expansion. Upon introduction into the Vistula River in Poland, the Amur sleeper expanded its range by 44 km (27 mi) the first year and up to 197 km (122 mi) per year subsequently (Grabowska 2011).

Most aquatic species are constrained in distribution by temperature, dissolved oxygen levels, and lack of flowing water. However, the Amur sleeper has a wide water temperature preference (Baensch and Riehl 2004), can live in poorly oxygenated waters, and may survive in dried-out or frozen water bodies by burrowing into and hibernating in the mud (Grabowska 2011). The Amur sleeper has an overall high climate match with a Climate 6 ratio of 0.376. The climate match is highest in the Great Lakes region (Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota), central and high Plains (Iowa, Nebraska, and Missouri), western mountain States (South Dakota, North Dakota, Montana, Wyoming, and Colorado), and central to eastern Alaska.

If introduced, the Amur sleeper is extremely likely to spread and become established in the wild due to this species' ability as a habitat generalist, generalist predator, rapid growth, high reproductive potential, adaptability to new environments, extraordinary mobility, and a history of invasiveness outside of the native range.

Potential Impacts to Native Species (Including Endangered and Threatened Species)

The Amur sleeper is a voracious generalist predator whose diet includes crustaceans, insects, and larvae of mollusks, fish, and amphibian tadpoles (Bogutskaya and Naseka 2002, Reshetnikov 2008). Increased predation with the introduction of the Amur sleeper has resulted in decreased species richness and decreased population of native fish (Grabowska 2011). Declines in lower trophic level populations (invertebrates) result in increased competition among native predatory fish, including the European mudminnow (*Umbra krameri*) (Grabowska 2011), which is listed as vulnerable on the IUCN Red List (Freyhof 2011). Two species similar to the European mudminnow, the eastern mudminnow (*Umbra pygmaea*) and the central mudminnow (*Umbra limi*), are native to the eastern United States. Both these species are integral members of freshwater ecosystems, with the eastern mudminnow ranging from New York to Florida (Froese and Pauly 2013), and the central mudminnow residing in the freshwater of the Great Lakes, Hudson Bay, and Mississippi River basins (Froese and Pauly 2013). Introduced Amur sleepers could prey on and reduce the population of native U.S. mudminnow species.

In some areas, the Amur sleeper's eating habits have been responsible for the dramatic decline in juvenile fish and amphibian species (Reshetnikov 2003). Amur sleepers prey on juvenile stages and can cause decreased reproductive success and reduced populations of the native fish and amphibians (Mills *et al.* 2004). Both the European mudminnow and lake minnow (*Rhynchocypris percnurus;* an IUCN Red List endangered species) have been negatively affected by the Amur sleeper's predatory nature (Grabowska 2011).

The introduction or establishment of the Amur sleeper is likely to reduce native wildlife biodiversity. In the Selenga River (Russia), the Amur sleeper competes with native Siberian roach (*Rutilus rutilus lacustris*) and Siberian dace (*Leuciscus leuciscus baicalensis*) for food resources. This competition results in decreased populations of native fish species, which may result in negative effects on commercial fisheries and in economic losses (Litvinov and O'Gorman 1996, Grabowska 2011).

Species similar to Siberian roach and Siberian dace that are native to the United States include those of the genus *Chrosomus,* such as the blackside dace (*Chrosomus cumberlandensis*), northern redbelly dace (*C. eos*), southern redbelly dace (*C. erthrogaster*), and Tennessee dace (*C. tennesseensis*). Like with the Siberian roach and the Siberian dace, introduced populations of the Amur sleeper may compete with native dace fish species consequently resulting in population declines of these native species.

Additionally, the Amur sleeper harbors parasites, including *Nippotaenia mogurndae* and *Gyrodactylus perccotti.* The introduction of the Amur sleeper has resulted in the simultaneous introduction of both parasites to the Amur sleeper's nonnative range. These parasites have in essence expanded their own nonnative range and successfully infected new hosts of native fish species (Košuthová *et al.* 2008).

Potential Impacts to Humans

We have no reports of Amur sleeper being harmful to humans.

Potential Impacts to Agriculture

The Amur sleeper may affect agriculture by decreasing aquaculture productivity. This fish species hosts parasites, including *Nippotaenia mogurndae* and *Gyrodactylus perccotti.* These parasites may switch hosts (Košuthová *et al.* 2008) and infect farmed species involved in aquaculture. Increased parasite load impairs a fish's physiology and general health, and consequently may decrease aquaculture productivity.

Factors That Reduce or Remove Injuriousness for Amur Sleeper

Control

Once introduced and established, it would be difficult, if not impossible, to control or eradicate the Amur sleeper. All attempts to eradicate the Amur sleeper once it had established a reproducing population have been unsuccessful (Litvinov and O'Gorman 1996). Natural predators include pike, snakeheads, and perch (Bogutskaya and Naseka 2002). Not all freshwater systems have these or similar predatory species, and thus would allow the Amur sleeper population to be uncontrolled.

Some studies have indicated that the Amur sleeper may be eradicated by adding calcium chloride ($CaCl_2$) or ammonium hydroxide (NH_4OH) to the water body (Grabowska 2011). However, this same study found that the Amur sleeper was one of the most resistant fish species to either treatment. Thus, the use of either treatment would likely negatively affect many other native organisms and is not considered a viable option. Control measures that would harm other wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the Amur sleeper.

Factors That Contribute to Injuriousness for European Perch

Current Nonnative Occurrences

This fish species is not found within the United States. The European perch has been introduced and become established in several countries, including Ireland, Italy, Spain, Australia, New Zealand, China, Turkey, Cyprus, Morocco, Algeria, and South Africa.

Potential Introduction and Spread

The main pathway of introduction is through stocking for recreational fishing. Once stocked, this fish species has expanded its nonnative range by swimming through connecting waterbodies to new areas within the same watershed.

The European perch prefers a temperate climate (Riehl and Baensch 1991, Froese and Pauly 2014). This species can reside in a wide variety of aquatic habitats ranging from freshwater to brackish water (Froese and Pauly 2014). The European perch has a Climate 6 ratio of 0.438, with locally high matches to the Great Lakes region, central Texas, western mountain States, and southern and central Alaska. Hawaii ranges from low to high matches. Much of the rest of the country has a medium climate match.

If introduced to the United States, the European perch is likely to spread and establish in the wild as a generalist predator that is able to adapt to new environments and outcompete native fish species. Additionally, this species has proven to be invasive outside of its native range.

Potential Impacts to Native Species (Including Threatened and Endangered Species)

The European perch can impact native species through outcompeting and preying on them and by transmitting disease. This introduced fish species competes with other European native species for both food and habitat resources (Closs *et al.* 2003) and has been implicated in the local extirpation (in Western Australia) of the mudminnow (*Galaxiella munda*) (Moore 2008, ISSG 2010).

In addition to potentially competing with the native yellow perch (*Perca flavescens*), the European perch may also hybridize with this native species, resulting in irreversible changes to the genetic structure of this important native species (Schwenk *et al.* 2008). Hybridization can reduce the fitness of the native species and, in some cases, has resulted in drastic population declines causing endangered classification and even extinction (Mooney and Cleland 2001). Furthermore, the yellow perch has value for both commercial and recreational fishing and is also an important forage fish in many freshwater ecosystems (Froese and Pauly 2014). Thus, declines in yellow perch populations can result in serious consequences for upper trophic level piscivorous (fish-eating) fish. Additionally, European perch can form dense populations competing with each other to the extent that they stunt their own growth (NSW DPI 2013).

European perch prey on zooplankton, macroinvertebrates, and fish; thus, the introduction of this species can significantly alter trophic level cycling and affect native freshwater communities (Closs *et al.* 2003). European perch are reportedly voracious predators that consume small Australian fish (pygmy perch *Nannoperca spp.,* rainbowfish (various species), and carp gudgeons *Hypseleotris spp.*); and the eggs and fry of silver perch (*Bidyanus bidyanus*), golden perch (*Macquaria ambigua*), Murray cod (*Maccullochella peelii*), and introduced trout species (rainbow, brook (*Salvelinus fontinalis*), and brown trout (NSW DPI 2013). In one instance, European perch consumed 20,000 newly released nonnative rainbow trout fry from a reservoir in southwestern Australia in less than 72 hours (NSW DPI 2013). Rainbow trout are native to the western United States. If introduced into U.S. freshwaters, European perch would be expected to prey on rainbow trout and other native fish.

The European perch can also harbor and spread the viral disease Epizootic Haematopoietic Necrosis (EHN) (NSW DPI 2013). This virus can cause mass fish mortalities and affects silver perch, Murray cod, *Galaxias* fish, and Macquarie perch (*Macquaria australasica*) in their native habitats. This continued spread of this virus (with the introduction of the European perch) has been partly responsible for declining population of native Australian fish species (NSW DPI 2013). This virus is currently restricted to Australia but could expand its international range with the introduction of European perch to new waterways where native species would have no natural resistance.

Potential Impacts to Humans

We have no reports of the European perch being harmful to humans.

Potential Impacts to Agriculture

The European perch may affect agriculture by decreasing aquaculture productivity. The European perch may potentially spread the viral disease Epizootic Haematopoietic Necrosis (EHN) (NSW DPI 2013) to farmed fish in aquaculture facilities. Although this virus is currently restricted to Australia, this disease can cause mass fish mortalities and is known to affect other fish species (NSW DPI 2013).

Factors That Reduce or Remove Injuriousness for European Perch

Control

It would likely be extremely difficult, if not impossible, to control or eradicate a population of European perch. However, Closs *et al.* (2003) examined the feasibility of physically removing (by netting and trapping) European perch from small freshwater environments. Although these researchers were able to reduce population numbers through repeated removal efforts, European perch were not completely eradicated from any of the freshwater lakes. Biological controls or chemicals might be effective; however, they would also have lethal effects on native aquatic species. Control measures that would harm other wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the European perch.

Factors That Contribute to Injuriousness for Zander

Current Nonnative Occurrences

The zander was intentionally introduced into Spiritwood Lake (North Dakota) in 1989 for recreational fishing. The North Dakota Game and Fish Department reports a small, established population in this lake (Fuller 2009). The most recent report was of a 32-in (81.3 cm) fish caught by an angler in 2013 (North Dakota Game and Fish 2013). This was the largest zander in the lake reported to date, which could indicate that the species is finding suitable living conditions. We are not aware of any other reports of zanders within the United States. This fish species has been introduced and become established through much of Europe, regions of Asia (China, Kyrgyzstan, and Turkey), and Africa (Algeria, Morocco, and Tunisia). Within Europe, zanders have established populations in Belgium, Bulgaria, Croatia, Cyprus, Denmark, France, Italy, the Netherlands, Portugal, the Azores, Slovenia, Spain, Switzerland, and the United Kingdom.

Potential Introduction and Spread

The zander has been introduced to the United States and a small population exists in Spiritwood Lake, North Dakota. Primary pathways of introduction have

originated with recreational fishing and aquaculture stocking. The zander has also been introduced to control unwanted cyprinids (Godard and Copp 2011). Additionally, the zander disperse unaided into new waterways.

The zander prefers a temperate climate (Froese and Pauly 2014). This species resides in a variety of freshwater and brackish environments, including turbid waters with increased nutrient concentrations (Godard and Copp 2011). The overall climate match is high with a Climate 6 ratio of 0.374. The zander has high climate matches in the Great Lakes region, northern Plains, western mountain States, and Pacific Northwest. Medium climate matches include southern Alaska, western mountain States, central Plains, and mid-Atlantic and New England regions. Low climate matches occur in Florida, along the Gulf Coast, and desert Southwest regions.

If introduced, the zander would likely establish and spread as a consequence of its nature as a generalist predator, ability to hybridize with multiple fish species, extraordinary mobility, long life span (maximum 24 years) (Godard and Copp 2011), and proven invasiveness outside of the native range.

Potential Impacts to Native Species (Including Endangered and Threatened Species)

The zander may affect native fish species by outcompeting and preying on them, transferring pathogens to them, and hybridizing with them. The zander is a top-level predator and competes with other native piscivorous fish species. In Western Europe, increased competition from introduced zanders resulted in population declines of native northern pike and European perch (Linfield and Rikards 1979). If introduced to the United States, the zander is projected to compete with native top-level predators such as the closely related walleye (*Sander vitreus*), sauger (*Sander canadensis*), and northern pike.

The zander is a piscivorous predator with a diet that includes juvenile smelt, ruffe, European perch, vendace, roach, and other zanders (Kangur and Kangur 1998). The zander also feeds on juvenile brown trout and Atlantic salmon (Jepsen *et al.* 2000; Koed *et al.* 2002). Increased predation on juvenile and young fish disrupts the life cycle and reproductive success. Decreased reproductive success results in decreased populations (and sometimes extinction) (Crivelli 1995) of native fish species. If introduced, predation by zander could decrease native populations of cyprinids (minnows, daces, and chub species), salmonids (Atlantic salmon and species of Pacific salmon (*Oncorhynchus* spp.), and yellow perch.

The zander is a vector for the trematode parasite *Bucephalus polymorphus* (Poulet *et al.* 2009), which has been linked to decreased native cyprinid populations in France (Lambert 1997, Kvach and Mierzejewska 2011). This parasite may infect native cyprinid species and result in their population declines.

The zander can hybridize with both the European perch and Volga perch (*Sander volgensis*) (Godard and Copp 2011). Our native walleye and sauger also hybridize (Hearn 1986, Van Zee *et al.* 1996, Fiss *et al.* 1997), providing evidence that species of this genus can readily hybridize. Hence, there is concern that zander may hybridize with walleye (Fuller 2009) and sauger (P. Fuller, pers. comm. 2015). Zander hybridizing with native species could result in irreversible changes to the genetic structure of native species (Schwenk *et al.* 2008). Hybridization can reduce the fitness of a native species and, in some cases, has resulted in drastic population declines leading to endangered classification and, in rare cases, extinction (Mooney and Cleland 2001).

Potential Impacts to Humans

We are not aware of any documented reports of the zander being harmful to humans.

Potential Impacts to Agriculture

The zander may impact agriculture by affecting aquaculture. This species is a vector for the trematode parasite *Bucephalus polymorphus* (Poulet *et al.* 2009), which has been linked to decreased native cyprinid populations in France (Lambert 1997, Kvach and Mierzejewska 2011). This parasite may infect and harm native U.S. cyprinid species involved in the aquaculture industry.

Factors That Reduce or Remove Injuriousness for Zander

Control

An established population of zanders would be both difficult (if not impossible) and costly to control (Godard and Copp 2011). In the United Kingdom (North Oxford Canal), electrofishing was unsuccessful at eradicating localized populations of zander (Smith *et al.* 1996).

Potential Ecological Benefits for Introduction

Zanders have been stocked for biomanipulation of small planktivorous fish (cyprinid species) in a small, artificial impoundment in Germany to improve water transparency with some success (Drenner and Hambright 1999). However, in their discussion on using zanders for biomanipulation, Mehner *et al.* (2004) state that the introduction of nonnative predatory species, which includes the zander in parts of Europe, is not recommended for nature diversity and bioconservation purposes. We are not aware of any other documented ecological benefits of a zander introduction.

Factors That Contribute to Injuriousness for Wels Catfish

Current Nonnative Occurrences

This fish species is not found in the wild in the United States. The wels catfish has been introduced and become established in China; Algeria, Syria, and Tunisia; and the European countries of Belgium, Bosnia-Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Italy, Portugal, Spain, and the United Kingdom (Rees 2012).

Potential Introduction and Spread

The wels catfish has not been introduced to U.S. ecosystems. Potential pathways of introduction include stocking for recreational fishing and aquaculture. This catfish species has also been introduced for biocontrol of cyprinid species in Belgium and through the aquarium and pet trade (Rees 2012). Wels catfish were introduced as a biocontrol for cyprinid fish in the Netherlands, where it became invasive (Rees 2012). Once introduced, this fish species can naturally disperse to connected waterways.

The wels catfish prefers a temperate climate. This species inhabits a variety of freshwater and brackish environments. This species has an overall high climate match with a Climate 6 ratio of 0.302. High climate matches occur in the Great Lakes, western mountain States, West Coast, and southern Alaska. All other regions had a medium or low climate match.

If introduced, the wels catfish is likely to establish and spread. This species is a generalist predator and fast growing, with proven invasiveness outside of the native range. Additionally, this species has a long life span (15 to 30 years, maximum of 80 years) (Kottelat and Freyhof 2007). This species has an extremely high reproductive rate (30,000 eggs per kg of body weight), with the maximum recorded at 700,000 eggs (Copp *et al.* 2009). The wels catfish is highly adaptable to new warmwater environments, including those with low dissolved oxygen levels (Rees 2012). The invasive success of this species is likely to be further enhanced by

increases in water temperature expected to occur with climate change (Rahel and Olden 2008, Britton *et al.* 2010a).

Potential Impacts to Native Species (Including Threatened and Endangered Species)

The wels catfish may affect native species through outcompeting and preying on native species, transferring diseases to them, and altering their habitats. This catfish is a giant predatory fish (maximum 5 m (16 ft), 306 kg (675 lb)) (Copp *et al.* 2009; Rees 2012) that will likely compete with other top trophic-level, native predatory fish for both food and habitat resources. Stable isotope analysis, which assesses the isotopes of carbon and nitrogen from food sources and consumers to determine trophic level cycling, suggests that the wels catfish has the same trophic position as the northern pike (Syväranta *et al.* 2010). Thus, U.S. native species at risk of competition with the wels catfish are top predatory piscivores and may include species such as the northern pike, walleye, and sauger. Additionally, the wels catfish can be territorial and unwilling to share habitat with other fish (Copp *et al.* 2009).

Typically utilizing an ambush technique but also known to be an opportunistic scavenger (Copp *et al.* 2009), the wels catfish are generalist predators and may consume native invertebrates, fish, crayfish, eels, small mammals, birds (Copp *et al.* 2009), and amphibians (Rees 2012). In France, the stomach contents of wels catfish revealed a preference for cyprinid fish, mollusks, and crayfish (Syväranta *et al.* 2010). Birds, amphibians, and small mammals also contributed to the diet of these catfish (Copp *et al.* 2009). This species has been observed beaching itself to prey on land birds on a river bank (Cucherousset 2012). Native cyprinid fish potentially affected include native chub, dace, and minnow fish species, some of which are federally endangered or threatened. Native freshwater mollusks and amphibians may also be affected, some of which are also federally endangered or threatened. Increased predation on native cyprinids, mollusks, crustaceans, and amphibians can result in decreased species diversity and increased food web disruption.

The predatory nature of the wels catfish may also lead to species extirpation (local extinction) or the extinction of native species. In Lake Bushko (Bosnia), the wels catfish is linked to the extirpation of the endangered minnow-nase (*Chondrostoma phoxinus*) (Froese and Pauly 2014). Although nase species are native to Europe, the subfamily Leuciscinae includes several native U.S. species, such as dace and shiner species, which may be similar enough to serve as prey for the catfish.

Furthermore, because the roach can hybridize with other fish species of the subfamily Leuciscinae as stated above, and this subfamily includes several U.S. native species, the roach will likely be able to hybridize with some U.S. native species.

The wels catfish is a carrier of the virus that causes SVC and may transmit this virus to native fish (Hickley and Chare 2004). The spread of SVC can deplete native fish stocks and disrupt the ecosystem food web. SVC transmission would further compound adverse effects of both competition and predation by adding disease to already-stressed native fish.

Additionally, this catfish species excretes large amounts of phosphorus and nitrogen to the freshwater environment (Schaus *et al.* 1997, McIntyre *et al.* 2008). Excessive nutrient input can disrupt nutrient cycling and transport (Boulêtreau *et al.* 2011) that can result in increased eutrophication, increased frequency of algal blooms, and decreased dissolved oxygen levels. These decreases in water quality can affect both native fish and mollusks.

Potential Impacts to Humans

There are anecdotal reports of exceptionally large wels catfish biting or dragging people into the water, as well as reports of a human body in a wels catfish's stomach, although it is not known if the person was attacked or scavenged after drowning (Der Standard 2009; Stephens 2013; National Geographic 2014). However, we have no documentation to confirm harm to humans.

Potential Impacts to Agriculture

The wels catfish could impact agriculture by affecting aquaculture. The wels catfish may transmit the fish disease SVC to other cyprinids (Hickley and Chare 2004, Goodwin 2009). An SVC outbreak could result in mass mortalities among farmed fish stocks at an aquaculture facility.

Factors That Reduce or Remove Injuriousness for Wels Catfish

Control

An invasive wels catfish population would be difficult, if not impossible, to control or manage (Rees 2012). We know of no effective methods of control once this species is introduced because of its ability to spread into connected waterways, high reproductive rate, generalist diet, and longevity.

Potential Ecological Benefits for Introduction

We are not aware of any documented ecological benefits for the introduction of the wels catfish.

Factors That Contribute to Injuriousness for the Common Yabby

Current Nonnative Occurrences

The common yabby has moved throughout Australia, and its nonnative range extends to New South Wales east of the Great Dividing Range, Western Australia, and Tasmania. This crayfish species was introduced to Western Australia in 1932, for commercial farming for food from where it escaped and established in rivers and irrigation dams (Souty-Grosset *et al.* 2006). Outside of Australia, this species has been introduced to China, South Africa, Zambia, Italy, Spain, and Switzerland (Gherardi 2011a) for aquaculture and fisheries (Gherardi 2011a). The first European introduction occurred in 1983, when common yabbies were transferred from a California farm to a pond in Girona, Catalonia (Spain) (Souty-Grosset *et al.* 2006). This crayfish species became established in Spain after repeated introduction to the Zaragoza Province in 1984 and 1985 (Souty-Grosset *et al.* 2006).

Potential Introduction and Spread

The common yabby has not established a wild population with the United States. Souty-Grosset *et al.* (2006) indicated that the first introduction of the common yabby to Europe occurred with a shipment from a California farm. However, there is no recent information that indicates that the common yabby is present or established in the wild within California. Primary pathways of introduction include importation for aquaculture, aquariums, bait, and research. Once it is found in the wild, the yabby can disperse on its own in water or on land.

The common yabby prefers a tropical climate but tolerates a wide range of water temperatures from 1 to 35 °C (34 to 95 °F) (Withnall 2000). This crayfish can also tolerate both freshwater and brackish environments with a wide range of dissolved oxygen concentrations (Mills and Geddes 1980). The overall climate match was high, with a Climate 6 ratio of 0.209 with a high climate match to the central Appalachians and Texas.

If introduced, the common yabby is likely to establish and spread within U.S. waters. This crayfish species is a true diet generalist with a diet of plant material, detritus, and zooplankton that

varies with seasonality and availability (Beatty 2005). Additionally, this species has a quick growth (Beatty 2005) and maturity rate, high reproductive rate, and history of invasiveness outside of the native range. The invasive range of the common yabby is expected to expand with climate change (Gherardi 2011a). The yabby can also hide for years in burrows up to 5 m (16.4 ft) deep during droughts, thus essentially being invisible to anyone looking to survey or control them (NSW DPI 2015).

Potential Impacts to Native Species (Including Endangered and Threatened Species)

Potential impacts to native species from the common yabby include outcompeting native species for habitat and food resources, preying on native species, transmitting disease, and altering habitat. Competition between crayfish species is often decided by body size and chelae (pincer claw) size (Lynas 2007, Gherardi 2011a). The common yabby has large chelae (Austin and Knott 1996) and quick growth rate (Beatty 2005), allowing this species to outcompete smaller, native crayfish species. This crayfish species will exhibit aggressive behavior toward other crayfish species (Gherardi 2011a). In laboratory studies, the common yabby successfully evicted the smooth marron (*Cherax cainii*) and gilgie (*Cherax quinquecarinatus*) crayfish species from their burrows (Lynas *et al.* 2007). Thus, introduced common yabbies may compete with native crustaceans for burrowing space and, once established, aggressively defend their territory.

The common yabby consumes a similar diet to other crayfish species, resulting in competition over food resources. However, unlike most other crayfish species, the common yabby switches to an herbivorous, detritus diet when preferred prey is unavailable (Beatty 2006). This prey-switching allows the common yabby to outcompete native species (Beatty 2006). If introduced, the common yabby could affect macroinvertebrate richness, remove surface sediment deposits resulting in increased benthic algae and compete with native crayfish species for food, space, and shelter (Beatty 2006). Forty-eight percent of U.S. native crayfish are considered imperiled (Taylor *et al.* 2007, Johnson *et al.* 2013). The yabby's preference for small fishes, such as eastern mosquitofish *Gambusia holbrooki* (Beatty 2006), could imply a potential threat to small native fishes.

The common yabby eats plant detritus, algae and macroinvertebrates (such as snails) and small fish (Beatty 2006). Increased predation pressure on macroinvertebrates and fish may reduce populations to levels that are unable to sustain a reproducing population. Reduced populations or the disappearance of certain native species further alters trophic level cycling. For instance, species of freshwater snails are food sources for numerous aquatic animals (fish, turtles) and also may be used as an indicator of good water quality (Johnson 2009). However, in the past century, more than 500 species of North American freshwater snails have become extinct or are considered vulnerable, threatened, or endangered by the American Fisheries Society (Johnson *et al.* 2014). The most substantial population declines have occurred in the southeastern United States (Johnson 2009), where the common yabby has a medium to high climate match. Introductions of the common yabby could further exacerbate population declines of snail species.

In laboratory simulations, this crayfish species also exhibited aggressive and predatory behavior toward turtle hatchlings (Bradsell *et al.* 2002). These results spurred concern about potential aggressive and predatory interactions in Western Australia between the invasive common yabby and that country's endangered western swamp turtle (*Pseudemydura umbrina*) (Bradsell *et al.* 2002). There are six freshwater turtle species that are federally listed in the United States (USFWS Draft Environmental Assessment 2015), all within the yabby's medium or high climate match.

The common yabby is susceptible to the crayfish plague (*Aphanomyces astaci*), which affects European crayfish stocks (Souty-Grosset *et al.* 2006). North American crayfish are known to be chronic, unaffected carriers of the crayfish plague (Souty-Grosset *et al.* 2006). The common yabby can carry other diseases and parasites, including burn spot disease *Psorospermium* sp. (Jones and Lawrence 2001), *Cherax destructor* bacilliform virus (Edgerton *et al.* 2002), *Cherax destructor* systemic parvo-like virus (Edgerton *et al.* 2002), *Pleistophora* sp. microsporidian (Edgerton *et al.* 2002), *Thelohania* sp. (Jones and Lawrence 2001, Edgerton *et al.* 2002, Moodie *et al.* 2003), *Vavraia parastacida* (Edgerton *et al.* 2002), *Microphallus minutus* (Edgerton *et al.* 2002), *Polymorphus biziurae* (Edgerton *et al.* 2002), and many others (Jones and Lawrence 2001, Longshaw 2011). If introduced, the common yabby could spread these diseases among native crayfish species, resulting in decreased populations and changes in ecosystem cycling.

The common yabby digs deep burrows (Withnall 2000). This burrowing behavior has eroded and collapsed banks at some waterbodies (Withnall 2000). Increased erosion or bank collapse results in increased sedimentation, which increases turbidity and decreases water quality.

Potential Impacts to Humans

The common yabby's burrowing behavior undermines levees, berms, and earthen dams. Weakened levees, berms, and dams could result in problems and delays involving water delivery infrastructure. This could be a particular problem in southern Louisiana or the Everglades, where levees and berms are major features for flood control.

Several crayfish species, including the common yabby, can live in contaminated waters and accumulate high heavy metal contaminants within their tissues (King *et al.* 1999, Khan and Nugegoda 2003, Gherardi 2010, Gherardi 2011b). The contaminants can then pass on to humans if they eat these crayfish. Heavy metals vary in toxicity to humans, ranging from no or little effect to causing skin irritations, reproductive failure, organ failure, cancer, and death (Hu 2002, Martin and Griswold 2009). Therefore, the common yabby may directly impact human health by transferring metal contaminants through consumption (Gherardi 2010).

Potential Impacts to Agriculture

The common yabby may affect agriculture by decreasing aquaculture productivity. The common yabby can be host to a variety of diseases and parasitic infections, including the crayfish plague, burn spot disease, *Psorospermium* sp., and thelohaniasis (Jones and Lawrence 2001, Souty-Grosset *et al.* 2006). These diseases and parasitic infections can infect other crayfish species (Vogt 1999) resulting in impaired physiological functions and death. Crayfish species (such as red swamp crayfish (*Procambarus clarkii*)) are involved in commercial aquaculture and increased incidence of death and disease would reduce this industry's productivity and value.

Factors That Reduce or Remove Injuriousness for the Common Yabby

Control

In Europe, two nonnative populations of the common yabby have been eradicated by introducing the crayfish plague. Since this plague is not known to affect North American crayfish species, this may be effective against an introduced common yabby population

(Souty-Grosset *et al.* 2006). However, this control method is not recommended because it would introduce disease into the environment and has the potential to mutate and harm native crayfish. Control measures that would harm native wildlife are not recommended as mitigation to reduce the injurious characteristics of this species and therefore do not meet control measures under the Injurious Wildlife Evaluation Criteria.

Potential Ecological Benefits for Introduction

We are not aware of any potential ecological benefits for introduction of the common yabby.

Conclusions for the 11 Species

Crucian Carp

The crucian carp is highly likely to survive in the United States. This fish species prefers a temperate climate and has a native range that extends through north and central Europe. The crucian carp has a high climate match throughout much of the continental United States, Hawaii, and southern Alaska. If introduced, the crucian carp is likely to spread and become established due to its ability as a habitat generalist, diet generalist, and adaptability to new environments, long life span, and proven invasiveness outside of its native range.

Since the crucian carp is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, hybridization, and disease transmission on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of crucian carp to new locations, or recover ecosystems affected by this species, the Service finds the crucian carp to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Eurasian Minnow

The Eurasian minnow is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Eurasia. In the United States, the Eurasian minnow has a high climate match to the Great Lakes region, coastal New England, central and high Plains, West Coast, and southern Alaska. If introduced, the Eurasian minnow is likely to spread and establish due to its traits as a habitat generalist, generalist predator, adaptability to new environments, increased reproductive potential, long life span, extraordinary mobility, social nature, and proven invasiveness outside of its native range.

Since the Eurasian minnow is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at expanding its range; has negative impacts of competition, predation, and disease transmission on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the Eurasian minnow to new locations, or recover ecosystems affected by this species, the Service finds the Eurasian minnow to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Prussian Carp

The Prussian carp is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) that extends throughout Eurasia. In the United States, the Prussian carp has a high climate match to the Great Lakes region, central Plains, western mountain States, and California. This fish species has a medium climate match to much of the continental United States, southern Alaska, and regions of Hawaii. Prussian carp have already established in southern Canada near the U.S. border, validating the climate match in northern regions. If introduced, the Prussian carp is likely to spread and establish due to its tolerance to poor quality environments, rapid growth rate, ability to reproduce from unfertilized eggs, and proven invasiveness outside of its native range.

Since the Prussian carp is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, habitat alteration, hybridization, and disease transmission on native wildlife (including threatened and endangered species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the Prussian carp to new locations, or recover ecosystems affected by this species, the Service finds the Prussian carp to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Roach

The roach is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Europe, Asia, Australia, Morocco, and Madagascar. The roach has a high climate match to southern and central Alaska, regions of Washington, the Great Lakes region, and western mountain States, and a medium climate match to most of the United States. If introduced, the roach is likely to spread and establish due to its highly adaptive nature toward habitat and diet choice, high reproductive rate, ability to reproduce with other cyprinid species, long life span, extraordinary mobility, and proven invasiveness outside of its native range.

Since the roach is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, hybridization, altered habitat resources, and disease transmission on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the roach to new locations, or recover ecosystems affected by this species, the Service finds the roach to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Stone Moroko

The stone moroko is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Eurasia, Algeria, and Fiji. The stone moroko has a high climate match to the southeast United States, Great Lakes region, central Plains, northern Texas, desert Southwest, and West Coast. If introduced, the stone moroko is likely to spread and establish due to its traits as a habitat generalist, diet generalist, rapid growth rate, adaptability to new

environments, extraordinary mobility, high reproductive rate, high genetic variability, and proven invasiveness outside of its native range.

Since the stone moroko is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, disease transmission, and habitat alteration on native wildlife (including threatened and endangered species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the stone moroko to new locations, or recover ecosystems affected by this species, the Service finds the stone moroko to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Nile Perch

The Nile perch is highly likely to survive in the United States. This fish species is a tropical invasive and its current range (native and nonnative) includes central Africa. In the United States, the Nile perch has an overall medium climate match to the United States. However, this fish species has a high climate match to the Southeast, California, Hawaii, Puerto Rico, and the U.S. Virgin Islands. If introduced, the Nile perch is likely to spread and establish due to its nature as a habitat generalist, generalist predator, long life span, quick growth rate, high reproductive rate, extraordinary mobility, and proven invasiveness outside of its native range.

Since the Nile perch is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, and habitat alteration on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides (including through fisheries); and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the Nile perch to new locations, or recover ecosystems affected by this species, the Service finds the Nile perch to be injurious to the interests of wildlife and wildlife resources of the United States.

Amur Sleeper

The Amur sleeper is highly likely to survive in the United States. Although this fish species native range only includes the freshwaters of China, Russia, North and South Korea, the species has a broad invasive range that extends throughout much of Eurasia. The Amur sleeper has a high climate match to the Great Lakes region, central and high plains, western mountain States, Maine, northern New Mexico, and southeast to central Alaska. If introduced, the Amur sleeper is likely to spread and establish due to its nature as a habitat generalist, generalist predator, rapid growth rate, high reproductive potential, adaptability to new environments, extraordinary mobility, and history of invasiveness outside of its native range.

Considering the Amur sleeper's past history of being released into the wild; ability to survive and establish outside of its native range; success at spreading its range; negative impacts of competition, predation, and disease transmission on native wildlife (including endangered and threatened species); negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the Amur sleeper to new locations, or recover ecosystems affected by this species, the Service finds the Amur sleeper to be injurious to agriculture and to wildlife and wildlife resources of the United States.

European Perch

The European perch is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Europe, Asia, Australia, New Zealand, South Africa, and Morocco. In the United States, the European perch has a medium to high climate match to the majority of the United States except the desert Southwest. This species has especially high climate matches in the southeast United States, Great Lakes region, central to southern Texas, western mountain States, and southern to central Alaska. If introduced, the European perch is likely to spread and establish due to its nature as a generalist predator, ability to adapt to new environments, ability to outcompete native species, and proven invasiveness outside of its native range.

Since the European perch is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, and disease transmission on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the European perch to new locations, or recover ecosystems affected by this species, the Service finds the European perch to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Zander

The zander is highly likely to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Europe, Asia, and northern Africa. In the United States, the zander has a high climate match to the Great Lakes region, northern Plains, western mountain States, and Pacific Northwest. Medium climate matches extend from southern Alaska, western mountain States, central Plains, and mid-Atlantic, and New England regions. If introduced, the zander is likely to spread and establish due to its nature as a generalist predator, ability to hybridize with other fish species, extraordinary mobility, long life span, and proven invasive outside of its native range.

Since the zander is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, parasite transmission, and hybridization with native wildlife; has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the zander to new locations, or recover ecosystems affected by this species, the Service finds the zander to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Wels Catfish

The wels catfish is highly likely to survive to survive in the United States. This fish species prefers a temperate climate and has a current range (native and nonnative) throughout Europe, Asia, and northern Africa. This fish

species has a high climate match to much of the United States. Very high climate matches occur in the Great Lakes region, western mountain States, and the West Coast. If introduced, the wels catfish is likely to spread and establish due to its traits as a generalist predator, quick growth rate, long life span, high reproductive rate, adaptability to new environments, and proven invasiveness outside of its native range.

Since the wels catfish is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, disease transmission, and habitat alteration on native wildlife (including endangered and threatened species); has negative impacts on humans by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the wels catfish to new locations, or recover ecosystems affected by this species, the Service finds the wels catfish to be injurious to agriculture and to wildlife and wildlife resources of the United States.

Common yabby

The common yabby is highly likely to survive in the United States. This crustacean species prefers a tropical climate and has a current range (native and nonnative) that extends to Australia, Europe, China, South Africa, and Zambia. The common yabby has a high climate match to the eastern United States, Texas, regions of Washington, and regions of southern Alaska. If introduced, the common yabby is likely to spread and establish due to its traits as a diet generalist, quick growth rate, high reproductive rate, and proven invasiveness outside of its native range.

Since the common yabby is likely to escape or be released into the wild; is able to survive and establish outside of its native range; is successful at spreading its range; has negative impacts of competition, predation, and disease transmission on native wildlife (including endangered and threatened species); has negative impacts on humans through consumption of crayfish with heavy metal bioaccumulation and by reducing wildlife diversity and the benefits that nature provides; has negative impacts on agriculture by affecting aquaculture; and because it would be difficult to prevent, eradicate, or reduce established populations, control the spread of the common yabby to new locations, or recover ecosystems affected by this species, the Service finds the common yabby to be injurious to humans, to the interests of agriculture, and to wildlife and the wildlife resources of the United States.

Summary of Injurious Wildlife Factors

The Service used the injurious wildlife evaluation criteria (see Injurious Wildlife Evaluation Criteria) and found that all of the 11 species are injurious to wildlife and wildlife resources of the United States, 10 are injurious to agriculture, and the yabby is injurious to humans. Because all 11 species are injurious, the Service proposes to add these 11 species to the list of injurious wildlife under the Act. The table shows a summary of the evaluation criteria for the 11 species.

TABLE: SUMMARY OF INJURIOUS WILDLIFE EVALUATION CRITERIA FOR 11 SPECIES

Species	Factors that contribute to being considered injurious					Factors that reduce the likelihood of being injurious	
	Nonnative occurrences	Potential for introduction and spread	Impacts to native species [1]	Direct impacts to humans	Impacts to agriculture [2]	Control [3]	Ecological benefits for introduction
Crucian Carp	Yes	Yes	Yes	No	Yes	No	No.
Eurasian Minnow	Yes	Yes	Yes	No	Yes	No	Negligible.
Prussian Carp	Yes	Yes	Yes	No	Yes	No	No.
Roach	Yes	Yes	Yes	No	Yes	No	No.
Stone Moroko	Yes	Yes	Yes	No	Yes	No	No.
Nile Perch	Yes	Yes	Yes	No	No	No	No.
Amur Sleeper	Yes	Yes	Yes	No	Yes	No	No.
European Perch	Yes	Yes	Yes	No	Yes	No	No.
Zander	Yes	Yes	Yes	No	Yes	No	Negligible.
Wels Catfish	Yes	Yes	Yes	No	Yes	No	No.
Common Yabby	Yes	Yes	Yes	Yes	Yes	No	No.

[1] Includes endangered and threatened species and wildlife and wildlife resources.
[2] Agriculture includes aquaculture.
[3] Control—"No" if wildlife or habitat damages may occur from control measures being proposed as mitigation.

Required Determinations

Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that the regulatory system must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these principles.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory

flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

The Service has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Of the 11 species, only one population of one species (zander) is found in the wild in the United States. Of the 11 species, one species (yabby) has evidence of being in negligible trade in the United States; three species (crucian carp, Nile perch, and wels catfish) have been imported in only small numbers since 2011; and seven species are not in U.S. trade. Therefore, businesses derive little or no revenue from their sale, and the economic effect in the United States of this proposed rule would be negligible, if not nil. The draft economic analysis that the Service prepared supports this conclusion (USFWS Draft Economic Analysis 2015). In addition, none of the species requires control efforts, and the rule would not impose any additional reporting or recordkeeping requirements. Therefore, we certify that, if made final as proposed, this rulemaking would not have a significant economic effect on small entities, as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rulemaking under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprise to compete with foreign-based enterprises.

The 11 species are not currently in trade or have been imported in only small numbers since 2011, when we specifically began to query the trade data for these species. Therefore, there should be a negligible effect, if any, to small businesses with this proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) does not apply to this proposed rule since it would not produce a Federal mandate or have a significant or unique effect on State, local, or tribal governments or the private sector.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), the proposed rule does not have significant takings implications. Therefore, a takings implication assessment is not required since this rule would not impose significant requirements or limitations on private property use.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required since this rule would not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. The rulemaking has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

Paperwork Reduction Act of 1995

This proposed rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We 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.

National Environmental Policy Act

The Service has reviewed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), Department of the Interior NEPA regulations (43 CFR 46), and the Departmental Manual in 516 DM 8. This action is being taken to protect the natural resources of the United States. A draft environmental assessment has been prepared and is available for review by written request (see **FOR FURTHER INFORMATION CONTACT**) or at *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2013–0095. By adding the 11 species to the list of injurious wildlife, the Service intends to prevent their introduction and establishment into the natural areas of the United States, thus having no significant impact on the human environment.

Clarity of Rule

In accordance with E.O. 12866 and 12988 as well as the Presidential Memorandum of June 1, 1998, all rules must be written in plain language. This means that each published rulemaking must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences;

(e) Use lists and tables wherever possible.

If you feel that this proposed rule has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. This will better help to revise the rulemaking and comments should be as specific as possible. For example, comments should include the numbers of sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections that should include lists or tables.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal

public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This proposed rule involves the prevention of importation and interstate transport of 10 live fish species and 1 crayfish, as well as their gametes, viable eggs, or hybrids, that are not native to the United States. We are unaware of trade in these species by tribes as these species are not currently in U.S. trade, or they have been imported in only small numbers since 2011.

Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references used in this rulemaking is available from *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2013–0095 or from *http://www.fws.gov/injuriouswildlife/.*

Authors

The primary authors of this proposed rule are the staff of the Branch of Aquatic Invasive Species at the Service's Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons discussed within the preamble, the U.S. Fish and Wildlife Service proposes to amend part 16, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 16—INJURIOUS WILDLIFE

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

■ 2. Amend § 16.13 by revising paragraph (a)(2)(v) and by adding paragraphs (a)(2)(vi) through (x). The revision and additions read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) * * *

(v) Any live fish, gametes, viable eggs, or hybrids of the following species in family Cyprinidae:

(A) *Carassius carassius* (crucian carp).

(B) *Carassius gibelio* (Prussian carp).

(C) *Hypophthalmichthys harmandi* (largescale silver carp).

(D) *Hypophthalmichthys molitrix* (silver carp).

(E) *Hypophthalmichthys nobilis* (bighead carp).

(F) *Mylopharyngodon piceus* (black carp).

(G) *Phoxinus phoxinus* (Eurasian minnow).

(H) *Pseudorasbora parva* (stone moroko).

(I) *Rutilus rutilus* (roach).

(vi) Any live fish, gametes, viable eggs, or hybrids of *Lates niloticus* (Nile perch), family Centropomidae.

(vii) Any live fish, gametes, viable eggs, or hybrids of *Perccottus glenii* (Amur sleeper), family Odontobutidae.

(viii) Any live fish, gametes, viable eggs, or hybrids of the following species in family Percidae:

(A) *Perca fluviatilis* (European perch).

(B) *Sander lucioperca* (zander).

(ix) Any live fish, gametes, viable eggs, or hybrids of *Silurus glanis* (wels catfish), family Siluridae.

(x) Any live crustacean, gametes, viable eggs, or hybrids of *Cherax destructor* (common yabby), family Parastacidae.

* * * * *

Dated: September 30, 2015.

Michael J. Bean

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–27366 Filed 10–29–15; 8:45 am]

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM14–14–000; Order No. 816]

Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations that govern market-based rate authorizations for wholesale sales of electric energy, capacity, and ancillary services by public utilities pursuant to the Federal Power Act. This order represents another step in the Commission's efforts to modify, clarify and streamline certain aspects of its market-based rate program. The Commission is eliminating or refining certain existing filing requirements for market-based rate sellers as well as providing clarification regarding several issues. The specific components of this rule, in conjunction with other regulatory activities, are designed to ensure that the market-based rates charged by public utilities are just and reasonable.

DATES: *Effective Date:* This rule will become effective January 28, 2016.

FOR FURTHER INFORMATION CONTACT:

Greg Basheda (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6479.

Carol Johnson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8521.

SUPPLEMENTARY INFORMATION:

Order No. 816

Final Rule

Table of Contents

I. Introduction 1
II. Background 4
III. Overview of Final Rule 12
IV. Discussion 24
A. Horizontal Market Power 24
1. Sellers in RTOs/ISOs 24
2. Sellers With Fully Committed Long-Term Generation Capacity 29
3. Relevant Geographic Market for Certain Sellers in Generation-Only Balancing Authority Areas 45
4. Reporting Format for the Indicative Screens and SIL Submittals 1 and 2 72
5. Competing Imports 84
6. Capacity Ratings 87
7. Reporting of Long-Term Firm Purchases 108
8. Clarification of Commission Language in Performing SIL Studies 146
B. Vertical Market Power—Land Acquisition Reporting 200
1. Commission Proposal 200
2. Comments 202
3. Commission Determination 207
C. Notices of Change in Status 213
1. Geographic Focus 213
2. New Affiliation and Behind-the-Meter Generation 241
3. Reporting of Long-Term Firm Purchases 256
D. Asset Appendix 259
1. Changes to the Existing Columns 260
2. Reporting Power Purchase Agreements 268
3. Clarifications Regarding the Existing Columns 272
4. Changes Regarding OATT Waiver and Citations in Transmission Asset List 295
5. Electronic Format 301
6. Database 308
E. Category 1 and Category 2 Sellers 314
1. Commission Proposal 314
2. Comments 319
3. Commission Determination 320
F. Corporate Families 323
1. Corporate Organizational Charts 323
2. Single Corporate Tariff 336
G. Part 101 and 141 Waivers 339
1. Commission Proposal 339
2. Comments 342
3. Commission Determination 345
H. Miscellaneous Issues 351
1. Regional Reporting Schedule 351
2. Affirmative Statement 354
3. Comments of Barrick 357
V. Section-by-Section Analysis of Regulations 360
VI. Information Collection Statement 370
VII. Environmental Analysis 380
VIII. Regulatory Flexibility Act 381
IX. Document Availability 384
X. Effective Date and Congressional Notification 387
Appendix C to the Final Rule: Regional Reporting Schedule
Appendix D to the Final Rule: Generalized Map of Geographic Regions
Appendix E to the Final Rule: Summary Tables for SIL Calculation
Appendix F to the Final Rule: List of Commenters and Acronyms

Order No. 816

Final Rule

(Issued October 16, 2015)

I. Introduction

1. On June 19, 2014, the Commission issued a Notice of Proposed Rulemaking (NOPR), pursuant to sections 205 and 206 of the Federal Power Act (FPA),[1] in which the Commission proposed to revise its current standards for market-based rates for sales of electric energy, capacity, and ancillary services.[2] The Commission proposed to modify and streamline certain aspects of the Commission's filing requirements to reduce the administrative burden on market-based rate sellers[3] and the Commission.

2. This Final Rule represents another step in the Commission's efforts to modify, clarify and streamline certain aspects of its market-based rate program. Some aspects of this Final Rule eliminate or refine existing filing requirements, while other aspects of the Final Rule require submission of additional information from market-based rate sellers. For example, this Final Rule redefines the default relevant geographic market for an independent power producer (IPP) with generation capacity located in a generation-only balancing authority and requires sellers to report all long-term firm purchases that have an associated long-term firm transmission reservation in their indicative screens and asset appendices. The Final Rule provides clarification on issues including capacity ratings and preparation of simultaneous transmission import limit (SIL) studies. Streamlining is accomplished through, for example, elimination of the land acquisition reporting requirement, reduction in the number of notice of change in status filings due to establishment of a 100 megawatt (MW) threshold for reporting new affiliations, and clarification that sellers need not report behind-the-meter generation in the indicative screens and asset appendices. The specific components of this rule, in conjunction with other regulatory activities, are designed to ensure that the market-based rates charged by public utilities are just and reasonable.

3. Pursuant to sections 205 and 206 of the FPA, the Commission is amending its regulations to revise subpart H to part 35 of title 18 of the Code of Federal Regulations (CFR), which governs market-based rate authorizations for wholesale sales of electric energy, capacity, and ancillary services by public utilities.

II. Background

4. In 1988, the Commission began considering proposals for market-based pricing of wholesale power sales. The Commission acted on market-based rate proposals filed by various wholesale suppliers on a case-by-case basis. Over the years, the Commission developed a four-prong analysis to assess whether a seller should be granted market-based rate authority: (1) Whether the seller and its affiliates lack, or have adequately mitigated, market power in generation; (2) whether the seller and its affiliates lack, or have adequately mitigated, market power in transmission; (3) whether the seller or its affiliates can erect other barriers to entry; and (4) whether there is evidence involving the seller or its affiliates that relates to affiliate abuse or reciprocal dealing.

5. In 2006, the Commission issued a notice of proposed rulemaking, which led to the issuance in 2007 of Order No. 697, which clarified and codified the Commission's market-based rate policy and generally retained the four prong analyses.[4] As to the first prong, the Commission adopted two indicative screens for assessing horizontal market power: The pivotal supplier screen and the wholesale market share screen (with a 20 percent threshold). Each of these uses a ''snapshot in time'' approach based on historical data[5] and serves as a cross check on the other to determine whether sellers may have horizontal market power and should be further examined.[6] The Commission stated that passage of both indicative screens establishes a rebuttable presumption that the seller does not possess horizontal market power. Sellers that fail either indicative screen are rebuttably presumed to have market power and are given the opportunity to present evidence such as a delivered price test (DPT) analysis or historical sales and transmission data to demonstrate that, despite a screen failure, they do not have market power.[7] The Commission specified that in traditional markets (outside regional transmission organization/independent system operator (RTO/ISO) markets), the default relevant geographic market for purposes of the indicative screens is first, the balancing authority area(s) where the seller is physically located, and second, the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority areas).[8] Generally, sellers that are located in and are members of the RTO/ISO may consider the geographic region under the control of the RTO/ISO as the default relevant geographic market for purposes of the indicative screens.[9]

6. With respect to the vertical market power analysis, in cases where a public utility or any of its affiliates owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file, or that the seller or its applicable affiliate has received waiver of the OATT requirement, before granting a seller market-based rate authorization.[10] The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.[11] As such, the Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).[12] In Order No. 697–C, the Commission revised the change in status reporting requirement

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[1] 16 U.S.C. 824d, 824e.

[2] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* FERC Stats. & Regs. ¶ 32,702 (2014) (NOPR).

[3] The term ''seller'' as used in this Final Rule includes sellers that have already been granted market-based rate authority as well as applicants for market-based rate authority, unless otherwise noted.

[4] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007) (Clarifying Order), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[5] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 17.

[6] *Id.* PP 62, 75.

[7] *Id.* P 13; 18 CFR 35.37(c)(3).

[8] The Commission also noted that ''[w]here a generator is interconnecting to a non-affiliate owned or controlled transmission system, there is only one relevant market (*i.e.,* the balancing authority area in which the generator is located).'' Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[9] Where the Commission has made a specific finding that there is a submarket within an RTO/ISO, that submarket becomes a default relevant geographic market for sellers located within the submarket for purposes of the market-based rate analysis. *See Id.* PP 15, 231.

[10] *Id.* P 408.

[11] *Id.* P 440.

[12] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 176.

in section 35.42 of the Commission's regulations to require a market-based rate seller to report the acquisition of control of sites for new generation capacity development on a quarterly basis instead of within 30 days of the acquisition.[13] The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.[14] Finally, as part of the vertical market power analysis, the Commission also requires a seller to make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.[15]

7. If a seller is granted market-based rate authority, the authorization is conditioned on: (1) Compliance with affiliate restrictions governing transactions and conduct between power sales affiliates where one or more of those affiliates has captive customers; [16] (2) a requirement to file post-transaction electric quarterly reports (EQR) with the Commission containing: (a) A summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (b) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter; [17] (3) a requirement to file any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority; [18] and (4) a requirement for large sellers to file updated market power analyses every three years.[19]

8. In Order No. 697, the Commission created two categories of sellers.[20] Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888 [21]); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.[22] Category 1 sellers are not required to file regularly scheduled updated market power analyses. Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.[23] However, the Commission may require an updated market power analysis from any market-based rate seller at any time, including those sellers that fall within Category 1.[24]

9. In Order No. 697, the Commission further stated that through its ongoing oversight of market-based rate authorizations and market conditions, the Commission may take steps to address seller market power or modify rates. For example, based on its review of updated market power analyses, EQR filings, or notices of change in status, the Commission may institute a proceeding under section 206 of the FPA to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since its original market-based rate authorization. The Commission also may, based on its review of EQR filings or daily market price information, investigate a specific utility or anomalous market circumstance to determine whether there has been a violation of RTO/ISO market rules or Commission orders or tariffs, or any prohibited market manipulation, and take steps to remedy any violations.[25]

10. After more than six years of experience with the implementation of Order No. 697, the Commission proposed a number of changes to the market-based rate program which, taken as a whole, it believed would simplify and streamline certain aspects of the market-based rate program and reduce the burden on industry and the Commission, while continuing to ensure that the standards for market-based rate sales of electric energy, capacity and ancillary services result in sales that are just and reasonable. The Commission also proposed a number of changes to improve transparency in the market-based rate program, some of which represent increases in information collected from market-based rate sellers.

11. The Commission received 23 comments in response to the NOPR. A list of commenters is attached as Appendix F.[26]

III. Overview of Final Rule

12. In this Final Rule, we adopt in many respects the proposals contained in the NOPR with further modifications and clarifications and decline to adopt others. Our findings are summarized below.

13. First, with respect to the Commission's horizontal market power analysis, we are not, at this time, adopting the proposal to relieve market-based rate sellers in RTO/ISO markets of the obligation to submit indicative screens. However, we are confirming clarifications and adopting many of the other proposed modifications to the horizontal market power analysis. For example, we clarify that sellers may explain that their generation capacity in the relevant geographic market (including first-tier markets) is fully committed in lieu of submitting indicative screens as part of their horizontal market power analysis. We also clarify that, when the current Commission-accepted SIL values into the relevant market are zero for all four seasons and the seller's and its affiliates' generation capacity in the relevant market is fully committed, the seller does not need to submit indicative screens. In addition, we adopt the NOPR proposal regarding reporting of long-term firm purchases.

14. We adopt the proposal to define the default relevant geographic market for an IPP located in a generation-only balancing authority area as the balancing authority area(s) of each transmission provider to which the IPP's generation-only balancing authority area is directly interconnected. We explain that an IPP should study all of its uncommitted

[13] Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 at P 18; 18 CFR 35.42(d).

[14] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446; 18 CFR 35.37(c).

[15] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447 (clarifying that the obligation in this regard applies to both the seller and its affiliates but is limited to the geographic market(s) in which the seller is located).

[16] 18 CFR 35.39.

[17] 18 CFR 35.10b.

[18] 18 CFR 35.42.

[19] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 3; 18 CFR 35.37(a)(1).

[20] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

[21] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[22] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849 n.1000; 18 CFR 35.36(a).

[23] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

[24] *Id.* P 853.

[25] *Id.* P 5.

[26] Although the Commission did not request reply comments, several commenters nonetheless submitted reply comments. The Commission will reject such reply comments.

generation capacity from the generation-only balancing authority area in the balancing authority area(s) of each transmission provider to which it is directly connected, and we provide examples and clarification of this policy.

15. We amend the indicative screen reporting format and require that the horizontal market power indicative screens and SIL Submittals 1 and 2 be filed in workable electronic spreadsheets. We find that solar photovoltaic and solar thermal facilities are energy limited. However, we determine that, due to their unique characteristics, solar photovoltaic facilities, unlike other energy-limited facilities, must use nameplate capacity and may not use historical five-year average capacity factors.

16. We adopt the proposal to require a market-based rate seller to report in its indicative screens and asset appendix all of its long-term firm purchases of capacity and/or energy that have an associated long-term firm transmission reservation regardless of whether the market-based rate seller has control over the generation capacity supplying the purchased power. We also adopt a modified formula for converting energy to capacity, and make corresponding changes to the change in status reporting requirements.

17. We confirm most of the clarifications proposed in the NOPR regarding the SIL studies and provide some additional clarifications in response to comments.

18. With respect to the Commission's vertical market power analysis, we adopt the proposal to eliminate the requirement that market-based rate sellers file quarterly land acquisition reports and provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses. With respect to other change in status proposals, we clarify that the 100 MW threshold does *not* include generation capacity that can be imported from first-tier markets. Similarly, we find that applicants and sellers are *not* limited to nameplate ratings when determining the 100 MW threshold. We have reconsidered the proposed clarification that market-based rate sellers must account for behind-the-meter generation in their indicative screens and asset appendices and find that behind-the-meter generation need not be accounted for in the indicative screens and asset appendices and will not count towards the 100 MW change in status threshold or the 500 MW Category 1 seller threshold.

19. We also adopt a 100 MW change in status threshold for reporting new affiliations to align with the existing 100 MW threshold for reporting net increases in generation capacity.

20. We adopt changes to the asset appendix that sellers must submit with most market-based rate filings, and will also require that the asset appendix be submitted in an electronic format that can be searched, sorted, and otherwise accessed using electronic tools. In addition, based on comments received, we will add two additional worksheets to the asset appendix, one for end notes and another for long-term firm purchases. We provide some additional clarifications on the asset appendix as well.

21. We adopt the NOPR proposal to require a seller filing an initial application for market-based rate authority, an updated market power analysis, or a notice of change in status reporting new affiliations to include a corporate organizational chart. However, we clarify that the organizational chart need only to include the seller's affiliates as defined in section 35.36(a)(9) of the Commission's regulations rather than all upstream owners, ''energy subsidiaries'' and ''energy affiliates.''

22. We adopt the NOPR proposal and clarify that granting waiver of 18 CFR part 101 under market-based rate authority does not waive the requirements under Part I of the FPA for hydropower licensees. In addition, we clarify how hydropower licensees that only make sales at market-based rates may satisfy the requirements in part 101 of the Commission's regulations (Uniform System of Accounts), and confirm that hydropower licensees that have Commission-approved cost-based rates are required to comply with the full requirements of the Uniform System of Accounts.

23. We also provide clarifications in the Final Rule with regard to simplifying assumptions, the criteria for determining seller category status, how to file a single corporate tariff, the regional reporting schedule, and the vertical affirmative statement obligation.

IV. Discussion

A. Horizontal Market Power

1. Sellers in RTOs/ISOs

a. Commission Proposal

24. Section 35.37 of the Commission's regulations requires market-based rate sellers to submit market power analyses: (1) When seeking market-based rate authority; (2) every three years for Category 2 sellers; and (3) at any other time the Commission requests a seller to submit an analysis. A market power analysis must address a seller's potential to exercise horizontal and vertical market power. If an RTO/ISO seller [27] fails the indicative screens for the RTO/ISO, it can seek to obtain or retain market-based rate authority by relying on Commission-approved RTO/ISO monitoring and mitigation.[28]

25. The Commission proposed to not require sellers in RTO/ISO markets to submit indicative screens as part of their horizontal market power analyses if they rely on Commission-approved monitoring and mitigation to prevent the exercise of market power. Under the proposal, RTO/ISO sellers instead would simply state that they are relying on such mitigation to address any potential market power they might have, and describe their generation and transmission assets and provide an asset appendix with a list of generation assets and entities with market-based rate authority (generation list) and a list of transmission assets and natural gas intrastate pipelines and gas storage facilities (transmission list). Under this proposal, all RTO/ISO sellers seeking market-based rate authority in an RTO/ISO market would make an initial filing, consistent with current practice, and those sellers required to file updated market power analyses every three years (*i.e.,* Category 2 sellers) would continue to make their scheduled filings. The Commission noted that it would retain the ability to require an updated market power analysis, including indicative screens, from any market-based rate seller at any time.

b. Comments

26. Some commenters support the Commission's proposal to allow market-based rate sellers in RTO/ISO markets with Commission-approved monitoring and mitigation to not file indicative screens when submitting initial applications requesting market-based rate authority and updated market power analyses.[29] Some commenters

[27] RTO/ISO sellers are sellers that study an RTO, ISO, and submarkets therein as a relevant geographic market.

[28] In Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111, the Commission stated that ''to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved [RTO/ISO] market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns.''

[29] American Electric Power Service Corporation (AEP) at 4–5; Electric Power Supply Association (EPSA) at 3–4; FirstEnergy Service Company (FirstEnergy) at 4–5; Golden Spread Electric Cooperative, Inc. (Golden Spread) at 6; NextEra

Continued

request that the Commission clarify aspects of its proposal [30] or extend the proposal to additional circumstances.[31] Some commenters oppose the Commission's proposal, raising issues regarding the Commission's legal authority to eliminate the indicative screens [32] or the effectiveness of RTO/ISO monitoring and mitigation.[33] For example, Potomac Economics agrees with the general principal underlying the Commission's proposal, but states that in some cases, participants selling into RTO markets may be exempt from certain market power mitigation measures or the mitigation measures may not be fully effective and that the Commission's proposal may allow some participants with potential market power to sell at market-based rates without this market power being fully addressed.[34] APPA/NRECA contend that the proposal is a fundamental departure from the market-based rate scheme that the courts have previously upheld.[35]

c. Commission Determination

27. The Commission received 15 comments on this issue from a wide variety of market participants. Indeed, this was one of the most widely commented upon aspects of the Commission's NOPR. The comments included those who fully support the Commission's proposal, those who favor only portions of it, those who seek clarification of it and those who oppose it. And among those who oppose it, there are various reasons for their opposition, which include legal, economic, and implementation issues. While the Commission considers further the issues that were raised in these comments, we are not prepared to adopt at this time the proposal in the NOPR and will continue with our current practice of requiring that sellers in RTO/ISO markets submit the indicative screens when submitting initial applications requesting market-based rate authority and updated market power analyses and relying on the Commission-approved market monitoring and mitigation. We will transfer the record on this aspect of the NOPR to Docket No. AD16–8–000 for possible consideration in the future as the Commission may deem appropriate.

28. Because we continue to value the information obtained through the indicative screens and are not prepared at this time to adopt the proposal, market-based rate sellers in RTO/ISO markets must continue to submit the indicative screens as part of their horizontal market power analysis unless the seller and its affiliates do not own or control generation capacity or all of their capacity is fully committed. We will continue to allow sellers to seek to obtain or retain market-based rate authority by relying on Commission-approved RTO/ISO monitoring and mitigation in the event that such sellers fail the indicative screens for the RTO/ISO markets.[36]

2. Sellers With Fully Committed Long-Term Generation Capacity

a. Commission Proposal

29. The Commission has found that, if generation is committed to be sold on a long-term firm basis to one or more buyers and cannot be withheld by a seller, it is appropriate for a seller to deduct such capacity when performing the indicative screens.[37] In the NOPR, the Commission clarified that where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets including first-tier balancing authority areas or markets is fully committed, sellers may satisfy the Commission's market-based rate requirements regarding horizontal market power by explaining that their capacity is fully committed in lieu of including indicative screens in their filings. The Commission proposed to clarify that, in order to qualify as ''fully committed,'' a seller must commit the generation capacity so that none of it is available to the seller or its affiliates for one year or longer.

30. The Commission proposed that sellers claiming that all of their relevant generation capacity [38] is fully committed would have to include the following information: the amount of generation capacity that is fully committed, the names of the counterparties, the length of the long-term contract, the expiration date of the contract, and a representation that the contract is for firm sales for one year or longer. The Commission stated that in order to qualify as fully committed, the commitment of the generation capacity cannot be limited during that 12-month consecutive period in any way, such as limited to certain seasons, market conditions, or any other limiting factor. Furthermore, the Commission stated that a seller's generation would not qualify as fully committed if, for example, the seller has generation necessary to serve native load, provider of last resort obligations, or a contract that could allow the seller to reclaim, recall, or otherwise use the capacity and/or energy or regain control of the generation under certain circumstances (such as transmission availability clauses).

31. Additionally, the Commission stated that, consistent with the existing regulations, a change in status filing will be required when a long-term firm sales agreement expires if it results in a net increase of 100 MW or more.[39]

b. Comments

32. Many commenters support the Commission's proposal.[40] For example, EPSA agrees with the Commission's assessment that the study of uncommitted generation in indicative screens becomes a purely mathematical task and provides no significant additional information when sellers' fully-committed long-term capacity is deducted from the indicative screens.[41] NextEra, also agreeing with the Commission's proposal, states that where all generation owned or controlled by sellers and their affiliates is fully committed to purchasers not affiliated with the seller, the ability to exercise market power is severely limited or non-existent.[42] FirstEnergy states that it supports the proposal because a seller whose generation capacity is fully committed on a long-term basis lacks the ability to exercise horizontal market power by withholding such capacity from the market.[43]

33. NRG Companies also support the proposal and request that the Commission clarify that even if the seller and/or its affiliates have uncommitted capacity in one or more

Energy, Inc. (NextEra) at 2; Subsidiaries of NRG Energy, Inc. (NRG Companies) at 8–9.

[30] *See, e.g.,* E.ON Climate & Renewables North America LLC (E.ON) at 3–4; Southern California Edison Company (SoCal Edison) at 16; Julie Solomon and Matthew Arenchild (Solomon/Arenchild) at 2; Edison Electric Institute (EEI) at 6.

[31] *See, e.g.,* FirstEnergy at 10; AEP at 6; EEI at 7.

[32] American Antitrust Institute (AAI) at 3–7; American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA) at 6–21; Transmission Access Policy Study Group (TAPS) at 1–2, 5–9, 17–18.

[33] Potomac Economics at 3–4.

[34] Potomac Economics at 2.

[35] APPA/NRECA at 8–10 (citing *Mont. Consumer Counsel v. FERC,* 659 F.3d 910; *California ex rel. Lockyer v. FERC,* 383 F.3d 1006 (9th Cir. 2004) (*Lockyer*); *Blumentha v. FERC,* 552 F.3d 875,882 (D.C. Cir. 2009) (*Blumenthal*)).

[36] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 11.

[37] *See id.* P 41.

[38] ''Relevant'' generation capacity refers to seller and affiliated capacity in the study area, including the first tier.

[39] The Commission noted that such a change would be a departure from the characteristics the Commission relied upon in granting market-based rate authority. *See* 18 CFR 35.42(a).

[40] EPSA at 4; Solomon/Arenchild at 2; NextEra at 3; EEI at 8; FirstEnergy at 7; NRG Companies at 10.

[41] EPSA at 5.

[42] NextEra at 3.

[43] FirstEnergy at 7.

first-tier markets, no indicative screens will be required if all of their generation capacity in the relevant market is fully committed under long-term contracts and (1) the simultaneous import limitation for the relevant market is zero, indicating that no capacity can be imported from affiliates in first-tier markets, or (2) neither the seller nor its affiliates have firm transmission rights into the relevant market from any first-tier market in which its affiliates have uncommitted capacity.[44]

34. NextEra states that there is no need to provide screens in balancing authority areas where all generation owned or controlled by sellers and their affiliates is fully committed to purchasers not affiliated with the seller and further requests that the Commission not require screens if there is uncommitted capacity in any first-tier market when 100 percent of the seller's generation capacity in the relevant market is fully committed.[45]

35. EPSA requests clarification that the proposed term ''fully committed'' would also apply to circumstances where a seller retains the right to sell capacity to a second buyer, but only when the first buyer under the long-term contract waives the right to purchase. EPSA explains that if the buyer under a long-term contract has the right to call on the full output of the seller's generation, and the seller may only offer the capacity to a second buyer when the first buyer foregoes its purchase right, then that capacity should be considered fully committed and thus, excluded from the indicative screens.[46]

36. Solomon/Arenchild state that the Commission's proposal that the exemption from the submittal of screens depends, in part, on whether the seller has uncommitted capacity in first-tier markets is inconsistent with its general approach in defining geographic markets and when screens are required. They recommend that the Commission's proposal be amended. In the NOPR, the Commission stated that ''where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets *including first-tier balancing authority areas or markets* is fully committed, sellers may explain that their capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the Commission's market-based rate requirements regarding horizontal market power.''[47] Solomon/Arenchild propose that the language ''including first-tier balancing authority areas or markets'' be excluded.[48] Alternatively, they state that the definition could be modified to only include first-tier supply that has a corresponding long-term firm transmission agreement into the relevant balancing authority area.[49]

37. With regard to the information a seller must provide, NextEra seeks clarification on the phrase ''firm sales for one year or longer.'' NextEra requests that the Commission clarify that the term ''firm'' has the same meaning as in the Commission's EQR Data Dictionary, where it is defined as ''a service or product that is not interruptible for economic reasons.''[50]

38. NextEra does not oppose the Commission's proposal to require that sellers provide the expiration date of the contract in updated market power analyses, but NextEra states that it does not agree with requiring this information in initial market-based rate applications. NextEra states that, more often than not, at the time a seller files for market-based rate authority, the expiration date is unknown.[51] EEI does not support requiring the expiration date and notes that the expiration date is reported separately in EQR filings.[52]

c. Commission Determination

39. Consistent with the NOPR, the Commission clarifies here that when all of a seller's generation capacity is sold on a long-term firm basis to one or more buyers, the seller has no uncommitted capacity and in such cases will not be required to file the indicative screens. Sellers may explain that their generation capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the Commission's market-based rate requirements regarding horizontal market power in instances where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets, including first-tier balancing authority areas or markets, is fully committed. We clarify that to qualify as fully committed, a seller must commit the capacity to a non-affiliated buyer so that none of it is available to the seller or its affiliates for one year or longer. We also adopt the proposal that for those sellers claiming that all of their relevant capacity is fully committed they must include the following information: The amount of generation capacity that is fully committed, the names of the counterparties, the length of the long-term contract, the expiration date of the contract, and a representation that the contract is for firm sales for one year or longer. In order to qualify as fully committed, the commitment of the generation capacity cannot be limited during that 12-month consecutive period in any way, such as limited to certain seasons, market conditions, or any other limiting factor. As stated in the NOPR, a seller's generation would not qualify as fully committed if, for example, that generation is needed for the seller to meet its native load or provider of last resort obligations, or the power sales contract in question could allow the seller to reclaim, recall, or otherwise use the generation capacity and/or energy or regain rights to the generation under certain circumstances (such as transmission availability clauses). Additionally, a change in status filing will be required when a long-term firm sales agreement expires if it results in a net increase of 100 MW or more.

40. We do not adopt the suggestions by NRG Companies, NextEra, and Solomon/Arenchild regarding capacity in first-tier markets. We will not implement NRG Companies' and NextEra's proposals that the Commission not require sellers to submit indicative screens even if they have uncommitted capacity in one or more first-tier markets as long as all of the seller's capacity in the relevant market is fully committed. A seller may fail an indicative screen in a market where it does not have any uncommitted capacity due to its imports into the study area.[53] However, when the current Commission-accepted SIL values into the relevant market are zero for all four seasons, the seller does not have to consider imports in its market-power studies. Therefore, we clarify that if the seller's capacity in the relevant market is fully committed and all the SIL values into the relevant market are zero, the seller does not need to submit the indicative screens.

41. We do not adopt the suggestion from Solomon/Arenchild to only consider first-tier supply that has long-term firm transmission rights into the relevant market. First-tier generation capacity without long-term firm

[44] NRG Companies at 10–11.

[45] NextEra at 4.

[46] EPSA at 5.

[47] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 43 (emphasis added).

[48] Solomon/Arenchild at 2–3.

[49] *Id.* at 3.

[50] NextEra at 4–5 (citing *http://www.ferc.gov/docs-filing/eqr/order770/data-dictionary.pdf*).

[51] *Id.* at 5.

[52] EEI at 8.

[53] For example, this can occur when a seller is relatively large and the study area is relatively small and relies significantly on imports to meet its load obligations.

transmission rights still can be imported into the relevant market as long as the SIL value is not zero; albeit on a non-firm, *pro rata* basis.[54] The SIL values used in the Commission's horizontal market power analysis are net of long-term firm transmission reservations. While a seller's *pro rata* share of the SIL value or transmission capacity that may be used to import generation capacity from the first-tier ultimately may be small, it should not be ignored.

42. We also decline to adopt EPSA's request that we clarify that a seller's generation capacity is fully committed where the seller retains the right to sell capacity to a second buyer.[55] We are concerned that permitting a more flexible definition of fully committed could create the potential for sellers to claim that their contracts meet the standard for fully committed even where it is not clear that the capacity's output is fully committed. Moreover, the contract-specific analysis could create inconsistencies in the way data is reported.

43. With regard to NextEra's request that the Commission clarify that ''firm'' has the same meaning as in the Commission's EQR Data Dictionary, we clarify here that the term ''firm'' means a ''service or product that is not interruptible for economic reasons,'' as it is defined in the Commission's EQR Data Dictionary.

44. We believe that NextEra raises a valid point concerning unknown expiration dates. Therefore, we clarify here that if a contract expiration date is unknown at the time of the market-based rate filing, the seller must follow up with an informational filing, in the docket in which the seller was granted market-based rate authorization, to inform the Commission of the contract expiration date, within 30 days of the date becoming known. In response to EEI's argument that the expiration date is reported separately in EQR filings, we note many contracts reported in EQR filings do not include expiration dates. Further, there can be a time gap between when a seller receives market-based authority and when it submits its EQR. This time gap may be as large as 120 days, and would not meet the need for this information. Therefore, we will require expiration date information to show that generation capacity is fully committed.

3. Relevant Geographic Market for Certain Sellers in Generation-Only Balancing Authority Areas

a. Commission Proposal

45. In the NOPR, the Commission noted that ''the horizontal market power analysis centers on and examines the balancing authority area where the seller's generation is physically located'' [56] and that the default relevant geographic market under both indicative screens ''will be first, the balancing authority area where the seller is physically located [the seller's home balancing authority area] and second, the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority area markets).'' [57] However, the Commission noted that ''[w]here a generator is interconnecting to a non-affiliate owned or controlled transmission system, there is only one relevant market (*i.e.,* the balancing authority area in which the generator is located).'' [58] Similarly, the Commission noted that RTO/ISO sellers are required ''to consider, as part of the relevant market, only the relevant [RTO/ISO] market and not first-tier markets to the [RTO/ISO].'' [59]

46. The Commission noted that Order No. 697 stated that a ''balancing authority area means the collection of generation, transmission, and loads within the metered boundaries of a balancing authority, and the balancing authority maintains load/resource balance within this area.'' [60] The Commission further noted that, given that generation-only balancing authority areas do not have any load, these balancing authority areas do not appear to meet the Commission definition of a default relevant geographic market. In light of the unusual and complex circumstances that are associated with defining the relevant geographic market of an IPP located in a generation-only balancing authority area, and in light of the fact that a generation-only balancing authority area is not a market, the Commission proposed in the NOPR that the default relevant geographic market(s) for such a seller would be the balancing authority areas of each transmission provider to which its generation-only balancing authority area is directly interconnected. The Commission proposed that such IPP seller study all of its uncommitted generation capacity from the generation-only balancing authority area in the balancing authority area(s) of each transmission provider to which it is directly interconnected, since all such uncommitted capacity could potentially be sold into any of the markets that are directly interconnected to the IPP's generation-only balancing authority area, even if the IPP has not sold into that market.

47. In the NOPR, the Commission stated that ''[f]or purposes of market power analyses for market-based rate authority, we propose to define an IPP as a generation resource that has power production as its primary purpose, does not have any native load obligation, is not affiliated with any transmission owner located in the first-tier markets in which the IPP is competing and does not have an affiliate with a franchised service territory. This IPP could also have an OATT waiver on file with the Commission.'' [61]

48. To illustrate the NOPR proposal, the Commission explained that if an IPP is located in a generation-only balancing authority area that is embedded within a transmission provider's balancing authority area, and that balancing authority area is the only balancing authority area that the IPP's generation-only balancing authority area is directly interconnected with, then the IPP would provide indicative screens for that transmission provider's balancing authority area.[62]

49. The Commission provided another example for an IPP located in a generation-only balancing authority area in a remote area such as the desert southwest. In that case, the IPP would have to provide indicative screens for the balancing authority area(s) of the transmission provider(s) to which its generation-only balancing authority area

[54] Stated another way, if the SIL value is not zero, and the seller has uncommitted generation capacity in a first-tier market, that uncommitted capacity is capable of reaching the study area and will affect the market power analysis. However, a seller's first-tier uncommitted capacity has to compete with non-affiliated first-tier uncommitted capacity to enter the study area, so the Commission allows sellers to allocate to themselves a portion of the SIL value based on the percentage of uncommitted generation capacity they and their affiliates own in the aggregated first-tier area in relation to the total amount of uncommitted generation capacity in this area. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 373–375.

[55] Here we are referring to a situation in which the seller retains rights to sell the same generation capacity to a second buyer. We are not referring to a contractual arrangement whereby capacity is fully committed but is sold to multiple buyers; *e.g.,* 500 MW of a 1,000 MW unit is sold to buyer A, while the remaining 500 MW of the unit is sold to buyer B, with A and B having exclusive rights to their respective shares of the unit.

[56] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 47 (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 37).

[57] *Id.* (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232).

[58] *Id.* (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217).

[59] *Id.* (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 231 n.215).

[60] *Id.* P 51.

[61] *Id.* P 49 n.50.

[62] The Commission proposed that an IPP in this situation would not need to study the transmission provider's balancing authority first-tier markets, just as would be the case if that generator were similarly located in the transmission provider's balancing authority area.

is directly interconnected. The IPP would assume that all of its uncommitted capacity could compete in each balancing authority area of the transmission provider(s) to which its generation-only balancing authority area is directly interconnected, since all such uncommitted capacity could potentially be sold in each market to which there is a direct interconnection, even if the IPP has not sold into that market in the past. An IPP in this situation would not need to study any first-tier markets.[63]

50. For an IPP in a generation-only balancing authority area directly interconnected to a transmission provider at an energy trading hub, the Commission proposed that the IPP would provide indicative screens that study itself in the balancing authority area of each transmission provider that is directly interconnected at the trading hub. Thus, the balancing authority areas that are directly interconnected at the hub would each be relevant geographic markets for that IPP, and the IPP would provide indicative screens that study the IPP in each of those transmission providers' balancing authority areas. The Commission proposed that the IPP would provide indicative screens that assume that all of its uncommitted capacity may compete in each of the balancing authority areas that are directly interconnected at that trading hub, since all such uncommitted capacity could potentially be sold in each market to which there is a direct interconnection, even if the IPP has not sold into that market in the past. The IPP in this situation would not need to provide indicative screens that study itself in any markets that are first-tier to the various balancing authority areas that are directly interconnected at the trading hub.

b. Comments

51. Solomon/Arenchild agree in principal with the Commission's proposal to define relevant geographic market(s) for sellers located in generation-only balancing area as the balancing authority areas of each transmission provider to which the generation-only balancing authority area is directly interconnected. Solomon/Arenchild suggest that the Commission confirm that the proposal also applies to quasi-generation-only balancing authority areas, such as Ohio Valley Electric Corporation and Alcoa Power Generating, Inc.—Yadkin Division. According to Solomon/Arenchild, in these quasi-generation-only balancing authority areas, generation was built to serve load in a balancing authority area, but there is no longer any material load present in the balancing authority area.[64]

52. However, Solomon/Arenchild voice concerns with the Commission's proposal to have an IPP provide screens that study the IPP in the balancing authority area of each transmission provider that is directly interconnected at the trading hub. Citing the example in the NOPR regarding IPPs interconnected to the Hassayampa switchyard, Solomon/Arenchild state that, as proposed, the solution is overly burdensome and likely to have unintended consequences.[65] They explain that the Commission's proposal, as they understand it, would require New Harquahala Generating Company, LLC (Harquahala) and Arlington Valley, LLC (Arlington Valley) to each perform indicative screens for all Arizona Nuclear Power Project switchyard participants. They state that this would be at least six balancing authority areas and perhaps more, resulting in a "significant increase in the scope of the analysis and the burden." [66]

53. Solomon/Arenchild also argue that the proposal does not clarify many of the steps that must be considered. They state that a seller has to determine if each of the analyses require a presumption that 100 percent of the output of each of the relevant merchant generators can be "imported" into each of the six or more balancing authority areas. They further state that the SIL studies done by the transmission owners in the region would have to be aligned with the analyses and they question whether that means that each of the balancing authority areas would be required to conduct two SIL studies—one that assumes each of the potentially relevant generators reside "within" their balancing authority areas and one that does not. Solomon/Arenchild also question whether Harquahala and Arlington Valley should be singled out from their other counterparts who are also interconnected at Hassayampa, merely because they reside in a generation-only balancing authority area.[67]

54. Solomon/Arenchild state that the proposal to conduct indicative screens for multiple interconnected balancing authority areas appears to merely create multiple opportunities for the generator in a generation-only balancing authority area to fail an indicative screen. Solomon/Arenchild further state that in proposing that each generator consider multiple relevant balancing authority areas, it seems that the Commission is acknowledging the highly interconnected nature of the region (a key reason for the existence of a "hub"), while still rejecting the proposition that a "hub" itself can be a relevant market. Solomon/Arenchild explain that it is worth noting that in the Western Interconnection (unlike in the Eastern Interconnection), load flow models such as those underlying the SIL analyses are based not on individual balancing authority areas, but on "areas" that more closely approximate real world conditions.[68]

55. Solomon/Arenchild state that the proposal could have significant market-distortive effects. Solomon/Arenchild postulate that if a generator fails an indicative screen in the Salt River Project balancing authority area, but not in the Arizona Public Service balancing authority area, the Salt River Project balancing authority area may lose opportunities to purchase at market-based rates, and generators may lose opportunities to sell at market-based rates. Solomon/Arenchild contend that this would not occur if somewhat broader markets are considered. Solomon/Arenchild conclude that, in the absence of creating broader markets for generation-only balancing authority areas like those at Hassayampa, the Commission should not change its current practice. That is, sellers in generation-only balancing authority areas should use as the default relevant market, the directly interconnected balancing authority areas and that the scope of such definitions be evaluated on a case-by-case basis.[69]

56. Lastly, Solomon/Arenchild request that the Commission clarify that, to the extent that a seller fails the indicative screens in the balancing authority area(s) to which it is directly interconnected, sales at the "hubs" be treated as "at the metered boundary" of a seller's mitigated balancing authority

[63] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[64] Solomon/Arenchild at 15.

[65] The Commission explained in the NOPR that if an IPP in a generation-only balancing authority area in the Arizona desert is directly interconnected to a transmission provider at the Palo Verde trading hub at the Palo Verde and Hassayampa switchyards, then it would provide screens that study all of its uncommitted capacity in each balancing authority area that is directly interconnected at the switchyard. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 56.

[66] Solomon/Arenchild at 15–17 (citing NOPR, FERC Stats. & Regs. ¶ 32,702 at P 56).

[67] *Id.* at 17.

[68] *Id.* at 17–18 (noting that Western Electricity Coordinating Council transmission models used an "Area 14," which covers the Arizona "region" as the basis for SIL studies rather than the individual balancing authority areas).

[69] *Id.* at 18.

area, and hence, allow market-based rate sales at the hubs.[70]

57. Romkaew Broehm and Gerald A. Taylor (Broehm/Taylor) agree with the Commission's logic in proposing to define relevant markets as the balancing authority areas that are directly interconnected to the generation only-balancing authority area. However, Broehm/Taylor encourage the Commission to look beyond its default market rule when defining a proper relevant geographic market for a market power analysis for all sellers. Broehm/Taylor question whether a seller's home balancing authority area and its first-tier balancing authority area would be adequate for determining relevant default markets. According to Broehm/Taylor, during the 2000–2001 Western power crisis experience, suppliers with generation more than two wheels away could easily reach the California buyers and became pivotal sellers, simply by having firm transmission rights at the key interfaces.[71] Broehm/Taylor explain that if the Commission were to require sellers to report all of their transmission reservation data, a seller with reservations on a path from a first-tier to a second-tier balancing authority area would need to perform a market power analysis for the second-tier balancing authority area.[72] Broehm/Taylor state that this suggests that the Commission should expand its review to consider other information, such as sellers' transmission reservation data. Broehm/Taylor therefore recommend that the Commission require all sellers to summarize their historical short-term trade patterns outside their home balancing authority area and report their firm transmission service reservations of one month or longer as part of their triennial updated market power analysis filing. Broehm/Taylor state that sellers are required to report this information to the Commission via EQRs and that this information can be used to determine whether or not the default geographic markets as defined by the Commission are adequate for purposes of market power analyses.[73]

58. EPSA generally supports the proposal, but suggests consistent treatment in the Commission's evaluation of nested balancing authority areas. It requests that the Commission clarify that it will implement the proposal in such a manner to ensure that as long as there is network deliverability from the nested balancing authority areas through the interconnected balancing authority areas and to the first-tier balancing authority areas, those first-tier balancing authority areas should be included in the indicative screens of sellers in the generation-only balancing authority areas. According to EPSA, this approach would more accurately reflect the geographic area in which the energy from the nested balancing authority area is available and with which it can compete. They also state that this approach would be consistent with the analysis for an IPP's balancing authority area that is connected to a trading hub.[74]

59. NRG Companies request that the Commission clarify that if a seller in a generation-only balancing authority area fails the indicative market power screens and surrenders or loses market-based rate authorization to sell in one or more of the markets connected to the trading hub, the seller will still be allowed to make market-based rate sales at the trading hub, as long as it retains market-based rate authorization in at least one of the balancing authority areas interconnected to the trading hub. NRG Companies state that such clarification is consistent with the Commission's holding in Order No. 697 that a seller that has lost market-based rate authorization and is making sales subject to cost-based mitigation may continue to ''make market-based rate sales at the metered boundary between a mitigated balancing authority area and a balancing authority in which the seller has market-based rate authority.'' [75]

60. EEI encourages the Commission to clarify that IPPs connected to a hub would need to perform the market power analyses only for the home market of each transmission provider connected to the hub, not the transmission provider's first-tier adjacent markets, and that the IPPs could conduct a single analysis, not separate ones for each provider's market. EEI also requests the Commission consider whether a similar approach could be used for entities that are not IPPs and for entities that have a *de minimis* amount of load in their balancing authority areas.[76]

c. Commission Determination

61. We adopt the NOPR proposal to define the default relevant geographic market(s) for an IPP located in a generation-only balancing authority area as the balancing authority areas of each transmission provider to which the IPP's generation-only balancing authority area is directly interconnected. For purposes of this provision, we define an eligible IPP as a generation resource that has power production as its primary purpose, does not have any native load obligation, is not affiliated with any transmission owner located in the target or first-tier markets in which the IPP is competing and does not have an affiliate with a franchised service territory.[77]

62. We also adopt the proposal for such an IPP to study all of its uncommitted generation capacity from the generation-only balancing authority area in the balancing authority area(s) of each transmission provider to which it is directly interconnected. We clarify that we do not consider other generation-only balancing authority areas to which an IPP may be interconnected to be balancing authority areas of transmission providers. If an IPP is located in a generation-only balancing authority area that is embedded within a transmission provider's balancing authority area, and that balancing authority area is the only balancing authority that the IPP's generation-only balancing authority area is directly interconnected with, then the IPP only needs to study that transmission provider's balancing authority area. An IPP in this situation would not need to study the transmission provider's first-tier markets. An example of this situation is NaturEner Power Watch, LLC (NaturEner), which has a generation-only balancing authority area that is located within the NorthWestern Energy balancing authority area. NaturEner would provide indicative screens that examine all of its uncommitted capacity in the NorthWestern Energy balancing authority area. NaturEner would not need to study itself in any other balancing authority areas unless its generation-only balancing authority area is directly interconnected to other balancing authority areas.

63. Similarly, if the IPP is located in a generation-only balancing authority area and is not embedded within a single transmission provider's balancing authority area, the IPP would need to provide indicative screens for the balancing authority area(s) of the transmission provider(s) to which its generation-only balancing authority area is directly interconnected. For example, if it were the case that the generation-only balancing authority areas of the Gila River Power Company LLC and

[70] *Id.*

[71] Broehm/Taylor at 3.

[72] *Id.* at 3–5.

[73] *Id.* at 5–6.

[74] EPSA at 6.

[75] NRG Companies at 12–13 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 817).

[76] EEI at 9.

[77] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 49 n.50. This IPP could also have an OATT waiver on file with the Commission or qualify for a blanket waiver under 18 CFR 35.28(d).

Sundevil generation plants are each directly interconnected with the balancing authority area operated by Arizona Public Service Co. (APS), then each of those IPPs would study themselves in the APS balancing authority area, and each would treat all other competing generators from generation-only balancing authority areas directly interconnected with the APS balancing authority area as being in the APS balancing authority area. The IPPs in generation-only balancing authority areas would also study themselves in the same manner in any other balancing authority areas to which their generation-only balancing authority area is directly interconnected.[78] An IPP in this situation would not need to study any of the transmission providers' first-tier markets, just as would be the case if it were a generator located within the transmission provider's home balancing authority area.[79]

64. Finally, we adopt the proposal to require an IPP in a generation-only balancing authority area that is directly interconnected to a transmission provider at a trading hub to provide indicative screens that study itself in the balancing authority area of each transmission provider that is directly interconnected at the trading hub[80] and to assume that all of its uncommitted capacity may compete in each of those balancing authority areas.[81] If the uncommitted capacity of an IPP studying a balancing area authority directly interconnected to a trading hub exceeds the transmission provider's SIL, then the capacity assumed available to compete in that balancing authority area will be equal to the SIL.

65. We appreciate the concerns of Solomon/Arenchild that this requirement is overly burdensome, but think the proposal achieves an appropriate balance. Historically, these sellers frequently failed the indicative screens for their home markets since they often own or control the majority of installed capacity, but have no associated load from which to reduce their market shares. The Commission's approach in this Final Rule likely will obviate the need to submit a DPT to rebut the presumption of market power that results from failure of the indicative screens, which typically is more burdensome and expensive than preparing indicative screens for multiple markets. In addition, the obligation to submit screens for all balancing authority areas directly interconnected to a trading hub would apply to a limited number of market-based rate sellers and these sellers could rely on previously-accepted studies to complete their indicative screen analyses. We believe that this approach helps sellers by providing explicit guidance on the definition of the default market for their specific situation.

66. In response to Solomon/Arenchild's concern that a transmission provider would need to conduct two SIL studies, we clarify that SIL studies should consider the IPP's generation capacity as first-tier generation to each balancing authority area studied. There would be no need to conduct a second SIL study that assumes that the IPP is located within a transmission provider's balancing authority area. However, if an IPP has a long-term firm transmission reservation into a particular transmission provider's balancing authority area for all or a portion of its output, then the SIL study would have to reflect the fact that the IPP's generation capacity associated with the transmission reservation would be a firm import to that specific transmission provider. However, multiple SIL studies would not need to be performed; in this case, the IPP's generation capacity associated with the transmission reservation would be modeled as a firm import to the relevant transmission provider's balancing authority area.

67. With regard to requests that the Commission clarify that, to the extent a seller fails the indicative screen in the balancing authority area(s) it is directly interconnected to, sales at hubs are treated as "at the metered boundary"[82] of a seller's mitigated balancing authority area, and hence, market-based rate sales at hubs are allowed, we clarify as follows. An IPP would be allowed to make market-based rate sales at a trading hub if it loses market-based rate authority in one of the markets connected to the trading hub, so long as the hub is not located within the market in which the IPP is prohibited from selling.[83]

68. We find Broehm/Taylor's request that the Commission require all market-based rate sellers to report their historical sales and transmission reservation data and to use such data to define the relevant geographic market, including markets beyond the first-tier, to be outside the scope of this rulemaking. This aspect of the NOPR proposal is limited to the relevant geographic market for IPPs in generation-only balancing authority areas.

69. We interpret EPSA's reference to nested balancing authority areas to mean generation-only balancing authority areas that are embedded within a transmission provider's balancing authority area. With regard to EPSA's request to require IPPs in generation-only balancing authority areas to provide indicative screens for first-tier balancing authority areas when there is network deliverability from the embedded balancing authority area through the interconnected balancing authority area to the first-tier balancing authority areas, we reiterate that an IPP in this situation would not need to study the transmission provider's first-tier markets, even if there is available transmission capacity. As noted above, if an IPP is located in a generation-only balancing authority area that is embedded within a transmission provider's balancing authority area, and that balancing authority area is the only balancing authority that the IPP's generation-only balancing authority area is directly interconnected with, then the IPP only needs to study that transmission provider's balancing authority area.

70. We clarify, in response to the request from Solomon/Arenchild, that the Commission's proposal also is meant to apply to quasi-generation-only balancing authority areas such as Ohio Valley Electric Corporation, Alcoa Power Generating, Inc.-Yadkin Division and Electric Energy Inc. We interpret EEI's request for the Commission to consider applying the proposal to entities that are not IPPs and entities that have a *de minimis* amount of load

[78] However, the transmission provider, in all cases, would consider the IPP generation capacity as first-tier generation when conducting its SIL studies and indicative screens.

[79] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[80] As noted in the NOPR, when we state that the transmission providers' balancing authority areas are directly interconnected at the hub we are assuming that all such balancing authority areas are directly interconnected with each other. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 56 n.58.

[81] For example, if an IPP in a generation-only balancing authority area in the desert southwest is directly interconnected to a transmission provider at the Palo Verde trading hub at the Palo Verde and Hassayampa switchyards, then the IPP would provide screens that study all of its uncommitted capacity in each balancing authority area that is directly interconnected at the trading hub. An IPP in this situation would not need to study any markets that are first-tier to the various balancing authority areas that are directly interconnected at the trading hub.

[82] Mitigated sellers are allowed to make market-based rate sales for export at the metered boundary between a mitigated balancing authority area and a balancing authority area in which the seller has market-based rate authority. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 819–821.

[83] Resale of any sort by an affiliate of the mitigated seller into the seller's mitigated balancing authority area(s) (*i.e.,* by looping power through adjacent markets) are violations of a Commission-approved tariff that may also, depending on the facts, violate the Commission's market manipulation regulations. *See id.* P 831.

in their balancing authority areas to also be referring to quasi-generation-only balancing authority areas.

71. In response to EEI's request, we clarify that an IPP in a generation-only balancing authority area that is directly interconnected to a hub would need to perform the market power analyses only for the home market of each transmission provider connected to the hub, not the transmission provider's first-tier adjacent markets. However, we decline to grant EEI's request to allow IPPs to provide a single analysis for all balancing authority areas interconnected to the trading hub and Solomon/Arenchild's similar request for broader markets to be considered. Preparing a single analysis for all balancing authority areas interconnected to a trading hub would require that these areas be combined into a single, consolidated market. We believe that such a request is beyond the scope of this proceeding.[84]

4. Reporting Format for the Indicative Screens and SIL Submittals 1 and 2

a. Commission Proposal

72. When submitting indicative screens as part of a horizontal market power analysis, sellers are required to use the standard screen formats adopted by the Commission in Order Nos. 697 and 697–A, which are provided in appendix A to subpart H of part 35.[85] Although sellers currently submit their indicative screens using the standard formats, they perform their own mathematical calculations. In the NOPR, the Commission noted that in *Puget Sound Energy, Inc.*[86] the Commission adopted standardized formats for reporting SIL study results, which includes Submittal 1, a spreadsheet that calculates the SIL values to be used in the indicative screens. However, the Commission noted in the NOPR that the current standard screen formats for indicative screens does not have a row for SIL values even though the Uncommitted Capacity Import values are constrained by the SIL values from row 10 of Submittal 1 used to report SIL study results.

73. Thus, the Commission proposed to amend the indicative screen reporting formats in appendix A of subpart H of part 35. The Commission proposed that appendix A include new rows for SIL Values, Long-Term Firm Purchases (from outside the study area), and Remote Capacity (from outside the study area) in both the pivotal supplier and market share screen reporting formats. The Commission stated that including a row in the indicative screens for SIL Values will help reinforce the relationship between affiliated and non-affiliated generation capacity imports and the SIL value. The Commission also proposed to modify the descriptive text of the rows in the indicative screens for Installed Capacity, Long-Term Firm Purchases, Long-Term Firm Sales, and Uncommitted Capacity Imports.[87] The Commission stated that the new rows and their descriptions will clarify whether the resources are either inside or outside the study area for Installed Capacity and Long-Term Firm Purchases. Furthermore, the description for Uncommitted Capacity Imports will now be consistent across both indicative screens. The Commission provided an example of the proposed new indicative screens reporting formats in appendix A of the NOPR.

74. The Commission proposed to revise the regulations at 18 CFR 35.37(c)(4) to require sellers to file the indicative screens in a workable electronic spreadsheet format.[88] The Commission also proposed to post on the Commission's Web site a pre-programmed spreadsheet as an example that sellers may use to submit their indicative screens.[89]

75. Next, the Commission proposed to add a paragraph to the end of section 35.37(c), making it paragraph (5), to codify the Commission's requirement that sellers submitting SIL studies adhere to the direction and required format for Submittals 1 and 2 found on the Commission's Web site[90] and submit their information, as instructed, in workable electronic spreadsheets.

b. Comments

76. APPA/NRECA and Golden Spread state that they support requiring sellers to file the indicative screens in a workable, electronic spreadsheet format.[91] EEI states that to the extent that the Commission's proposal simply reflects the Commission's current requirements for conducting the indicative screens and *Puget* submittal analyses, the changes are appropriate and reasonable.[92]

77. EEI requests that the Commission specify that it simply wants market-based rate sellers to file the information electronically using standard formats such as Adobe, Excel, or Word. EEI adds that if the Commission has something more complex in mind, it should explain the need for a more complex approach and should work with the regulated community in developing the new formats that will be posted on the FERC Web site, and in preparing other such guidance, information, and requirements related to the market-based rate program, to ensure that all are reasonable, clear, accurate, easy to use, and most cost-effective.[93]

78. Solomon/Arenchild state that the proposal to require sellers to provide a summary spreadsheet of the SIL components used to calculate the SIL values in the electronic spreadsheet format provided on the Commission's Web site is potentially helpful but seek clarification as to whether only Line 10 of Submittal 1 is required to be filed publicly.[94]

79. El Paso commends the proposal to add new rows to clearly identify Long-Term Firm Purchases and Remote Capacity from outside the study area. It states that these reporting modifications will not only provide clarity and transparency for the Commission's review, but will also correctly recognize traditional entities, like El Paso, which have invested in remote generation capacity to serve their native load customers.[95] El Paso states that the Commission should extend its proposal further and apply it to the study of first-tier balancing authority areas. El Paso states that the Commission's proposed modifications to the standard screen

[84] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268 (''[a]ny proposal to use an alternative geographic market (*i.e.,* a market other than the default geographic market) must include a demonstration regarding whether there are frequently binding transmission constraints . . . that prevent competing supply from reaching customers within the proposed alternative geographic market.'').

[85] The Commission noted in the NOPR that the market share screen was inadvertently deleted from appendix A to subpart H of part 35 at the time that the Commission made a correction to the pivotal supplier screen in Order No. 697–A. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 42 n.39.

[86] 135 FERC ¶ 61,254 (2011) (*Puget*).

[87] The Commission proposed to change the phrase ''Imported Power'' in Rows D and H of the pivotal supplier screen to ''Uncommitted Capacity Imports.'' The Commission also proposed to make the same change to Row E of the Market Share Screen. Thus, under this proposal, all four rows in the indicative screens will have the same text for this field, which represents affiliate and non-affiliate uncommitted capacity able to be imported from the first tier.

[88] ''Workable electronic spreadsheet'' refers to a machine readable file with intact, working formulas as opposed to a scanned document such as an Adobe PDF file.

[89] The Commission explained in the NOPR that if a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site.

[90] The sample spreadsheets for Submittals 1 and 2 are found at the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/authorization.asp* under ''Quick Links.''

[91] APPA/NRECA at 4; Golden Spread at 7.

[92] EEI at 9.

[93] *Id.* at 9–10.

[94] Solomon/Arenchild at 11–12.

[95] El Paso at 2–3.

formats in appendix A do not consider when a seller with remote generation performs the analysis for the balancing authority areas market where its remote generation is located. El Paso recommends that the Commission extend its proposal to modify the horizontal screen formats to add the following rows to the screen formats in appendix A: (i) ''Seller Native Load outside the study area'' as a separate line in row K of the Market Share Analysis and (ii) ''Amount of Seller Load outside the study area attributable to Seller Capacity inside the study area, if any'' as a separate line in row N of the Pivotal Supplier Analysis.[96]

c. Commission Determination

80. We adopt the NOPR proposal to amend the indicative screen reporting formats in appendix A of subpart H of part 35 to include new rows for SIL Values, Long-Term Firm Purchases (from outside the study area), and Remote Capacity (from outside the study area) in both the pivotal supplier and market share screen reporting formats. We also adopt the NOPR proposal to revise the regulations at 18 CFR 35.37, as proposed in the NOPR, to require sellers to file the indicative screens in a workable electronic spreadsheet format and to codify the requirement that sellers submitting SIL studies adhere to the direction and required formats for SIL Submittals 1 and 2 found on the Commission's Web site and submit their information in workable electronic spreadsheets. The adopted indicative screen reporting formats for appendix A to subpart H is provided in appendix A of this Final Rule.

81. In response to EEI's request that the Commission specify that it simply wants market-based rate sellers to file the information electronically using standard formats such as Adobe, Excel, or Word, we clarify that Excel or another spreadsheet format will be acceptable but an Adobe PDF file will not be acceptable. As the Commission stated in the NOPR, a ''workable electronic spreadsheet'' refers to a machine readable file with intact, working formulas as opposed to a scanned document such as an Adobe PDF file. If a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site.[97]

82. In response to Solomon/Arenchild's request that the Commission clarify whether only row 10 of Submittal 1 is required to be filed publicly, we clarify that the Commission expects that all of Submittal 1, not just row 10, will be filed publicly. Submittal 1 provides summary numeric data showing how the SIL values were calculated for a given relevant geographic market and some of this data already is publicly available. While we discourage submitting any portion of Submittal 1 as privileged, to the extent a filer intends to request privileged treatment for any portion of Submittal 1 or any other portion of its filing, such filing must comply with 18 CFR 388.112, including the justification for privileged treatment, *i.e.,* why the information is exempt from disclosure under the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552 (2012).

83. We believe there is no need to expand the indicative screens as proposed by El Paso because the scenario El Paso describes can be addressed within the screens, as amended by this Final Rule. However, we clarify that a seller with remote generation serving the seller's home balancing authority area (rather than serving the balancing authority area where the generation is physically located) should account for that generation capacity in row C ''Long-Term Firm Sales (in and outside the study area)'' if that generation is used to serve load in the seller's home study area by virtue of dynamic scheduling and/or long-term firm transmission reservations. If the seller's remote generation is not committed to serving load in the seller's home balancing authority area, then that generation should be studied as uncommitted generation in the first-tier balancing authority area where it is located.

5. Competing Imports

a. Commission Proposal

84. In the NOPR, the Commission noted that it permits sellers to make simplifying assumptions, where appropriate, and to submit streamlined horizontal market power analyses. The Commission noted that Order No. 697 provided that '' 'a seller, where appropriate, can make simplifying assumptions, such as performing the indicative screens assuming no import capacity or treating the host balancing authority area utility as the only other competitor.' ''[98] In the NOPR, the Commission clarified that the phrase ''assuming no import capacity'' means that a seller may assume ''no *competing* import capacity'' from the first-tier area (*i.e.,* directly interconnected balancing authority areas or markets).[99] The Commission further clarified that the seller must still include any uncommitted capacity that it and its affiliates can import into the study area.

b. Comments

85. EEI, APPA/NRECA, and Golden Spread support the Commission's proposed clarifications regarding sellers performing simplified indicative screens assuming no competing import capacity.[100]

c. Commission Determination

86. We confirm the Commission's clarification in the NOPR regarding competing import capacity. Specifically, ''assuming no import capacity'' means that a seller may assume ''no *competing* import capacity'' from the first-tier markets (*i.e.,* adjacent balancing authority areas or markets). This clarification is consistent with the April 14, 2004 Order[101] and other Commission orders.[102] The seller must still include any uncommitted capacity that it and its affiliates can import into the study area.

6. Capacity Ratings

a. Commission Proposal

87. In the NOPR, the Commission noted that it allows sellers submitting indicative screens to rate their generation facilities using either nameplate or seasonal capacity ratings.

[96] *Id.* at 3–4.

[97] It must have one worksheet for each of the indicative screens and each screen must have the same exact rows, columns, and descriptive text as the sample worksheets. Cells requiring negative values must be pre-programmed to only allow negative values. Likewise, cells with calculated values must contain a working formula that calculates the value for that cell. The file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. The list of acceptable file formats can be found at the Commission's Web site: *http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.*

[98] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 66 (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 321).

[99] *Id.* P 67 (emphasis in original).

[100] EEI at 10; APPA/NRECA at 4; Golden Spread at 7.

[101] *AEP Power Marketing, Inc. et al.,* 107 FERC ¶ 61,018, at P 38 (April 14 Order), *order on reh'g,* 108 FERC ¶ 61,026 (2004) (''Where appropriate, the screens allow the applicant to submit streamlined applications or to forego the generation market power analysis entirely and, in the alternative, go directly to mitigation. For example, if an applicant would pass the screens without considering *competing* supplies from adjacent control areas, the applicant need not include such imports in its studies.'' (emphasis added)).

[102] *See, e.g., Acadia Power Partners, LLC et al.,* 107 FERC ¶ 61,168, at P 12 (2004) (''We remind applicants that they may provide streamlined applications, where appropriate, to show that they pass both screens. For example, if an applicant would pass both screens without considering *competing* supplies imported from adjacent control areas, the applicant need not include such imports.'' (emphasis added) (footnote omitted)).

The Commission stated that Order No. 697 allows sellers with energy-limited resources, such as hydroelectric and wind generation facilities, to provide an analysis based on historical capacity factors reflecting the use of a five-year average capacity factor, including a sensitivity test using the lowest and highest capacity factors for the previous five years. The Commission noted that since the issuance of Order No. 697, the Commission has recognized that sellers with newly-built energy-limited generation facilities may not have five years of historical data and has allowed the use of the five most recent years of regional average capacity factors from the Energy Information Administration (EIA) to determine capacity factors for those resources.

88. In the NOPR, the Commission proposed to identify solar technologies as energy-limited generation resources and to allow such sellers to use either nameplate capacity or five-year historical average capacity ratings to determine the capacity rating for their solar technology generation resources. The Commission stated that similar to other energy-limited generation resources, sellers using the five-year average capacity factor must include sensitivity tests using the lowest and highest capacity factors for the previous five years. The Commission proposed that sellers with energy-limited generation facilities (including solar technologies) that do not have five years of historical data may use nameplate capacity, or the EIA-derived, regional capacity factor for the previous five years appropriate to their specific technology as defined in the EIA publication *Annual Energy Outlook,*[103] but may not use seasonal ratings.[104] For sellers using EIA-derived estimates, the Commission proposed to require that sellers submit their calculation of the regional capacity factor as well as copies of the appropriate tables of regional generation capacity ratings from EIA's *Annual Energy Outlook* in their filing.

89. In addition, the Commission sought industry input in identifying additional technologies that are energy-limited generation resources, and what capacity factors should be used to rate them. The Commission acknowledged that solar photovoltaic facilities will effectively function with zero capacity during nighttime hours or during heavy overcast conditions, as the sun does not provide much, if any, solar energy from solar photovoltaic facilities during such conditions. Thus, the Commission sought comment on whether these operating characteristics warrant establishing a different method of setting capacity factors for solar generation as compared to other generation technologies.

90. Also in the NOPR, the Commission proposed to clarify that, within each filing, a seller must use the same capacity rating methodology for similar generation assets. The Commission stated that if a seller chooses in a particular filing to use seasonal ratings for one of its thermal units, it must use seasonal ratings for all of its thermal units in that filing. Likewise, if the seller chooses to use an alternative rating methodology, such as the five-year average for any energy-limited generation resource, it must use the five-year average for all energy-limited generation resources in that filing for which five years of historical data is available; otherwise it must use the EIA-derived capacity factors for those resources for which the seller does not have five years of data. The Commission stated that the seller must specify in the filing's transmittal letter or accompanying testimony, and in the generation asset appendix, which rating methodologies it is using. The seller must use the specified rating methodologies consistently throughout its entire filing, including in its transmittal letter, asset appendix, and indicative screens. The Commission noted that this proposal does not preclude the seller from using a different capacity rating methodology for each type of generation facility (thermal or energy limited) in subsequent filings (*e.g.,* in its initial filing a seller may use nameplate ratings for its thermal units, then in its next filing choose to use seasonal ratings for its thermal units).

b. Comments

i. Identify Solar as Energy Limited

91. Many commenters support the Commission's proposal to identify solar technologies as energy-limited generation resources.[105]

ii. Use of Capacity Factors

92. E.ON agrees with the Commission's proposal to allow a seller that owns or controls solar technology generating resources to use either nameplate capacity or five-year historical average capacity ratings to determine capacity rating, and to use EIA-derived, regional capacity factor estimates if the seller does not have five-year historical capacity data. EEI asks the Commission to consider allowing a given seller, with or without five years of historical data, to use an alternative to the EIA regional capacity ratings if the seller can demonstrate that the alternative is more accurate as to one or more of the specific solar-generation facilities at issue in the filing, while allowing use of actual or historical data for other facilities in the same market.

93. Many commenters sought clarification on the Commission's proposals regarding use of capacity factors for energy-limited resources. E.ON seeks clarification that if the seller relies on EIA-derived capacity factors for a solar resource, it is not precluded from using actual historical five-year data to establish capacity factors for its other energy-limited resources.[106] SoCal Edison requests clarification as to the calculation of the five-year average capacity factor for a given triennial; specifically, what periods do the five years cover, and what is the average, is it by unit or technology.[107] SoCal Edison also asks if the EIA-derived capacity factor is used, whether it is to apply to nameplate capacity or seasonal ratings.[108] EEI requests that the Commission clarify that companies can use the average of the data available in the EIA data tables, up to a maximum of a five-year average.[109] SoCal Edison strongly supports allowing a seller to use nameplate capacity ratings anytime a seller is required to file only an asset appendix.

94. Broehm/Taylor state that the Commission should require use of the average historical capacity factor of existing energy limited resources with the same technologies within the same region instead of the EIA-derived, regional capacity factor estimates proposed by the Commission. Broehm/Taylor state that the EIA-derived,

[103] *See* EIA, Annual Energy Outlook (May 2014), *available at http://www.eia.gov/forecasts/aeo/source_renewable.cfm.* In Table 58 through Table 58.9 ''Renewable Energy Generation by Fuel—(by Area),'' EIA provides data for the total generating capacity, and actual (or estimated) electricity generated by renewable type for 22 ''electricity market module regions'' covering the lower 48 states. After converting the inputs into matching units, sellers can divide actual (or estimated) electricity generated by installed capacity to find the capacity factor.

[104] The Commission stated that sellers should use either nameplate, a five-year average of historical data, or EIA-derived five-year average regional capacity factors instead of seasonal capacity factors for energy-limited resources. The Commission noted that a five-year average wind capacity factor derived from EIA regional data was an appropriate proxy for wind generators that do not have five years of historical data.

[105] *See, e.g.,* E.ON at 4; NextEra at 6; EEI at 11; SunEdison, Inc. (SunEdison) at 1.

[106] E.ON at 5.

[107] SoCal Edison at 15–16.

[108] *Id.* at 16.

[109] EEI at 12 (noting that some of the EIA tables only cover 2011 forward, so five years of EIA data might not be available).

regional capacity factor estimates are an annual average value that does not reflect seasonality, thereby creating a disconnect with the Commission's indicative screens, which are required to be performed on a seasonal basis. Broehm/Taylor further state that generation patterns for certain energy limited resources such as solar and wind may vary by months and seasons in certain locations.[110]

95. Further, Broehm/Taylor state that they ''seek Commission clarification on whether the availability factors [111] are required to be applied only to nameplate capacity ratings of energy limited resources.'' Broehm/Taylor ask whether the Commission's statement ''that sellers without five years of historical data cannot use seasonal ratings imply that the availability factors should not be applied to seasonal ratings.'' Broehm/Taylor state that, if this is the case, it is appropriate to apply the same availability calculation to both new and existing units of energy limited resources. Broehm/Taylor caution that sellers need to be consistent in using capacity ratings for calculating historical capacity factors and if the capacity ratings are nameplate in the historical capacity factor calculation, these capacity factors should be applied to nameplate capacity ratings.[112]

iii. Identifying Other Energy-Limited Resources

96. In response to the Commission's request for industry input in identifying additional technologies that are energy-limited generation resources, SoCal Edison identifies the following: Hydro, wind, solar, biomass, and geothermal resources. It further states that it believes this list can and should be expanded as appropriate.[113]

iv. Require Same Rating Methodology for All Resources of the Same Technology

97. NextEra states that it does not support requiring the same rating methodology for all resources of the same technology. To better reflect a seller's market power, NextEra urges the Commission to provide sellers the option in submitting indicative screens to reflect, if known, the historical capability for resources of the same technology and, if unknown, to submit EIA regional data for those specific resources.[114] EEI echoes these concerns stating that sellers should be able to use five-year historical data for particular energy-limited generation resources where the sellers have the information, even as they may need to use a regional capacity factor for other such facilities for which they do not have the information.[115]

v. Limiting Capacity Standard to Peak Hours for Solar

98. FirstEnergy states that the Commission properly recognized in the NOPR that solar photovoltaic facilities will effectively function with zero capacity during nighttime hours or during heavy overcast conditions.[116] FirstEnergy states that in the event that the Commission permits capacity ratings of solar technologies to be based on historical generation output rather than on nameplate ratings, such capacity ratings should be based on the output of such generating facilities during peak day-light hours only.[117] Idaho Power believes that using peak hours for determining solar capacity factors would be appropriate and would provide better data.[118] Broehm/Taylor state that the Commission did not provide the definition of peak hours and suggests that the Commission give reasonable flexibility to sellers with regard to the number of peak hours when calculating availability factors for energy limited technologies as long as sellers justify their approach.[119]

99. However, SoCal Edison contends that the screens are not designed for a particular hour or the peak hour for many types of generation, all hours should be considered when calculating the capacity rating.[120] EPSA states that using peak hours will not provide a better measure of capacity for solar technology generation resources, and consistent with other intermittent energy resources, such as wind, a historical average capacity rating during peak hours would more accurately represent output of the facility incorporating the variability of output given environmental and weather events that affect solar generation resources output.[121] E.ON states that it is unclear that the use of peak hours is appropriate. It states that these energy-limited resources can provide energy in daylight hours and not necessarily only in peak-defined hours. E.ON asks that if the Commission ultimately adopts some limiting capacity standard, whether that is peak hours or otherwise, that the Commission clarify that the solar photovoltaic resource would not be precluded from selling energy products at market-based rates in any off-peak hours.[122] EEI states that the Commission should allow a seller to use an alternative to EIA regional capacity ratings if they can demonstrate that the alternative is more accurate as to one or more of the specific solar facilities at issue in the filing. EEI states that the Commission should give sellers the option to base solar capacity factors on peak hours rather than all hours, but should not require them to do so.[123] NextEra states that as the horizontal market power indicative screens are intended to study peak hours, it believes that it may be more consistent to require the nameplate capacity rating, which for solar technologies largely correlate to peak load times, rather than the five-year average capacity factor or EIA regional data.[124]

c. Commission Determination

100. We adopt the NOPR proposals with certain modifications and clarifications. Specifically, we will allow sellers with energy-limited generation facilities to use capacity factors to de-rate those facilities in their market power analysis, with certain clarifications discussed below. We will also identify solar thermal technologies as energy-limited technologies, but require the use of nameplate capacity ratings for solar photovoltaic units.

i. Identify Solar as Energy Limited

101. We accept the NOPR proposal to identify solar photovoltaic and solar thermal facilities as energy-limited generation resources. However, as discussed below we will continue to require a seller to use nameplate ratings for its solar photovoltaic facilities. We will allow a seller to treat solar thermal facilities in the same manner as other energy-limited resources. If a seller chooses to use a rating based on a five-year average capacity factor for solar thermal facilities in their filings, they must follow all of the requirements discussed in this Final Rule regarding the use of capacity factors. Further, a seller must use the same rating methodology for non-affiliated solar thermal facilities, as it does for its own solar thermal facilities.

102. For solar photovoltaic facilities we adopt NextEra's proposal and

[110] Broehm/Taylor at 6.

[111] Broehm/Taylor use the term ''availability factors'' several times. The Commission has never used availability factors as a basis for de-rating generation capacity.

[112] Broehm/Taylor at 7.

[113] SoCal Edison at 15.

[114] NextEra at 7.

[115] EEI at 11.

[116] FirstEnergy at 7.

[117] *Id.* at 8.

[118] Idaho Power at 3.

[119] Broehm/Taylor at 7–8.

[120] SoCal Edison at 15.

[121] EPSA at 6–7.

[122] E.ON at 5.

[123] EEI at 11.

[124] NextEra at 6.

require the use of nameplate capacity in the asset appendices and market power studies. As noted above, there was no consensus among commenters as to whether to de-rate solar photovoltaic facilities based on either an annual capacity factor or an on-peak capacity factor. Given the generation profile of solar photovoltaic facilities (*i.e.,* output is highest during peak hours), we believe that use of nameplate ratings is reasonable for the purposes of the horizontal market power analysis. In addition, the Commission's experience to date is that sellers typically use nameplate ratings for solar photovoltaic facilities in their market power analyses and asset appendices, so this requirement is consistent with current industry practice. Although we are requiring the use of nameplate capacity for solar photovoltaic resources, we clarify that adopting the use of a limiting capacity factor, such as peak hours, for any generation resource, would not preclude that resource from selling energy products at market-based rates in off-peak hours.[125]

ii. Use of Capacity Factors

103. We will continue to allow a seller with energy-limited generation facilities other than solar photovoltaic to use capacity factors to de-rate those facilities in its market power analysis. For purposes of this discussion we are excluding solar photovoltaic from using capacity factors; as discussed above, solar photovoltaic will be rated on nameplate rating. We clarify that for energy-limited facilities, a seller may use either the nameplate capacity or a rating based on a five-year average capacity factor. When a seller chooses to use a certain rating methodology for an energy-limited resource, it must consistently use that rating methodology for that specific type of energy-limited resource in its market-power studies (*i.e.,* its energy-limited facilities, and non-affiliated energy-limited facilities).[126] A seller must specify in the filing's transmittal letter or accompanying testimony, and in the applicable asset appendices, which rating methodology it is using for each technology. To the extent that a seller chooses to use a capacity factor, it must use a unit-specific, historical five-year average for any unit for which it can obtain five or more years of operating history, and use the EIA-derived regional capacity factor for any unit for which it is unable to obtain five years of operating history.[127]

104. A seller must use the same capacity rating method for non-affiliated energy-limited facilities that it uses to rate the capacity of its own energy-limited facilities when they are preparing their market-power analyses. Thus, a seller that uses nameplate ratings for its own energy-limited facilities should use nameplate ratings for all other energy-limited facilities included in their horizontal market power studies. Likewise, a seller that de-rate its own energy-limited facilities using five-year average capacity factors should de-rate non-affiliated energy-limited facilities using EIA regional average capacity factors in its screens and DPTs. Consistent with Order No. 697, we will continue to require a seller that de-rates its energy-limited facilities to include sensitivity tests using the lowest capacity factor in the previous five years, and the highest capacity factor in the previous five years.[128]

105. In the NOPR the Commission stated that a seller would be allowed to use different capacity rating methodologies in subsequent filings. However, we find here that a seller must use the same rating methodology in subsequent filings until the next updated triennial market power analysis. Thus, a seller would not be allowed to change its rating methodologies until its next updated triennial market power analysis (*e.g.,* if a seller uses nameplate ratings for nuclear plants in its triennial, it must use nameplate for nuclear in all filings, until its subsequent triennial). If a seller is a Category 1 seller (*i.e.,* not required to file an updated triennial market power analysis), it would be allowed to change rating methodologies when its region's transmission owners' updated triennial market power analyses are due. We reject SoCal Edison's request to allow a seller to switch rating methods just because it is filing an asset appendix. A seller must use the same rating methodology for each specific technology in all filings. We do not see this as more burdensome, because the capacity rating for most facilities will not change between filings. In fact, we believe this may be less burdensome because companies will not have different versions of their asset appendix.

106. We adopt the NOPR proposal to require that a seller submit its calculations of the regional capacity factor as well as copies of the appropriate tables of regional generation capacity ratings from EIA's *Annual Energy Outlook* in its filing. We also clarify that when using the EIA tables to calculate a regional average for energy-limited facilities, a seller should calculate capacity factors using the most recent five calendar years of data available in the tables. Further, the capacity factors should be applied per unit, to each generation facility and applied to the facilities' nameplate ratings. Although we intend the use of EIA regional capacity factors as a simple and objective means for a seller to de-rate energy-limited facilities, we will allow a seller to propose alternative methods of de-rating such facilities in response to EEI and Broehm/Taylor's comments. A seller proposing alternative methodologies must provide the data and calculations used to derive the capacity factors to the Commission in public, non-privileged files. Further, the seller must also provide the EIA regional average capacity factor as a comparison and explain why it believes its methodology provides a more accurate capacity rating than the EIA regional average. We will decide on a case-by-case basis whether to accept any such proposed alternative methodology.

iii. Identifying Other Energy-limited Resources

107. In the NOPR, the Commission sought industry input in identifying additional technologies that are energy-limited generation resources, and what capacity factors should be used to rate them. As discussed above, we adopt the proposal to identify solar thermal technologies as energy limited. However, given that the Commission only received one comment identifying additional technologies (other than solar) and the Commission did not receive any comments regarding what capacity factors should be used to rate additional technologies, we will not specifically identify any additional technologies as energy limited at this time.

7. Reporting of Long-Term Firm Purchases

a. Commission Proposal

108. In Order No. 697, the Commission stated that a seller's uncommitted capacity, as calculated in the indicative screens, is determined by adding the total nameplate or seasonal

[125] E.ON at 5.

[126] This is a change from the NOPR proposal to require that if a seller uses an alternative rating methodology for any energy-limited resource, it must use an alternative rating for all energy-limited resources.

[127] Sellers must use five years of historical data even if that means using data from multiple EIA reports. We recognize that this may necessitate sellers including years after the study period. However, this information is still historical and therefore consistent with the requirements of Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 298–301.

[128] *Id.* P 344.

capacity of generation owned or controlled through contract and long-term firm capacity purchases, minus operating reserves, native load commitments, and long-term firm sales.[129] The Commission also stated that generation capacity associated with contracts that confer operational control of a given facility to an entity other than the owner must be assigned to the entity exercising control over that facility. Therefore, market-based rate sellers have been required to report long-term firm purchases in row B of the indicative screens (Long-Term Firm Purchases) only if the purchase granted them control of the capacity. Similarly, for purposes of reporting a change in status, sellers have been required to report long-term firm capacity purchases when assessing their cumulative generation capacity only if such purchases confer control of such capacity to them.[130] In the NOPR, the Commission noted that this requirement applies to long-term firm energy purchases to the extent that the long-term firm energy purchase would allow the purchaser to control generation capacity.[131]

109. In the NOPR, the Commission noted that the limited reporting of long-term firm purchases may create errors or misleading results in the indicative screens submitted by some sellers including incorrectly-sized markets and negative market shares for franchised public utilities and inconsistencies between the SIL values reported in the screens and the SIL values calculated for the relevant market or balancing authority area. The Commission noted instances where neither the seller nor the purchaser under a long-term firm power sale is attributed with the generation capacity that is used to make the sale because the seller deducted the capacity committed under the long-term firm power sale from its uncommitted capacity while the purchaser followed existing Commission policy and, because it did not ''control'' this capacity, did not include it as part of its uncommitted capacity.

110. The Commission proposed in the NOPR to modify the policy with respect to the reporting of long-term firm purchases in the indicative screens. Specifically, the Commission proposed to require applicants[132] under the market-based rate program to report all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices, where the purchaser has an associated long-term firm transmission reservation, regardless of whether the seller has operational control over the generation capacity supplying the purchased power.[133] The Commission proposed that if the long-term firm purchase involves the sale of energy and does not identify an associated capacity amount, the purchaser must convert the amount of energy to which it is entitled into an amount of generation capacity for purposes of its indicative screens and asset appendices, *i.e.,* include the amount of the capacity as long-term firm purchases in rows B (Long-Term Firm Purchases (from inside the study area)) or B1 (Long-Term Firm Purchases (from outside the study area)) of the proposed revised indicative screens and include it in its asset appendix. The Commission proposed that a seller under that firm power purchase agreement must continue this approach the next time it submits a market-based rate triennial or change in status filing with the Commission, *i.e.,* convert the energy into capacity and include the amount of capacity as a long-term firm sale in row C (Long-Term Firm Sales).[134] The Commission proposed that, when making these filings, both the purchaser and the seller must show how they made the energy-to-capacity conversion. Although the Commission proposed this attribution of capacity as a general policy, the Commission noted that applicants or intervenors may raise fact-specific circumstances that they believe may support a different attribution of capacity.

111. The Commission stated that the intent of the proposed reform is to have an applicant report all long-term firm purchases that it makes where the selling entity has a legal obligation to provide the purchaser with an energy supply that cannot be interrupted for economic reasons or at the seller's discretion. If the purchaser has contractual rights to receive the output of a long-term firm energy purchase, the Commission proposed that the amount of the capacity supplying that purchase must be reported in the purchaser's screens.

112. In the NOPR, the Commission stated that the proposal to require applicants to report all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices is supported based on several considerations. First, it will size the market correctly and therefore improve the accuracy of the indicative screens, especially for franchised public utilities, whose indicative screens are used by the non-transmission owning sellers to prepare their own indicative screens. Currently, applicants often do not report some or all of their long-term firm purchases because they do not control these resources. Including all long-term firm purchases in the indicative screens will properly size the market and eliminate the unrealistic results (*e.g.,* negative market shares) caused by the under-reporting of generation noted above.

113. Second, the Commission stated that this proposed change will establish consistent treatment of long-term firm sales and long-term firm purchases in the indicative screens. The Commission noted that applicants typically deduct long-term firm sales without making a determination as to whether those sales confer operational control to the purchaser. The Commission explained that, in Order No. 697, it did not require that sellers make such a determination before deducting the capacity supporting long-term firm sales: ''Uncommitted capacity is determined

[129] *Id.* P 38.

[130] *See* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at PP 99–101.

[131] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 73 (citing Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at PP 99–101).

[132] Although we generally use the term ''sellers'' elsewhere in the Final Rule when referring to market-based rate sellers and applicants, in this section, we refer to such sellers as ''applicants'' to avoid confusion when discussing market-based rate sellers who are purchasers under long-term firm power purchase agreements.

[133] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 79. In *Vantage Wind, LLC,* 139 FERC ¶ 61,063 (2012) (*Vantage Wind*), the Commission directed the purchasers to report all long-term firm purchases if the purchase had long-term firm transmission rights associated with those resources. In the NOPR, the Commission assumed for purposes of the proposal that all long-term firm purchases necessarily have long-term firm transmission rights associated with them. If that is not the case, the Commission stated that applicants or intervenors are free to raise fact-specific circumstances that they believe may support a different attribution of capacity. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 79 n.97.

[134] In the NOPR, the Commission stated that many power purchase agreements for firm energy specify an associated capacity commitment from the seller. In cases where capacity commitments are not specified in the power purchase agreement, we propose that applicants use the following formula to convert energy to capacity (on a one-year basis): [Energy (MWh)/8,760]/capacity factor = capacity (MW).

Where energy (MWh) is the total amount of energy purchased under the power purchase agreement over the calendar year; 8,760 is the total hours of a calendar year (use 8,784 in a leap year); capacity factor is actual capacity factor achieved by the unit(s) supplying the energy during the calendar year and is a measure of a generating unit's actual output over a specified period of time compared to its potential or maximum output over that same period. For example, if 700,000 MWh is the amount of firm energy purchased under a power purchase agreement during a calendar year, and the capacity factor of the generator supplying the energy is 0.8 or 80 percent, then the 700,000 MWh of energy would be converted into approximate 100 MW of capacity. That is: (700,000 MWh/8,760)/0.8 = 100 MW. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 79 n.98.

by adding the total nameplate or seasonal capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm sales.'' [135] In Order No. 697, the Commission stated that ''[s]ellers may deduct generation associated with their long-term firm requirements sales, unless the Commission disallows such deductions based on extraordinary circumstances.'' [136]

114. In the NOPR, the Commission explained that it is only on the ''buy'' side of long-term firm purchases that the Commission has considered the issue of control in reporting capacity in the screens.[137] The Commission stated that the result is that some generation capacity sold under long-term power purchase agreements ''disappears'' from the market because neither the seller nor the purchaser includes the capacity as part of its uncommitted capacity (*i.e.,* the seller subtracts the amount sold under the long-term power purchase agreement from its capacity for purposes of its screens, but sometimes the purchaser does not add the corresponding amount to its capacity for purposes of its screens). The Commission stated that it is inevitable that some generation capacity will be excluded from the indicative screens, with resulting errors in market shares and overall market size, when differing standards are applied to long-term firm purchases and long-term firm sales with respect to the allocation of such capacity. The Commission stated that the NOPR proposal will make those standards consistent, reducing such errors.

115. Third, requiring the reporting of all long-term firm power purchases also will ensure consistent treatment of owned or installed capacity and long-term firm purchases in the indicative screens. The Commission stated that the horizontal market power analysis implicitly assumes that applicants control all of their owned or installed capacity listed in their indicative screens but this is not necessarily the case.[138] For example, in situations where an applicant is a minority owner of a jointly-owned generating unit, it is quite possible that the applicant will not have operational control (*i.e.,* commitment and dispatch authority) over the unit.[139] However, applicants typically include all of their owned or controlled generation capacity in the indicative screens regardless of whether they actually control the commitment and dispatch of this capacity. Accordingly, the Commission proposed that an applicant with long-term firm purchases treat such contracted-for capacity in a similar manner to an applicant that owns capacity; that is, such purchases should be included in the applicant's portfolio of generation for the indicative screens.

116. Further, the Commission stated in the NOPR that for those applicants incorrectly reporting long-term firm power purchases in the wrong row of the indicative screens,[140] uniform reporting of these purchases will also help to ensure consistency between the SIL values reported in the screens and the Commission's accepted SIL values for the relevant market or balancing authority area. In the NOPR, the Commission stated that improperly classifying long-term firm purchases (or imports of remotely-owned installed capacity) as Imported Power in the existing screens (row D of the pivotal supplier screen and row E of the market share screen) may lead to an overstatement of the market's SIL values.[141] The Commission explained in the NOPR that this is because the sum of the values in the existing pivotal supplier screen for Seller and Affiliate Imported Power shown in row D and Non-Affiliate Imported Power shown in row H should be less than or equal to the Commission-accepted SIL values. All Commission-accepted SIL values account for (*i.e.,* subtract) long-term transmission reservations into the study area, so that they reflect the transmission capability available to competing sellers after accounting for the capability that the local utility has reserved for its own use to import power from remote resources. Thus, the Commission explained that classifying long-term firm purchases as Imported Power effectively ''double counts'' import capability in the screens because it adds back the import capability associated with long-term firm purchases and assumes that this capability is available to potential competitors. The Commission stated that this problem does not arise if long-term firm purchases (and imports of remotely-owned installed capacity) are properly classified in the indicative screens as Long-Term Firm Purchases (rows B1 and F1 in the proposed screen format for the pivotal screen) and Remote Capacity (rows A1 and E1 in the proposed screen format for the pivotal screen), respectively. The Commission stated that this proposal is intended to help clarify how to classify imports of firm power and remotely-owned capacity. The Commission also proposed these changes to the screen format for the market-share screen.

b. Comments

117. Commenters mostly disagree with the proposal, either supporting the Commission's existing ''control test'' or expressing concerns that the Commission's proposal does not actually make the reporting more accurate.[142] SoCal Edison states that the Commission's identified flaws in the control test and the current reporting of long-term purchases are not well supported and do not merit abandonment of the control test.[143] In particular, SoCal Edison disputes the ''disappearing capacity'' concern raised in the NOPR, asserting that generation capacity associated with long-term firm sales is reflected in some manner in the screens.[144] SoCal Edison also contends that the Commission's assertion that a long-term firm purchase is just like ownership with regard to the ability to

[135] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38 (footnotes omitted).

[136] *Id.* P 38 n.18.

[137] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at PP 99, 100.

[138] As the Commission explained in the NOPR, in Order No. 697, the Commission noted that its historical approach has been that the owner of a facility is presumed to have control of the facility unless such control has been transferred to another party by virtue of a contractual agreement. The Commission stated in Order No. 697 that it would continue its practice of assigning control to the owner absent a contractual agreement transferring such control. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 183.

[139] Another example is when a generator confers operational control to a third party through a long-term tolling agreement. *See, e.g., Shell Energy North America (US), L.P.,* 135 FERC ¶ 61,090, at P 3 (2011).

[140] The NOPR stated that ''[a]s the Commission noted in *Vantage Wind,* improperly classifying long-term firm purchases (or imports of remotely-owned installed capacity) as Imported Power in the existing screens . . . may lead to an overstatement of the market's SIL values.'' NOPR, FERC Stats. & Regs. ¶ 32,702 at P 85 (citing *Vantage Wind,* 139 FERC ¶ 61,063).

[141] The Commission noted *Vantage Wind,* 139 FERC ¶ 61,063 at P 16 (''In its updated market power analysis, Puget accounted for both its remote generation from its Colstrip plant located in Montana and its firm power purchase agreements from Bonneville Power Administration as Imported Power (Line D of the market share screen and the pivotal supplier screen) rather than as Installed Capacity (Line A of the market share screen and the pivotal supplier screen) or a Long-term Firm Purchase (Line B of the market share screen and the pivotal supplier screen), respectively. Consequently, the total SIL shown in Puget's screens exceeded the net SIL value for the Puget balancing authority area as accepted by the Commission in [*Puget,* 135 FERC ¶ 61,254]. When Vantage Wind applied the Commission-approved SIL values to its analysis without making any other adjustments to Puget's screens, Vantage Wind appeared to fail the screens because Puget's capacity was underreported.'').

[142] EPSA at 10; APPA/NRECA at 21–24; SoCal Edison at 3–11; Solomon/Arenchild at 8–10; Avista at 2–4; NextEra at 8; TAPS at 2.

[143] SoCal Edison at 3.

[144] *Id.* at 5.

get energy to the market is demonstrably false in some cases.[145]

118. E.ON and FirstEnergy agree with the Commission's proposal.[146] FirstEnergy states that ''attribution of all such capacity to the purchaser, as proposed by the FERC, will recognize appropriately the rights of the purchaser in the purchased resource and will help to improve the consistency of market power studies.'' [147] E.ON requests clarification that sellers of long-term capacity in RTO markets would not be required to submit indicative screens solely because the purchaser was required to do so.[148]

119. EEI urges the Commission to engage in further dialogue, noting that some EEI members have concerns, and some agree with at least some elements of the proposal. EEI states that some members were concerned that they would lose flexibility to reflect actual ownership and control of assets in indicative screens and asset appendices, and whether they would need to report the long-term contracts in the asset appendix.[149]

120. Avista/Puget state that the Commission's proposed solution goes too far and that the Commission instead should retain its current treatment of purchased capacity and/or energy based on the concept of operational control established in Order No. 697, with certain modifications to ensure that the capacity does not disappear from reports of the market.[150] To prevent generation capacity from disappearing in the indicative screens, Avista/Puget propose that the Commission modify its current policy with regard to the seller's treatment of sold energy such that it is the mirror image of the purchaser's treatment. Under Avista/Puget's proposal, generating capacity associated with a long-term sale would be assigned to the seller, for purposes of conducting the indicative screen computations, if the contract does not convey control of the capacity to the purchaser.[151]

121. TAPS expresses concerns that the proposed change may well result in inaccurate reporting and mask the market power of large sellers where they retain control over the resource(s).[152] APPA/NRECA concede that this may fix some administrative problems, but worry that the resulting indicative screens will not accurately reflect actual market shares or pivotal supplier conditions.[153]

122. Indicated Utilities state that if the Commission adopts this rule, it should exempt from this requirement the capacity and/or energy associated with power purchase agreements from inherently intermittent qualifying small power production facilities entered into under 18 CFR part 292, subpart C, namely solar and wind qualifying facilities.[154] Indicated Utilities state that power purchase agreements with intermittent resource qualifying facilities are often fundamentally different from other power purchase agreements and thus warrant different treatment from that proposed in the NOPR.[155] For that reason Indicated Utilities urge the Commission to retain for such power purchase agreements its existing policy of attributing capacity and/or energy to the entity that ''controls'' the qualifying facilities, as that term has been used in Order No. 697.[156]

123. EPSA questions the utility of this proposal and seeks clarification of how this requirement would differ from the reporting required in EQRs. EPSA states that it appears that the information required to be reported by this proposal would duplicate the information provided by sellers contained in the EQRs, which are required to be filed under current Commission regulations. EPSA suggests that if the Commission is seeking this information, then the Commission should not adopt the proposed revision but just refer to the EQR data.[157]

124. EPSA requests clarification that in evaluating long-term contracts for the indicative screens, sellers are still permitted to make conservative assumptions in their initial application and triennial updated market power analyses.[158]

125. Indicated Utilities state that the Commission should clarify that this proposed change—whether for intermittent qualifying small power production facilities power purchase agreements or other power purchase agreements—applies only to the indicative screens and asset appendices, and does not apply to any DPT analyses submitted to rebut a presumption of market power brought about by failure of one or both of the screens. Indicated Utilities contend that it would be consistent with the Commission's post-Order No. 697 approach for the proposed policy to apply only to the indicative screens while maintaining the current ''control-based'' approach to DPT analyses. Indicated Utilities state that the indicative screens are designed to be screens, while the DPT, on the other hand, is more granular and a more accurate means of assessing horizontal market power.[159]

126. SoCal Edison states that it does not generally object to the Commission collecting data on all long-term firm purchases through the asset appendix, but SoCal Edison asks the Commission to clarify that inclusion of a long-term firm purchase in an asset appendix does not constitute a concession that a purchase should appear in a market power screen analysis. SoCal Edison states that a seller should be permitted to rebut the presumption that any particular long-term firm purchase should be counted if the applicant is seeking to exclude the long-term firm purchase from a market power analysis. SoCal Edison further submits that if the applicant has no obligation to submit such screens, it need not rebut the presumption, but reserves the right to do so if ever requested to submit a screen analysis.[160]

127. Several commenters request clarification of various aspects of the proposal. SoCal Edison requests that the Commission explain how the buyer is to obtain the capacity factor information, which may not exist, in order to convert energy-only transactions.[161] Solomon/Arenchild state that converting an energy-only contract to MW-equivalents rather than the full amount of capacity may create confusion. Solomon/Arenchild ask whether the determining characteristic is whether a capacity payment is part of the long-term contract.[162] NextEra expresses concerns with the formula proposed for converting long-term energy purchases to a capacity value.[163] NextEra suggests that rather than requiring the actual energy supplied during a calendar year in the capacity calculation, a purchaser/seller should be allowed to rely on EIA regional data for energy-limited resources. NextEra states that otherwise there could be a significant overstatement of the capacity value submitted in triennial market power updates or notices of change in status.[164] APPA/NRECA state that the proposed conversation mechanism in

[145] *Id.* at 11.

[146] E.ON at 6; FirstEnergy at 8.

[147] FirstEnergy at 8–9.

[148] E.ON at 7.

[149] EEI at 12.

[150] Avista Corp. and Puget Sound Energy, Inc. (Avista/Puget) at 2.

[151] *Id.* at 4.

[152] TAPS at 2.

[153] APPA/NRECA at 21–24.

[154] Indicated Utilities at 2.

[155] *Id.* at 5.

[156] IWU at 7.

[157] EPSA at 9–10.

[158] *Id.* at 10.

[159] Indicated Utilities at 8–9.

[160] SoCal Edison at 12.

[161] *Id.* at 17.

[162] Solomon/Arenchild at 10–11.

[163] NextEra at 9.

[164] *Id.* at 10.

footnote 98 of the NOPR calculates capacity as an average annual number, whereas the peak capacity purchased during a shorter interval in the study period would be the most relevant number.

128. SoCal Edison states that although the NOPR proposes reporting of long-term firm purchases where the purchase has an associated long-term firm transmission reservation, the concept of a long-term firm transmission reservation does not exist within the California Independent System Operator Corporation (CAISO) market. Therefore, SoCal Edison states that the Commission should clarify for CAISO and any other region that has eliminated long-term firm reservations, how this standard should be applied.[165]

129. Solomon/Arenchild ask for clarification on the treatment of jointly-owned facilities. They state that although the NOPR proposal abandons the need to determine the party that controls capacity under long-term contracts, the need for letter of concurrence seems to remain. They state that because the letter of concurrence previously was tied to the issue of the degree to which each party controls a facility, and control is no longer a factor, it is difficult to understand when letters of concurrence are appropriate.[166]

c. Commission Determination

130. We adopt the proposal to report long-term firm purchases in the indicative screens, with modification and clarifications as discussed below. We believe that requiring applicants under the market-based rate program to report all of their long-term firm purchases of energy and/or capacity, regardless of whether the applicant has operational control of the generation capacity supplying the purchased power, will improve the accuracy of the indicative screens.

131. Some commenters contend that the proposed change will not make the screens more accurate because it may understate the market power of entities selling long-term firm capacity and/or energy.[167] However, this argument overlooks the fact that sellers in most cases already are deducting capacity sold pursuant to long-term firm contracts. The differing standards applied to purchasers and sellers with respect to control are the basis for the ''disappearing capacity'' problem described in the NOPR. Furthermore, as explained below, the Commission believes that it is more appropriate to attribute such capacity to the purchaser rather than the seller.

132. We are not persuaded by SoCal Edison's arguments disputing the existence of a ''disappearing capacity'' problem under the current policy. For example, SoCal Edison claims that even if an applicant does not attribute a long-term firm energy and/or capacity purchase to itself, the associated capacity will show up in the screens as non-affiliate capacity.[168] This is potentially true only if the purchased capacity is located in the same balancing authority area or market as the purchaser because the non-affiliated capacity included in the indicative screens only includes capacity located in the study area.[169] Many of the long-term purchases reported in certain regions cross balancing authority areas, *i.e.,* the purchase is made from a resource external to the purchaser's home market. Therefore, capacity associated with long-term purchases often is not included in the indicative screens. Moreover, not reporting a long-term firm purchase from an external generation resource would make the screens inconsistent with the SILs, which account for long-term transmission reservations. Long-term firm purchases usually have an associated long-term firm transmission reservation. SoCal Edison's arguments also ignore the problems that can arise when an applicant's long-term firm purchases are recorded in an incorrect line of the indicative screens, which the Commission noted in *Vantage Wind*[170] and explained in the NOPR.

133. Avista/Puget proposes to fix the ''disappearing capacity'' problem by allowing sellers of long-term firm energy and/or capacity to only deduct such capacity in their indicative screens if they relinquish operational control over the capacity.[171] While this proposal would solve the ''disappearing capacity'' problem, we find that it is more appropriate to attribute capacity from a long-term firm power purchase agreement accompanied by a long-term firm transmission reservation to a purchaser/load serving entity, rather than to the seller, because the purchaser can use that contract to meet its capacity requirements. The seller cannot withhold the power from the purchaser even though the seller has operational control over the generating unit(s) supplying the power. Power purchase agreements may give the purchaser significant economic control over the power; *e.g.,* the purchaser can bid the energy into centralized spot markets (if present).

134. Moreover, applying the control test to the seller would largely negate the Commission's policy with respect to fully committed generation capacity, as described elsewhere in this Final Rule. Under this policy, in order to satisfy the Commission's market-based rate requirements regarding horizontal market power, sellers may explain that their generation capacity is fully committed in lieu of including indicative screens. Today, new generating units, many of which are wind and solar units, often represent that they are fully committed under long-term power purchase agreements and deduct all of their capacity in the indicative screens or do not provide screens at all. Under Avista/Puget's proposal to assign the control test to the seller of long-term firm capacity, such sellers would only be able to deduct their capacity if they demonstrated that the purchaser had operational control of the generating unit. These sellers either would have to demonstrate that they no longer have control of their generation capacity or, if that was not the case, submit indicative screens. What currently are routine filings requesting market-based rate authority for new fully committed generators could in some cases become complicated.

135. We reject Indicated Utilities' proposal to exempt applicants from reporting long-term firm purchases backed by intermittent or energy-limited qualifying facility resources.[172] We believe that there is no reason to ignore such long-term firm purchases in the indicative screens and that Indicated Utilities' position confuses the operational characteristics of such resources with operational control. The fact that a solar or wind unit will not produce energy at certain times is equally true whether an applicant owns a solar or wind unit or purchases energy from a solar or wind unit through a long-term firm power purchase agreement. We clarify, however, that consistent with our direction elsewhere in this Final Rule, long-term firm purchases backed by energy-limited resources may be de-rated based on a

[165] SoCal Edison at 13.

[166] Solomon/Arenchild at 11.

[167] APPA/NRECA at 24; TAPS at 2.

[168] SoCal Edison at 5.

[169] The indicative screens include rows for long-term firm sales and purchases made by non-affiliated sellers. However, the existence of these rows does not support SoCal Edison's argument because a long-term firm purchase made by SoCal Edison from a seller external to SoCal Edison's market (CAISO) would not show up as a long-term firm purchase made by a non-affiliated seller in CAISO. Thus, the capacity associated with the long-term firm purchase that SoCal Edison did not report would not show up in its indicative screens for the CAISO market.

[170] *Vantage Wind,* 139 FERC ¶ 61,063 at P 16.

[171] Avista at 4.

[172] IWU at 7.

five-year average capacity factor based either on the unit's operating history or the EIA regional average. Providing this capacity rating option to applicants will yield consistent treatment of such resources in the indicative screens, whether owned or purchased.[173] This capacity rating option also addresses NextEra's concern regarding the potential overstatement of capacity associated with long-term firm power purchase agreements in the indicative screens.

136. Regarding SoCal Edison's argument concerning the distinctions between owning and purchasing generation, we reiterate that, for the purpose of horizontal market power analyses, long-term firm power purchase agreements convey rights to generation capacity that are similar (though not identical) to ownership because they provide the purchaser with a resource that the purchaser can rely on to serve its load. The common definition of a ''firm'' purchase is a service or product that is not interruptible for economic reasons.[174] This was the Commission's primary reason for concluding in the NOPR that a long-term firm purchase was comparable to ownership. Such purchases provide a resource that a load-serving entity can count towards its capacity requirement. The variable nature of energy-limited resources is the primary reason given by SoCal Edison for disputing the NOPR's contention that long-term firm energy agreements provide the purchaser with energy that only can be interrupted for limited and specified reasons.[175] However, as discussed above, the variable nature of certain energy-limited generators is a separate issue, and we will allow applicants to de-rate long-term firm power purchase agreements backed by energy-limited resources according to a five-year average capacity factor as discussed below. This will permit equivalent treatment of energy-limited resources in the indicative screens whether owned or purchased under long-term firm power purchase agreements.

137. With regard to EPSA's contention that reporting of long-term firm power purchase agreements in the indicative screens is duplicative of reporting such transactions in EQRs, the indicative screens and EQRs perform separate functions. The former is an *ex ante* analysis of a seller's potential market power while the latter enables an *ex post* analysis of its sales. Information on long-term firm purchases and sales is required to complete the indicative screens. The need to provide this information is not ''waived'' because it also is reported after-the-fact in EQRs or other forms. Therefore, we affirm the need for applicants to report long-term firm purchases in the indicative screens.

138. With respect to questions raised regarding the treatment of long-term firm purchases in DPT analyses, we clarify that applicants must attribute long-term firm power purchase agreements to the purchaser when the power purchase agreement has an associated long-term transmission reservation. An applicant that includes long-term firm power purchase agreements in its screens should include the same power purchase agreements in any DPT analyses filed to rebut the presumption of market power resulting from a screen failure. The fact that DPTs are more detailed, granular market power analyses does not negate the need to attribute long-term firm purchases to purchasers. We recognize that this may lead to inconsistencies in the treatment of long-term purchases between DPT analyses submitted in section 203 filings and those submitted in section 205 filings, but there already are several differences between DPT analyses filed in section 203 and 205 proceedings (*e.g.,* the section 203 analysis is a forward-looking analysis whereas the section 205 analysis is historical).

139. We confirm that long-term firm power purchase agreements that are reported in the indicative screens also should be reported in the asset appendix, appendix B, as proposed in the NOPR. However, we agree with commenters that the existing appendix B is not designed to report long-term firm purchases, particularly those that are not backed by specific generating units. Therefore, the Commission is creating a separate sheet in appendix B specifically for applicants to report all long-term firm purchases included in their indicative screens. This new sheet to the asset appendix is described in the discussion of the asset appendix below.[176]

140. With respect to the process for converting long-term firm energy-only contracts to MW equivalents, we provide clarification and have decided to modify the approach set forth in the NOPR. First, with respect to a question raised by Solomon/Arenchild, we clarify that such conversions are needed only if a capacity amount (MW) is not specified in the contract. Long-term firm power purchase agreements that have a capacity amount specified need not be converted, regardless of whether the contract includes a separate capacity payment.

141. Upon consideration of the comments, we will modify the energy-to-capacity conversion formula proposed in the NOPR. We find there is some merit to SoCal Edison's argument that firm energy contracts cannot necessarily be linked to specific generating units (although the energy comes from a set of generating units that ultimately can be identified). Thus, we are adopting an alternative conversion approach that is responsive to these concerns; this approach is conceptually similar to the approach proposed in the NOPR but uses a different factor—load rather than generation—to convert energy into a capacity value.[177]

142. In place of the conversion formula set forth in the NOPR, applicants should use their actual load factor[178] in the relevant study period to convert a long-term firm energy-only contract to a MW equivalent. To determine the MW equivalent, applicants should first determine the average MW purchased under the long-term firm energy contracts over the study period.[179] Applicants should then divide the average MW purchased by their load factor to obtain the capacity value for the contract.

143. Long-term firm energy contracts serve the purchaser's load for a term of at least one year, so the purchaser's load factor is a reasonable basis to establish the capacity value of a long-term firm energy contract. This approach also avoids the need to calculate a capacity factor and link the purchase back to a generating unit or set of generating units. Applicants have ready access to their load data so performing this conversion should not be problematic or burdensome.

144. Applicants would continue to have the option of proposing a different method of attributing capacity based on

[173] *See supra* Section IV.A.6.

[174] The EQR Data Dictionary uses this definition as well.

[175] SoCal Edison at 11.

[176] *See infra* Section IV.D.

[177] Although we are adopting an alternative approach in the Final Rule, the alternative approach is a logical outgrowth of the approach proposed in the NOPR. *See Aeronautical Radio, Inc.* v. *FCC,* 928 F.2d 428, 445–446 (D.C. Cir. 1991) (citing *United Steelworkers of America* v. *Marshall,* 647 F.2d 1189, 1221 (D.C. Cir.1980), *cert. denied,* 453 U.S. 913, 101 (1981)) (holding that the notice requirement of section 553 of the Administrative Procedure Act is fulfilled ''so long as the content of the agency's final rule is a 'logical outgrowth' of its rulemaking proposal.'').

[178] Load factor is the average load divided by the peak load in a specified time period. For example, if during a calendar year a franchised public utility has a peak load of 2,000 MW and total sales to native load customers of 10,000,000 MWh, its load factor is [(10,000,000/8760)/2000] = 0.57 or 57 percent.

[179] Average MW equals total MWh purchased during the study period divided by the total hours in the study period.

the specific terms and conditions of their power purchase agreement. Any alternative attribution method would have to be fully supported and justified.

145. We provide several clarifications to the reporting of long-term firm power purchase agreements. First, we clarify that an applicant should report a long-term firm purchase of capacity and/or energy that has an associated long-term firm transmission reservation for either point-to-point or network transmission service. In addition, we clarify that this requirement applies regardless of whether the long-term firm transmission reservation is held by the purchaser or seller of the capacity/energy. In response to SoCal Edison's query, we clarify that the requirement that applicants only include long-term firm power purchase agreements in their indicative screens if they have an associated long-term transmission reservation will not apply within an RTO/ISO market if that RTO/ISO does not have long-term firm transmission reservations or their equivalent. Instead, applicants in such RTO/ISO markets will be required to report all long-term firm energy and/or capacity purchases from generation capacity located within the RTO/ISO market if the generation is a designated as a network resource or as a resource with capacity obligations. We further clarify that letters of concurrence will not be required to establish which party to a long-term firm power purchase agreement has control of the underlying generation resource(s).[180]

8. Clarification of Commission Language in Performing SIL Studies

146. The SIL study is used in both the indicative screens and the DPT analysis as the basis for establishing the amount of power that can be imported into the relevant geographic market.[181] In the NOPR, the Commission summarized previous Commission SIL guidance to transmission operators provided in the April 14 Order, *Puget,* and Order No. 697. The Commission noted that the April 14 Order requires that power flow benchmark cases reasonably simulate the historical conditions that were present [182] and requires that sellers consider ''all internal/external contingency facilities and all monitored/limiting facilities that were used historically to approximate area-area transmission availability'' and utilize scaling methods according to the same methods used historically for non-affiliate resources.[183]

147. In the NOPR, the Commission noted that *Puget* clarified that sellers must ''[p]rovide copies of all Operating Guide descriptions that were applied in the scaling section,'' as well as any operating guides used to ignore limiting elements in the SIL study results.[184] The Commission also stated that applicants must exclude study area non-affiliated load from study area native load, and should not include first-tier generation serving study area non-affiliated load in net area interchange. In addition, the Commission specified that applicants must document all instances where the SIL study differs from historical practices.[185]

148. In the NOPR, the Commission also noted the Commission's finding in Order No. 697 that SIL studies performed by sellers ''should not deviate from'' and ''must reasonable[ly] reflect'' the seller's Open Access Same-Time Information System (OASIS) operating practices and ''techniques used must have [been] historically available to customers.'' [186] The Commission further stated that ''by OASIS practices, we mean sellers shall use the same OASIS methods and studies used historically by sellers (in determining simultaneous operational limits on all transmission lines and monitored facilities) to estimate import limits from aggregated first-tier control areas into the study area.'' [187] Furthermore, the Commission stated that Order No. 697 requires that power flow cases ''represent the transmission provider's tariff provisions and firm/network reservations held by seller/affiliate resources during the most recent seasonal peaks.'' [188]

149. The Commission noted that Order No. 697 allows the use of simultaneous total transfer capability (simultaneous TTC) values in performing SIL studies ''provided that these TTCs are the values that are used in operating the transmission system and posting availability on OASIS.'' [189] The Commission requires sellers to provide evidence that simultaneous TTC values account for simultaneity, internal and first-tier external transmission limitations, and transmission reliability margins.[190]

150. In the NOPR, the Commission proposed to clarify several issues about how to perform SIL studies and the associated Submittals 1 and 2 found on the Commission's Web site.[191] In particular, the Commission proposed to clarify issues relating to what is included in OASIS practices, how to deal with conflicts between OASIS practices and the Commission directions provided in Appendix B of *Puget,* and the correct load value to use in the SIL study.

151. The Commission stated that the purpose of the SIL study is to calculate the total simultaneous import capability available to first-tier uncommitted generation resources, while also considering system limitations and existing resource commitments (*i.e.,* long-term firm transmission reservations).[192] Therefore, the methodology a transmission provider uses to calculate simultaneous TTC values [193] must be consistent with the methodology it uses for calculating and posting available transfer capability (ATC) [194] and for evaluating firm transmission service requests, consistent with Commission policy and precedent.[195] The Commission stated that import capability available to a transmission provider during real-time operations should not be included in

[180] However, sellers may need to submit a letter of concurrence to support claims that they do not own or control the entire capacity of a generation facility. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 187.

[181] *Id.* P 19.

[182] Historical conditions include ''facility/line deratings used to maintain capacity benefit margins (CBM) and transmission reliability (TRM/CBM), actual unit dispatch used to fulfill network and firm reservation obligation, the actual peak demand, generator operating limits opposed on all resources in real time, other limits/constraints imposed by the TP [Transmission Provider] during the season peaks.'' April 14 Order, 107 FERC ¶ 61,018 at app. E.

[183] NOPR, FERC Stats. & Regs. ¶ 32,702 at PP 147, 151 (citing April 14 Order, 107 FERC ¶ 61,018 at app. E).

[184] *Id.* P 150 (citing *Puget,* 135 FERC ¶ 61,254 at app. B, Reporting Requirements for Submittals 8, 9).

[185] *Id.* (citing *Puget,* 135 FERC ¶ 61,254 at app. B, Reporting Requirements for Submittals 10 and 11).

[186] *Id.* P 146 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354 (internal citations omitted)).

[187] *Id.* P 146 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354 n.361).

[188] *Id.* P 152 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354); *see also Puget,* 135 FERC ¶ 61,254 at P 15 (''Long-term firm transmission reservations for applicant/affiliate generation resources that serve study area load reduce the amount of study are transmission capability available to potential competitors.'').

[189] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 155 (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 364).

[190] *Id.; see also* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 142 (clarifying that ''the use of simultaneous TTC values in the SIL study must properly account for all firm transmission reservations, transmission reliability margin, and capacity benefit margin.'').

[191] The sample spreadsheets for Submittals 1 and 2 are found at the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/authorization.asp* under ''Quick Links.''

[192] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 158.

[193] *See* row 4 of proposed Submittal 1 (Total Simultaneous Transfer Capability).

[194] In the NOPR, FERC Stats. & Regs. ¶ 32,702 at P 25, ATC was inadvertently defined as ''available transmission capability''; it should have been ''available transfer capability.'' *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 57.

[195] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 158.

the transmission provider's SIL value if such transmission import capability is not available to non-affiliated uncommitted generation resources requesting long-term firm transmission service.[196]

a. OASIS Practices

i. Commission Proposal

152. In the NOPR, the Commission proposed to clarify that the term ''OASIS practices'' refers specifically to the seasonal benchmark power flow case modeling assumptions, study solution criteria,[197] and operating practices historically used by the first-tier and study area transmission providers[198] to calculate and post ATC and to evaluate requests for firm transmission service.[199]

153. The Commission also proposed to clarify that in performing a SIL study, the transmission provider must utilize its OASIS practices consistent with the administration of its tariff. The seasonal benchmark power flow cases submitted with a SIL study should represent historical operating practices only to the extent that such practices are available to customers requesting firm transmission service. For example, if the transmission provider does not allow the use of an operating guide when evaluating firm transmission service requests, the transmission provider should not use the operating guide when calculating SIL values.[200]

ii. Commission Determination

154. There were no comments on the above proposals. Therefore, we adopt the proposals as set forth in the NOPR to clarify that the term ''OASIS practices'' refers specifically to the seasonal benchmark power flow case modeling assumptions, study solution criteria, and operating practices historically used by the first-tier and study area transmission providers to calculate and post ATC and to evaluate requests for firm transmission service, and to clarify that in performing a SIL study, the transmission provider must utilize its OASIS practices consistent with the administration of its tariff. We believe these clarifications will improve consistency between the methodology a transmission provider uses to calculate SIL values and the methodology it uses for calculating and posting ATC and for evaluating transmission service requests.

b. SIL Studies and OASIS Practices

i. Conflicts Between OASIS Practices and *Puget*

(a) Commission Proposal

155. In the NOPR, the Commission proposed several clarifications for instances when the methodology a transmission provider uses to calculate SIL values is inconsistent with the methodology the transmission provider uses for calculating and posting ATC and for evaluating transmission service requests. The Commission proposed to clarify that where there is a conflict between OASIS practices and the Commission directions provided in Appendix B of *Puget,* sellers should follow OASIS practices except as noted in the NOPR. The Commission reminded sellers that, in instances where actual OASIS practices differ from the SIL direction provided in *Puget,* sellers should use actual OASIS practices and provide documentation specifically identifying such practices.[201] The Commission also proposed to clarify that, to the extent that a seller's SIL study departs from actual OASIS practices,[202] such departures are only permitted where use of actual OASIS practices is incompatible with an analysis of import capability from an aggregated first-tier area.[203] The Commission invited comments identifying potential areas where actual OASIS practices may be incompatible with the performance of SIL studies.

156. The Commission also reminded sellers that the calculated SIL value should account for any limits defined in the tariff, such as stability or voltage.[204] For example, if a seller utilizes a direct current analysis when performing a SIL study, but an alternating current analysis when evaluating transmission service requests, the seller must validate the total aggregate transfer level value, consistent with the transmission provider's OASIS practices, if modeled using an alternating current load flow model.[205]

157. The Commission also reiterated that sellers may use a load shift methodology to perform a SIL study if they use a load shift methodology in their OASIS practices, ''provided they submit adequate support and justification for the scaling factor used in their load shift methodology and how the resulting SIL number compares had the company used a generation shift methodology.''[206]

158. Regarding accounting for long-term firm transmission reservations for generation resources that serve study area load, the Commission proposed to clarify that sellers must reduce the simultaneous TTC value[207] by subtracting all long-term firm import transmission reservations, including reservations held by non-affiliated sellers.[208] The Commission noted that it has already provided guidance with respect to accounting for long-term firm transmission reservations into the study area from affiliated generation resources located outside the study area.[209] The Commission stated that proposed revised appendix A—Standard Screen Format accounts for all long-term firm

[196] *Id.*

[197] Study solution criteria may include but are not limited to distribution factor thresholds, transformer tap adjustments, reactive power limits, transmission equipment ratings, and model solution settings. *Id.* P 159 n.169.

[198] We reiterate that, while entities may not be familiar with all of the OASIS practices of transmission providers in first-tier balancing authority areas, they should at least be familiar with major constraints, path limits, and delivery problems in neighboring transmission systems. *Id.* P 159 n.170 (citing Order No. 697, FERC Stats. & Regs ¶ 31,252 at P 354 n.361).

[199] The interruptible nature of non-firm transmission service makes using these practices an inappropriate means of calculating the study area's SIL value. *Id.* P 161 n.171.

[200] By ''operating guide'' we generally refer to the North American Electric Reliability Corp. (NERC)-defined term ''Operating Procedure,'' which is defined as ''a document that identifies specific steps or tasks that should be taken by one or more specific operating positions to achieve specific operating goal(s).'' *See* NERC, Glossary of Terms Used in NERC Reliability Standards 53 (2014), *http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.* In the SIL study context, this may include switching procedures, special protection systems, load throw-over schemes, temporary transmission line rating changes, and other actions that are not typically represented in the seasonal benchmark power flow models. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 161 n.172.

[201] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 162 n.173 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 356).

[202] *See Puget,* 135 FERC ¶ 61,254 at app. B.

[203] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 162.

[204] *Id.* P 163 n.175 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 346).

[205] *Id.* P 163 n.176 (citing *Pinnacle West Capital Corporation,* 117 FERC ¶ 61,316, at P 11 n.19 (2006) (''The resulting loading and voltages for the limiting cases, if derived from DC (direct current) load flow analysis would have been verified by AC (alternating current) load flow analysis and demonstrated to be within the applicable system operating limits as dictated by thermal, voltage or stability considerations to ensure system reliability. The Commission requires that such comparisons be included in the applicant's working papers that are submitted to the Commission.'').

[206] *Id.* P 164 n.177 (quoting Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 145).

[207] The revised Standard Screen Format (*e.g.,* rows B1 and M1 in the market share screen (Long-Term Firm Purchases (from outside the study area))) must reflect the long-term firm reservations from Submittal 1, Table 1, row 5 of *Puget. Puget,* 135 FERC ¶ 61,254 at app. B.

[208] *See* NOPR, FERC Stats. & Regs. ¶ 32,702 at P 165 n.179 (citing revised app. E, Submittal 1, row 5).

[209] *Id.* P 165 n.180 (citing *Puget,* 135 FERC ¶ 61,254 at P 15).

import transmission reservations into the study area.[210] The Commission also proposed revisions to Submittal 2 to account for these non-affiliate long-term firm transmission reservations to ensure that the determination of the SIL value is consistent with the method used to allocate this value to uncommitted generation capacity in the aggregated first-tier area for the indicative screens.[211]

(b) Comments

159. Solomon/Arenchild agree with the Commission's proposal to continue the requirement that SIL studies follow OASIS practices. Southeast Transmission Owners, however, state they are concerned that the Commission's proposal to require sellers to ''subtract all long-term firm import transmission reservations, including reservations held by non-affiliated sellers, from the simultaneous TTC value'' could yield a misleading conclusion regarding market activity within a given area. According to Southeast Transmission Owners, the possession by a non-affiliate of a long-term transmission reservation across a seller's interface that sinks in the seller's home balancing authority area is an indicator of an open market, representing a decision by a competitor and the ability of that competitor to compete for load in the particular balancing authority area. Southeast Transmission Owners assert that, while the components of the screen inclusive of the SIL may yield a mathematically accurate result, the tabular depiction of the availability of transmission capacity for use by non-affiliates, as proposed in the NOPR, becomes complicated and misleading and results in the market appearing more constrained than it really is. Southeast Transmission Owners urge the Commission to forego adoption of this proposal and not require deduction of long-term reservations held by non-affiliates of the seller. Instead, Southeast Transmission Owners ask that the Commission adopt an approach that appropriately reflects marketplace activity and the availability of transmission capacity to non-affiliates. However, if the Commission proceeds with this proposal, then Southeast Transmission Owners urge that the Commission recognize the ability of sellers, when performing a SIL study and the associated screens, to rebut the results through companion sensitivities and other data that show how the utilization of import capability by non-affiliates is indicative of a competitive marketplace.[212]

(c) Commission Determination

160. We clarify that, where there is a conflict between the transmission provider's tariff or OASIS practices and the Commission directions specified in *Puget* for performing SIL studies, sellers, except as noted below, should follow OASIS practices and provide documentation specifically identifying such practices.[213]

161. We adopt the proposal that, to the extent that a seller's SIL study departs from actual OASIS practices, such departures are only permitted where use of actual OASIS practices is incompatible with an analysis of import capability from an aggregated first-tier area. The calculated SIL value should account for any limits defined in the tariff, such as stability and voltage.[214] Sellers may use a load shift methodology to perform a SIL study if they use a load shift methodology in their OASIS practices, provided they submit adequate support and justification for the scaling factor used in their load shift methodology and show how the resulting SIL values compare to those that would be obtained if the seller used a generation shift methodology.[215]

162. We also adopt the proposal to direct sellers to subtract all long-term firm import transmission reservations (including those held by non-affiliated sellers) from the simultaneous TTC and historical peak load values. Finally, we adopt the proposed revisions to Submittal 2 to account for these non-affiliate long-term firm transmission reservations. We note that the adopted Submittals 1 and 2 spreadsheet has an additional row in Submittal 2 for each non-affiliated long-term firm transmission reservation to more clearly illustrate that each transaction should be reported separately. There is also an additional row in the adopted spreadsheet in Submittal 2 for each power purchase agreement for the same reason.[216]

163. In response to Southeast Transmission Owners, we find that reducing the simultaneous TTC value and historical peak load value by long-term firm transmission reservations held by both affiliates and non-affiliates properly accounts for all import capability used to serve affiliated and non-affiliated load in the study area. This provides an accurate measure of the study area's load and import capability that is not available to uncommitted generation capacity in the first-tier area. We note that such reservations are properly accounted for in the indicative screens and that treating all long-term firm transmission reservations in a consistent manner should reduce confusion rather than increase it. With respect to Southeast Transmission Owners' request that the Commission recognize the ability of sellers to rebut SIL study results through companion sensitivities, we note that sellers ''[m]ay submit additional sensitivity studies, including a more thorough import study as part of the DPT. We reaffirm, however, that any such sensitivity studies must be filed in addition to, and not in lieu of, a SIL study.'' [217]

ii. Wheel-Through Transactions

(a) Commission Proposal

164. The Commission proposed to clarify that sellers must account for wheel-through transactions where such transactions are used to serve a non-affiliated load that is embedded within a study area. Specifically, the Commission proposed that the seller reduce the simultaneous TTC value by subtracting the value of all wheel-through transactions. The Commission observed that while wheel-through transactions are not used to serve study area load, they reduce the amount of transmission capability available to first-tier generators competing to serve study area load. Thus, the Commission proposed that these transactions be accounted for as long-term firm import transmission reservations and reported

[210] *Id.* P 165 & n.182 (citing to revised app. A, Standard Screen Format, specifically rows A1, B1, E1 and F1 in the market share screen and rows A1, B1, L1, and M1 in the pivotal supplier screen).

[211] *Id.* P 165.

[212] Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., Louisville Gas and Electric Co., Kentucky Utilities Co., South Carolina Electric and Gas Co., and Southern Companies Services, Inc., acting as agent for Alabama Power Co., Georgia Power Co., Gulf Power Co., and Mississippi Power Co. (Southern Companies) (collectively, Southeast Transmission Owners) at 3.

[213] *See* Order No. 697, FERC States. & Regs. ¶ 31,252 at P 356.

[214] *Id.* P 346.

[215] Order No. 697–A, FERC States. & Regs. ¶ 31,268 at P 145.

[216] Though the spreadsheet published in the NOPR did not contain these additional rows, the original instructions for Submittal 2 published in Appendix B of *Puget* and the proposed spreadsheet posted on the Commission's Web site each had the instruction to insert ''as many rows as necessary'' to report each power purchase agreement. Finally, the descriptive text in rows 2 and 6 of Submittal 2 has been changed to ''Power Purchase Agreement'' instead of ''Purchased Power Agreement'' to be consistent with this nomenclature as used elsewhere in this Final Rule.

[217] Order No. 697–A, FERC States. & Regs. ¶ 31,268 at P 146.

in Submittal 2 and proposed corresponding changes to Submittal 2.

(b) Comments

165. Solomon/Arenchild state they do not understand the rationale and intent of the proposal to include wheel-through transactions as a deduction to the amount of transmission capability available to first-tier generators to serve study area load. According to Solomon/Arenchild, wheel-through reservations generally do not reduce overall import capability because the import schedule nets out against the subsequent export schedule and that such reservations are not used to serve load in the balancing authority area. Southeast Transmission Owners voice similar concerns about the Commission's proposal regarding wheel through transactions.[218] According to Southeast Transmission Owners, this proposal results in an inequitable reduction of a seller's SIL that is not indicative of actual marketplace activity. Further, Southeast Transmission Owners state that, in their experience, transmission operators use the term wheel through transaction to describe transactions that are imported into, and then exported out of, their particular areas of operation, thereby not serving load in that study area. Southeast Transmission Owners are unclear what transactions the NOPR would purport to capture by this new requirement and whether a wheel through transaction under the NOPR must in fact be supported by a long-term firm reservation.

166. Southeast Transmission Owners are concerned that the proposal may cause confusion among sellers, result in the capture of transactions that are beyond the intended scope, and contribute to less reliable SIL values. Given these concerns over the Commission's proposal, Southeast Transmission Owners request that the Commission (1) clarify or elaborate what it means by wheel through transactions sinking in the seller's area, and (2) limit this new requirement to this category of transactions that are supported by long-term firm reservations held by the seller and its affiliates.

(c) Commission Determination

167. We agree with commenters' interpretation of the term wheel-through to mean long-term firm transmission reservations that enter and exit a study area, but do not serve load in that study area. While a wheel-through transaction is still considered to be reserved capability on transmission lines similar to other long-term firm transmission reservations, a traditional wheel-through does not serve a study area's Historical Peak Load and, as such, should not be recognized as a long-term firm transmission reservation for the purposes of the SIL study. Accordingly, we clarify that the NOPR should have instead used the terminology ''wheel-into,'' which refers to a long-term firm transmission reservation that enters a study area and serves non-affiliated load embedded in that study area. Thus, we make this distinction to clarify these terms in the Final Rule, and to adopt the NOPR proposal to apply to wheel-into transactions rather than to wheel-through transactions.

168. Further, we clarify that wheel-into or other similarly related import transactions supported by first-tier, long-term firm transmission reservations used to serve non-affiliated load embedded within the study area are to be accounted for in a consistent manner, and the seller should reduce the simultaneous TTC value and historical peak load value by subtracting the value of all these transactions.[219]

169. Additionally, while import and export transactions may net out for the purpose of calculating net area interchange, the Commission does not net out such long-term firm transmission reservations that are used to serve non-affiliated load embedded within the study area. Finally, we refine our proposed language in row 3 and row 7 in Submittal 2 to remove any potential confusion with the use of the term ''wheel-through'' to read, ''Transaction to serve non-affiliated, load embedded in the study area using external generation.''

iii. Preferred Approach for Treating Controllable Tie Lines

(a) Proposal

170. The Commission proposed to clarify that, where a first-tier market or balancing authority area is directly interconnected to the study area only by controllable tie lines[220] and is not interconnected to any other first-tier market or balancing authority area, sellers should follow their OASIS practices regarding calculation and posting of ATC for such areas. If sellers' OASIS practices are incompatible with the SIL study (*e.g.,* ATC is based on tie line rating), sellers may use an alternative process to account for import capability for such tie lines.[221] The Commission also proposed to clarify that, in such circumstances, it will be presumed reasonable to model a controllable tie line as a single equivalent first-tier generator connected to the study area by a radial line. The Commission stated that sellers should document any instances where modeling of controllable tie lines deviates from OASIS practices, and explain such deviations, including: how tie line flow is accounted for in the net area interchange calculations; how tie line flow is scaled or otherwise controlled when calculating simultaneous incremental transfer capability; and how long-term firm transmission reservations are accounted for over controllable tie lines.[222]

(b) Comments

171. Solomon/Arenchild seek clarification of the preferred approach for treating controllable tie lines. According to Solomon/Arenchild, there are two reasonable options for treating such lines with regard to the Commission's proposal that SIL studies for markets ''directly connected to the study area [first-tier] only by controllable tie lines'' should follow OASIS practices regarding calculation and posting of ATC.[223] Using a market that has an high-voltage direct current (HVDC) tie of 200 MW as an example, Solomon/Arenchild state that one option for treating such lines is that the SIL study could include a 200 MW generator inside the balancing authority area being analyzed, assigning any share of the generation to the holder of long-term reservations on the HVDC tie, if any. Another option is that the SIL study could treat the HVDC tie as a 200 MW generator outside of the balancing authority area being analyzed but include it as part of the aggregated generation in the first-tier area.

(c) Commission Determination

172. We clarify that, for purposes of performing market power studies for market-based rate authorization, where a first-tier market or balancing authority area is directly interconnected to the

[218] Southeast Transmission Owners at 4 (citing NOPR, FERC Stats. & Regs. ¶ 32,702 at P 166).

[219] In Submittal 1, Long-Term Firm Transmission Reservations (row 5) are deducted from Total Simultaneous Transfer Capability (row 4) to yield the Calculated SIL Value (row 6). The Calculated SIL Value is compared to Adjusted Historical Peak Load (row 8) and Uncommitted First-Tier Generation (row 9) to determine the SIL Study Value (row 10), which is limited by those two values.

[220] Controllable tie lines include direct current (DC) transmission facilities and alternating current (AC) transmission facilities with the ability to control the magnitude and direction of power flows through equipment such as converters, phase shifting transformers, variable frequency transformers, etc.

[221] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 167.

[222] *Id.*

[223] Solomon/Arenchild at 12 (quoting NOPR, FERC Stats. & Regs. ¶ 32,702 at P 167).

study area only by controllable tie lines and is not interconnected to any other first-tier market or balancing authority area, sellers should follow their OASIS practices for calculation and posting of ATC for such areas.[224] However, if a seller's OASIS practices are incompatible with the SIL study (*e.g.,* ATC is based on tie line rating), the seller may use an alternative process to account for import capability for such tie lines.

173. In such circumstances where a seller's OASIS practices are incompatible with the SIL study, sellers shall not model a controllable tie line as a radial line connected to an equivalent study area generator, as proposed by Solomon/Arenchild, as this leads to potential SIL study errors when scaling generation. However, for purposes of calculating the SIL value and consistent with the NOPR proposal, where a first-tier market or balancing authority area is directly interconnected to the study area only by controllable tie lines, each controllable tie line shall be modeled as a radial line connecting the study area to a first-tier area generator located in the first-tier area, and may be scaled as first-tier area generation. For the purposes of allocating SIL values to aggregate uncommitted first-tier generation capacity, sellers must consider actual uncommitted generation capacity in each first-tier area, rather than the capability of the controllable tie line.

iv. Treatment of Controllable Merchant Lines

(a) Commission Proposal

174. The Commission stated that in the NOPR that, to the extent that the study area is directly interconnected to first-tier areas by controllable merchant transmission lines (*e.g.,* Linden VFT), sellers should properly account for capacity rights on such lines. If sellers hold long-term capacity rights on such lines, these rights should be accounted for as long-term firm transmission reservations. If sellers lack sufficient knowledge regarding the existence and attributes of capacity rights on controllable merchant lines, sellers shall assume the full capacity of such lines is held by sellers with long-term firm transmission reservations.[225]

(b) Comments

175. Solomon/Arenchild note their confusion as to controllable merchant lines and the Commission's statement that, ''[i]f sellers lack sufficient knowledge regarding the existence and attributes of capacity rights on controllable merchant lines, they shall assume the full capacity of such lines is held by sellers with long-term firm transmission reservations.'' [226] Solomon/Arenchild ask why these long-term firm transmission rights should be treated any differently than any other transmission reservations. Additionally, they ask whether the reference to ''sellers'' with long-term firm transmission rights really is a reference to transmission right holders as opposed to the ''sellers'' filing the screens. Further, Solomon/Arenchild seek clarification that the Commission's intent is to reflect the full amount of the controllable merchant line capacity in determining the total size of the market.[227]

(c) Commission Determination

176. We clarify in response to the question asked by Solomon/Arenchild that the reference to ''sellers'' was intended to be a generic reference to transmission right holders and not to apply to the seller submitting the study.

177. SIL values are net of long-term firm transmission reservation. We find that capacity rights on controllable merchant lines are comparable to long-term firm transmission reservations and should be deducted from the Total Simultaneous Transfer Capability value and Historical Peak Load value. Capacity rights on controllable merchant lines represent import capability that is only available to a specific transmission customer pursuant to the Commission's policies for merchant transmission, and is therefore not generally available to any uncommitted generator in the first-tier area. In the past, some sellers have treated controllable merchant transmission lines as if such lines were available to import generation into the study area. Such treatment is inconsistent with the merchant transmission model. However, sellers should be able to determine whether merchant transmission lines are subscribed given the requirement that merchant transmission developers disclose the results of their capacity allocation process.[228] However, where the seller is unaware of the terms and conditions for third-party capacity rights on controllable merchant lines, the seller must make a conservative assumption and subtract from the Total Simultaneous Transfer Capability and Historical Peak Load values the full capacity of the controllable merchant line as a long-term firm transmission reservation. We find this to be a reasonable assumption as the capacity on controllable merchant lines typically is fully subscribed.[229] This approach ensures that such capacity rights on controllable merchant transmission lines are treated in a comparable manner to long-term firm transmission reservations.

v. Inclusion of All Load Data

(a) Commission Proposal

178. In the NOPR, the Commission proposed to require sellers to include all load associated with balancing authority area(s) within the study area. The Commission stated that the SIL study is ''intended to provide a reasonable simulation of historical conditions'' and is not ''a theoretical maximum import capability or best import case scenario.'' [230] The Commission noted that the SIL study ''is a study to determine how much competitive supply from remote resources can serve load in the study area.'' [231] In the NOPR, the Commission noted the clarification in *Puget* that sellers should not report study area non-affiliated load as study area native load, and should adjust modeled net area interchange by the same amount.[232] The Commission stated that the exclusion of all study area non-affiliated load may result in SIL values that are inconsistent with the intent of the indicative screens. Furthermore, in the event the SIL value is limited by study area load, restricting study area load to affiliated load fails to account for import capability that may be used to serve wholesale load customers. The Commission stated that sellers should only adjust the reported value for modeled net area interchange to account for first-tier generation serving load associated with a first-tier balancing authority area that is modeled

[224] Controllable tie lines are transmission facilities with associated equipment enabling control of the magnitude and direction of power flows over the facility. One example of a controllable tie line is the Cross Sound Cable, which connects the New England and New York markets.

[225] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 168.

[226] Solomon/Arenchild at 12; NOPR, FERC Stats. & Regs. ¶ 32,702 at P 168.

[227] Solomon/Arenchild at 12–13.

[228] *See Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects Priority Rights to New Participant-Funded Transmission,* 142 FERC ¶ 61,038 (2013).

[229] This assumes that the capacity of the merchant tie line is included in the net area interchange value as well, such that the net impact on the SIL value is zero.

[230] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 169 (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354).

[231] *Id.* (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 361).

[232] *Id.* (citing *Puget,* 135 FERC ¶ 61,254 at app. B).

as part of the study area.[233] To ensure Submittal 1 is consistent with these requirements, the Commission proposed to revise row 8 to read ''Adjusted Historical Peak Load'' (instead of ''Study area adjusted native load'').

(b) Comments

179. Solomon/Arenchild and Southeast Transmission Owners agree with the Commission's proposal that sellers include in SIL studies all load associated with balancing authority area(s) within the study area, with sellers' specific load obligations accounted for in the indicative screen analysis. However, Idaho Power contends that the Commission's proposal prevents an accurate accounting for a fraction of non-affiliate load that is served by non-affiliate generation when both are located in the study area. Further, Idaho Power argues that the proposal to include both affiliate and all non-affiliate load in the definition of Historical Peak Load means that any remaining amount of non-affiliate load not served by non-affiliate generation in the study area would be included in long-term firm transmission reservations, which would reduce the simultaneous TTC value by this fraction of non-affiliate load. According to Idaho Power, this would lead to the fraction of the non-affiliate load served by internal non-affiliate generation incorrectly appearing as affiliate load.[234]

(c) Commission Determination

180. We adopt the proposal to require sellers to include in the SIL studies all load associated with balancing authority area(s) within the study area. With regard to Idaho Power's argument regarding consideration of study area non-affiliate load served by non-affiliate generation, we first note that study area non-affiliate load not served by study area non-affiliate generation would only appear as a long-term firm transmission reservation when served by first-tier generation capacity. Furthermore, as the Commission noted in the NOPR, Adjusted Historical Peak Load includes both affiliate and non-affiliate native load, as well as wholesale load. This ensures the SIL value, when limited by Adjusted Historical Peak Load, remains consistent with the load values in the indicative screens and also does not provide biased SIL values when they are limited by load. This clarification is not intended to re-categorize study area non-affiliated load as study area affiliate load, but rather clarify that they together are available to be served by competitors in the first-tier market and from available non-affiliate generators within the study area. However, we agree with Idaho Power that non-affiliate load served by internal non-affiliate generation with a firm commitment should not be represented as being available to be served by competitors. Therefore, we clarify that when a non-affiliate generator has a firm commitment to serve a non-affiliate load and both are located within the study area, then this non-affiliate generator should not be scaled and the value of this non-affiliate load should not be included in the study area Historical Peak Load as reported on row 7 of Submittal 1.

vi. Sources of Load Data

(a) Commission Proposal

181. The Commission stated in the NOPR that it is also looking for consistent, reported load values for all sellers to use in preparing SIL studies, noting that *Puget* requires that sellers use FERC Form No. 714 load values or explain the source of the data used.[235] The Commission noted that some sellers have stated that the load values in their models differ from FERC Form No. 714 data and have sought to rely on data from sources other than FERC Form No. 714. The Commission sought industry comment on what sources other than FERC Form No. 714 may be appropriate sources to rely on in determining historical peak load.

(b) Comments

182. Idaho Power believes that, with the other adjustments in the NOPR, use of FERC Form No. 714 data, which includes the balancing authority area load, is appropriate. However, Solomon/Arenchild state that, in their experience, the load included in seasonal benchmark power flow models often does not precisely match loads reported in FERC Form No. 714 and typically used in the indicative screens. Solomon/Arenchild recommend that the Commission allow sellers to use the load data underlying the transmission models for purposes of row 7 of Submittal 1.

183. Southeast Transmission Owners believe that, regardless of its source, the load data must incorporate all data in the market under study. Southeast Transmission Owners use Southern Companies as an example to demonstrate that FERC Form No. 714 may not always reflect aggregated balancing authority area information necessary to determine the historical peak load for the SIL study because the FERC Form No. 714 data reflects load data of the Southern Companies and not the load of all other load-serving entities operating inside the Southern Companies balancing authority area. Therefore, Southeast Transmission Owners argue that, in order to perform a SIL study consistent with the Commission's existing requirements, entities like Southern Companies use archived load data from their energy management systems in order to provide the requisite balancing authority area information needed for the study. Southeast Transmission Owners assert that, while there may be other FERC Form No. 714 alternatives, archived energy management systems data serves as a reliable, cost-effective means for satisfying the Commission's requirements and ensuring that the appropriate inputs to the SIL have been obtained in order to yield accurate results.

(c) Commission Determination

184. We do not find it necessary for the load used in the seasonal benchmark case model to exactly match FERC Form No. 714 data. However, the Historical Peak Load reported in row 7 of Submittal 1 should be consistent with the load used in the seasonal benchmark case model. We clarify that entities are permitted to deviate from reported FERC Form No. 714 load values where such values fail to account for all load within the study area, but sellers must explain and document their reasons for using an alternative data source and any adjustments made to the data. In addition, we find it acceptable for sellers to use energy management systems data to represent Historical Peak Load values, so long as sellers attest that such data is unmodified and accurate, and includes all study area affiliate and non-affiliate load.

vii. Submittals 1 and 2

(a) Commission Proposal

185. The Commission clarified in the NOPR that the values provided in Submittal 1 should generally be supported by the submitted seasonal benchmark power flow models.[236] In particular, the Commission explained

[233] *Id.* (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 169 n.186 (''If the load is modeled as part of another area, *i.e.,* as a non-area load attached to an area bus, and the net area interchange calculation includes both tie lines and non-area loads attached to area buses, net area interchange associated with service to such load should be approximately zero, and no adjustment will be necessary.'')).

[234] Idaho Power at 4–5.

[235] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 170 (citing *Puget,* 135 FERC ¶ 61,254 at app. B, Submittal 1, n.iv).

[236] *Id.* P 171.

that row 1 (Simultaneous Incremental Transfer Capability), row 2 (Modeled Net Area Interchange), and row 4 (Total Simultaneous Transfer Capability) should agree with the corresponding values from the seasonal benchmark power flow models. Any differences should be explained by the seller. The Commission proposed to update Submittal 1, as reflected in Appendix E to the NOPR, to provide additional clarity on the expected values for certain rows.[237] As addressed above in the discussion of wheel-through transactions, the Commission also proposed revisions to Submittal 2. Revised versions of Submittals 1 and 2 were posted on the Commission's Web site.

(b) Commission Determination

186. We adopt the proposal to clarify that the values provided in Submittal 1 should generally be supported by the submitted benchmark power flow models. Any differences should be explained by the seller. We will also adopt the proposal to update Submittal 1, as reflected in Appendix E of the NOPR, to provide additional clarity on the expected values for certain rows. We will post the revised versions of Submittals 1 and 2 on the Commission's Web site and direct sellers to begin using the revised versions no later than the effective date of this Final Rule.

c. Simultaneous TTC Method

i. Commission Proposal

187. The Commission proposed in the NOPR to define the following standard guidance for data submittals and representations that sellers using the simultaneous TTC method must provide to the Commission. First, the Commission stated that sellers must provide historical data of actual, hourly, real-time TTC values used for operating the transmission system and posting transmission capacity availability on OASIS. Sellers should identify the date and hour from which simultaneous TTC values were calculated. Sellers may use the maximum sum of TTC values for any day and time during each season, so long as they also demonstrate that these TTC values are simultaneously feasible. Sellers may demonstrate that TTC values are simultaneously feasible by performing a power flow study that verifies that the declared simultaneous TTC value is simultaneously feasible while accounting for all internal and external transmission limitations identified in Appendix E of the NOPR and *Puget*.[238] Sellers may also provide expert testimony explaining how the specific criteria and procedures used to calculate posted TTC values result in TTC values that are simultaneously feasible.

188. The Commission reiterated that, in the event there are limited interconnections between first-tier markets, the Commission will review evidence that potential loop flow between first-tier areas is properly accounted for in the underlying SIL values on a case-by-case basis.[239] However, the Commission clarified that simply attesting that first-tier markets or balancing authority areas are not directly interconnected is not sufficient evidence that TTC values posted on OASIS are simultaneous, as this does not preclude internal transmission limitations from limiting the simultaneous TTC below the sum of individual path TTC values.

ii. Commission Determination

189. There were no comments addressing this proposal. Thus, we adopt the standard guidance for data submittals and representations that sellers using the simultaneous TTC method must provide to the Commission.

d. Other Issues

i. Comments

190. Solomon/Arenchild seek several clarifications relating to the determination of the SIL and its application in the indicative screens versus a DPT analysis. First, they state that the SIL value for the indicative screens is calculated for four seasonal peaks (Winter, Spring, Summer, and Fall), whereas the DPT analysis typically evaluates a ''Shoulder'' season that combines Spring and Fall. Solomon/Arenchild seek that the Commission clarify that the DPT analysis of a ''Shoulder'' season should use the average of the Spring and Fall values, unless it can be demonstrated that facts exist to support use of either Spring or Fall values alone for the Shoulder season.

191. Second, Solomon/Arenchild state that, in their experience, the SIL values used in the DPT and those reported in the SIL submittals may legitimately differ as a direct result of underlying differences between the DPT and the indicative screens related to the treatment of long-term transmission reservations. Solomon/Arenchild ask that the Commission clarify that it is appropriate when calculating the SIL values used in the DPT analysis not to deduct any associated long-term transmission for a remote generating facility during a period when such generation is not fully available or not economic (or, alternatively, to increase the SIL to reflect additional import capacity).

192. Finally, Solomon/Arenchild seek clarification of the definition of ''long-term firm transmission contracts.'' According to Solomon/Arenchild, the Commission's current regulations define transmission contracts with a term of 28 days or more as ''long-term'' and direct that such contracts be reflected in the SIL analysis. However, Solomon/Arenchild assert that such contracts may be excluded in the indicative screen analysis and/or the DPT because they do not meet the definition of ''long-term'' as being one year or longer, as used for analyzing energy markets. While they recognize that both the SILs and the indicative screens are intended to depict an accurate historical representation of markets, Solomon/Arenchild contend that including only transmission reservations with durations of one year or longer provides a more robust analysis. Accordingly, Solomon/Arenchild suggest that the Commission clarify that only long-term contracts, including seasonal contracts, that are one year or longer be included in both the SIL study and the indicative screen and/or DPT analyses.[240]

193. EEI states it is concerned with the volume of clarifications in the Commission's proposal regarding SIL studies. EEI encourages the Commission to engage in further dialogue with the regulated community about the proposed changes, to ensure that the changes are reasonable, clear, accurate, and easy to implement. Additionally, EEI expresses concern that some of its members are already being required to make changes in their SIL analyses.[241]

194. Southeast Transmission Owners support EEI's request for the Commission to further caucus with industry regarding SIL studies. Given the complexities underlying the market-based rate program and the fact that industry's most recent round of triennial updated market power analysis filings will continue until June 2016, Southeast Transmission Owners state that the Commission does not need to rush action with regard to these proposals.[242] Further, Southeast Transmission Owners are concerned that the Commission's proposals may cause confusion among sellers, rather than the

[237] *See* Revised app. E, Submittal 1.

[238] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 172.

[239] *Id.* P 173 (citing *Atlantic Renewables Projects II,* 135 FERC ¶ 61,227, at P 9 (2011)).

[240] Solomon/Arenchild at 14–15.

[241] EEI at 21.

[242] Southeast Transmission Owners at 6–7 (citing NOPR, FERC Stats. & Regs. ¶ 32,702 at app. C).

intended goal of streamlining the market-based rate program, and may result in less reliable SIL values.

195. SoCal Edison recommends that the Commission require each RTO/ISO, and the CAISO in particular, to perform a SIL study for common use.

ii. Commission Determination

196. We find Solomon/Arenchild's request for clarification regarding which Spring and Fall SIL values to use for the DPT analysis to be beyond the scope of this rulemaking proceeding. We also find their request for clarification regarding calculation of the SIL values used in the DPT analysis to be beyond the scope of this rulemaking proceeding.

197. Additionally, we decline Solomon/Arenchild's request to redefine the applicable duration of long-term firm transmission reservations, currently defined as 28 days or longer, for purposes of the SIL study as this would inflate the amount of import capability available on a long-term basis. Solomon/Arenchild have not demonstrated why the Commission should change the definition for purposes of the SIL study. Indeed, the power flow cases utilized for SIL studies are a reflection of seasonal peaks such that a ''monthly'' designation for such reservations appropriately captures this designation.

198. With regard to concerns about the volume and complexity of changes, we remind commenters that the proposed rule is primarily a clarification of existing policy and that the need for this clarification was based in part on a lack of specificity resulting in confusion with the SIL study process. To the extent sellers remain confused about any aspect of the Commission's instructions regarding SIL studies, Commission staff will continue to be available to discuss these issues prior to an applicant submitting its filing.

199. In response to SoCal Edison's request for the Commission to require each RTO/ISO to perform a SIL study for common use, the RTOs/ISOs do not have market-based rate tariffs on file; thus, we will not require SIL studies from RTOs/ISOs.

B. Vertical Market Power—Land Acquisition Reporting

1. Commission Proposal

200. In the NOPR, the Commission noted that all market-based rate sellers currently are required to provide, as part of their vertical market power analysis, a description of their ownership or control of, or affiliation with an entity that owns or controls, sites for generation capacity development [243] and to file notices of change in status on a quarterly basis when they acquire sites for new generation capacity development.[244] The Commission noted that in the more than six years since issuance of Order No. 697, not a single protest had been filed in response to disclosures regarding sites for new generation capacity development and it proposed to eliminate the requirement that market-based rate sellers file quarterly land acquisition reports and provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses (land acquisition reporting requirements) because the burden of such reporting outweighs the benefits.[245] The Commission noted that, if there is a concern that a particular seller's sites for generation capacity development may be creating a barrier to entry, the Commission can request additional information from the seller at any time.[246]

201. Thus, the Commission proposed to revise the regulations at 18 CFR 35.42 relating to change in status reporting requirements to remove paragraph (d). This proposed revision would remove the requirement that sellers report the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated. Likewise, the Commission proposed to revise the regulations at 18 CFR 35.42 to remove paragraph (e), which pertains to the definition of site control for purposes of paragraph (d). In addition, the Commission proposed to revise 18 CFR 35.42 at paragraph (b) to remove the reference to the reporting of acquisition of control of a site or sites for new generation capacity development. The Commission also proposed to revise the market power analysis regulations at 18 CFR 35.37 to remove paragraph (e)(2), which requires sellers to provide information regarding sites for generation capacity development to demonstrate a lack of vertical market power.

2. Comments

202. Several commenters support the Commission's proposal to eliminate the land acquisition reporting requirements.[247] These commenters contend that the reporting obligation is unnecessary and unduly burdensome, with little benefit, particularly given that in the last six years intervenors have not challenged whether sites for new generation capacity development created a barrier to entry.[248]

203. EPSA and NRG Companies note that the purpose of the initial applications, triennial updates, and notices of change in status, is to identify for the Commission material facts and changes relevant to a seller's qualification for market-based rate authority. EPSA and NRG Companies state that requirements that sellers file quarterly land acquisition reports fail to further the purpose of the triennial updates and notices of change in status filings.[249] NRG Companies add that there is no reason to think that these reports would ever provide information that would call into question the validity of ''the rebuttable presumption that sellers cannot erect barriers to entry with regard to the ownership or control of, or affiliation with any entity that owns or controls . . . sites for generation capacity development . . . .'' [250] As such, EPSA states that the Commission's proposal furthers the Commission's stated goal of reducing the regulatory burdens on market-based rate sellers.[251]

204. NextEra asserts that, in addition to being burdensome, the reports have limited value because the land acquisition reporting requirements do not allow the netting of generation in the interconnection queue when a market-based rate seller withdraws a proposed project from the interconnection queue or places a new project in-service. According to NextEra, as a result, the information on file with the Commission does not accurately reflect actual site control in the interconnection process and the quarterly reports provide little useful information to the Commission or the public.[252]

[243] 18 CFR 35.37(e)(2).

[244] 18 CFR 35.42(d).

[245] For example, the Commission received, from the second quarter in 2012 to the fourth quarter in 2013, approximately 90 filings from 1,380 filers. This is a reporting burden on sellers and an inefficient use of Commission resources for information that has yet to produce an actionable item or elicit a single comment in almost five years.

[246] *See* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 at P 23 (''[I]f there is a concern that a particular seller may be acquiring land for the purpose of preventing new generation capacity from being developed on that land, the Commission can request additional information from the seller at any time.'').

[247] *See, e.g.,* AEP at 5–7; E.ON at 7–8; EEI at 13; EPSA at 7; FirstEnergy at 9; NRG Companies at 7–8; NextEra at 10.

[248] *See* E.ON at 7–8; EEI at 13; FirstEnergy at 9; NextEra at 10.

[249] EPSA at 7; NRG Companies at 7–8.

[250] NRG Companies at 7–8 (quoting Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446).

[251] EPSA at 7.

[252] NextEra at 10.

205. On the other hand, other commenters oppose removing the land acquisition reporting requirements.[253] They argue that the fact that in the last six years intervenors have not challenged whether sites for new generation capacity development created a barrier to entry is not a reason for the Commission to ignore the issue in the future. AAI argues that, due to the relative scarcity of land suitable for renewable energy development, incumbents can erect barriers to entry through strategic generation site acquisitions, *i.e.,* accumulate renewable energy sites with the aim of preventing rivals from developing them. Further, AAI states that the composition of generation in the United States may be on the cusp of radical restructuring, pointing to state enacted Renewable Portfolio Standards and the United States Environmental Protection Agency's rulemaking to reduce greenhouse gas emissions from new and existing power plants.[254] According to AAI, for the intended change in the generation fleet to occur, barriers to entry, including access to generation sites, must be minimized. AAI states that the Commission should continue to collect data on the acquisition of generation sites and recommends using a comprehensive database, as opposed to relying on complaints of affected parties, to monitor this issue in a systematic fashion. Lastly, AAI states that, given the anticipated high growth in renewable energy, revising land acquisition and generation capacity development reporting rules would be premature.

206. Similarly, APPA/NRECA states that a number of economic, technological, and regulatory factors are inducing the retirement of substantial coal generation and the construction of substantial new gas-fired and renewable generation in the coming years. APPA/NRECA asserts that where this new generation will be located will be an important issue because most of the new generation will be location-constrained renewable resources. Further, APPA/NRECA asserts that, because of constraints on gas pipeline capacity, the location of gas-fired generation sites relative to existing and proposed gas pipelines is also critical. Lastly, APPA/NRECA asserts that the retirement of coal generation can change the economic and reliability factors that will determine where new generation may be located. APPA/NRECA warns that, because the location of new generation build-out may have important economic consequences, the Commission should not ignore the barriers to entry created by the acquisition of new generation sites.[255] TAPS supports APPA/NRECA's comments with respect to land acquisition reporting. TAPS opposes the proposed elimination of the land acquisition reporting requirement given the current dramatic changes in generation resource mixes, and in particular, the potential importance of access to gas pipeline facilities.[256]

3. Commission Determination

207. We adopt the NOPR proposal to eliminate the land acquisition reporting requirements.

208. We continue to find that the current land acquisition reporting is of limited value in assessing barriers to entry. The existing land acquisition reports include: (1) The number of sites acquired; (2) the relevant geographic market in which the sites are located; and (3) the maximum potential number of megawatts that are reasonably commercially feasible on the sites reported.[257] Thus, the reports identify relevant geographic market/balancing authority areas, but such reports do not indicate specific locations or whether the sites are adjacent to the existing transmission grid or natural gas pipelines. Moreover, the reports do not include any metrics or analyses to indicate whether the seller's land acquisitions provide it with control over a sufficient amount of sites to create a potential barrier to entry within a geographic market.

209. As noted above, the land acquisition reporting requirements are burdensome for sellers and yield little, if any, offsetting benefit. Out of 58 filings of land acquisition reports from the fourth quarter in 2013 to the first quarter in 2015, none has been contested or has provided sellers and the Commission with useful information regarding barriers to entry.[258] No one has used the information in a land acquisition report in a comment or protest challenging the market-based rate authority of any seller.

210. In response to the concerns raised by AAI and APPA/NRECA, we clarify that intervenors are free to challenge an applicant's claims that it has not erected barriers to entry. We also reiterate that the Commission retains the right to request additional information on such potential barriers to entry from the seller at any time if it has reason to believe that a seller's acquisition of land has created a barrier to entry or otherwise been used to exercise vertical market power.[259] Furthermore, the Commission will continue to require market-based rate sellers to affirmatively state that they and their affiliates have not and will not raise any barriers to entry in the relevant market, including of land acquisitions, as part of the Commission's vertical market power analysis required in initial applications, triennials, and notices of change in status that affect the vertical market power analysis.

211. Finally, AAI suggests that the Commission utilize a comprehensive database to monitor the acquisition of generation sites in a systematic fashion. However, the Commission did not propose any refinements to the information collected in land acquisition reports but rather the elimination of the requirement. The comprehensive database recommended by AAI would be a major undertaking with uncertain benefits, for the reasons stated above, and is beyond the scope of this rulemaking. For these reasons, we reject this request.

212. We adopt the NOPR proposal to revise the regulations at 18 CFR 35.42 relating to the change in status reporting requirements to remove paragraph (d), the requirement that sellers report the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated. We will also remove paragraph (e), which pertains to the definition of site control for purposes of paragraph (d), and revise paragraph (b) to remove the reference to the reporting of acquisition of control of a site or sites for new generation capacity development. Further, we adopt the NOPR proposal to revise the market power analysis regulations at 18 CFR 35.37 to remove paragraph (e)(2), which requires sellers to provide information regarding sites for generation capacity development to demonstrate a lack of vertical market power.

[253] AAI at 10–12; APPA/NRECA at 26–27; TAPS at 2.

[254] AAI at 11–12 (citing U.S. Energy Info. Admin., Most States Have Renewable Portfolio Standards, Feb. 3, 2012, *available at http://www.eia.gov/todayinenergy/detail.cfm?id=4850*; Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FR 34830 (proposed June 18, 2014) (to be codified at 40 CFR part 60)).

[255] APPA/NRECA at 26–27.

[256] TAPS at 2.

[257] 18 CFR 35.42(d).

[258] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 89 n.109.

[259] *See* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 at P 23 (''[I]f there is a concern that a particular seller may be acquiring land for the purpose of preventing new generation capacity from being developed on that land, the Commission can request additional information from the seller at any time.'').

C. Notices of Change in Status

1. Geographic Focus

a. Commission Proposal

213. In Order No. 697–A, the Commission clarified that sellers must report a change in status when they acquire 100 MW or more in the ''geographic market that was the subject of the horizontal market power analysis on which the Commission relied in granting the seller market-based rate authority.'' [260] In the NOPR, the Commission proposed to clarify that the 100 MW reporting threshold in section 35.42(a)(1) is not limited only to markets previously studied. The Commission proposed that, if a seller acquires generation that would cause a cumulative net increase of 100 MW or more in any relevant geographic market (including generation in both the relevant geographic market itself and any first-tier/interconnected market with the potential to import into that market) since the seller's most recent triennial updated market power analysis or change in status filing, the seller must make a change in status filing. This would include cumulative increases of 100 MW or more in a new market that has not previously been studied because, once the seller has generation in that market, it is a relevant geographic market for that seller. The Commission clarified that a net increase measures the difference between increases and decreases in affiliated generation.

214. In Order No. 697–A, the Commission also provided the following example, ''if a seller has a net increase of 50 MW in the geographic market on which the Commission relied in granting the seller market-based rate authority and 50 MW increase in a different geographic market that is in the same region . . . , the 100 MW or more threshold would not be met because the increase in generation capacity is less than [100] MW in each generation market and, accordingly, a change in status filing would not be required.'' [261] In the NOPR, the Commission clarified that this example described a situation where the geographic market on which the Commission relied in granting market-based rate authority was not first-tier to the geographic market in which the seller acquired an additional 50 MW. Thus, the Commission proposed to clarify that the 100 MW threshold applies to the cumulative capacity added in any relevant geographic market, including what can be imported from first-tier markets, but does not cover situations where a seller acquires less than 100 MW in one market and less than 100 MW in another market, as long as those two markets are not first-tier to each other.

215. The Commission further proposed to require that the 100 MW threshold requirement for change in status filings be calculated based on a generator's nameplate capacity rating because it is a single value, it exists for all types of generators, it is generally a more conservative value than a seasonal or five-year average rating would be, and it allows for uniform measurements across different types of generators.

216. The Commission proposed to revise the regulatory text in section 35.42(a)(1) of the Commission's regulations to provide greater clarity and direction on this topic.

b. Comments

217. Several commenters object to the Commission's proposal to consider cumulative net increases of 100 MW or more of nameplate capacity in any relevant geographic market as well as any first-tier/interconnected market with the potential to import into that market when determining whether to report a change in status.[262] Solomon/Arenchild and NextEra argue that the proposed change significantly broadens the market definition captured in the metric of what constitutes a net 100 MW change in generation capacity.[263] Solomon/Arenchild and NextEra contend that the current proposal implies that a megawatt outside of the market is equivalent to a megawatt inside of the market, which is not the case.[264] Solomon/Arenchild and NextEra further argue that the Commission's proposal reinstates the ''hub and spoke'' methodology, which attributed all capacity controlled by the seller and its affiliates in the relevant and first-tier markets to the seller, and was properly disposed of by the Commission because megawatts added in first-tier markets cannot necessarily be imported, unless there is a firm transmission reservation, which is a distinction the proposal fails to address.[265] Solomon/Arenchild propose corresponding revisions to the Commission's proposed regulatory text.[266]

218. EEI contends that the Commission should not attribute changes in generation in one market to another market, even if the markets are first-tier to one another.[267] EEI explains that the 100 MW threshold should be measured for each market separately, without adding changes in first-tier markets, for two reasons.[268] First, the focus of the Commission's market power analyses has always been on the default balancing authority area or other market in which market-based rate authorization is sought, informed by transmission capability to import generation into that market, but not by generation ownership in adjacent markets.[269] EEI argues that there seems to be little reason to expand the change in status reporting requirement to mix changes in generation ownership in the relevant geographic market and the adjacent first-tier markets, which would be the subject of a separate study if market-based rate authorization is sought in those markets.[270] Second, EEI is concerned that the expansion of the change in status reporting requirement for generation ownership to account for generation in the first-tier markets would create confusion.[271] EEI states that this would complicate the tracking of generation and the application of the 100 MW threshold in the various markets and will not produce commensurate benefits.[272] EEI therefore proposes that each market should be treated independently for the purpose of change in status reporting.[273] EPSA adds that any increase in megawatts in a first-tier market would already be reflected in the analysis of that particular first-tier market and argues that amending the current regulations to require sellers to account for such increases separately would be redundant and serve to substantially increase the burden on such sellers.[274]

219. E.ON notes that the Commission proposes to require a seller to notify the Commission when it becomes affiliated with ''100 MW or more in *any* relevant

[260] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 512.

[261] *Id.*

[262] *See, e.g.,* Solomon/Arenchild at 4; NextEra at 11; E.ON at 10; EEI at 14. *But see* APPA/NRECA (supporting the Commission's proposal); Golden Spread at 7 (supporting the eleven Commission proposals that APPA/NRECA supports, which are listed on pages 4–5 of the APPA/NRECA joint comments).

[263] Solomon/Arenchild at 4; NextEra at 11.

[264] Solomon/Arenchild at 4; NextEra at 11 (stating that the proposal appears to assume that 100 MW (or even one megawatt) added to a first-tier market should be treated no differently than 100 MW added in the relevant geographic market).

[265] Solomon/Arenchild at 4; NextEra at 11.

[266] Solomon/Arenchild at 5.

[267] EEI at 14.

[268] *Id.*

[269] *Id.*

[270] *Id.*

[271] *Id.*

[272] *Id.*

[273] *Id.* at 15. EPSA also argues that the proposal would complicate the tracking of generation and similarly recommends that the Commission to treat each market separately. EPSA at 8.

[274] EPSA at 9.

geographic market'' [275] and requests the Commission clarify that the ''any relevant market'' language is limited to the applicable geographic region and applicable first-tier markets.[276] E.ON further notes that the Commission states in the NOPR that this notification requirement would extend to ''cumulative increases of 100 MW or more in a new market that has not previously been studied because, once the seller has generation in that market, it is a relevant geographic market for that seller'' [277] and states that it struggles to understand the benefit of this extended notification requirement and the Commission's definition of a new ''relevant'' market.[278]

220. Several commenters oppose the Commission's proposal to use nameplate capacity to calculate the 100 MW change in status threshold.[279] Solomon/Arenchild argue that the proposal creates a disconnect between the asset appendix capacity ratings and indicative screens capacity ratings because most indicative screens are based on seasonal (summer/winter), not nameplate, ratings, and many sellers report summer ratings only in their asset appendix.[280] Solomon/Arenchild therefore propose that the Commission allow sellers to use either nameplate or seasonal ratings and, if applicable, five-year averages, for determining the 100 MW threshold for the notice of change in status.[281] Solomon/Arenchild and EEI argue that the Commission should allow energy-limited resources, in particular, to report five-year averages.[282]

221. Similarly, E.ON states that, if an affiliate of a market-based rate seller acquires an interest in or builds 100 MW or more of energy-limited generation, the Commission may already have on file five years of historical average capacity ratings or EIA-derived data for the energy-limited generation and argues that it would be a ''mismatch'' to apply nameplate rating to the energy-limited generation for the purposes of triggering any notice of change in status filing requirement.[283] Therefore, E.ON requests that, to the extent the 100 MW threshold remains, the Commission revise its regulations in section 35.42(a)(1) to provide that a market-based rate seller submit a notice of change in status where there are ''cumulative net increases . . . of 100 MW or more of nameplate capacity *or as otherwise has been reported to the Commission.''* [284] Idaho Power adds that while using nameplate ratings across all generation types may provide consistency, it does not provide a proper basis for evaluation when comparing, for example, variable generation (*i.e.,* wind, solar) with thermal generation (*i.e.,* natural gas).[285]

222. Other commenters argue that notices of change in status need not be filed in certain circumstances.[286] FirstEnergy argues that the Commission's approval of a transaction under section 203 of the FPA should obviate the need for a subsequent change in status report and further Commission review under section 205 of the FPA.[287] FirstEnergy states that it is unaware of any instance in which the Commission authorized a merger of generation facilities under section 203 of the FPA and later found that the merged entity fails the standard for selling electricity at market-based rates in any relevant geographic market.[288] FirstEnergy further claims that its recommendation will reduce the regulatory burden on sellers without adversely affecting the Commission's ability to protect consumers.[289]

223. Additionally, AEP and E.ON argue that the Commission should eliminate altogether the notice of change in status requirement for sellers within RTOs. AEP explains that, to the extent market power concerns are implicated by a market-based rate seller's acquisition or new affiliation, the extensive Commission-approved RTO market monitoring and mitigation rules adequately prevent the exercise of market power without the need for the seller to file an additional report.[290]

224. E.ON requests that the Commission clarify that a notice of change in status filing is not necessary where an affiliate of a market-based rate seller is granted market-based rate authorization.[291] E.ON also recommends that the Commission revise its policies so that only one substantive filing is submitted to the Commission.[292]

225. NextEra claims that this notice of change in status proposal is confusing in light of another NOPR proposal to eliminate the requirement to provide indicative screens where all of a seller's and its affiliates' generation in the relevant market is committed under long-term power purchase agreements.[293] NextEra states that the proposed revised text of section 35.42(a)(1) of the Commission's regulations provides only a bright line test for notices of change in status based on nameplate capacity in the relevant geographic market and first-tier markets, thus ignoring the long-term power purchase agreements.[294] NextEra suggests that, if the Commission adopts this new requirement, it should explain how section 35.42(a) of the Commission's regulation should be interpreted when generation is subject to a long-term power purchase agreement.[295] EEI encourages the Commission to find additional ways to streamline the change in status reporting requirements. EEI offers two examples: (1) The Commission should indicate that minor changes in organization or other information covered by the change in status reporting requirements need not be reported individually but can be cumulated to include with a next change in status filing, and (2) the Commission should consider providing additional relief from change in status reporting to companies based on the Commission's experience with the change in status requirements over the past decade (*e.g.,* the Commission should consider increasing the 100 MW thresholds).[296]

226. EPSA notes that sellers are required to report a change in status when an additional 100 MW in a relevant geographic market is attained, but states that it is unclear whether the change in status reporting requirement is then ''reset'' and a notice of change in status is necessary when another 100 MW of controlled generation is

[275] E.ON at 10 (citing NOPR, FERC Stats. & Regs. ¶ 32,702 at P 96) (emphasis added by E.ON).

[276] *Id.* at 10. E.ON uses the following example: If a seller owns or controls a generation facility in PJM and obtained market-based rate authorization, the fact that a new affiliate may own or control 100 MW or more of new generation in the CAISO market has no relevance to whether the seller in PJM lacks horizontal market power.

[277] *Id.* (citing NOPR, FERC Stats. & Regs. ¶ 32,702 at P 96).

[278] *Id.*

[279] *See, e.g.,* Solomon/Arenchild at 3; EEI at 15; EPSA at 8–9; E.ON at 13; Idaho Power at 3–4.

[280] Solomon/Arenchild at 3.

[281] *Id.*

[282] *Id.;* EEI at 15.

[283] E.ON at 13.

[284] *Id.* E.ON's proposed change is illustrated in italics.

[285] Idaho Power at 3–4.

[286] *See, e.g.,* FirstEnergy at 10, 11; AEP at 6; E.ON at 8–9, 11.

[287] FirstEnergy at 10.

[288] *Id.*

[289] *Id.* at 11.

[290] AEP at 6. E.ON makes similar arguments. *See* E.ON at 8–9 (emphasizing that the notice of change in status would simply repeat what the market-based rate seller has already told the Commission, namely, that the market-based rate seller is relying on RTO mitigation).

[291] E.ON at 11.

[292] *Id.* (arguing that an initial market-based rate application of the new affiliate should suffice to address all other relevant, affiliated market-based sellers).

[293] NextEra at 11.

[294] *Id.*

[295] *Id.* at 12.

[296] EEI at 16.

obtained, or once the 100 MW threshold is attained, if all new controlled generation in excess of 100 MW must be reported.[297] EPSA seeks clarification that a notice of change in status must be submitted each time a seller attains a cumulative 100 MW of controlled generation.[298]

227. FirstEnergy recommends that, in addition to the proposal to relieve RTO/ISO sellers from the obligation to file the indicative screens, the Commission should relieve RTO/ISO sellers from the obligation to submit notices of change in status relating to increases in generation capacity. Similarly, AEP recommends that the Commission relieve RTO/ISO sellers from the obligation to submit notices of change in status altogether. EEI encourages the Commission to consider providing broader relief from change in status reporting to utilities with FERC-approved market power mitigation measures to reduce the burden associated with the market-based rate program. EEI states that the same principles underlying the proposed exemption of sellers with FERC-approved market power mitigation from providing the indicative horizontal market screens in their market power updates could apply equally to the overall change in status reporting requirements.

c. Commission Determination

228. We adopt the NOPR proposal with certain modifications and clarifications. In the NOPR, the Commission proposed to apply the 100 MW threshold to a seller's and/or its affiliates' generation capacity in each relevant market and first tier market(s), and to also apply the 100 MW threshold to each new relevant market (not previously studied) in which a seller and/or its affiliates acquire a cumulative net increase of 100 MW. The NOPR also proposed to require that the 100 MW threshold for change in status filings be calculated based solely on a generator's nameplate capacity rating.

229. We believe that the Solomon/Arenchild and NextEra comments with respect to the calculation of the 100 MW threshold have merit[299] and that generation capacity in the first tier markets should not be treated the same as capacity located in the seller's relevant geographic market/study area. We recognize that 100 MW located outside of the study area is only equivalent to 100 MW inside when there is a long-term firm transmission reservation to import the 100 MW.

230. Therefore, we will modify the proposal set forth in the NOPR. The 100 MW threshold for reporting a change in status will apply to a seller's and/or its affiliates' net generation capacity additions in each individual market, but will exclude markets and balancing authority areas that are first-tier to the seller's study area. This means a seller need not consider its and its affiliates new generation, including generation from long-term purchase agreements, in first-tier areas in determining whether it has reached the 100 MW threshold.

231. However, we confirm that, consistent with the NOPR, the 100 MW threshold applies to each new relevant market (not previously studied) in which a seller and/or its affiliates acquire a cumulative net increase of 100 MW. To find otherwise would allow a loophole where an applicant could request and be granted market-based rate authority with a small amount of generation in one market, qualify as a Category 1 seller, and then accumulate large amounts of generation in other markets in the same region such that the seller could become Category 2 in the region without notifying the Commission. In addition, applying the 100 MW threshold to each new relevant market ensures that sellers study the generation acquired in any additional market that meets or exceeds this threshold.

232. Further, we believe that the comments opposing the Commission's proposal to require use of nameplate capacity to calculate the 100 MW change in status threshold have merit.[300] Therefore, we will revise the NOPR proposal and permit sellers to use nameplate or seasonal capacity ratings for the 100 MW threshold for most generation and allow energy-limited generation to use either nameplate or a five-year average capacity factor.[301]

233. We disagree with FirstEnergy's contention that section 203 approvals should obviate the need for subsequent change in status filings for further Commission review under section 205. The Commission's analyses under sections 203 and 205 consider different criteria for approving transactions; therefore, it is not a given that a seller that passes a section 203 analysis will pass a section 205 analysis. Furthermore, the data required for the Commission's analyses under FPA sections 203 and 205 differ; section 203 filings are prospective, with studies based on projected data, whereas the change in status filings under section 205 require studies based on historical data.

234. Additionally, we reject AEP's, E.ON's, FirstEnergy's, AEP's, and EEI's requests that the Commission eliminate the change in status requirements for sellers located in RTOs/ISOs.[302] AEP states that the Commission-approved market monitoring and mitigation rules adequately prevent the exercise of market power without the need for the seller to file an additional report.[303] As explained above, we are not prepared at this time to adopt the NOPR proposal to relieve sellers in RTO/ISO markets of the obligation to file indicative screens.[304] Therefore, we will not relieve sellers in RTO/ISO markets of their obligation to file notices of change in status.

235. We reject EEI's request to report minor changes in organization or other information covered by the change in status requirements cumulatively with another change in status filing instead of in separate change in status filings. Any change in other information covered by the change in status requirements must be reported within 30 days of the change. We interpret EEI's request to be that ''minor change'' be permitted to be filed more than 30 days after the change, *i.e.,* at the time of the next change in status filing. Timely notice of reportable changes in status are part of the Commission's *ex post* analysis;[305] it is not appropriate to exempt any changes from being reported within 30 days, particularly given that it is unclear when, if at all, those changes would ever be reported.

236. Additionally, we reject EEI's proposal to increase the 100 MW change in status reporting threshold.[306] We believe that the 100 MW threshold is reasonable, particularly given the trend towards building smaller units. Further, changing the value of the megawatt

[297] EPSA at 11–12.

[298] *Id.*

[299] NextEra at 11; Solomon/Arenchild at 4.

[300] *E.g.,* E.ON at 13 ; EEI at 15; Idaho Power at 3–4; Solomon/Arenchild at 3.

[301] However, consistent with our finding in this Final Rule regarding use of nameplate capacity for solar photovoltaic facilities, for change in status threshold purposes, sellers should use nameplate capacity for such facilities. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 104.

[302] AEP at 3; E.ON at 8–9.

[303] AEP at 6.

[304] Moreover, we note that the NOPR did not propose to completely eliminate the requirement for RTO sellers to file triennial updated market power analyses but instead proposed to eliminate the need to file indicative screens with their triennials.

[305] *Cal. ex rel. Harris* v. *FERC.,* 784 F.3d 1267, 1276 (9th Cir. 2015) (''When we approved market-based ratemaking in *Lockyer,* we repeatedly emphasized the importance of the 'dual requirement of an ex ante finding of the absence of market power *and* sufficient post-approval reporting requirements.' '' (citing *Cal. ex rel. Lockyer* v. *FERC,* 383 F.3d 1006, 1013 (9th Cir. 2004)).

[306] EEI at 16.

threshold was not proposed in the NOPR; thus, the proposal is outside the scope of this rulemaking.

237. With regard to E.ON's request that the Commission clarify that the ''any relevant market'' language is limited to the applicable geographic region and applicable first-tier markets,[307] we clarify that *any relevant market* refers to a market in which a seller already has generation located and acquires an additional 100 MW or a new market that the seller had not studied previously.

238. Additionally, in response to E.ON's requests that the Commission clarify if a seller needs to submit a change in status if it acquires generation in an RTO market where it sells energy products, and clarify whether a seller has to file a change in status when an affiliate is granted market-based rate authority, we clarify as follows. A seller should submit a change in status when it acquires generation in any market, including an RTO market where it sells electric products. Further, if a seller's affiliate is granted market-based rate authority, and that results in 100 MW or more of new generation capacity in a market, then the seller will have to file a corresponding change in status. Therefore, we reject E.ON's recommendation to revise the change in status policy so that only one substantive filing is submitted to the Commission.[308]

239. In response to NextEra's contention that the notice of change in status proposal is confusing because it conflicts with the NOPR proposal to eliminate the requirement to provide indicative screens where all of a seller's and its affiliates' generation in the relevant market is committed under long-term power purchase agreements, we clarify as follows.[309] For purposes of the change in status requirement in section 35.42(a)(1), long-term firm purchases should be treated as seller or affiliate-owned or controlled generation capacity in the determination of the 100 MW threshold. Thus, a seller need not make a change in status filing every time it enters into a new long-term firm purchase agreement, but would need to submit a change is status when its overall cumulative increase in generation is 100 MW. The seller would need to revise its asset appendix to include the long-term purchase agreement(s). In addition, we clarify that a market-based rate seller that adds new generation capacity that is fully committed to a non-affiliated buyer need not count that capacity toward the 100 MW threshold.

240. We clarify in response to EPSA that if a seller acquires more than 100 MW, it should report all of the newly acquired generation to ensure that the net change in generation capacity is reported in a timely manner. Furthermore, once a seller files a change in status for a net increase of 100 MW or more of generation capacity, the threshold is effectively reset such that the seller must file a change in status each time it acquires an additional 100 MW or more of generation capacity.

2. New Affiliation and Behind-the-Meter Generation

a. Commission Proposal

241. Market-based rate sellers are required to make a change in status filing when, among other requirements in section 35.42 of the Commission's regulations, they become affiliated with entities that: (1) Own or control generation; (2) own or control inputs to electric power production; (3) own, operate, or control transmission facilities; or (4) have a franchised service territory. There currently is no 100 MW threshold for reporting new affiliations (but there is a 100 MW threshold for net increases for a seller's owned or controlled generation facilities). In the NOPR, the Commission proposed to revise the change in status regulations to include a 100 MW threshold for reporting new affiliations. That is, a market-based rate seller that has a new affiliation would not be required to file a change in status for an affiliation with an entity with generation assets until its new affiliations result in a cumulative net increase of 100 MW or more of nameplate capacity in any relevant geographic market. The Commission noted that the 100 MW threshold for reporting new generation strikes the proper balance between the Commission's duty to ensure that market-based rates are just and reasonable and the Commission's desire not to impose an undue regulatory burden on market-based rate sellers.[310] Similarly, the Commission stated that applying the 100 MW threshold to new affiliations might ease the reporting burden on sellers without diminishing the Commission's ability to identify possible market power. Therefore, the Commission proposed to revise section 35.42(a)(2) of the Commission's regulations to add a 100 MW threshold for reporting certain new affiliations.

242. The Commission also clarified that the requirement to submit a notice of change in status to report affiliation with new generation, transmission, or intrastate gas pipelines includes reporting that asset in the seller's asset appendix. The Commission proposed to amend section 35.42(c) to clarify that sellers must include all new affiliates and any assets owned or controlled by the new affiliates in the asset appendix.

243. The Commission further proposed in the NOPR that ''all assets'' include behind-the-meter generation and qualifying facilities.[311] However, the Commission proposed to allow sellers to aggregate their behind-the-meter generation by balancing authority area or market into one line on the list of generation assets. Similarly, the Commission proposed to allow sellers to aggregate their qualifying facilities under 20 MW by balancing authority area or market into one line on the list of generation assets.

244. The Commission also proposed that sellers should include these assets in their indicative screens, as well as in their asset appendix and that sellers should include this generation when calculating the 100 MW change in status threshold and the 500 MW Category 1 threshold.

b. Comments

245. Commenters generally support the Commission's proposal to revise the change in status regulations to include a 100 MW threshold for reporting new affiliations.[312] Specifically, EEI supports the Commission's proposal and adds that the Commission should consider allowing a seller the option to file an

[307] E.ON at 10. E.ON uses the following example: If a seller owns or controls a generation facility in the PJM market and obtained market-based rate authorization, the fact that a new affiliate may own or control 100 MW or more of new generation in the CAISO market has no relevance to whether the seller in the PJM market lacks horizontal market power.

[308] E.ON at 11 (arguing that an initial market-based rate application of the new affiliate should suffice to address all other relevant, affiliated market-based sellers).

[309] NextEra at 11.

[310] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* Order No. 652, FERC Stats. & Regs. ¶ 31,175, at P 68, *order on reh'g,* 111 FERC ¶ 61,413 (2005).

[311] Accordingly, the appendix must list all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate or seasonal ratings by unit. As a general rule, any generation assets included in a seller's market power study should be listed in the asset appendix. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 895.

[312] *See, e.g.,* EEI at 15–16; FirstEnergy at 11–12; SunEdison at 9 (noting that this proposal is especially important to a company like SunEdison that routinely acquires or becomes affiliated with new entities that own small amounts of capacity); NRG Companies at 11–12; APPA/NRECA at 4; Golden Spread at 7.

addendum to its appendix B asset list with the change in status filing, instead of a complete new list, to show the specific changes in generation.[313] FirstEnergy also supports the Commission's proposal, but argues that, if the new affiliation has previously been reviewed by the Commission pursuant to its authority under section 203 of the FPA, the Commission will derive no significant benefit by requiring the seller to submit a notice of change in status relating to such affiliation and recommends that the reporting requirement be further limited.[314]

246. FirstEnergy supports the proposal to require generating capacity associated with qualifying facilities and behind-the-meter generation to be considered when determining the applicability of the Commission's rules for filing notices of change in status and updated market power analyses.[315] FirstEnergy contends that, to the extent qualifying facilities may be owned by or affiliated with entities owning other generation resources, there is no valid reason why owners of qualifying facilities and/or behind-the-meter generation resources should not be subject to the same rules as those applicable to other market participants.[316]

247. Several commenters oppose the Commission's proposal to include behind-the-meter generation as part of the 100 MW change in status threshold.[317] NRG Companies and NextEra argue that requiring the inclusion of behind-the-meter generation in asset appendices and market power analyses would impose a substantial burden on sellers.[318] NRG Companies and NextEra also argue that no useful purpose will be served by the inclusion of behind-the-meter generation that is committed to on-site consumption and not available to the grid.[319] NRG Companies and NextEra add that such generation may involve net metering, which they state does not involve wholesale sales or transmission implicating the Commission's jurisdiction.[320]

248. NRG Companies, NextEra, and SunEdison argue that behind-the-meter generation does not contribute to market power and should be excluded from the asset appendix.[321] SunEdison argues that it is inconsistent to require listing of assets that are not engaged in wholesale power sales in the interstate power market and therefore cannot and do not contribute to the seller's market share or market power.[322] SunEdison argues that, because the purpose of an asset appendix is to provide data to be used in the Commission's assessment of a seller's and its affiliates' market power in jurisdictional wholesale markets, the Commission should find that assets that do not participate in wholesale markets should not be included in the asset appendix.[323] SunEdison further contends that, since behind-the-meter facilities are not physically capable of engaging in coordinated interactions or arrangements with generation that sells power in jurisdictional markets, there is no need to include them in a seller's asset appendix.[324] SunEdison requests that, if the Commission determines it necessary to report behind-the-meter generation in the asset appendix, it should exempt from this requirement facilities with a net capacity of one MW or less.[325]

249. El Paso recognizes the increasing role of behind-the-meter generators in wholesale power markets and does not oppose the Commission's inclusion of behind-the-meter generation in the indicative screens.[326] However, El Paso cautions the Commission to recognize that for some systems, the output of these generators will have already been reflected in the net load reported in the FERC Form No. 714 (Annual Electric Control and Planning Area Report), thus resulting in double-counting a utility's capacity and, consequently, overestimating its supply.[327] El Paso requests that the Commission further refine its reporting directive to instruct sellers to include behind-the-meter generation in their indicative screens to the extent such generation is not already netted against load for purposes of their FERC Form No. 714 reporting.[328]

250. Other commenters seek clarification of the Commission's proposed changes to the change in status reporting requirements, as they relate to behind-the-meter generation. Specifically, EPSA argues that, if a seller has behind-the-meter generation that is used solely to operate equipment for production (such as an oil or gas operation that uses behind-the-meter generation to produce oil or gas), such behind-the-meter generation should not be counted towards the 100 MW threshold because that generation is never offered or sold into the market. EPSA recommends the Commission clarify that any such behind-the-meter generation that is wholly self-consumed would not count towards the 100 MW threshold.[329] SoCal Edison requests the Commission clarify whether behind-the-meter generation includes generation not synchronized to the grid (*i.e.,* generation that cannot be used for wholesale power sales), since all generation is typically behind *some* meter.[330] SoCal Edison does not believe, for example, that a back-up generator used to power a control center in the event of a power outage needs to be included in a seller's asset appendix and seeks confirmation to that effect.[331] SoCal Edison also requests that the Commission clarify whether it will permit sellers to aggregate long-term firm purchases from small generators (such as qualifying facilities under 20 MW) by balancing authority area or market into one line on the list of

[313] EEI at 16.

[314] FirstEnergy at 11.

[315] *Id.* at 12.

[316] *Id.*

[317] *See, e.g.,* NextEra at 12; NRG Companies at 2–3 (stating, however, that the proposal makes sense as to qualifying facilities); SunEdison 5–8.

[318] NRG Companies at 3 (stating that distributed generation projects can be developed and installed in very short time periods and tracking these projects with the frequency required to maintain accurate asset appendices would be burdensome on any entity whose affiliates are active in this area); NextEra at 12 (stating that the burden to include behind-the-meter generation will increase significantly, if there are numerous facilities within a corporate family).

[319] NextEra at 12–13 (stating that, because of their small size, such facilities are unlikely to affect meaningfully any evaluation of market power in the indicative screens and adding that there would be little or no value to the Commission in submitting a notice of change in status in addition to the initial applications and market power updates); NRG Companies at 2–3.

[320] NextEra at 13; NRG Companies at 2–3 (citing *Sun Edison LLC,* 129 FERC ¶ 61,146, at P 18 (2009) (*Sun Edison*)).

[321] SunEdison at 4 (stating that the requirement will be ''unduly burdensome'' for a company that owns ''hundreds of small behind-the-meter solar projects'' and whose business plan is for it and its affiliates to develop and acquire ''thousands of additional similar projects'' and citing Commission precedent where the Commission held that net-metered sales do not represent jurisdictional wholesale sales or transmission). SunEdison also references the White House and U.S. Department of Energy initiative to streamline the permitting, installation, and interconnection processes and states that reducing unnecessary administrative burdens on companies that develop solar energy projects is one way to help achieve this goal. *Id.* at 4–5.

[322] *Id.* at 5.

[323] *Id.* at 7.

[324] *Id.*

[325] *Id.* at 9 (citing *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility,* Order No. 732, 75 FR 15950 (Mar. 30, 2010), FERC Stats. & Regs. ¶ 31,306, at P 34 (2010) and comparing its argument for why behind-the-meter generation should not be included in a seller's asset appendix to the Commission's reasoning in Order No. 732 to exempt small facilities from the Commission's Qualifying Facility status filing requirement).

[326] El Paso at 4.

[327] *Id.*

[328] *Id.*

[329] EPSA at 11.

[330] SoCal Edison at 19 (emphasis in original).

[331] *Id.*

generation assets.[332] SoCal Edison argues that such aggregation should be permitted to relieve the burden that otherwise would be imposed.[333]

c. Commission Determination

251. We adopt the NOPR proposal to establish a 100 MW threshold for reporting new affiliations in change of status filings. A market-based rate seller that has a new affiliation will not be required to file a change in status for an affiliation with an entity with generation assets until its new affiliations result in a cumulative net increase of 100 MW of capacity in a relevant geographic market.[334] The 100 MW threshold for new affiliations will be determined in exactly the same manner as the 100 MW threshold is determined for other notices of change in status. As explained above, the 100 MW threshold will be determined for each relevant geographic market but will not consider generation capacity additions in first-tier markets. We believe the 100 MW threshold strikes a reasonable balance between reducing reporting burden on sellers while keeping the Commission informed about potential market power concerns. We clarify that the 100 MW reporting threshold for new affiliations is not separate nor distinct from the 100 MW thresholds for reporting power purchase agreements or owned generation as discussed elsewhere in this Final Rule. In other words, if a seller becomes newly affiliated with 50 MW of generation in a balancing authority area or market and experiences an increase of 50 MW of owned generation in that same balancing authority area or market, the 100 MW reporting threshold would be triggered. Similarly, a seller with a newly acquired 50 MW power purchase agreement in that same balancing authority area of market would also trigger the reporting threshold.

252. However, we do not adopt the NOPR proposal to count behind-the-meter generation in the 100 MW change in status threshold and 500 MW Category 1 seller status threshold and to include such generation in the asset appendices and indicative screens.

253. We agree with El Paso that the output of behind-the-meter generation should be reflected in the load data reported in the FERC Form No. 714. That is, the load reported in FERC Form No. 714 reflects the fact that the load is lower than it otherwise would be if a portion of the load were not served by behind-the-meter generation. Additionally, since behind-the-meter generation is netted out of the load data, requiring sellers to count behind-the-meter generation as installed capacity could result in double-counting a portion of the seller's generation capacity. Moreover, we clarify that behind-the-meter generation that is consumed on-site by the host load and not sold into the wholesale market, or is not synchronized to the transmission grid, is not relevant to the Commission's horizontal market power analysis.

254. Given our decision not to require sellers to include behind-the-meter generation in their asset appendices, indicative screens, and for purposes of calculating the 100 MW change in status threshold and 500 MW Category 1 threshold, we will not address the remaining requests for clarifications made by NRG Companies, NextEra, SunEdison, EPSA, and SoCal Edison.

255. Finally, we clarify that qualifying facilities that are exempt from FPA section 205 [335] and facilities that are behind-the-meter facilities do not need to be reported in the asset appendix or indicative screens. However, many qualifying facilities do have market-based rate authority and the capacity of these facilities should be reported in the screens, asset appendix and in determining the 100 MW threshold.

3. Reporting of Long-Term Firm Purchases

a. Commission Proposal

256. As discussed elsewhere in this Final Rule, the Commission proposed to require reporting of long-term firm purchases in the indicative screens and also proposed to include such contracts when determining the 100 MW threshold for change in status filings.[336]

b. Comments

257. The comments addressed in the discussion on treatment of long-term contracts generally encompass the issues in this section. However, SoCal Edison states that the Commission should clarify that it will permit long-term firm purchase aggregation from small generators, such as qualifying facilities under 20 MW. SoCal Edison requests that such aggregation be permitted to relieve the burden that otherwise would be imposed.[337]

c. Commission Determination

258. The requirement to report long-term firm purchases in the asset appendix and indicative screens and to require that such contracts be counted towards the 100 MW threshold is discussed elsewhere in this Final Rule.[338] With respect to SoCal Edison's request regarding aggregation of long-term firm purchase agreements, we clarify that aggregation of such agreements will be permitted in the asset appendix if certain conditions are met. Specifically, we will allow aggregation of long-term firm purchase agreements from small generators only if the information in these columns in the asset appendix is identical for all agreements: ''[E] Market/Balancing Authority Area,'' ''[F] Geographic Region,'' ''[G] Start Date (mo/da/yr),'' and ''[H] End Date (mo/da/yr).'' Aggregating agreements with different start dates or end dates or agreements in different Market/Balancing Authority Areas would defeat the usefulness of collecting such information. We also clarify that a seller that meets these criteria can aggregate such agreements but would need to use column ''[I] End Note'' to report different docket numbers and/or names of the filing entities and seller(s) in the End Note list of the asset appendix.

D. Asset Appendix

259. The Commission proposed clarifications and revisions to the required appendix that contains the lists of generation and transmission assets.

1. Changes to the Existing Columns

a. Commission Proposal

260. The Commission proposed to make three changes to the existing columns in the asset appendix. The Commission proposed to change a column heading on both assets lists from ''Balancing Authority Area'' to ''Market/Balancing Authority Area'' to reflect the correct location for assets in organized markets as well as in balancing authority areas. The second proposal was to change a column heading on both asset lists from ''Geographic Region (per Appendix D)'' to ''Geographic Region'' because there have been changes to some regions since the Commission originally published the region map in Appendix D of Order No. 697. Finally, the Commission proposed to change the heading for the ''Nameplate and/or Seasonal Rating'' column of the generation list to ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average'' to

[332] *Id.* at 23.

[333] *Id.*

[334] However, if a seller files a notice of change in status for another reason, *e.g.,* to report the entrance into a power purchase agreement of more than 100 MW, the seller should note that it has a new affiliate with market-based rate authority and include that new affiliate and any related assets in the seller's asset appendix.

[335] *See* 18 CFR 292.601(c)(1).

[336] NOPR, Stats. & Regs. ¶ 32,702 at P 100.

[337] SoCal Edison at 23.

[338] *See supra* Section IV.C.1.

clarify that this column requires capacity ratings in megawatts and to reflect that each submission in the asset appendix should use either ''nameplate,'' ''seasonal,'' or ''five-year average'' ratings to reflect the rating used throughout the filing for a particular generation technology. The Commission indicated that these proposed changes would ensure consistency across filings and allow the industry and Commission staff to better utilize the information contained in the asset lists.

261. The Commission further proposed to clarify that the asset lists should not contain any information other than what is required in the respective columns. For instance, sellers frequently include footnotes in their appendices that cause the appendices to become unwieldy and difficult to read or understand. Sellers sometimes explain in these footnotes that some facilities are partially owned, that some affiliates included in their asset lists may not actually be affiliates but are included out of an abundance of caution, or that a facility is expected to come on-line or off-line at some future date. The Commission discouraged any such footnotes and directed that any such representations be made in the filing transmittal letter.

262. Thus, the Commission proposed to modify the example of the required appendix found in appendix B to subpart H of part 35 of the Commission's regulations to incorporate these changes.

b. Comments

263. Few commenters express concern about the Commission's proposed changes to the existing columns in the asset appendix.[339] Solomon/Arenchild are concerned that the proposal to change the heading for capacity ratings column from ''Nameplate and/or Seasonal Rating'' to ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average'' may introduce ''another potential source of inconsistency across filings'' and therefore suggest that the Commission add another column to the asset appendix to allow a seller to report nameplate or seasonal ratings, as well as the five-year average rating, if the seller elects to use five-year average ratings.[340] EEI states that the Commission's proposed changes to existing columns seem appropriate, but would encourage the Commission not to change the geographic regions without advance notice and opportunity for comment by market participants in those regions.[341]

264. Several commenters oppose the Commission's proposal to clarify that asset lists should not contain any information other than what is required in the respective columns.[342] EPSA notes that the reason sellers include footnotes and other ''extraneous information'' is to avoid allegations that the sellers have misled the Commission.[343] EPSA requests that the Commission add a separate column to the asset appendix for explanatory notes and clarifications, instead of prohibiting the use of footnotes.[344] NRG Companies echo EPSA's concerns and state that sellers include explanatory notes to avoid misleading the Commission about matters that are too complex to be depicted fully and accurately in the prescribed fields.[345] NRG Companies add that providing the explanatory notes in the transmittal letter will not be an adequate substitute for appropriate notes in the asset appendix itself.[346] El Paso argues that discouraging sellers from adding footnotes to their asset appendices could cause confusion amongst industry particularly if the Commission creates a searchable public database from these asset appendices because sellers may unintentionally provide misleading information.[347] EEI notes that this clarification seems unnecessary and could inhibit sellers from including helpful information in the asset appendix.[348]

c. Commission Determination

265. We adopt the proposed changes to the existing columns in the asset appendix on both asset lists from ''Balancing Authority Area'' to ''Market/Balancing Authority Area'' to reflect the correct location for assets in organized markets, as well as in balancing authority areas. We also adopt the proposed column heading change from ''Geographic Region (per Appendix D)'' to ''Geographic Region'' because there have been changes to some regions since the Commission originally published the region map in Appendix D of Order No. 697. We note, with regard to EEI's comment, that removing the reference to Appendix D removes an outdated reference to the Appendix in Order No. 697. Further, to aid in identification of similarly named columns in the asset lists, we are adding an alphabetic label to each column in the asset lists in the new Asset Appendix.[349]

266. We do not adopt the proposal to change the heading for the ''Nameplate and/or Seasonal Rating'' column of the generation list to ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average.'' Instead, in response to the Solomon/Arenchild comments, we will modify the generation asset list to clearly distinguish between the nameplate rating and an alternative rating of a generation facility. Specifically, we are removing the ''Nameplate and/or Seasonal Rating'' column and replacing it with three new Columns [J], [K], and [L], entitled ''Capacity Rating: Nameplate (MW)'', ''Capacity Rating: Used in Filing (MW)'', and ''Capacity Rating: Methodology Used in [K]: (N)ampelate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative,'' respectively.[350] Sellers will populate Column [J] with the nameplate capacity rating of their facilities, Column [K] with the capacity rating attributed to that facility in the filing and any associated market power study, and Column [L] with the appropriate letter to indicate which rating methodology was used to derive the capacity rating used in Column [K].[351] Sellers will need to populate every column for all facilities in the generation asset list, even facilities that are not discussed in a given filing. If the instant filing does not contain a market power study, or a particular generation asset is not included in a market power study in that filing, sellers should include in the generation asset list the rating that it used the last time the asset was included in a market power study. We believe this format addresses Solomon/Arenchild's concern about consistency of the rating methodology across filings,

[339] *See, e.g.,* Solomon/Arenchild at 7; EEI at 17.

[340] Solomon/Arenchild at 7 & Attachment 1 (illustrating their proposed additional column to the asset appendix).

[341] EEI at 17.

[342] *See, e.g.,* EEI at 18; El Paso at 5; EPSA at 13; NRG Companies at 6.

[343] EPSA at 13.

[344] *Id.*

[345] NRG Companies at 6.

[346] *Id.* at 7.

[347] El Paso at 5 (arguing that members of the public may not take the time to search the original transmittal letter that would explain a seller's ownership).

[348] EEI at 18.

[349] For example, the first column in the generation asset list is ''Filing Entity and its Energy Affiliates.'' We have labeled that column, above the column heading, as Column ''[A].''

[350] As discussed in this Final Rule, sellers are allowed to use alternative rating methodologies for different generation technologies in their market power studies. The ''Capacity Rating: Used in Filing (MW)'' column is where sellers should report the actual value they used in the market power analysis. If a seller uses nameplate ratings, the values in Column [J] ''Capacity rating nameplate (MW)'' and Column [K] ''Capacity rating: used in filing (MW)'' will be the same.

[351] For example, for a seller that has decided to use nameplate ratings for all wind facilities in its market power studies and owns a 100 MW (nameplate) wind facility, the seller will place ''100'' in Column [J], ''100'' in Column [K], and ''N'' in Column [L].

while maintaining the ability to tie asset appendix ratings to those used in a market power analysis.

267. Finally, we adopt the NOPR proposal to prohibit footnotes from the asset appendices. However, in response to commenters' concerns about loss of clarity and information, we adopt EPSA's suggestion and add a separate column to the asset appendix for explanatory notes and clarifications. We are adding a column entitled ''End Note Number (Enter text in End Note Tab)'' as the final column in the generation list (Column [M]), transmission list (Column [J]), and, as discussed below, the new long-term firm power purchase agreement list (Column [I]), and creating an additional end notes list. The end notes list will have three columns: Column [A] ''End Note Number;'' Column [B] ''List (Generation, PPA, or Transmission);'' and Column [C] ''Explanatory Note.'' When a seller wants to provide more information about a particular facility in an asset appendix list, the seller will place a number in the appropriate end note column of the row listing that facility. Furthermore, the seller will then enter that number in Column [A] of the end notes list, specify in Column [B] which asset list this end note refers to, and finally, enter in Column [C] the explanatory text.

2. Reporting Power Purchase Agreements

a. Commission Proposal

268. The Commission also proposed to require sellers to include all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices, regardless of whether the seller has operational control over the generation capacity supplying the purchased power. The Commission stated that this approach will help size the market correctly and will establish consistent treatment of long-term firm sales and long-term firm purchases.[352] Other sections of this Final Rule discuss the conversion of a power purchase agreement measured in MWh into MW values that will be entered into the asset appendix and indicative screens.

b. Comments

269. Several commenters requested clarification regarding how to account for long-term firm purchases in the asset appendix. For example, SoCal Edison states that it will not be possible to fill out the asset appendix as currently proposed where a long-term firm purchase is not tied to a physical generating asset and suggests separating the appendix into two appendices—one for seller's/applicant's generation and one for seller's/applicant's long-term firm purchases.[353] SoCal Edison states that if the Commission does not change the asset appendix headings as requested, the Commission should hold a technical conference to address questions raised by the change in policy regarding the reporting of long-term firm purchases.[354] NextEra opposes the reporting of long-term power purchase agreements in the asset appendix but states that if the Commission decides to require this reporting it should allow the use of EIA regional data for facilities that do not yet have seasonal or a five-year average capacity rating.[355]

c. Commission Determination

270. We do not find the comments opposed to reporting of long-term firm purchases in the asset appendix to be persuasive and adopt the NOPR proposal to require sellers to report all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices. However, we agree with commenters that the format of the generation asset list is not well suited for reporting long-term purchases. Therefore, we are implementing SoCal Edison's recommendation to create a separate list for a seller's long-term firm purchases.[356] The new long-term purchases list has columns similar to the generation list, but removes several inapplicable columns (Generation Name, Owned By, Controlled By, and Date Control Transferred), and adds ''Start Date (mo/da/yr)'' and ''End Date (mo/da/yr)'' columns.

271. NextEra requests that purchasers under a long-term firm power purchase agreement be allowed to use EIA regional data. As discussed above in the section on capacity ratings, we permit use of EIA regional data but only for energy-limited facilities that lack five years of operating data or for non-affiliated energy-limited facilities for which the seller cannot obtain operating data.[357] We also will require that sellers de-rate all generators using the same technology in a consistent manner. Thus, if a purchaser can identify which generation units are fulfilling a long-term firm PPA, it should use the same rating methodology for that facility in its market power study that it is using for other generation facilities utilizing that technology.

3. Clarifications Regarding the Existing Columns

a. Commission Proposal

272. The Commission noted that its post-Order No. 697 experience has been that, with respect to the column in the list of generation assets that is currently labeled ''Nameplate and/or Seasonal Rating,'' some sellers report *only* the portion of the capacity that they own,[358] whereas other sellers report the entire capacity of the facility. Additionally, some sellers include in their generation asset lists facilities in which they have claimed a relationship through only passive, non-controlling interests.

273. The Commission proposed the following clarifications with respect to the asset appendix: (1) A seller must enter the entire amount of a generator's capacity (in MWs) in the ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average'' column of the generation list even if the seller only owns part of a facility; (2) a seller should list only one of the following as a ''use'' in the ''Asset Name and Use'' column of the transmission list: Transmission, intrastate natural gas storage, intrastate natural gas transportation, or intrastate natural gas distribution; and (3) entities and generation assets in which passive ownership interests have been claimed should not be included in the horizontal market power indicative screens or reported in the appendix.[359]

274. The Commission explained that if a seller does not believe that the entire capacity of a generation facility should be included in its indicative screens, it may explain its position in the transmittal letter filed with its horizontal market power screens, including letters of concurrence where appropriate,[360] and thus account for only its portion of that particular generation facility in the indicative

[352] NOPR, FERC Stats. & Regs. ¶ 32,702 at PP 16, 79.

[353] SoCal Edison at 21.

[354] *Id.* at 23.

[355] NextEra at 13–14.

[356] SoCal Edison at 21.

[357] As discussed above, the Commission will not permit de-rating of solar photovoltaic facilities. *See supra* Section IV.A.6.c.i.

[358] The Commission noted that it has not permitted market-based rate sellers to dilute the ownership share of generation attributed to the seller or its affiliates based on multiplying successive shares of partial ownership in a company. *See Kansas Energy LLC, Trademark Merchant Energy, LLC,* 138 FERC ¶ 61,107, at P 28 (2012). Instead, sellers must account for generation capacity owned or controlled by the seller and its affiliates for purposes of analyzing horizontal market power. *See id.* P 37.

[359] The Commission noted that sellers must demonstrate why such ownership interests should be deemed passive. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 116 n.129 (citing *AES Creative Resources, L.P. et al.,* 129 FERC ¶ 61,239 (2009) (*AES Creative*)).

[360] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 187.

screens. However, the entire capacity of the facility should be reflected in the list of generation assets in the appendix.

275. The Commission noted that generating units within a single plant may be aggregated in a single row of the generation list if the information in the other columns is the same for all units, but separate plants cannot be aggregated into a single row. As discussed and adopted elsewhere in this Final Rule,[361] the Commission proposed that qualifying facilities less than 20 MW may be aggregated by balancing authority area or market into one line in the generation asset list. The Commission further clarified that each asset should be listed only once; if it is owned by more than one affiliate, all affiliate names should be included in the ''Owned By'' column. If a company or an affiliate is registered in the Commission's company registration database,[362] the Commission proposed to clarify that the name in the asset appendix for that company must appear exactly the same as in the registration database.

276. With respect to the ''Date Control Transferred'' column in both the generation and transmission asset lists, the Commission proposed to clarify that the ''Date Control Transferred'' column should identify the date on which a contract or other transaction that transfers control over a facility became effective. The Commission noted that where appropriate, sellers may enter ''N/A'' in this field to indicate that it is not applicable to their asset(s) and explain why in the end note list.

277. With respect to the ''Size'' column in the list of transmission assets, the Commission proposed to clarify that the ''Size'' refers to both the length of the transmission line (*i.e.,* feet or miles) and the capability of the line in voltage (kV). The Commission noted that sellers may aggregate their transmission assets by voltage. For instance, a seller that owns a transmission system with several hundred transmission lines might include two rows in the transmission asset list; one row with 200 miles of 138 kV lines listed in the ''Size'' column and another row with 100 miles of 230 kV lines listed in the ''Size'' column as long as all the other columns (*e.g.,* owned by, controlled by, balancing authority area, geographic region, etc.) remain the same for all assets aggregated in that row. The name for such aggregated facilities should describe the lines that are being aggregated, *e.g.,* ''230 kV transmission lines.''

i. Entire Amount of Generator's Capacity in Asset Appendix

(a) Comments

278. Several commenters express concern over the Commission's proposal to require a seller to include the entire amount of a generator's capacity in its asset appendix, even if the seller only owns part of a facility.[363] Idaho Power, EEI, and FirstEnergy argue that this proposal may lead to double counting many generation facilities, or would otherwise lead to confusion.[364] FirstEnergy also argues that the proposal will result in the amount of generation capacity reported by a seller in its asset appendix to differ from the amount of generation capacity reflected in its indicative screens, which may cause confusion over the amount of generation capacity controlled by the reporting entity.[365] NextEra adds that the information in the asset appendix may not match the information in the transmittal letter, which only includes a seller's ownership interest in the generation facility where it has demonstrated its partial ownership (or lack of control over).[366] Idaho Power, NextEra, and El Paso suggest that, if the Commission adopts this requirement, it should add a column to the asset appendix to allow a seller to declare the percentage of the generation facility it owns or controls.[367]

(b) Commission Determination

279. We adopt the NOPR's proposed clarification that a seller must enter the entire amount of a generator's capacity in the generation asset list. In response to commenters' concerns that the NOPR proposal could result in double counting, confusion, or other inconsistencies, we believe we have addressed those concerns through the addition of capacity rating and end notes columns discussed above. Specifically, as discussed more fully above, we are adopting Solomon/Arenchild's proposal to add a new end notes column where sellers will be able to place explanatory notes.[368] To the extent a seller is attributing to itself less than a facility's full capacity rating, the seller can explain that in the end notes column.

ii. Size Column in Transmission Asset List

(a) Comments

280. SoCal Edison questions the continued need for mileage of transmission assets as required in the asset appendix for entities that own integrated transmission networks rather than number of interconnection customer's interconnection facilities. SoCal Edison argues that the total length in miles of a utility's integrated network transmission assets has no meaningful relationship to the ability to exercise vertical market power. SoCal Edison further argues that one of the aims of the distributed generation movement is to slow transmission growth, such that a lack of transmission system growth could merely reflect state preference for distributed generation over long-distance transmission. Finally, SoCal Edison argues that FERC Form No. 1 provides the Commission an annual update of the transmission mileage for major utilities and should prove sufficient for analysis. SoCal Edison recommends that the Commission explain the need to track mileage of transmission lines in service and how it relates to vertical market power, particularly in light of third parties' ability to build new transmission additions under Order No. 1000.[369]

(b) Commission Determination

281. We disagree with SoCal Edison that reporting the mileage of

[361] *See supra* Section IV.C.2.c.

[362] The term ''company registration database'' here refers to ''FERC's Online Company Registration application'' (*see http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf*). However, Commission orders have referred to this database as we have also issued orders referring to it as ''Company Registration,'' (*see Filing Via the Internet, Revisions to Company Registration and Establishing Technical Conference,* 142 FERC ¶ 61,097 (2013)) or ''Company Registration system'' (*see Filing Requirements for El. Utility S.A., Order Updating Electric Quarterly Report Data Dictionary,* 146 FERC ¶ 61,169 (2014)).

[363] *See, e.g.,* Idaho Power at 2, 4; EEI at 17; FirstEnergy at 12–13; NextEra at 14–15; El Paso at 4–5.

[364] Idaho Power at 2, 4 (explaining that, if a seller enters the entire amount of the generator's capacity when it owns just a share of the generating asset, it is unclear how the Commission would ensure that the generation capacity is not being counted twice); EEI at 17 (explaining that, if multiple sellers have an interest in an asset, and each lists the asset's entire generation, the seller may over count the facility's capacity); FirstEnergy at 12–13 (explaining that each joint owner including the entire generating capacity of a jointly owned facility may result in double-counting).

[365] FirstEnergy at 12–13.

[366] NextEra at 14.

[367] Idaho Power at 2, 4; NextEra at 15 (expressing concern over the public having to search for the seller's transmittal letter in which the seller declares its partial interest); El Paso at 4–5 (recommending that the Commission add a ''Percentage of Ownership/Control'' column to the asset appendix that would allow a seller to identify the percentage of a generation facility that the seller owns or controls).

[368] *See supra* Section IV.D.1.c.

[369] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132, *order on reh'g,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

transmission assets as required in the asset appendix for entities that own integrated transmission networks is unnecessary for a transmission market power analysis. While we agree that the total length in miles of a utility's integrated network transmission assets has no direct relationship to the ability to exercise vertical market power, the asset appendix is not intended to provide a detailed study of a transmission owner's system. Instead, the transmission asset list, like the generation asset list, provides a comprehensive list of the assets owned or controlled by a market-based rate seller and identifies the relevant transmission assets of sellers in wholesale power markets. Collecting this information adds transparency to the market and allows the public the opportunity to provide comments on a seller's transmission assets. However, as noted in the NOPR, sellers are permitted to aggregate similar assets in a balancing authority area, which will reduce the burden associated with preparing the asset lists.[370]

iii. Passive Ownership

(a) Comments

282. Some commenters took issue with the Commission's proposal to clarify that entities and generation assets in which passive ownership interests have been claimed should not be reported in the asset appendix.[371] EEI states that the clarification seems appropriate, but vague.[372] EEI asks whether partial passive ownership by anyone is enough to exclude the asset from the asset appendix, or whether passive ownership as the seller's only interest in the asset is what is required for that seller to exclude the asset from its asset appendix.[373]

283. However, AAI cautions the Commission against eliminating the passive ownership interests reporting requirement. AAI argues that a passive interest can still affect competitive dynamics in the market because control is not the sole factor to determine whether an entity exercises market power.[374] AAI further argues that eliminating the reporting requirement could encourage generation owners to acquire undisclosed passive interests that enhance their incentive to engage in generation withholding and other abusive market behavior.[375]

[370] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 118.

[371] *See, e.g.,* EEI at 17; AAI at 7–9.

[372] EEI at 17.

[373] *Id.*

[374] AAI at 7–8.

[375] *Id.* at 7–9

(b) Commission Determination

284. We clarify that sellers should not include in their asset appendices entities and facilities for which they have claimed, and demonstrated to the Commission, that the only relationship is through passive, non-controlling interests consistent with *AES Creative* (*i.e.,* where the seller has a strictly passive ownership interest in another entity, or another entity has a strictly passive ownership interest in the seller). This is consistent with current Commission practice. As noted in the NOPR, sellers must demonstrate why such a relationship should be deemed passive.[376] We are not persuaded by AAI's concerns that eliminating this reporting requirement could encourage generation owners to acquire undisclosed passive interests. We stress that we are not eliminating the requirement to demonstrate passivity; we are merely articulating our existing expectations. As noted above, we will continue to require that any seller that claims certain interests are passive or non-controlling must meet the standards set out in *AES Creative*.

iv. Other Issues

285. The Commission proposed clarifications regarding: Populating the ''Use'' column in the transmission asset list; listing each asset once in an asset list; matching seller and affiliate names in the asset lists with the name registered in the Commission's company registration database where possible; and the use of the ''Date Control Transferred'' column in the transmission asset list.

(a) Comments

286. We did not receive any comments directly related to the aforementioned proposals. However, Solomon/Arenchild raised a concern related to clarifications regarding existing columns in the asset appendix. Solomon/Arenchild note that the proposed reporting of capacity values in generation asset list in the asset appendix may be inconsistent with the indicative screens. Specifically, Solomon/Arenchild state that there is a disconnect between the time period covered in the asset appendix and the time period covered in the indicative screens.[377] Solomon/Arenchild also state that the indicative screens cannot rely solely on the ratings reported in the asset appendix because both summer and winter seasonal ratings typically are used in the indicative screens while the current asset appendix only allows sellers to report one rating per generation unit.[378] Accordingly, Solomon/Arenchild recommend that the Commission specify that any generation sold or contracts terminated following the relevant study period be excluded from the historical study period of the triennial filing, and that any generation acquired or contracts begun since the historical study period be included in the indicative screens and asset appendix.[379]

[376] NOPR, FERC Stats. & Regs. ¶ 32,702 at P 116 n.130 (citing *AES Creative,* 129 FERC ¶ 61,239).

[377] Solomon/Arenchild at 7–8.

(b) Commission Determination

287. We adopt the proposed clarifications regarding: Populating the ''Use'' column in the transmission asset list; listing each asset once in an asset list; matching seller and affiliate names in the asset lists with the name registered in the Commission's company registration database where possible; and to the use of the ''Date Control Transferred'' column in the transmission asset list.

288. In regard to the ''Date Control Transferred'' column, we further clarify that sellers should identify the date on which a contract or other transaction that transfers control over a facility becomes effective. Where appropriate, companies may enter ''N/A'' in this field to indicate that it is not applicable to their asset(s) and provide any further explanation in the new end notes column.

289. We do not adopt Solomon/Arenchild's recommendation to modify the data in the market power analysis to match the data required for the asset appendix. In Order No. 697, the Commission stated ''that when the Commission evaluates an application for market-based rate authority, the Commission's focus is on whether the seller passes both of the indicative screens based on unadjusted historical data. Likewise, when a seller fails one or both of the screens and the Commission evaluates whether that seller passes the DPT, the Commission's focus is on whether the seller passes the DPT based on unadjusted historical data'' [380] We will continue to require that a seller's market power analysis rely on unadjusted historical data. To the extent that a seller's generation

[378] *Id.*

[379] *Id.* at Attachment 1 (noting that their recommendation conforms the indicative screens with the asset appendix that is part of the triennial filing, creates a ''baseline'' for any future notice of change in status filings, and more properly aligns the determination of when a change in status should be filed in the context of the 100 MW net change in capacity ownership for those entities that have sold generation or terminated contracts).

[380] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 301.

assets have changed between the historical time period used in the market power analysis and the current time period of the asset appendix, the seller should explain and reconcile any differences in its application. Sellers may also provide sensitivity runs along with the required historical studies to show whether changed circumstances since the end of the study period justify a different conclusion than what the data from the study period indicates.[381] The Commission has addressed the data disconnect issue by noting previously that the Commission will consider, on a case-by-case basis, clear and compelling evidence that seeks to demonstrate that certain changes in the market should be taken into account as part of the market power analysis in a particular case.[382] However, we provide the following guidance for preparing the studies and asset appendices for filings that commonly contain both asset appendices and market-power studies.

290. For initial applications where the seller has acquired an existing facility, sellers should prepare or rely on a study with historical data that transfers the MW values of the acquired generation from the Non-Affiliate Capacity rows to the Seller and Affiliate Capacity rows of their indicative screens and enter the information for the acquired facility in the generation asset list.

291. For initial applications where the seller has newly built generation, sellers should submit a study that increases the total capacity value of the market/balancing authority area in which the seller is physically located by the seller's newly built generation capacity. To accomplish this, the seller should use a previously approved study and add the value of their newly built generation to the total capacity value of the market/balancing authority area. Sellers must report this newly built generation in the generation asset list.

292. In triennials, there are occasions when a seller's generation fleet at the time of filing has changed since the close of the relevant study period. In these instances, sellers should explain the changes in the text of their filing, the end notes of the asset appendix if applicable, and if the changes are significant, the seller should provide a sensitivity analysis reflecting those changes.

293. Notices of change in status generally do not require indicative screens. However, sometimes a seller provides screens for changes that the seller considers significant enough to merit the submission of screens to show that it would not fail the indicative screens with these new assets. In this case, we clarify that any studies submitted by a seller should use the most recently available historical data for the market, but include the seller's current generation portfolio, imports, and load and reserve obligations (if any).

294. We understand Solomon/Arenchild's concern that the indicative screens cannot solely rely on the ratings reported in the asset appendix. Based on our experience, sellers that use seasonal ratings for thermal generation in their indicative screens are likely to use either summer or winter ratings in their asset appendix. However, in some cases sellers that use seasonal ratings in their screens use nameplate ratings in their asset appendix. Therefore, we clarify that when sellers use seasonal ratings in their indicative screens, their asset appendix should include the capacity rating used for each generation unit in their pivotal supplier screen(s). Requiring sellers to report the capacity rating used in their pivotal supplier screen eliminates this inconsistency and allows us to maintain the simplicity of the asset appendix. In addition, this ensures that the generation asset list displays the seasonal rating of each generation unit at the time of peak demand, when capacity is most needed.[383]

4. Changes Regarding OATT Waiver and Citations in Transmission Asset List

a. Commission Proposal

295. The Commission has stated that even if a seller has been granted waiver of the requirement to file an OATT, those transmission facilities should be reported in its asset appendix,[384] and the Commission stated in the NOPR that this should be reiterated and clarified going forward. Therefore, the Commission proposed to require any seller that has been granted waiver of the requirement to file an OATT for its facilities[385] to report in its transmission asset list the citation to the Commission order granting the OATT waiver for those facilities. The Commission proposed to modify the example of the asset appendix found in appendix B to subpart H of part 35 of the Commission's regulations to add a new column in the transmission asset list for the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement. Providing the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement in the list of transmission assets was intended to facilitate the Commission's and market participants' verification that sellers were granted the appropriate authorizations or waivers.

b. Comments

296. While APPA/NRECA support the Commission's proposal to require a seller that has been granted waiver of the requirement to file an OATT for its facilities to cite the Commission order granting that waiver in its list of transmission assets in the asset appendix,[386] other commenters oppose it. Some commenters note that the Commission's proposal may be at odds with the Interconnection Customer Interconnection Facility (ICIF) rulemaking in Docket No. RM14–11–000 that was pending at the Commission at the time the comments were submitted.[387] SoCal Edison requests that the Commission reject this proposal because the new column will not provide useful information, in light of the proposed ICIF rulemaking, and may cause confusion.[388] NextEra suggests that the Commission synthesize the OATT waiver provisions in both pending rulemakings.[389]

297. Other commenters argue that the proposal is unnecessary and unclear.[390] Specifically, FirstEnergy states that, if the citation to the OATT or OATT waiver is in the transmittal letter, including the citation in the asset appendix is redundant and unnecessary.[391] FirstEnergy further states that, if a company transferred operational control of its facilities to an

[381] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at PP 124–130.

[382] *Id.* P 130.

[383] As previously noted, if a filing does not contain a market power study, or a particular generation asset is not included in a market power study, sellers should include in the asset appendix the rating that it used the last time the asset was included in a market power study.

[384] "We clarify that the transmission facilities that we require to be included in that asset appendix are limited to those the ownership or control of which would require an entity to have an OATT on file with the Commission (even if the Commission has waived the OATT requirement for a particular seller)." Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 378.

[385] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

[386] APPA/NRECA at 5; *see also* Golden Spread at 7.

[387] SoCal Edison at 25 (explaining that the Commission is proposing a blanket waiver of all OATT, OASIS, and Standards of Conduct requirements to any public utility that is subject to such requirements solely because it owns, controls, or operates interconnection customer interconnection facilities and citing *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities,* 147 FERC ¶ 61,123, at P 35 (2014)); NextEra at 15; EEI at 17–18.

[388] SoCal Edison at 25.

[389] NextEra at 15.

[390] *See, e.g.,* AEP at 9; EEI at 17; and FirstEnergy at 13.

[391] FirstEnergy at 13.

RTO, a citation to the order authorizing the transfer should suffice.[392] AEP argues that the proposal to provide a citation to the OATT waiver is an extra imposition on sellers that is inconsistent with the stated purpose of the NOPR.[393] AEP and EEI state that OATTs are readily publicly available and therefore do not need to be included in the transmission asset list.[394] AEP further argues that it is unclear which OATT waiver citation a company like AEP would list because its filings are frequently revised and updated.[395]

c. Commission Determination

298. We adopt the proposal to require sellers to add a citation to the order accepting a seller's OATT. Further, we agree with FirstEnergy's suggestion that if a seller has transferred operational control of its facilities to an RTO/ISO, this cite should be to the order authorizing the transfer. Therefore, we have changed the text to the proposed column (Column [B]) of the transmission asset list from ''Cite to Order Accepting OATT or granting OATT waiver'' to ''Cite to order accepting OATT or order approving the transfer of transmission facilities to an RTO or ISO.'' The change to remove ''granting OATT waiver'' is discussed below.

299. We do not agree with AEP's assertion that this requirement is an extra imposition upon sellers. Further, in regard to AEP and EEI's comments, we understand that OATT information is already publicly available. However, sellers are already required to supply this information as part of their demonstration that they meet the Commission's vertical market power requirements. The new column provides a convenient location for sellers to provide the information and for the Commission or third-parties to find the information. We clarify that sellers are not expected to change the citation every time they revise or update their OATTs. Similar to Column [B] ''Docket # where market-based rate authority was granted'' in the generation asset list, we expect sellers to provide citation to the initial order accepting a seller's OATT or accepting the seller's transfer of transmission facilities to an RTO/ISO in Column [B] of the transmission asset list. This will minimize any burden associated with including this information in the transmission asset list.

[392] *Id.* at 14.

[393] AEP at 9.

[394] *Id.;* EEI at 17.

[395] AEP at 9; *see also* EEI at 17.

300. However, we do not adopt the NOPR proposal to require sellers to add a citation to orders granting the seller waiver of the OATT requirements. We agree with SoCal Edison that this requirement will not provide useful information, in light of the Final Rule in the ICIF proceeding.[396]

5. Electronic Format

a. Commission Proposal

301. Currently, virtually all of the asset appendices are submitted to the Commission using PDF format. Staff is unable to perform calculations on PDF files, or to search, or sort the data contained in the asset lists. Staff therefore frequently transfers the information included in the asset lists into spreadsheets for sorting, comparison purposes, and internal calculations, and in doing so has found numerous submission errors from sellers. In the NOPR, the Commission stated that if it provided a sample electronic spreadsheet and required sellers to submit the assets lists in an electronic spreadsheet, it would reduce filing burdens, improve accuracy, decrease the number of staff inquiries to sellers regarding submission errors, and result in a more efficient use of resources.

302. Therefore, the Commission proposed to require market-based rate sellers to submit the appendix B asset lists in an electronic spreadsheet format that can be searched, sorted, and otherwise accessed using electronic tools. The Commission proposed to post on the Commission's Web site sample asset lists in formatted electronic spreadsheets and to require sellers to submit the asset appendix in the form and format of the sample electronic asset list spreadsheets.[397]

303. An example of the electronic spreadsheet for the asset appendix with the proposed new columns and column headings was included as appendix B to the NOPR.

[396] *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities,* Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015) (amending Commission regulations to waive the OATT requirements of section 35.28, the OASIS requirements of part 37, and the Standards of Conduct requirements of part 358, under certain conditions, for entities that own interconnection facilities).

[397] The Commission proposed that if a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site. Specifically, it must have the same exact columns and descriptive text as the sample spreadsheet. The Commission further proposed that the file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. NOPR, FERC Stats. & Regs. ¶ 32,702 at P 63 n.71. *See* FERC, Acceptable File Formats (January 2012), *available at http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.*

b. Comments

304. Commenters generally support the Commission's proposal to require sellers to submit the asset appendix in an electronic spreadsheet format; however, several commenters request clarification or modification of the proposal.[398] EPSA requests clarification on the specific fields that would be required in the electronic format, and the methodology that should be used to submit the electronic forms.[399] E.ON urges the Commission to thoroughly vet the process to ensure ease of use and submission by market participants, which may require a public test period.[400] EEI states that, ''if the Commission simply intends to require market-based rate applicants and sellers to file the information in standard electronic formats, such as Adobe, Excel, and Word, that would be fine. Such straightforward electronic filing will simply mirror the current FERC eFiling process, which has eased the burden of filing documents at FERC. If, however, the Commission has in mind that market-based rate applicants and sellers must provide the information using rigid new formats, *e.g.* with pre-defined rows and columns using XML data, EEI asks the Commission to engage in further dialogue with the regulated community first, to ensure that the format changes are reasonable, clear, and workable.'' [401]

c. Commission Determination

305. We adopt the NOPR proposal to require sellers to submit the asset appendix in an electronic spreadsheet format.

306. EEI apparently misconstrued this proposal and we clarify here that the electronic format requirement for the asset appendix is specifically designed to stop the submission of asset appendices in Word or PDF format and instead require that these be submitted in a workable electronic file format such as Excel. We adopt the NOPR requirements of a ''workable electronic spreadsheet,'' [402] provide an example on

[398] *See, e.g.,* APPA/NRECA at 5 (supporting the Commission's proposal and requesting no clarifications or modifications); Solomon/Arenchild at 6–7; EPSA at 12; E.ON at 13, 14.

[399] EPSA at 12.

[400] E.ON at 13.

[401] EEI at 18.

[402] '' 'Workable electronic spreadsheet' refers to a machine readable file with intact, working formulas as opposed to a scanned document such as an Adobe PDF file.'' NOPR, FERC Stats. & Regs. ¶ 32,702 at P 63 n.70. Additionally:

If a seller chooses to create its own workable electronic spreadsheet, the file it submits must have

our Web site, and provide the electronic filing requirements for such a filing.[403] Furthermore, we clarify that this requirement is not dependent upon any particular technology such as Extensible Markup Language (XML), and instead can use any one of a number of Commission accepted spreadsheet formats.[404] In response to EPSA, we clarify that the entire asset appendix (including all relevant lists) should be submitted in the electronic format. Sellers should submit the electronic asset appendix as an attachment to their filings, following the Commission's electronic filing requirements described above.

307. Finally, we replace the example appendix found in appendix B to subpart H of part 35 of the Commission's regulations with the appendix B in this Final Rule.

6. Database

a. Commission Proposal

308. The Commission sought comment regarding whether in the future it would be beneficial to develop a comprehensive searchable public database of the information contained in the asset appendix, which would eventually replace the pre-formatted spreadsheet. The Commission noted that such an approach would allow market-based rate sellers to update their asset appendices when circumstances change. The Commission sought comments regarding whether such a database would be useful, how the database might be created, standardized and maintained, and the frequency with which it should be updated. The Commission further sought input on the usefulness of including unique identifiers for the affiliate companies and generation assets in such a database, *e.g.,* the company registration database and the EIA Power Plant Code and Generator ID, respectively, where those identifiers exist. The Commission also sought comment on the difficulty of reporting and the usefulness of including in such a database the percentage each affiliate owns of each of its assets.

b. Comments

309. While APPA/NRECA, Golden Spread, and E.ON support the Commission's proposal to develop a comprehensive, searchable public database of the information contained in the asset appendix,[405] several other commenters expressed concern.[406] SoCal Edison and EEI argue that including contract data in the database would raise concerns about confidentiality.[407] EEI states that the database would need to be designed in close coordination with the regulated community to ensure a useful result, minimize the regulatory burden, and address confidentiality and critical energy infrastructure information (CEII) concerns.[408] Idaho Power states that, in some cases, proprietary information of a generator's capacity would be masked in a public database, impacting the usefulness of the database.[409]

310. Other commenters raise issues related to maintaining the database's integrity.[410] SoCal Edison, EEI, and AEP state that the database could omit qualifying facilities' generation and non-jurisdictional entities' generation.[411] SoCal Edison also argues that it would be difficult to assemble information from the asset appendix about long-term firm purchases into a meaningful database.[412] Solomon/Arenchild support the database, in theory, but state that the database would require continual, time-consuming, and cumbersome maintenance to maintain its integrity.[413] They further state that for such a database to provide meaningful information, one would need to be able to readily identify duplicates, overlaps etc., or the utility of the database will be undermined. NextEra echoes Solomon/Arenchild's concern and state that the burdens associated with maintaining such a database would outweigh the benefits.[414] EPSA expresses concern over whether the industry or the Commission will be responsible for updating the database and how the accuracy of the information will be ensured.[415]

311. EPSA also seeks clarification on whether the database would eventually replace the asset appendix, or if both a database and an asset appendix would be required.[416] EPSA states that, if both a database and an asset appendix will be required of all market-based rate sellers, then such requirements would run counter to the Commission's stated intentions to streamline the information required and reduce the regulatory burden on market-based rate sellers. EPSA suggests that, if sellers will be required to use the database for documentation of assets, the seller should be responsible for updating and maintaining its data on the database.[417]

312. AEP does not see the need for the Commission to host a comprehensive searchable public database, stating that the information is available through other means and creating the database would impose another reporting obligation on sellers.[418]

c. Commission Determination

313. We will not direct the creation of a comprehensive public database as part of this rulemaking. In the NOPR, we sought industry comment on the usefulness of a potential database and for input on how the database might be created and maintained. While some commenters raise valid concerns about the structure, confidentiality, burden and maintenance of the database, others recognize the potential utility of a well-designed and properly administered database.[419] Similarly, we continue to recognize the potential value of the database and may consider the creation of a database in the future.

E. Category 1 and Category 2 Sellers

1. Commission Proposal

314. In Order No. 697, the Commission created a category of market-based rate sellers, Category 1 sellers, that are exempt from the requirement to periodically submit

the same format as the sample spreadsheet on the Commission Web site. Specifically, it must have one worksheet for each of the indicative screens and each screen must have the same exact rows, columns, and descriptive text as the sample worksheets. Cells requiring negative values must be pre-programmed to only allow negative values. Likewise, cells with calculated values must contain a working formula that calculates the value for that cell. Finally, the file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. *See* FERC, Acceptable File Formats (Jan. 2012), *available at http://www.ferc.gov/docs-filing/elibrary/accept-fileformats.asp.* NOPR, FERC Stats. & Regs. ¶ 32,702 at P 63 n.71.

[403] *Id.* P 123 n.135.

[404] *Id.* P 65 n.73; *see also supra* Section IV.A.4.c.

[405] APPA/NRECA at 5; Golden Spread at 7; E.ON at 14 (stating that a database would be particularly useful if the Commission ultimately adopts its proposal to redefine relevant markets for generation-only balancing authority areas, and it would provide market participants and market-based rate sellers with access to megawatt generation data needed for horizontal market power analyses).

[406] *See, e.g.,* SoCal Edison at 26; EEI at 18; Idaho Power at 2–3.

[407] SoCal Edison at 26; EEI at 18 (adding that including contract data in the database would create additional information collection burdens and would also raise concerns about the disclosure of Critical Energy Infrastructure Information (CEII)).

[408] EEI at 18.

[409] Idaho Power at 2–3.

[410] *See, e.g.,* SoCal Edison at 26; EEI at 18; AEP at 10; Solomon/Arenchild at 6–7; NextEra at 15; EPSA at 14.

[411] SoCal Edison at 26 (adding also that the data may not be particularly useful due to joint ownership issues); EEI at 18; AEP at 10.

[412] SoCal Ed. at 26.

[413] Solomon/Arenchild at 6–7.

[414] NextEra at 15.

[415] EPSA at 14.

[416] *Id.*

[417] *Id.*

[418] AEP at 9.

[419] APPA/NRECA at 5; Golden Spread at 7; E.ON at 14; Solomon/Arenchild at 6–7.

updated market power analyses in accordance with the regional reporting schedule. Category 1 sellers include wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power concerns.[420]

315. In the NOPR, the Commission proposed to clarify the distinction in determining the seller category status of power marketers and power producers. For purposes of determining seller category status for each region, a power marketer should include all affiliated generation capacity in that region. Power producers only need to include affiliated generation that is located in the same region as the power producer's generation assets. The Commission explained that the reason behind this distinction is that a power marketer with no generation assets in the ground is assumed to have no home market; it is thus assumed to be equally likely to make sales in any region. In contrast, although a power producer has authorization to make sales in other regions, it is assumed that the majority of its sales will be in the region(s) in which it owns generation assets.

316. Thus, the Commission proposed to clarify that a power marketer with no generation assets may qualify as a Category 1 seller in any region where: (1) Its affiliates own or control, in aggregate, 500 MW or less of generation capacity; (2) it is not affiliated with anyone that owns, operates or controls transmission facilities; (3) it is not affiliated with a franchised public utility; and (4) it does not raise other vertical market power issues. The Commission noted that the above is consistent with the Commission's treatment of power marketers since the issuance of Order No. 697.

317. The Commission also proposed to clarify that a power producer may qualify as a Category 1 seller in any region in which the power producer itself owns generation and the power producer and its affiliates own or control, in aggregate, 500 MW of generation capacity or less, as long as the power producer is not affiliated with anyone that owns, operates or controls transmission facilities in that region, is not affiliated with a franchised public utility in that region, and does not raise other vertical market power issues. In addition, unlike power marketers, a power producer may qualify as a Category 1 seller in a region where the power producer itself does not own or control any generation or transmission assets but where it has affiliates that are Category 2 sellers.[421]

318. Therefore, the Commission proposed to revise the regulation at 18 CFR 35.36(a)(2) and clarify that in order to qualify for Category 1 status, a seller must meet *all* of the requirements. Failure to satisfy *any* of these requirements results in a Category 2 designation.

2. Comments

319. EEI recommends that the Commission modify its proposed clarifications regarding Category 1 and Category 2 sellers. EEI encourages the Commission to allow power marketers to demonstrate that their sales from particular capacity are confined to particular regions and thus should be counted accordingly in determining their category status.[422] EEI adds that the Commission should modify the definition of a Category 1 seller from ''no more than 500 MW generation ownership and/or control'' to ''no more than 500 MW of uncommitted resources owned and/or controlled.''[423] EEI contends that some companies have always had negative uncommitted resources because they are net buyers, and so should not be required to make updated market power analysis filings or change in status filings.[424]

3. Commission Determination

320. We adopt the proposed clarifications regarding Category 1 and Category 2 sellers and the corresponding regulatory changes to 18 CFR 35.36(a)(2) as proposed in the NOPR.

321. In response to EEI's comment to allow power marketers to demonstrate that sales from particular capacity are confined to a particular region, the Commission has found that category seller status is based on the region in which generation capacity is owned or controlled by the seller and its affiliates in aggregate rather than where sales are made in an effort to keep the definition and demonstration of a seller's category status simple and straightforward.[425] Since sales change frequently, we believe basing the category seller status definition on sales could create an additional burden on sellers to demonstrate that their and their affiliates' sales are confined to a particular region. However, we note that to the extent that any seller wishes to limit its market-based rate authority to a particular region or set of regions in its tariff, it is free to do so. If a seller does not have market-based rate authority in a particular region, it will not have an obligation to file regular updated market-power analyses for that region.

322. EEI also proposed that the category seller status designation be based on whether a seller owns or controls uncommitted resources in a region. We reject this proposal as beyond the scope of what was proposed in the NOPR. Moreover, the test for category seller status was intended to be a bright line test that would be easy to administer.[426] The Commission has previously found that ''aggregate capacity in a given region best meets our goal of ensuring that we do not create regulatory barriers to small sellers seeking to compete in the market while maintaining an ample degree of monitoring and oversight that such sellers do not obtain market power.''[427] We do not believe that a seller with over 500 MW of capacity is the type of seller that the Commission intended to exclude from periodic updated market power analyses, regardless of whether the seller's capacity happens to be committed at a particular point in time.

F. Corporate Families

1. Corporate Organizational Charts

a. Commission Proposal

323. In the NOPR, the Commission proposed to require sellers to provide an organizational chart, in addition to the existing requirement[428] to provide written descriptions of their affiliates and corporate structure or upstream

[420] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 853–863; *see also* 18 CFR 35.36(a)(2).

[421] The Commission noted that a mitigated seller cannot use an affiliated power producer in another region as a conduit to sell in a mitigated balancing authority area because all affiliates of a mitigated seller are prohibited from selling at market-based rates in any balancing authority area or market where the seller is mitigated. Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 335.

[422] EEI at 19.

[423] *Id.*

[424] *Id.*

[425] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 864–868.

[426] *Id.* P 864.

[427] *Id.* P 865; Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 360.

[428] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 181, n.258 (also requiring sellers seeking market-based rate authority to describe the business activities of their owners, stating whether they are in any way involved in the energy industry).

ownership, for initial applications for market-based rate authority, updated market power analyses and notices of change in status reporting new affiliations.

324. The Commission noted that it has seen increasingly complex organizational structures as private equity funds and other financial institutions take ownership positions in generation and utilities.[429] The Commission stated that requiring the filing of an organizational chart would make reviewing market-based rate filings more efficient, increase transparency, and synchronize information about corporate structure that the Commission receives from sellers with market-based rate authority with similar information that the Commission receives under section 203 of the FPA.[430] The Commission proposed to require that sellers provide an organizational chart similar to that which the Commission requires from section 203 applicants. Specifically, the Commission noted that section 33.2(c)(3) of its regulations [431] provides that section 203 applicants must include: A description of the applicant, including, among other things, organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant represents that the proposed transaction does not affect the corporate structure of any party to the transaction. The Commission proposed that market-based rate sellers be required to provide, in addition to the already required written descriptions of their affiliates and corporate structure or upstream ownership, an organizational chart depicting the market-based rate seller's current corporate structures (including any pending authorized but not implemented changes) indicating all upstream owners, energy subsidiaries and energy affiliates. The Commission believed that the increased burden on market-based rate sellers would be minimal as most sellers have this organizational chart available.

325. Thus, the Commission proposed to revise the text in section 35.37(a)(2) of the Commission's regulations to add this requirement for purposes of initial applications and updated market power analyses. The Commission also proposed that such organizational chart be required for any notice of change in status involving a change in the ownership structure that was in place the last time the seller made a market-based rate filing with the Commission. Therefore, the Commission proposed to revise the text in section 35.42(c) accordingly.

b. Comments

326. Many commenters oppose the Commission's proposal to require sellers to provide an organizational chart, in addition to written descriptions of their affiliates and corporate structure or upstream ownership, for initial applications for market-based rate authority, updated market power analyses, and notices of change in status reporting new affiliations.[432] However, APPA/NRECA and Golden Spread support the proposal.[433]

327. Several commenters submit that this proposal would impose a burden on sellers disproportionate to any benefit received, requiring significant investigation into numerous affiliate relationships.[434] EPSA notes that, even if a market-based rate entity already has an organizational chart, often those charts are not developed and used for the purpose of showing control, but rather to demonstrate how finances flow throughout the various companies.[435] Consequently, EPSA argues that the charts would require significant revisions to comply with the Commission's proposal.[436]

328. EPSA proposes that, if the Commission implements the proposal, the Commission should limit the entities depicted in the organizational chart to include only public utilities subject to the Commission's jurisdiction rather than all affiliates within a seller's corporate structure.[437] Other commenters state that the Commission does not need an organizational chart to evaluate market power concerns and that an organizational chart does not provide meaningfully different or material information to the Commission than is currently required.[438] Specifically, FirstEnergy argues that, because the evaluation of a market-based rate application treats the seller and its affiliates as a single entity, the complex internal relationships among affiliated entities that might be illustrated in an updated organizational chart are not relevant to the Commission's evaluation of whether an entity should enjoy market-base rate authority.[439]

329. If the Commission adopts this proposal, some commenters suggest that the Commission provide further guidance regarding which affiliated entities should be included in the organizational chart.[440] E.ON requests that the Commission clarify the meaning of ''energy affiliate'' and ''energy subsidiary'' and suggests that the meaning be limited to affiliates and subsidiaries that (1) own or control electric generation or inputs to electric power production in the relevant market or balancing authority area; (2) own, operate, or control electric transmission facilities in the relevant market or balancing authority area; or (3) have a franchised service territory in the relevant market or balancing authority area.[441] EPSA requests clarification of how the Commission would treat sellers that are part of joint ventures, whether they would be exempt from the organizational chart or require particular treatment in the organizational chart.[442]

330. Some commenters assert that if the Commission adopts this proposal, the Commission should allow exemptions for specific filers.[443] AEP notes that Order No. 717 eliminated a similar previous requirement for transmission providers to post an organizational chart of all affiliates, finding such a requirement to be an ''undue burden on transmission providers.'' [444] AEP also suggests that only filings that impact the organizational structure should require an organizational chart.[445] EEI similarly proposes that an organizational chart should not be required if ''that applicant

[429] We note that the Commission recently issued a NOPR seeking comment on a proposal to require each RTO and ISO to electronically deliver to the Commission data from market participants that lists market participants' ''connected entities,'' including entities that have certain ownership, employment, debt or contractual relationships to the market participant, and describes the nature of such relationships. *See Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators,* Docket No. RM15–23–000, 80 FR 58382 (Sept. 29, 2015), 152 FERC ¶ 61,219 (2015).

[430] 16 U.S.C. 824b.

[431] *See* 18 CFR 33.2(c)(3).

[432] *See, e.g.,* EPSA at 15–17; E.ON at 14–16; NextEra at 16; EEI at 19; FirstEnergy at 14–16; NRG Companies at 3–6; AEP at 9.

[433] APPA/NRECA at 5; Golden Spread at 7.

[434] *See, e.g.,* EPSA at 15–17 (noting that not all market-based rate sellers have these organization charts readily available and that many sellers have hundreds of affiliates); E.ON at 14–15; NextEra at 16; EEI at 19; NRG Companies at 3–4; AEP at 9.

[435] EPSA at 16.

[436] *Id.*

[437] *Id.* at 15–16.

[438] *See, e.g.,* E.ON at 15–16; NextEra at 16; EEI at 19; FirstEnergy at 14–16; NRG Companies at 5.

[439] FirstEnergy at 15.

[440] E.ON at 15; EPSA at 16.

[441] E.ON at 15.

[442] EPSA at 16.

[443] *See, e.g.,* AEP at 19; EEI at 19; FirstEnergy at 15–16.

[444] AEP at 9 (citing *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280, at P 243 (2008)).

[445] *Id.*

demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction.''[446] FirstEnergy suggests that there should be no need for a seller to submit an organizational chart (1) if the seller and its affiliates operate within an RTO with Commission-approved market monitoring and mitigation procedures and rely on such procedures to address horizontal market power concerns or (2) if a seller has become affiliated with a new entity that owns generation or transmission assets and where the transaction has been approved by the Commission pursuant to its authority under section 203 of the FPA.[447]

331. If the Commission adopts the organizational chart proposal, some commenters suggest that the Commission allow flexibility for meeting this proposal.[448] The NRG Companies suggest that the Commission allow sellers to submit simplified organizational charts that omit intermediate holding companies, energy subsidiaries and affiliates not relevant to the analysis in the applicable filings.[449] AEP proposes that market-based rate sellers be allowed to provide a link to an organizational chart on their Web sites or other accessible location.[450]

c. Commission Determination

332. We adopt the corporate organizational chart requirement with modifications and clarifications, as discussed below. We disagree with commenters' concerns that filing such charts will impose an undue burden on sellers. The Commission already requires sellers to file organizational charts for filings under FPA section 203, and, as EPSA notes, some companies already have organizational charts for other purposes. Furthermore, as acknowledged by some commenters, the information that the Commission would require in organizational charts does not materially differ from what is currently provided in narrative form in market-based rate filings. Thus, presenting this same information in a graphic format should not be unduly burdensome. Similarly, presenting organizational charts in market-based rate filings, rather than through links to a corporate Web site as proposed by AEP, should not be unduly burdensome.

333. However, in response to commenters' concerns, we provide further guidance regarding the extent to which upstream owners and affiliates need to be included in the corporate organizational charts. First, we find that the terms ''energy subsidiaries'' and ''energy affiliates,'' as used in the FPA section 203 context and as originally proposed in the NOPR, are not meaningful in the market-based rate context. Instead, we clarify that instead of ''indicating all upstream owners, energy subsidiaries, and energy affiliates'' in the organizational chart, as proposed in the NOPR, filers should indicate all affiliates, as defined under section 35.36(a)(9) of the Commission's market-based rate regulations. Second, to minimize burdens on filers and to simplify the charts, we clarify that if an entity is owned by multiple individual investors, such investors may be grouped in the organizational chart as long as they are identified elsewhere in the filing.

334. We caution applicants to examine all upstream ownership information to ensure that all affiliates are captured in the chart. Applicants should not assume that upstream owners are not affiliates of the applicant without looking further up the ownership chain. For example, suppose the applicant (Company A) has four upstream owners (Companies B, C, D, and E) each of which owns 8 percent of the voting shares of A. If Company F owns 100 percent of the voting interests in Companies B, C, D, and E, under the Commission's affiliate definition, Company F indirectly owns 32 percent of Company A and should be listed in the chart as an affiliate of Company A. Furthermore, since Companies A, B, C, D, and E are all under the common control of Company F, Companies B, C, D, and E also are affiliated with Company A under the Commission's definition and should be depicted as such in the organizational chart, even though they own less than 10 percent of the voting interests in Company A. Further, as the Commission clarified in *Tonopah Solar Energy, LLC,* applicants are not permitted to use a derivative share method to calculate ownership interests in downstream partially-owned entities for purposes of identifying affiliates.[451]

335. Consistent with our clarifications above, we will revise the regulatory text in § 35.37(a)(2) to clarify that the organizational chart must include affiliates, without any further reference to ''upstream owners,'' ''energy subsidiaries,'' or ''energy affiliates.'' We will also revise the regulatory text in section 35.42(c) of the Commission's regulations to require the submission of an organizational chart that depicts the seller's prior and new affiliations unless the change in status does not affect the seller's affiliations.

2. Single Corporate Tariff

a. Commission Proposal

336. In the NOPR, the Commission noted that when a corporate family has more than one affiliated seller, it may use a joint tariff. The Commission committed to clarify on its Web site how a corporate family that chooses to submit a joint master corporate tariff should identify its designated filer and what each of the other filers should submit into their respective eTariff databases. This information can be found on the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/tariff/joint.asp*.

b. Comments

337. EEI appreciates the Commission's recognition that allowing joint filings for corporate families provides economy of effort to companies.[452] EEI encourages the Commission to continue working with companies to enable companies to file joint tariffs within their corporate families.[453]

c. Commission Determination

338. There is no opposition to the Commission's NOPR clarification. We reiterate that when a corporate family has more than one affiliated seller, it may use a joint master tariff. Filing instructions for entities wishing to use a joint tariff are available on the Commission's Web site, as stated above.

G. Part 101 and 141 Waivers

1. Commission Proposal

339. In the NOPR, the Commission noted that it has granted certain entities with market-based rate authority, such as power marketers and independent power producers, waiver of the Commission Uniform System of Accounts requirements, specifically parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15. The Commission clarified that any waiver of part 101 granted to a market-based rate seller is limited such that the waiver of the provisions of part 101 that apply to hydropower licensees is *not* granted with respect to licensed hydropower

[446] EEI at 19.

[447] FirstEnergy at 15–16 (arguing that the requirement should be limited to circumstances in which the information may be useful to its review of an application for market-based rate authority).

[448] NRG Companies at 5; AEP at 10.

[449] NRG Companies at 5.

[450] AEP at 10.

[451] *Tonopah Solar Energy, LLC,* 151 FERC ¶ 61,203, at PP 11–12 (2015).

[452] EEI at 20.

[453] *Id.*

projects. The Commission stated that hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA, particularly sections 4(b), 10(d) and 14 of the FPA.[454] The Commission further noted that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from accounting responsibilities as a licensee under Part I of the FPA.[455] Thus, hydropower licensees that received waiver of Part 101 of the Commission's regulations as part of their market-based rate applications under Part II of the FPA are cautioned that such waivers do not relieve them of their obligations to comply with the Uniform System of Accounts to the extent necessary to carry out their responsibilities under Part I of the FPA with respect to their licensed projects.

340. The Commission further directed market-based rate sellers that own licensed hydropower projects to ensure that their market-based rate tariffs reflect appropriate limitations on any waivers that previously have been granted. Specifically, to the extent that the hydropower licensee has been granted waiver of part 101 as part of its market-based rate authority, the licensee's market-based rate tariff limitations and exemptions section should be revised to provide that the seller has been granted waiver of part 101 of the Commission's regulations with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects. Similarly, to the extent that a hydropower licensee has been granted waiver of part 141 as part of its market-based rate authority, it should ensure that the limitation and exemptions section of its market-based rate tariff specifies that waiver of part 141 has been granted, with the exception of sections 141.14 and 141.15 (which pertain to the filing by hydropower licensees of Form No. 80, Licensed Hydropower Development Recreation Report, and the Annual Conveyance Report).[456]

341. The Commission stated that these market-based rate tariff compliance filings are to be made the next time the hydropower licensee proposes a change to its market-based rate tariff, files a notice of change in status pursuant to 18 CFR 35.42, or submits an updated market power analysis in accordance with 18 CFR 35.37. In addition, going forward, any market-based rate seller requesting waivers of parts 101 and/or 141 should include these limitations in their market-based rate tariffs, regardless of whether they own any licensed hydropower projects. This will ensure that hydropower licensees understand the limitations on parts 101 and 141 waivers. To the extent that the market-based rate seller is not a licensee, these limitations should not have any effect as they only deny waiver of certain provisions affecting licensees. If a market-based rate seller becomes a hydropower licensee after it receives market-based rate authority, it must file revisions to its market-based rate tariff to reflect the limitations in its parts 101 and 141 waivers within 30 days of the effective date of its license.

2. Comments

342. Some commenters oppose the Commission's clarification that hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA.[457] They submit that the Commission in Order No. 697 decided against repealing waivers of the accounting requirements given to certain market-based rate entities, finding that ''little purpose would be served to require compliance with accounting regulations for entities that do not sell at cost-based rates and do not have captive customers.''[458] In addition, they assert that hydropower licensees with market-based rate authorizations neither sell at cost-based rates nor have captive customers.

343. Further, these commenters contend that requiring licensees to bring their accounts into conformance with the Uniform System of Accounts is not only unnecessary, but also would be costly and burdensome, require substantial work, and impose potential costs associated with hiring new accounting personnel, while yielding no identified benefit. According to commenters, hydropower licensees can already satisfy the statutory requirements in FPA Part I by employing Generally Applicable Accounting Principles.

344. National Hydropower Association (NHA) contends that the regulatory burden imposed on hydropower licensees to conform to the Uniform System of Accounts is disproportionate to the concern underlying the Commission's clarification of hydropower licensees' responsibilities, particularly sections 4(b), 10(d), and 14 of the FPA. According to NHA, the calculation of net investment and amortization reserves only becomes relevant in case of a federal takeover of the project under section 14 of the FPA and during relicensing, if the project is awarded to a competing applicant.[459] Further, NHA argues that there has not been a federal takeover of a licensed hydroelectric project and the Commission has yet to issue a new license to a competing applicant since the enactment of the FPA. Accordingly, NHA argues that the remote likelihood that a licensee will be paid its ''net investment'' for a project should allow licensees flexibility when complying with the FPA Part I statutory provisions identified in the NOPR.[460] Additionally, NHA argues that, in similar circumstances where the Commission addressed the FPA compliance obligations in light of an evolving electric industry, the Commission chose to eliminate a regulatory burden.[461] Therefore, NHA asserts that since hydropower licensees can rely on Generally Accepted Accounting Principles to comply with applicable provisions of FPA Part I, the Commission's concerns regarding the FPA Part I provisions would not be implicated by allowing hydropower

[454] In *Trafalgar Power Inc.,* 87 FERC ¶ 61,207, at 61,798 n.46 (1999) (*Trafalgar Power*), the Commission stated:

Under [s]ection 14 of the FPA, the Federal government may take over a project upon expiration of the project's licensee, conditioned upon the government's payment to the licensee of the 'net investment of the licensee in the project or projects taken.' Section 4(b) requires licensees to file a statement showing the 'actual legitimate original cost of construction of such project' to enable the Commission to determine 'the actual legitimate cost of and the net investment in' the project. Section 10(d) requires licensees to establish an amortization reserve account that will reflect excess or surplus earnings of their licensed project if such earnings have accumulated in excess of a reasonable rate of return upon the 'net investment' in the project during a period beginning after the first twenty years of operations. Pursuant to [s]ection 10(d) of the FPA the amount transferred to the amortization reserve may be used to reduce a licensee's net investment in the project, and if, after expiration of the license, the government takes over the project under [s]ection 14, it will be required to compensate the licensee for its net investment in the project, reduced by the amortization reserve for the project.

[455] *See Seneca Gen., LLC et al.,* 145 FERC ¶ 61,096, at P 23 n.20 (2013) (*Seneca Gen*) (citing *Trafalgar Power,* 87 FERC at 61,798).

[456] *See Domtar Maine, LLC,* 133 FERC ¶ 61,207, at P 23 (2010).

[457] EPSA at 17–18; NHA at 2–10; EEI at 21–22. *But see* APPA/NRECA at 5; Golden Spread at 7.

[458] *See, e.g.,* EPSA at 18 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 985).

[459] NHA at 6 (citing 16 U.S.C. 807(a); 808(a)(1)).

[460] *Id.* at 7–8.

[461] *Id.* at 8 (citing *Payment of Dividends From Funds Included in Capital Account,* 148 FERC ¶ 61,020 (2014)).

licensees to use Generally Accepted Accounting Principles to fulfill their statutory obligations. Thus, commenters ask the Commission to find that hydropower licensees can meet FPA Part I statutory requirements if they follow Generally Accepted Accounting Principles. However, if the Commission determines that licensees must comply with part 101 in order to fulfill their statutory obligations under FPA Part I, then commenters request that the Commission: (1) Provide guidance regarding which requirements of part 101 it considers necessary to comply with FPA Part I;[462] (2) only apply this policy prospectively;[463] and (3) delay implementation of this policy for at least one year to provide sufficient time to allow affected licensees to bring their accounting ledgers into compliance.[464] Regarding which specific accounts the Commission would expect licensees to maintain, NHA and EEI state the Commission should limit the number of accounts it deems necessary for a hydropower licensee to carry out its responsibilities under FPA Part I in order to minimize cost and burden for companies.[465]

3. Commission Determination

345. We affirm the NOPR clarification that any waiver of part 101 granted to a market-based rate seller is limited such that the waiver of the provisions of part 101 that apply to hydropower licensees is *not* granted with respect to Commission-licensed hydropower projects. We recognize that in Order No. 697, the Commission concluded that ''the costs of complying with the Commission's [Uniform System of Accounts] requirements and, specifically parts 41, 101, and 141 of the Commission's regulations, outweigh any incremental benefits of such compliance where the seller only transacts at market-based rates.''[466] However, a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from accounting responsibilities as a hydropower licensee under Part I of the FPA.[467] Thus, while hydropower licensees may have received waiver of part 101 of the Commission's regulations as part of their market-based rate authorizations under Part II of the FPA, that waiver does not relieve them of their obligations to comply with the Uniform System of Accounts to the extent necessary to carry out their responsibilities under Part I of the FPA with respect to their licensed projects. Moreover, we note that such responsibilities to maintain the information required for compliance with part 101 existed prior to the establishment of the Commission's market-based rate program.

346. Regarding comments that the Commission's clarification is not only unnecessary, but also would be costly and burdensome, require substantial work, and impose potential costs associated with hiring new accounting personnel, while yielding no identified benefit, we disagree. We find that use of Generally Accepted Accounting Principles will not satisfy the statutory requirements under FPA sections 4(b),[468] 14,[469] and 10(d).[470] Further, although NHA contends that the chances are remote that the United States federal government would take over a hydropower project under FPA section 14, the chance still exists. Under part 101 of the Commission's regulations, licensed hydropower projects are required to maintain records that may be used to calculate net investment in the event that the Commission recommends that the United States federal government take over a hydropower project under FPA section 14 (or another entity takes over the license pursuant to FPA section 15). Thus, there is a need for licensees to maintain adequate books and records in case either of those situations occur. However, we will attempt to minimize the burden of compliance as discussed below.

347. We find that a hydropower licensee that sells only at market-based rates may meet its obligations to comply with the Uniform System of Accounts by following General Instruction No. 16 under part 101 of the Commission's regulations.[471] Accordingly, we clarify that hydropower licensees that make sales only at market-based rates and that have been granted Commission waiver of part 101 as part of their market-based rate tariffs may satisfy the requirements in part 101 of the Commission's regulations by following General Instruction No. 16 under part 101. We find that doing so will not be unduly burdensome. However, we further clarify that hydropower licensees that have a cost-based rate tariff on file with the Commission are still required to comply with the full requirements of FPA sections 4(b), 10(d), and 14 and the amortization reserve article in their licenses.

348. We deny commenters' request that the Commission implement these clarifications prospectively and delay the implementation for at least one year to provide sufficient time to allow affected licensees to bring their accounting ledgers into compliance. We find it is not unduly burdensome for a hydropower licensee that sells only at market-based rates to meet its longstanding obligation to comply with the Uniform System of Accounts by following General Instruction No. 16 under part 101 of the Commission's regulations.

349. Accordingly, as discussed in the NOPR, we will direct market-based rate sellers that own licensed hydropower projects to ensure that their market-based rate tariffs reflect appropriate limitations on any waivers that previously have been granted. Specifically, to the extent that the hydropower licensee has been granted waiver of part 101 as part of its market-based rate authority, the licensee's market-based rate tariff limitations and exemptions section should be revised to provide that the seller has been granted waiver of part 101 of the Commission's regulations with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects. Similarly, to the extent that a hydropower licensee has been granted waiver of part 141 as part of its market-based rate authority, it should ensure that the limitation and exemptions section of its market-based rate tariff specifies that waiver of part 141 has been granted, with the exception of sections 141.14 and 141.15 (which pertain to the filing by hydropower licensees of Form No. 80, Licensed Hydropower Development Recreation Report, and the Annual Conveyance Report).[472] As explained in the NOPR, these market-based rate tariff compliance filings are to be made the next time the hydropower licensee proposes a change to its market-based rate tariff, files a notice of change in status pursuant to 18 CFR 35.42, or submits an updated market power analysis in accordance with 18 CFR 35.37. In addition, going forward, any

[462] EEI at 22; EPSA at 18; NHA at 8–9.

[463] EEI at 22; EPSA at 18; NHA at 8–9.

[464] EEI at 22; NHA at 8–9.

[465] EEI at 22: NHA at 9.

[466] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 985.

[467] *See Seneca Gen.*, 145 FERC ¶ 61,096 at P 23 n.20 (citing *Trafalgar Power,* 87 FERC at 61,798).

[468] 16 U.S.C. 797(b) (relating to determining actual legitimate original cost of and net investment in a licensed project).

[469] 16 U.S.C. 807 (regarding the right of the Federal government to take over a project by paying the licensee its net investment).

[470] 16 U.S.C. 803(d) (relating to surplus accumulated in excess of a specified reasonable rate of return and requirement to maintain amortization reserves that may be applied from time to time to reduce net investment).

[471] 18 CFR part 101 (General Instruction No. 16).

[472] *See Domtar Maine, LLC,* 133 FERC ¶ 61,207 at P 23.

market-based rate seller requesting waivers of parts 101 and/or 141 should include these limitations in its market-based rate tariffs, regardless of whether it owns any licensed hydropower projects. This will ensure that hydropower licensees understand the limitations on parts 101 and 141 waivers. To the extent that the market-based rate seller is not a licensee, these limitations should not have any effect as they only deny waiver of certain provisions affecting licensees.

350. If an existing market-based rate seller becomes a hydropower licensee and the Commission previously accepted the seller's market-based rate tariff with full waivers without the limitations relating to hydropower licensees discussed herein, the seller must file revisions to its market-based rate tariff to reflect the limitations in its parts 101 and 141 waivers within 30 days of the effective date of its hydropower license.

H. Miscellaneous Issues

1. Regional Reporting Schedule

a. Commission Proposal

351. In the NOPR, the Commission noted that that section 35.37(a)(1) of the Commission's regulations requires Category 2 sellers to submit a market power analysis according to the regional schedule contained in Order No. 697. The Commission proposed to revise section 35.37(a)(1) so that instead of referring to the schedule contained in Order No. 697, section 35.37(a)(1) would to refer to an updated regional reporting schedule posted on the Commission's Web site.[473] The Commission noted that the revised regional reporting schedule and associated map may be found on the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/triennial/when.asp.*

b. Comments

352. EEI encourages the Commission to confer with the regulated community before making changes in the schedule and map, to ensure that those changes are workable and appropriate.[474] Additionally, EEI states that one significant step that the Commission could undertake to reduce the burden on Category 2 sellers would be to extend the time frame for submitting updated analyses from every three years to every four to five years. EEI states that the Commission would continue to receive change in status filings as needed in the interim that would alert the Commission of changes occurring in a given market that might raise potential market power concerns, and if the Commission is concerned about those changes, the Commission already has the right to ask for more information or even an updated market power analysis from the seller filing the change in status report.[475]

c. Commission Determination

353. We adopt the NOPR's proposal to revise section 35.37(a)(1) of the Commission's regulations with regard to the regional reporting schedule. The regional reporting schedule and associated map can be found on the Commission's Web site.[476] In response to EEI's request that the Commission confer with the regulated community before making changes to the regional reporting schedule, we clarify that we are not changing the regional reporting schedule; we simply are changing the regulation to refer to the up-to-date schedule posted on the Commission's Web site. Our intention is to make the reporting schedule more transparent and accessible. We do not adopt EEI's suggestion to extend the time frame for submitting updated market power analyses from every three years to every four to five years. This suggestion is outside the scope of the NOPR. In any event, we believe that three years is a reasonable reporting schedule for filing updated market power analyses. EEI contends that sellers would submit change in status filings in the interim period. But change in status filings, while important, often lack the level of detail provided in updated market power analyses, such as indicative screens or SIL studies. Finally, in response to EEI's request that the Commission confer with the regulated community before making changes to the regional reporting schedule, we note that the region map is reflective of circumstances (such as mergers) that already have taken place. Future changes to the map would occur if, for example, a seller moved from an RTO in one region to an RTO in another region.

2. Affirmative Statement

a. Commission Proposal

354. In the NOPR, the Commission noted that in Order No. 697, as part of the vertical market power analysis, the Commission stated that it would require sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. The Commission further noted that the requirement is codified at section 35.37(e)(4). The Commission explained that although the Commission stated in Order No. 697 that the obligation applies both to the seller and its affiliates,[477] many sellers have not mentioned their affiliates when making their affirmative statements. Therefore, the Commission proposed to revise section 35.37(e)(4) (which was proposed elsewhere in the NOPR to be renumbered as section 35.37(e)(3)) to make clear that the affirmative statement requirement applies to the seller and its affiliates.

b. Comments

355. APPA/NRECA and Golden Spread support clarifying that an applicant for market-based rate authority must affirmatively state, on behalf of itself and its affiliates, that they have not and will not erect barriers to entry in the relevant market(s).[478]

c. Commission Determination

356. We adopt the proposal in the NOPR concerning the affirmative statement. No adverse comments were filed with respect to this proposal. As noted above, this obligation already applies both to the seller and its affiliates. However, because many sellers have not mentioned their affiliates when making their affirmative statements, we adopt the proposal to revise the regulations to make it clear that the affirmative statement requirement applies to the seller and its affiliates. The revised regulation will appear at section 35.37(e)(3).

3. Comments of Barrick

a. Comments

357. Barrick Goldstrike Mines (Barrick) notes that the Commission previously found that ''mitigated sellers *and their affiliates* are prohibited from selling power at market based rates in the balancing authority area in which the seller is found, or presumed, to have market power.'' [479] Barrick also notes

[473] The NOPR also included an updated region map in Appendix D.

[474] EEI at 22.

[475] *Id.* at 23.

[476] The regional reporting schedule and region map can be found on the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/triennial/when.asp.* Additionally, we include the regional reporting schedule in Appendix C of this Final Rule and the region map in Appendix D of this Final Rule.

[477] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

[478] APPA/NRECA at 5; Golden Spread at 7.

[479] Barrick at 6 (citing Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 at P 42) (emphasis added by Barrick). Barrick states that ''affiliate'' is broadly defined in the market-based rate regulation and may need to be refined to be limited to the relationship between a franchised public utility with captive customers and its associated market-regulated power sales company. *Id.*

that, in Order No. 697, the Commission recognized that wholesale sales made at the metered boundary for export lend themselves to being monitored for compliance and concluded to allow mitigated sellers to make such sales.[480] Barrick further notes that in Order No. 697, to ensure that the mitigated seller and its directly related companies did not sell the same power purchased by a third party at the metered boundary back into the balancing authority area where the seller is mitigated, the Commission imposed record keeping requirements for these sales.[481] Barrick states that, ''rather than dealing with the additional regulatory burdens and risk of non-compliance,'' mitigated sellers may instead *choose* not to make any market-based rate sales at the metered boundary and that this is problematic.[482] Barrick argues that permitting affiliates to choose not to sell at a metered boundary hinders the development of more robust competition. Barrick also represents that Berkshire Hathaway Energy Company's affiliates have elected not to sell in a market based on a rebuttable presumption that a seller has market power, but have done nothing to rebut or substantiate that presumption.[483] Barrick suggests that the Commission reevaluate the mitigation rules and the definition of ''affiliate'' in certain cases.[484]

358. Barrick further asserts that Order No. 697 should be amended in such a way to allow full optimization of imbalance energy across the broader footprint of CAISO Energy Imbalance Market[485] (EIM) and the sharing of other resources within the Northwest Power Pool.[486] Barrick states that the mitigation rules adopted in Order No. 697 cause imbalance energy across the broader CAISO EIM footprint to not be optimized despite the fact that transmission between the entities in the EIM is available, resulting in the inefficient implementation of the CAISO EIM.[487]

b. Commission Determination

359. With respect to Barrick's requests to revisit the Commission's findings in Order No. 697 that ''mitigated sellers and their affiliates are prohibited from selling power at market-based rates in the balancing authority area in which the seller is found, or presumed, to have market power'' and the definition of ''affiliate,'' at least in certain cases, we find that they are beyond the scope of this rulemaking. Accordingly, we will not address Barrick's comments in this Final Rule.[488]

V. Section-by-Section Analysis of Regulations

1. Section 35.36 Generally

360. This section defines certain terms specific to Subpart H and explains the applicability of subpart H.

361. The NOPR proposed to redefine ''Category 1 Seller'' in paragraph (a)(2) to clarify the distinction in determining the seller category status of power marketers and power producers. Specifically, that for purposes of determining category status, a power marketer should include all affiliated generation capacity in that region, but that a power producer only needs to include affiliated generation that is located in the same region as the power producer's generation assets.

362. The Final Rule adopts the regulatory text changes proposed in the NOPR regarding the definition of Category 1 Seller in paragraph (a)(2).

2. Section 35.37 Market Power Analysis Required

363. This section describes the market power analysis the Commission employs, as discussed in the preamble, and when sellers must file one. It is intended to identify the key aspects of the analysis.

364. The NOPR proposed to change the reference in paragraph (a)(1) for the location of the regional reporting schedule from Order No. 697 to the Commission's Web site. The NOPR proposed to add a requirement in paragraph (a)(2) that sellers include as part of their updated market power analyses, an organizational chart depicting their current corporate structure, indicating all upstream owners, energy subsidiaries and energy affiliates. The NOPR proposed to revise paragraph (c)(4) to specify that sellers must file their indicative screens in an electronic spreadsheet format. The NOPR proposed to add paragraph (c)(5) to require that sellers use the format provided in appendix A of subpart H of part 35 and, if applicable, file SIL Submittals 1 and 2 in the electronic spreadsheet format provided on the Commission's Web site. The NOPR also proposed to add paragraph (c)(6) to provide that sellers in RTO/ISO markets with Commission-approved market monitoring and mitigation may, in lieu of submitting the indicative screens, include a statement that they are relying on such mitigation to address any potential horizontal market power concerns. The NOPR proposed to remove paragraph (e)(2) to remove the requirement that sellers address sites for generation capacity development as part of their market power analyses and to renumber paragraphs (e)(3) and (e)(4) as paragraphs (e)(2) and (e)(3) respectively and to revise new paragraph (e)(3) to clarify that the vertical market power affirmative statement must be made on behalf of the seller and its affiliates.

365. The Final Rule adopts the regulatory text changes proposed in the NOPR regarding the location of the schedule for updated market power filings in paragraph (a)(1). The Final Rule also adopts the NOPR proposal to revise the language in paragraph (a)(2) to require an organizational chart; however the language varies from that proposed in the NOPR to limit the organizational chart to depicting affiliates as discussed in the Corporate Families discussion above. The Final Rule also adopts the NOPR regulatory text changes to paragraphs (c)(4) and (c)(5) regarding submission of the indicative screens and SIL Submittals 1 and 2 in electronic spreadsheet formats. Consistent with the Horizontal Market Power discussion, the Final Rule does not adopt the NOPR proposal to add a new paragraph allowing sellers in RTO/ISO markets to rely on market monitoring and mitigation in lieu of submitting indicative screens. The Final Rule adopts the NOPR proposal to

[480] *Id.* at 7 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 820).

[481] *Id.*

[482] *Id.* (emphasis by Barrick).

[483] *Id.* at 8–9.

[484] In particular, where (a) no RTO or ISO exists in the region so parties must depend on bilateral contracts; (b) dominant utility power suppliers with geographically large balancing authority areas and common ownership due to consolidation are present; (c) construction of electric generation facilities in these geographically large balancing authority areas is dominated by the utility power suppliers because they have relatively easy access to funding through retail ratepayer funding; and (d) dominant utility power suppliers are refusing to sell wholesale power into balancing authority areas, even where they have not been found to have market power. *Id.* at 7–8 (arguing that Order No. 697 did not adequately anticipate the possibilities brought about by the repeal of PUHCA of 1938, so now entities, are becoming too big to regulate with traditional rules).

[485] *Id.* at 10, 13 (citing *Cal. Indep. Sys. Operator Corp.,* Transmittal Letter, Docket No. ER14–1836–000 (filed Feb. 28, 2014) and *Cal. Indep. Sys. Operator Corp.,* 147 FERC ¶ 61,231 (2014)).

[486] *Id.* at 10–13.

[487] *Id.* at 11 (explaining that CAISO and NV Energy will be able to purchase and sell five-minute real-time energy under a market-driven regime for meeting energy imbalance needs, and CAISO and PacifiCorp will be able to purchase and sell five-minute real-time energy under a market-driven regime for meeting energy imbalance needs, but PacifiCorp and NV Energy will not be able to purchase and sell five-minute real-time energy under a market-driven regime for meeting energy imbalance needs).

[488] Additionally, reply comments were filed in response to Barrick's comments but they are not permitted in this proceeding.

amend the language of paragraph (e)(3) to clarify that the affirmative statement must be made on behalf of the seller and its affiliates.

3. Section 35.42 Change in Status Reporting Requirement

366. The NOPR proposed several revisions to the regulation, including a change to paragraph (a)(1) to clarify that the 100 MW reporting threshold is not limited to market previously studied and includes both the relevant market and any first-tier markets. The NOPR proposed a change to paragraph (a)(2)(i) to apply a 100 MW threshold for reporting new affiliations and to include in that threshold long-term firm purchases of capacity and/or energy and to included cumulative increases in the first-tier markets as well as the relevant market. The NOPR also proposed to revise paragraph (c) to require sellers to submit organizational chart unless the change in status does not affect the seller's structure. In addition, the NOPR proposed revisions to paragraph (b) to remove a reference to change in status filings to report acquisition of control of sites for new generation capacity development and to remove paragraphs (d) and (e), which address site control reporting, which is being eliminated as explained in the Notices of Change in Status discussion.

367. The Final Rule adopts the proposed edits to paragraph (a) except as discussed herein. In paragraphs (a)(1) and (a)(2)(i), the language proposed in the NOPR including first-tier markets is not included in accordance with the Notices of Change in Status discussion and the requirement is limited to 100 MW or more change in any *individual* relevant geographic market. The Final Rule adopts the NOPR proposal to add a 100 MW threshold to the change in status reporting requirement and, consistent with the Capacity Ratings discussion, adds language in paragraph (a)(2)(i) to specify that energy-limited resources may use a five-year capacity rating for purposes of calculating the threshold.

368. Consistent with the Vertical Market Power—Land Acquisition Reporting discussion, the Final Rule adopts the proposals to remove references to reporting new sites for generation capacity development, removing paragraphs (d) and (e) in their entirety and deleting the reference to site reporting from paragraph (b).

369. Finally, the Final Rule adopts the proposed edits to paragraph (c) except as discussed herein. Consistent with the Corporate Organizational Charts discussion, the Final Rule does not include the reference to upstream owners and energy subsidiaries, and requires only that the organizational charts indicate all affiliates.

4. Miscellaneous

VI. Information Collection Statement

370. The Office of Management and Budget (OMB) regulations require approval of certain information collection and data retention requirements imposed by agency rules.[489] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

371. The Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[490] In the NOPR, the Commission solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission included a table that listed the estimated public reporting burdens for the proposed reporting requirements, as well as a projection of the costs of compliance for the reporting requirements.

Comments

372. In response to the Commission's proposals regarding changes to the indicative screen reporting requirements, EEI notes that, if the Commission wants sellers to submit the indicative screens in appendix A in formats other than the standard formats, such as Adobe, Excel, or Word, the Commission should acknowledge that requiring the use of more complex formats and new details in appendix A will entail some additional burden on sellers filing the information, at least during the initial round of using such formats.[491]

Commission Determination

373. We revise the Information Collection Statement estimates contained in the NOPR because the Commission has made several changes to its NOPR proposal in this Final Rule, which are discussed below.

374. First, we do not adopt in the Final Rule the NOPR proposal to eliminate the requirement in section 35.37[492] to file the indicative screens as part of a horizontal market power analysis for any seller in an RTO if the seller is relying on Commission-approved monitoring and mitigation to mitigate any potential market power it may have. The NOPR presupposed a decrease in its burden estimate regarding this proposal, and we have adjusted the burden estimate in the table below to reflect that this burden will not change from current regulations.

375. Second, we will modify the NOPR's proposal to require sellers to file corporate organizational charts including all upstream owners, energy subsidiaries, and energy affiliates in initial market-based rate applications and related filings. The organizational charts will still be required, but they will be limited to include the seller's affiliates as defined in section 35.36(a)(9) of the Commission's regulations rather than all upstream owners, ''energy subsidiaries'' and ''energy affiliates.'' This modification of the NOPR proposal constitutes a small burden decrease from the NOPR. Because the corporate organizational chart filing is similar to that proposed in the NOPR, we are not modifying the estimated public reporting burdens for this proposed reporting requirement in the table below. We believe that the revised burden estimates below are representative of the average burden on filers.

376. Third, we do not adopt the NOPR proposal to clarify that sellers must report behind-the-meter generation in the indicative screens and asset appendices, and have such generation count toward change in status and category status thresholds. These changes represent a small decrease in burden due to the reduction in filings from not including behind-the-meter generation as part of the 100 MW generation threshold to trigger filing a notice of change in status for new affiliations.

377. Fourth, we modify the NOPR's proposed changes to the asset appendix by (1) requiring separate worksheets in the Asset Appendix for long-term PPAs and end notes, (2) adding new columns to the generation asset list for explanatory end note numbers and information regarding capacity ratings, and (3) adding new columns to the

[489] 5 CFR 1320.11(b) (2015).

[490] 44 U.S.C. 3507(d) (2012).

[491] EEI at 10.

[492] 18 CFR 35.37.

transmission list for citation to the order accepting the OATT or approving transfer of transmission facility to an RTO/ISO and explanatory end note numbers. The NOPR presupposed a burden decrease in its burden estimate regarding this proposal, and we have adjusted the burden estimate in the table below to reflect that, as amended, the burden will not change from current regulations. While these changes represent a small increase in burden, this burden is counterbalanced by the decrease in burden from eliminating the proposed requirements to report behind-the-meter generation in indicative screens and for change in status and seller category thresholds. Thus, we believe that the overall burden will not change when these two changes are averaged together.

378. In response to EEI's comment that the use of more complex formats for indicative screens will entail additional burden, Commission regulations already require the submission of indicative screens, and the Final Rule adopts the NOPR proposal to require these screens in electronic format. We view this as a *de minimis* decrease in burden for several reasons. While the new rows in the indicative screens may appear to require additional information to complete the screens (*e.g.,* rows A1, B1, L1, M, U, and V in the market share screen), the information entered in these new rows is simply disaggregated information that was previously required, but often erroneously aggregated into values in other rows. Requiring sellers to explicitly enter this information will reduce computation errors and subsequent phone calls from staff to correct problems in the screens. Also, these new screens are workable electronic spreadsheets with pre-programmed formulas in certain cells that compute intermediate and final cell values. Embedding these pre-programmed formulas into the worksheet will reduce the amount of time that sellers will spend creating and calculating the indicative screens, increase the accuracy of the values entered (*e.g.,* sellers will now enter only positive values and no longer have to enter values surrounded by parentheses to indicate a negative value), and eliminate computation errors that sellers have frequently made in the past. Thus, we consider the electronic format and the additional columns of information in the indicative screens to average out to be a *de minimis* decrease in burden for filers and project that the average burden on filers will not change from current regulations.

FERC–919 (FINAL RULE IN RM14–14–000)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [493]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1)
New Applications for Market-Based Rates (18 CFR 35.37	213	1	213	[494] 250 $21,268	53,250 $4,529,998	$21,268
Triennial Market Power Analysis in Category 2 Seller Updates (18 CFR 35.37)	83	1	83	250 $21,268	20,750 $1,765,203	$21,268
Quarterly Land Acquisition Reports [18 CFR 35.42(d)]	0	0	0	0 $0	0 $0	$0
Change in Status Reports [18 CFR 35.42(a)], With Screens	27	1	27	250 $21,268	6,750 $574,222	$21,268
Change in Status reports [18 CFR 35.42(a)], No Screens	186	1	186	20 $1,701	3,720 $316,460	$1,701
Total			509		84,470 $7,185,883	$14,118

After implementation of the proposed changes,the total estimated annual cost of burden to respondents is $7,185,882.90 [84,470 hours × $85.07 [495]) = $7,185,882.90].

[493] The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at *http://www.bls.gov/oes/current/naics2_22.htm*, plus benefits information at *http://www.bls.gov/news.release/ecec.nr0.htm*). The salaries (plus benefits) for the three occupational categories are:

- Economist: $67.75/hour
- Electric Engineer: $59.62/hour
- Lawyer: $128.02/hour

($67.57 + $59.62 + $128.02) ÷ 3 = $85.07

[494] The Commission notes that the estimate of 250 hours per new application is a conservative estimate and most likely overstates burden because some sellers (*i.e.,* power marketers with no generation to study and sellers that only have fully committed generation) will not have to file indicative screens with their initial applications.

[495] The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at *http://www.bls.gov/oes/current/naics2_22.htm*, plus benefits information at *http://www.bls.gov/news.release/ecec.nr0.htm*). The salaries (plus benefits) for the three occupational categories are:

- Economist: $67.75/hour

Title: Proposed Revisions to Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities (FERC–919).

Action: Revision of Currently Approved Collection of Information.

OMB Control No.: 1902–0234.

Respondents for this Rulemaking: Public utilities, wholesale electricity sellers, businesses, or other for profit and/or not for profit institutions.

Frequency of Responses:

Initial Applications: On occasion.

Updated Market Power Analyses: Updated market power analyses are filed every three years by Category 2 sellers seeking to retain market-based rate authority.

Land Acquisitions: We will eliminate this requirement under the Final Rule.

Change in Status Reports: On occasion.

Necessity of the Information:

Initial Applications: In order to receive market-based rate authority, the Commission must first evaluate whether a seller has the ability to exercise market power. Initial applications help inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be just and reasonable.

Updated Market Power Analyses: Triennial updated market power analyses allow the Commission to monitor market-based rate sellers to detect changes in market power or potential abuses of market power. The updated market power analysis permits the Commission to determine that continued market-based rate authority will still yield rates that are just and reasonable.

Change in Status Reports: The change in status requirement provides the Commission with information regarding changes that could affect facts the Commission relied upon in granting market-based rate authority and thus permits the Commission to ensure that rates and terms of service offered by market-based rate sellers remain just and reasonable.

Internal Review: The Commission has reviewed the reporting requirements and made a determination that revising the reporting requirements will ensure the Commission has the necessary data to carry out its statutory mandates, while eliminating unnecessary burden on industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

379. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, fax: (202) 273–0873]. Comments concerning the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov*. Comments submitted to OMB should refer to FERC–919 and OMB Control Number 1902–0234.

VII. Environmental Analysis

380. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[496] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[497] The actions here fall within this categorical exclusion in the Commission's regulations.

VIII. Regulatory Flexibility Act

381. The Regulatory Flexibility Act of 1980 (RFA)[498] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. Thus, the Commission estimates that the rulemaking will impose only a minimal additional burden on responsible entities, as described below.

382. The final rule in RM14–14–000 is expected to impose an additional burden on 2,002 entities. Comparison of the applicable entities with FERC's small business data indicates that approximately 1,634, or 82 percent[499] of the 2,002 entities are small entities affected by this Final Rule.[500]

383. On average, each small entity affected may have a one-time cost of $4,207.19, representing 84,470 hours at $67.57/hour (for economists), $59.62/hour (for electrical engineers), and $128.02/hour (for lawyers). These figures represent the implementation burden of the changes to FERC–919 per the RM14–14–000 Final Rule, as explained above in the information collection statement. Accordingly, the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission seeks comment on this certification.

IX. Document Availability

384. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

385. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

386. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

X. Effective Date and Congressional Notification

387. This Final Rule is effective January 28, 2016. The Commission has

- Electric Engineer: $59.62/hour
- Lawyer: $128.02/hour

($67.57 + $59.62 + $128.02)/3 = $85.07

[496] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[497] 18 CFR 380.4(a)(2)(ii).

[498] 5 U.S.C. 601–612 (2012).

[499] 81.6 percent.

[500] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this Final Rule, we use a 750 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121), Fossil Fuel Generation (NAICS code 221112), or Nuclear Power Generation (NAICS code 221113).

determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Issued: October 16, 2015.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.36 by revising paragraph (a)(2) to read as follows:

§ 35.36 Generally.

(a) * * *

(2) *Category 1 Seller* means a Seller that:

(i) Is either a wholesale power marketer that controls or is affiliated with 500 MW or less of generation in aggregate per region or a wholesale power producer that owns, controls or is affiliated with 500 MW or less of generation in aggregate in the same region as its generation assets;

(ii) Does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or has been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036);

(iii) Is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the Seller's generation assets;

(iv) Is not affiliated with a franchised public utility in the same region as the Seller's generation assets; and

(v) Does not raise other vertical market power issues.

* * * * *

■ 3. Amend § 35.37 as follows:

■ a. In paragraph (a)(1), remove the phrase ''contained in Order No. 697, FERC Stats. & Regs. ¶ 31,252'' and add in its place ''posted on the Commission's Web site''.

■ b. Revise paragraphs (a)(2) and (c)(4).

■ c. Add paragraph (c)(5).

■ d. Remove paragraph (e)(2) and redesignate paragraphs (e)(3) and (4) as paragraphs (e)(2) and (3), respectively.

■ e. Remove the period at the end of newly redesignated paragraph (e)(2) and add ''; and'' in its place.

■ f. Revise newly redesignated paragraph (e)(3).

The revisions and additions read as follows:

§ 35.37 Market power analysis required.

(a) * * *

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include an appendix of assets, in the form provided in appendix B of this subpart, and an organizational chart. The organizational chart must depict the Seller's current corporate structure indicating all affiliates.

* * * * *

(c) * * *

(4) When submitting the indicative screens, a Seller must use the format provided in appendix A of this subpart and file the indicative screens in an electronic spreadsheet format. A Seller must include all supporting materials referenced in the indicative screens.

(5) Sellers submitting simultaneous transmission import limit studies must file Submittal 1, and, if applicable, Submittal 2, in the electronic spreadsheet format provided on the Commission's Web site.

* * * * *

(e) * * *

(3) A Seller must ensure that this information is included in the record of each new application for market-based rates and each updated market power analysis. In addition, a Seller is required to make an affirmative statement that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

* * * * *

■ 4. Amend § 35.42 as follows:

■ a. Revise paragraphs (a)(1) and (2) and (c).

■ b. In paragraph (b), remove the phrase '', other than a change in status submitted to report the acquisition of control of a site or sites for new generation capacity development,''.

■ c. Remove paragraphs (d) and (e).

The revisions read as follows:

§ 35.42 Change in status reporting requirement.

(a) * * *

(1) Ownership or control of generation capacity or long-term firm purchases of capacity and/or energy that results in cumulative net increases (*i.e.,* the difference between increases and decreases in affiliated generation capacity) of 100 MW or more of nameplate capacity in any individual relevant geographic market, or of inputs to electric power production, or ownership, operation or control of transmission facilities; or

(2) Affiliation with any entity not disclosed in the application for market-based rate authority that:

(i) Owns or controls generation facilities or has long-term firm purchases of capacity and/or energy that results in cumulative net increases (*i.e.,* the difference between increases and decreases in affiliated generation capacity) of 100 MW or more of capacity based on nameplate or seasonal capacity ratings, or, for energy-limited resources, five-year average capacity factors, in any individual relevant geographic market;

(ii) Owns or controls inputs to electric power production;

(iii) Owns, operates or controls transmission facilities; or

(iv) Has a franchised service area.

* * * * *

(c) When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of all assets, including the new assets and/or affiliates reported in the change in status, in the form provided in appendix B of this subpart, and an organizational chart. The organizational chart must depict the Seller's prior and new corporate structures indicating all affiliates unless the Seller demonstrates that the change in status does not affect the corporate structure of the Seller's affiliations.

■ 5. Revise appendix A to subpart H to read as follows:

Appendix A to Subpart H of Part 35—Standard Screen Format

BILLING CODE 6717–01–P

Appendix A: Standard Screen Format (Data provided for illustrative purposes only)

Part I – Pivotal Supplier Analysis

Staff Notes:

The file differs from the file published in the NOPR:

1. All entered values must be positive (no parenthesis/negative numbers)
2. The formulas (and the text in the row description) have been changed to reflect number 1.
3. The text in row 13 "Date of Filing" has been replaced with "Data Year"
4. Instruction**:** *Enter all numeric values as positive numbers (blue values)*

Don't enter values into an outlined cell (black values)

Applicant-> **Company X, LLC (TO)**

Market -> **Company X BAA**

Data Year -> **Dec 2011-Nov 2012**

Row			Reference
	Generation		
	Seller and Affiliate Capacity (owned or controlled)		
A	Installed Capacity (from inside the study area)	1,500	worksheet X
A1	Remote Capacity (from outside the study area)	200	worksheet X
B	Long-Term Firm Purchases (from inside the study area)	70	worksheet X
B1	Long-Term Firm Purchases (from outside the study area)	200	worksheet X
C	Long-Term Firm Sales (in and outside the study area)	500	worksheet X
D	Uncommitted Capacity Imports	0	worksheet X
	Non-Affiliate Capacity (owned or controlled)		
E	Installed Capacity (from inside the study area)	300	worksheet X
E1	Remote Capacity (from outside the study area)	50	worksheet X
F	Long-Term Firm Purchases (from inside the study area)	40	worksheet X
F1	Long-Term Firm Purchases (from outside the study area)	40	worksheet X
G	Long-Term Firm Sales (in and outside the study area)	60	worksheet X
H	Uncommitted Capacity Imports	2,500	worksheet X
I	Study Area Reserve Requirement	300	worksheet X
J	Amount of Line I Attributable to Seller, if any	200	
K	Total Uncommitted Supply (A+A1+B+B1+D+E+E1+F+F1+H-C-G-I-M)	2,840	
	Load		
L	Balancing Authority Area Annual Peak Load	1,500	worksheet X
M	Average Daily Peak Native Load in Peak Month	1,200	worksheet X
N	Amount of Line M Attributable to Seller, if any	900	worksheet X
O	Wholesale Load (L-M)	300	
P	Net Uncommitted Supply (K-O)	2,540	
Q	Seller's Uncommitted Capacity (A+A1+B+B1+D-C-J-N)	370	

Result of Pivotal Supplier Screen (Pass if Line Q < Line P) (Fail if Line Q > Line P) **Pass**

Total Imports (Sum D,H), as filed by Seller ->	2,500
% of SIL for Seller's imported capacity ->	0.00
% of SIL for Other's imported capacity ->	1.00
SIL value* ->	2,500
Do Total Imports exceed the SIL value? ->	No

* Transmission owners filing triennials should use the SIL values from their Submittal 1, Row 10 (*see Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011)). Other sellers should use Commission-accepted SIL values, if they exist for the study area and study period. If these values do not exist, sellers should use SIL values that have been filed but not accepted.

Appendix A: Standard Screen Format (Data provided for illustrative purposes only)
Part II – Market Share Analysis

Staff Notes:

The file differs from the file published in the NOPR:

1. All entered values must be positive (no parenthesis/negative numbers)
2. The formulas (and the text in the row description) have been changed to reflect number 1.
3. Instruction**:** *Enter all numeric values as positive numbers (blue values)*

Don't enter values into an outlined cell (black values)

Applicant-> **Company X, LLC (TO)**
Study Area -> **Company X BAA**
Data Year -> **Dec 2011-Nov 2012**

Row		As filed by the Applicant/Seller				
		Winter (MW)	**Spring (MW)**	**Summer (MW)**	**Fall (MW)**	**Reference**
	Seller and Affiliate Capacity (owned, controlled or under LT contract)					
A	Installed Capacity (inside the study area)	1,000	900	1,500	1,000	worksheet X
A1	Remote Capacity (from outside the study area)	400	300	200	200	worksheet X
B	Long-Term Firm Purchases (inside the study area)	60	40	70	30	worksheet X
B1	Long-Term Firm Purchases (from outside the study area)	200	200	200	200	worksheet X
C	Long-Term Firm Sales (in and outside the study area)	500	500	500	500	worksheet X
D	Seasonal Average Planned Outages	150	50	80	100	worksheet X
E	Uncommitted Capacity Imports	0	0	0	0	worksheet X
	Capacity Deductions					
F	Average Peak Native Load in the Season	1,000	900	1,200	800	worksheet X
G	Amount of Line F Attributable to Seller, if any	700	700	900	600	worksheet X
H	Amount of Line F Attributable to Non-Affiliates, if any	300	200	300	200	
I	Study Area Reserve Requirement	200	200	300	100	worksheet X
J	Amount of Line I Attributable to Seller, if any	100	100	200	80	worksheet X
K	Amount of Line I Attributable to Non-Affiliates, if any	100	100	100	20	
	Non-Affiliate Capacity (owned, controlled or under LT contract)					
L	Installed Capacity (inside the study area)	250	200	300	150	worksheet X
L1	Remote Capacity (from outside the study area)	50	50	50	50	worksheet X
M	Long-Term Firm Purchases (inside the study area)	30	30	30	30	worksheet X
M1	Long-Term Firm Purchases (from outside the study area)	40	30	40	20	worksheet X
N	Long-Term Firm Sales (in and outside the study area)	50	30	60	50	worksheet X
O	Seasonal Average Planned Outages	10	20	10	20	worksheet X
P	Uncommitted Capacity Imports	2,000	1,500	2,500	1,300	worksheet X
	Supply Calculation					
Q	Total Competing Supply (L+L1+M+M1+P-H-K-N-O)	1,910	1,460	2,450	1,260	
R	Seller's Uncommitted Capacity (A+A1+B+B1+E-C-D-G-J)	210	90	290	150	
S	Total Seasonal Uncommitted Capacity (Q+R)	2,120	1,550	2,740	1,410	
T	**Seller's Market Share** (R÷S)	9.9%	5.8%	10.6%	10.6%	
	Results (Pass if < 20% and Fail if ≥ 20%)	Pass	Pass	Pass	Pass	
U	Total Imports, as filed by Seller (E+P)	2,000	1,500	2,500	1,300	
V	SIL value*	2,000	1,500	2,500	1,300	
	Do Total Imports exceed SIL value? (is U<=V)	No	No	No	No	

* Transmission owners filing triennials should use the SIL values from their Submittal 1, Row 10 (*see Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011)). Other sellers should use Commission-accepted SIL values, if they exist for the study area and study period. If these values do not exist, sellers should use SIL values that have been filed but not accepted.

■ 6. Revise appendix B to subpart H to read as follows:

Appendix B to Subpart H of Part 35—Corporate Entities and Assets Sample Appendix

	Instructions for completing the Asset Appendix list: Generation Assets		
Column	Title	Format	Description
[A]	Filing Entity and its Energy Affiliates	Free Form Text	Name of the Filing Entity and its Affiliates. Please use the exact name as in the Company Registration database if possible.
[B]	Docket # where MBR authority was granted	Text in the form: ##XX-XXX-XXX where "##" is either "ER" or "QF" and "X" is a digit	If applicable, Docket Number where MBR or QF status was originally granted. Can be an ER, EL or QF Docket.
[C]	Generation Name (Plant or Unit Name)	Free Form Text	Unit Name or if all units in a plant are reasonably similar, a plant name. Use EIA-860 or industry standard names to the extent possible.
[D]	Owned By	Free Form Text	Name of the Entity owning the generation unit or plant. Please use the same name as in the Company Registration database if possible.
[E]	Controlled By	Free Form Text	Name of the Entity that controls the output of the generation unit or plant. Please use the same name as in the Company Registration database if possible.
[F]	Date Control Transferred	MM/YYYY or DD/MM/YY	The date the unit came under the control of the Entity listed in "[E] Controlled By." Often it is the date the generation was acquired or built.
[G]	Market / Balancing Authority Area	Free Form Text. For Markets or submarkets please use one of the abbreviations or names in the next column. For BAAs please use the NERC defined name	One of the six RTO/ISOs (ISO-NE, NYISO, PJM, MISO, SPP, CAISO or their designated submarkets (PJM-East, 5004/5005, APsouth, Connecticut, Southwest Connecticut, New York City, Long Island) or a NERC defined Balancing Authority Area name.
[H]	Geographic Region	Specific Text	One of the six MBR regions: Northeast, Southeast, Central, SPP, Southeast, Southwest; or "N/A"
[I]	In-Service Date	MM/YYYY or MM/DD/YY	The date the unit first came into service.
[J]	Capacity Rating: Nameplate (MW)	Numeric. Either an integer or fixed width numeric with one decimal	The nameplate capacity rating of the unit, usually provided by the manufacturer, in MWs.
[K]	Capacity Rating: Used in Filing (MW)	Numeric. Either an integer or fixed width numeric with one decimal	The capacity rating of the unit(s), in MWs, used in this filing for that unit(s)
[L]	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative		A single capital letter (either "N", "S","U","E", or "A") to designate the rating methodology of the unit's capacity used in this filing.
[M]	End Note Number (Enter text in End Note Tab)	Integer	The number of the explanatory note in "End Notes" worksheet that refers to this entry. The numbers should be ascending integers throughout the appendix. If there are three notes in the Generation worksheet tab, then the first end note in the Transmission tab should be "four" (please do not start over with a new numbering sequence)

Instructions for completing the Asset Appendix list: Long-term Purchased Power Agreements (PPA)

Column	Title	Format	Description
[A]	Filing Entity and its Energy Affiliates	Free Form Text	Name of the Filing Entity or affiliate of the Filing Entity that is purchasing the energy or capacity.
[B]	Docket # where MBR authority was granted	Text in the form: ##XX-XXX-XXX where "##" is either "ER" or "QF" and "X" is a digit	Same instruction as the Generation Assets Tab.
[C]	Seller Name	Free Form Text	Name of the Entity that is selling the energy or capacity.
[D]	Amount of PPA (MW)	Numeric. Either an integer or fixed width numeric with one decimal	Contracted amount of MW of the PPA. If the contract is for the entire output of a specific generation facility, you may de-rate the facility using the same de-rating methodology that is used for generators of the same technology elsewhere in the appendix. If this amount is de-rated please explain in the end notes section. Energy only contracts must be converted from MwH to MW and only report contracts one year or longer
[E]	Market / Balancing Authority Area	Free Form Text. For Markets or submarkets please use one of the abbreviations or names in the next column. For BAAs please use the NERC defined name	The RTO/ISO, RTO/ISO submarket, or NERC defined balancing authority area where the generation or capacity is physically located.
[F]	Geographic Region	Specific Text	Same instruction as the Generation Assets Tab
[G]	Start Date (mo/da/yr)	MM/DD/YY	The Start Date of the PPA
[H]	End Date (mo/da/yr)	MM/DD/YY	The End Date of the PPA
[I]	End Note Number (Enter text in End Note Tab)	Integer	Same instruction as the Generation Assets Tab

Instructions for completing the Asset Appendix list: Transmission and Natural Gas Assets

Column	Title	Format	Description
[A]	Filing Entity and its Energy Affiliates		Same instruction as the Generation Assets Tab
[B]	Cite to order accepting OATT or the order approving the transfer of transmission facilities to an RTO or		Commission cite to the order accepting the Filing Entity's or its Energy Affiliates' current OATT, or the order transferring control of transmission facilities to an RTO/ISO.
[C]	Asset Name and Use	Free Form Text	Legal name of the facility and brief description of the type of facility (i.e. transmission line or gas pipeline).
[D]	Owned By		Same instruction as the Generation Assets Tab
[E]	Controlled By		Same instruction as the Generation Assets Tab
[F]	Date Control Transferred		Same instruction as the Generation Assets Tab
[G]	Market / Balancing Authority Area		Same instruction as the Generation Assets Tab
[H]	Geographic Region		Same instruction as the Generation Assets Tab
[I]	Size (length and kV)	Free Form Text	Description of the size in facility in the measures relevant to the specific type of facility. For example, for Electric "Size" refers to the Length and kV rating of the transmission line; for Gas pipeline "Size" refers to the Length and Diameter of the pipeline; for Gas Storage "Size" refers to the capacity of the facility
[J]	End Note Number (Enter text in End Note Tab)		Same instruction as the Generation Assets Tab

Instructions for completing the Asset Appendix list: End Notes

Column	Title	Format	Description
[A]	End Note Number	Integer	Should match an End Note number in the "Generation Assets", "PPA" or "Transmission" lists
[B]	List (Generation, PPA or Transmission)	The words "Generation", "PPA", or "Transmission"	Indicates which asset list the end note is located
[C]	Explanatory Note	Free Form Text	Text providing the clarification or explanatory note.

Asset Appendix: Generation Assets

This is an example of the required appendix listing the filing entity and all its energy affiliates and their associated assets which should be submitted with all market-based rate filings.

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]	[M]
						Location						
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)

Asset Appendix: Long-Term Purchased Power Agreements (PPA)

This is an example of the required appendix listing the filing entity and all its long -term purchased power agreements that must be submitted with some market-based rate filings.

Note:

Energy only contracts must be converted to MW

Only report Contracts one year or longer

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]
				Location				
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Seller Name	Amount of PPA (MW)	Market / Balancing Authority Area	Geographic Region	Start Date (mo/da/yr)	End Date (mo/da/yr)	End Note Number (Enter text in End Note Tab)

Asset Appendix: Transmission Assets / Natural Gas Assets

This is an example of the required appendix listing the filing entity and all its energy affiliates and their associated assets which must be submitted with some market-based rate filings.

Electric Transmission Assets and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]
						Location		Size	
Filing Entity and its Energy Affiliates	Cite to order accepting OATT or order approving the transfer of transmission facilities to an RTO or ISO	Asset Name and Use	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	Size: (length and kV)	End Note Number (Enter text in End Note Tab)

Asset Appendix: End Notes

This is an example of the required appendix listing the filing entity and all its energy affiliates and their associated assets which must be submitted with some market-based rate filings.

End Notes for Entries in the Generation, Long-term PPA and Transmission Lists

[A]	[B]	[C]
End Note Number	List (Generation, PPA or Transmission)	Explanatory Note

Note: The following appendices will not be published in the Code of Federal Regulations.

Appendix C to the Final Rule: Regional Reporting Schedule

Appendix C

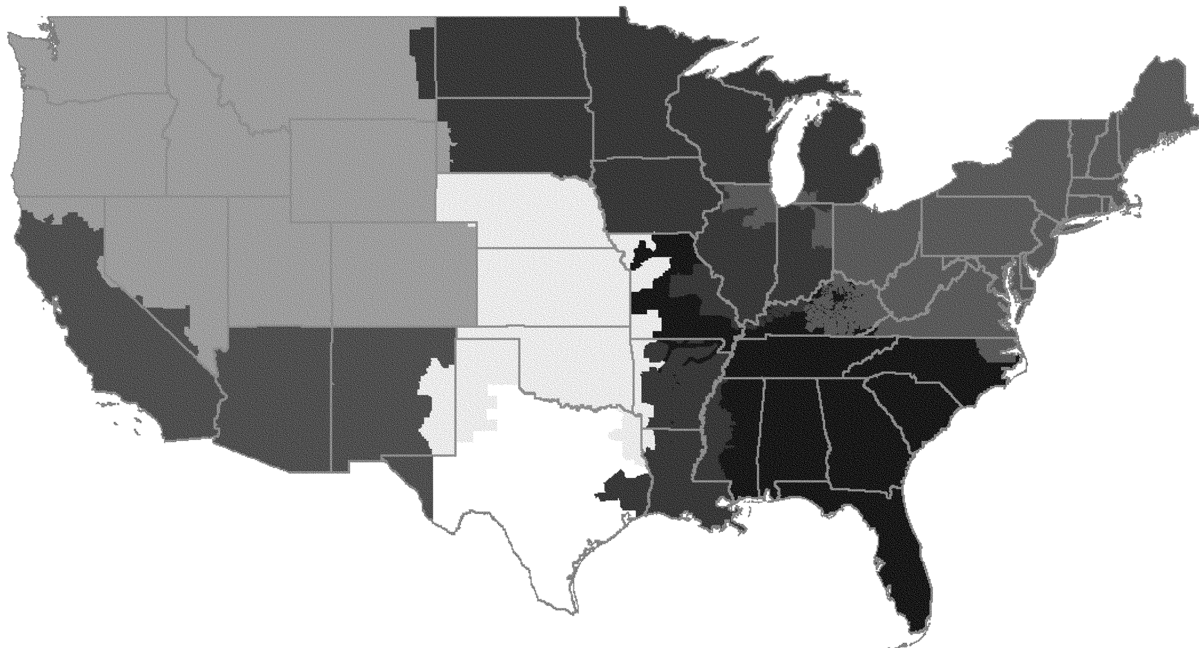
Schedule for Transmission Owning Utilities with Market-based Rate Authority that are Designated as Category 2 Sellers in the Region

Entities Required to File	Study Period			Filing Period (anytime during this month)
Northeast Transmission Owning Utilities	December 2011	to	November 2012	December: 2013
Southeast Transmission Owning Utilities	December 2011	to	November 2012	June: 2014
Central Transmission Owning Utilities	December 2012	to	November 2013	December: 2014
SPP Transmission Owning Utilities	December 2012	to	November 2013	June: 2015
Southwest Transmission Owning Utilities	December 2013	to	November 2014	December: 2015
Northwest Transmission Owning Utilities	December 2013	to	November 2014	June: 2016
Northeast Transmission Owning Utilities	December 2014	to	November 2015	December: 2016
Southeast Transmission Owning Utilities	December 2014	to	November 2015	June: 2017
Central Transmission Owning Utilities	December 2015	to	November 2016	December: 2017
SPP Transmission Owning Utilities	December 2015	to	November 2016	June: 2018
Southwest Transmission Owning Utilities	December 2016	to	November 2017	December: 2018
Northwest Transmission Owning Utilities	December 2016	to	November 2017	June: 2019
Northeast Transmission Owning Utilities	December 2017	to	November 2018	December: 2019
Southeast Transmission Owning Utilities	December 2017	to	November 2018	June: 2020
Central Transmission Owning Utilities	December 2018	to	November 2019	December: 2020
SPP Transmission Owning Utilities	December 2018	to	November 2019	June: 2021
Southwest Transmission Owning Utilities	December 2019	to	November 2020	December: 2021
Northwest Transmission Owning Utilities	December 2019	to	November 2020	June: 2022
Northeast Transmission Owning Utilities	December 2020	to	November 2021	December: 2022
Southeast Transmission Owning Utilities	December 2020	to	November 2021	June: 2023
Central Transmission Owning Utilities	December 2021	to	November 2022	December: 2023
SPP Transmission Owning Utilities	December 2021	to	November 2022	June: 2024
Southwest Transmission Owning Utilities	December 2022	to	November 2023	December: 2024
Northwest Transmission Owning Utilities	December 2022	to	November 2023	June: 2025

Appendix C1

Schedule for Non-Transmission Owning Utilities with Market-based Rate Authority that are Designated as Category 2 Sellers in the Region					
Entities Required to File		**Study Period**			**Filing Period (anytime during this month)**
Northwest	Non-Transmission Owning Utilities	December 2010	to	November 2011	December: 2013
Northeast	Non-Transmission Owning Utilities	December 2011	to	November 2012	June: 2014
Southeast	Non-Transmission Owning Utilities	December 2011	to	November 2012	December: 2014
Central	Non-Transmission Owning Utilities	December 2012	to	November 2013	June: 2015
SPP	Non-Transmission Owning Utilities	December 2012	to	November 2013	December: 2015
Southwest	Non-Transmission Owning Utilities	December 2013	to	November 2014	June: 2016
Northwest	Non-Transmission Owning Utilities	December 2013	to	November 2014	December: 2016
Northeast	Non-Transmission Owning Utilities	December 2014	to	November 2015	June: 2017
Southeast	Non-Transmission Owning Utilities	December 2014	to	November 2015	December: 2017
Central	Non-Transmission Owning Utilities	December 2015	to	November 2016	June: 2018
SPP	Non-Transmission Owning Utilities	December 2015	to	November 2016	December: 2018
Southwest	Non-Transmission Owning Utilities	December 2016	to	November 2017	June: 2019
Northwest	Non-Transmission Owning Utilities	December 2016	to	November 2017	December: 2019
Northeast	Non-Transmission Owning Utilities	December 2017	to	November 2018	June: 2020
Southeast	Non-Transmission Owning Utilities	December 2017	to	November 2018	December: 2020
Central	Non-Transmission Owning Utilities	December 2018	to	November 2019	June: 2021
SPP	Non-Transmission Owning Utilities	December 2018	to	November 2019	December: 2021
Southwest	Non-Transmission Owning Utilities	December 2019	to	November 2020	June: 2022
Northwest	Non-Transmission Owning Utilities	December 2019	to	November 2020	December: 2022
Northeast	Non-Transmission Owning Utilities	December 2020	to	November 2021	June: 2023
Southeast	Non-Transmission Owning Utilities	December 2020	to	November 2021	December: 2023
Central	Non-Transmission Owning Utilities	December 2021	to	November 2022	June: 2024
SPP	Non-Transmission Owning Utilities	December 2021	to	November 2022	December: 2024
Southwest	Non-Transmission Owning Utilities	December 2022	to	November 2023	June: 2025

Appendix D to the Final Rule: Generalized Map of Geographic Regions



Northeast (ISO-NE, NYISO, PJM)

Southeast (SERC and FRCC NERC Regions, excluding for PJM and MISO members)

Central (Midcontinent Independent System Operator (MISO) and members of the Midwest Reliability Organization (MRO) that are not part of another RTO)

Southwest Power Pool (SPP NERC Region, excluding MISO members)

Southwest (Arizona, most of California, part of Nevada and the portions of New Mexico and Texas within the Western Interconnection)

Northwest (The remainder of the Western Interconnection)

Appendix E to the Final Rule: Summary Tables for SIL Calculation

Required Reporting for Simultaneous Import Limit (SIL) Studies, with Numerical Examples

Submittal 1: Summary Table of the Components Used to Calculate SIL Values

Table 1: SIL Computation

Instructions:

1 Delete the text 'XX' in the heading 'Study Period' and enter the last two digits of the years in the study period.
2 Delete the text 'Name of Home BAA/Market' and enter the name of the study area.
3 If you are studying more than one first-tier area, copy the relevant columns of Table 1 to empty columns on the right of this spreadsheet for each of the first-tier areas studied.
4 If you are studying first-tier areas, replace the text 'Name of First-Tier BAA/Market' with the name of the first-tier area(s).
5 Do not enter data in the white-background cells as these contain formulas which compute the cell values, enter all megawatt values as non-negative integers in rows 1 through 3, 7 and 9 (the blue-shaded cells).
6 Note that row 5 in Table 1 is the sum of the seasonal columns from row 9 of Table 2.
7 Include an electronic copy of this spreadsheet, or a workable electronic spreadsheet with the same format and formulas as the sample spreadsheet on the Commission Web site, with your filing.
8 The SIL Study Values (i.e., row 10 of Table 1) must be filed as part of a public document. (see note below)*
NOTE: See the footnotes below for further instruction and references to prior Commission direction on the component or calculation in that row.

Study Period: December 1, 20XX to November 30, 20XX

		Name of Home BAA/Market				Name of First-Tier BAA/Market			
	Description of Component	Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)
1	**Simultaneous Incremental Transfer Capability** The most limiting First Contingency Incremental Transfer Capability (FCITC), Normal Incremental Transfer Capability (NITC) or equivalent values. *Note i*	1,700	1,800	1,900	2,000	3,000	3,200	3,400	3,600
2	**Modeled Net Area Interchange** (NAI) Enter a positive value and indicate the direction of flow in row 3 below. *Note ii*	500	600	700	800	200	300	400	500
3	**Interchange Direction** Indicate whether the Study Area NAI is export or import.	Import	Import	Import	Import	Export	Export	Export	Export
4	**Total Simultaneous Transfer Capability** (row 4 = row 1 +/- row 2). *Note iii*	2,200	2,400	2,600	2,800	2,800	2,900	3,000	3,100
5	**Long-Term Firm Transmission Reservations** Sum of the long-term firm transmission reservations from Table 2. *Note iv*	620	300	620	300	460	360	460	360
6	**Calculated SIL Value** (row 6 = row 4 - row 5). *Note v*	1,580	2,100	1,980	2,500	2,340	2,540	2,540	2,740
7	**Historical Peak Load** (Identify source if not from FERC Form No. 714). *Note vi*	1,400	1,900	2,500	2,000	1,400	1,900	2,500	2,000
8	**Adjusted Historical Peak Load** (row 8 = row 7 - row 5). *Note vii*	780	1,600	1,880	1,700	940	1,540	2,040	1,640
9	**Uncommitted First-Tier Generation** Amount of uncommitted generation modeled in the first-tier area. *Note viii*	13,580	12,800	14,500	12,800	13,580	12,800	14,500	12,800
10	**SIL Study Value** (row 10 = the minimum of the values entered in rows 6, 8 and 9 for each season). Use these SIL Study Values in the Market Share Screens. *Note ix*	780	1,600	1,880	1,700	940	1,540	2,040	1,640

*** To the extent a filer intends to request privileged treatment for any portion of Submittals 1 or 2, such filing must comply with 18 CFR 388.112, including the justification for privileged treatment, i.e., why the information is exempt from disclosure under the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552 (2012)**

Submittal 2: Identify Long-Term Firm Transmission Reservations Used to Import Power from Generating Resources in the First-Tier Area to Serve Historical Peak Load in the Study Area

Table 2: Long-Term Firm Transmission Reservations

Instructions:

1 Delete the text 'Name of Home BAA/Market' and enter the name of the study area.

2 If you are studying more than one first-tier area, copy the relevant columns of Tables 1 and 2 to empty columns on the right of this spreadsheet for each of the first-tier areas studied.

3 If you are studying first-tier areas, replace the text 'Name of First-Tier BAA/Market' with the name of the first-tier area(s).

4 Enter all megawatt values as non-negative integers in rows 1 through 3 and 5 through 7 (the blue-shaded cells).

5 Do not enter data in the white-background cells as these cells contain formulas to compute the value in that cell.

6 Enter text to complete the "Description of Component" column as necessary in each row (e.g., enter the name of plant, describe the Power Purchase Agreement or Transaction to serve non-affiliate embedded load.)

7 Use a separate line to report each Remote Plant/ Power Purchase Agreement/ Transaction to serve non-affiliate embedded load by inserting a new rows into the table under the existing rows for that component. For instance, to report a third Power Purchase Agreement for an affiliate, insert a new row between the existing row "2a" and row "3" and label that row "2b"

8 Row 9, Sum of affiliate and non-affiliated reservations, will automatically sum the long-term reservations in that column and place the total into the same seasonal column in Submittal 1, row 5, Long-Term Firm Transmission Reservations.

9 Include an electronic copy of this spreadsheet, or a workable electronic spreadsheet with the same format and formulas as the sample spreadsheet on the Commission Web site, with your filing. (see note below)*

		Name of Home BAA/Market				Name of First-Tier BAA/Market			
	Description of Component	Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)
	Affiliates								
1	MW Share of Remote Plant #1	100	-	100	-	50	50	50	50
1a	MW Share of Remote Plant #2	50	50	50	50	100	-	100	-
1b	MW Share of Remote Plant #3	45	-	45	-	-	50	-	50
2	Power Purchase Agreement where the energy is imported into the study area with long-term firm reservations	75	75	75	75	80	80	80	80
2a	Power Purchase Agreement where the energy is imported into the study area with long-term firm reservations	25	25	25	25				
3	Transaction to serve non-affiliated load embedded in the study area using external generation	10	0	10	0				
3a	Transaction to serve non-affiliated load embedded in the study area using external generation	5	0	5	0				
4	Sum of affiliated long-term firm reservations	310	150	310	150	230	180	230	180
	Non-Affiliates								
5	MW Share of Remote Plant #1	100	-	100	-	50	50	50	50
5a	MW Share of Remote Plant #2	50	50	50	50	100	-	100	-
5b	MW Share of Remote Plant #3	60	-	60	-	-	50	-	50
6	Power Purchase Agreement where the energy is imported into the study area with long-term firm reservations	50	50	50	50	80	80	80	80
6a	Power Purchase Agreement where the energy is imported into the study area with long-term firm reservations	25	25	25	25				
7	Transaction to serve non-affiliated load embedded in the study area using external generation	15	15	15	15				
7a	Transaction to serve non-affiliated load embedded in the study area using external generation	10	10	10	10				
8	Sum of non-affiliated long-term firm reservations	310	150	310	150	230	180	230	180
9	Sum of affiliated and non-affiliated long-term firm reservations (enter value in row 5 of Table 1 above)	620	300	620	300	460	360	460	360

*** To the extent a filer intends to request privileged treatment for any portion of Submittals 1 or 2, such filing must comply with 18 CFR 388.112, including the justification for privileged treatment, i.e., why the information is exempt from disclosure under the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552 (2012)**

Endnotes for Table 1:

[i] *See generally AEP Service Corp.*, 131 FERC ¶ 61,146, at P 5 (2010) (*AEP*) (“FCITC is calculated in the power flow model and represents the additional power that can flow into a study area by increasing available uncommitted generation in the first-tier area while simultaneously decreasing generation in the study area.”).

Enter an integer value for the FCITC or incremental SIL value. A negative FCITC or incremental SIL value may indicate a serious modeling error such as an N-0 or N-1 base case overload and must be addressed or explained.

[ii] *See generally AEP*, 131 FERC ¶ 61,146 at P 5 (“The net area interchange is also determined in the seasonal power flow model and represents ‘the sum of a study area’s scheduled energy transactions’ already flowing into and out of the study area at the seasonal peak that is modeled.” (citing *CP&L*, 128 FERC ¶ 61,039 at P 9)).

Enter a non-negative integer value for Net Area Interchange. Different sellers apparently use different nomenclature to represent net imports into a study area. Here, the direction of the interchange, either export from or import into the study area, is explicitly declared in the text in row 3 and the direction is not indicated by the sign of the interchange value. *See generally AEP*, 131 FERC ¶ 61,146 at P 14 (“The Commission previously has given guidance on how to combine the FCITC and net area interchange values in calculating the SIL. However, this guidance was based on the assumption that the industry standard was to report a study area exporting power as a positive value (a positive net area interchange). SPP, however, used the reverse notation, causing some SPP Transmission Owners to subtract net area interchange from the FCITC value when they should have added.” (footnote omitted)).

[iii] *See generally AEP*, 131 FERC ¶ 61,146 at P 14 (“For a study area whose net area interchange represents net exports from the study area, the SIL value is equal to FCITC minus net exports. Therefore, net exports from a study area reduce the SIL value. Conversely, for a study area whose net area interchange represents net imports into the study area, the SIL value is equal to FCITC plus net imports. Therefore, net imports into a study area increase the SIL value.”); *CP&L Clarification Order*, 129 FERC ¶ 61,152 at P 23 n.15.

[iv] *See generally* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 368 ("[T]he Commission will require sellers to account for firm and network transmission reservations having a duration of longer than 28 days."); *id*. P 368 n.375 ("The simultaneous import limit study must account for short-term firm transmission rights including point-to-point on-peak/off-peak transmission reservations (firm or network transmission commitments) which have been stacked, or successively arranged, into an aggregated point-to-point transmission reservation longer than 28 days."); *id*. P 369 ("[W]e clarify that the seller's firm, network, and grandfathered transmission reservations longer than 28 days, including reservations for designated resources to serve retail load, shall be fully accounted for in the simultaneous import limit study."); Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 142 ("[W]e clarify that the use of simultaneous TTC in the SIL study must properly account for all firm transmission reservations, transmission reliability margin, and capacity benefit margin.").

[v] *See generally* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 144 ("Therefore, we will require applicants to allocate their seasonal and longer transmission reservations to themselves from the calculated SIL, where seasonal reservations are greater than one month and less than 365 consecutive days in duration, as defined in the Commission's EQR Data Dictionary."); Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 at P 6 "[T]he Commission clarifies and reaffirms that it will require applicants to allocate their seasonal and longer transmission reservations to themselves from the calculated simultaneous transmission import limit *only* up to the uncommitted first-tier generation capacity owned, operated or controlled by the seller and its affiliates.").

[vi] *See generally CP&L Clarification Order*, 129 FERC ¶ 61,152 at P 26 ("We clarify that seasonal, historical peak load is one limitation on the SIL values reported in the indicative screens and the Delivered Price Test. This SIL value limitation applies to both scaling methodologies when conducting a SIL study (load-shift and generation-shift methodologies)." (footnote omitted)); *id.* P 26 n.16 ("The other two limitations are: (1) when transmission equipment reaches an operating limit during the energy transfer calculation portion of the SIL study (these are 'the real-life physical limitations of first-tier balancing authority areas that impede power flowing from remote first-tier resources into the seller's study area'; and (2) when the available uncommitted generation in the first-tier area is exhausted and no transmission equipment has reached an operating limit during the scaling process." (citations omitted)).

Here, enter the highest hourly net energy for load value for each season from FERC Form No. 714 or equivalent and identify the source of the data if not FERC Form No. 714. Do not enter the average seasonal peak load value used in the wholesale market share screen because it is not the single, highest hourly load recorded for each season.

[vii] *Puget Sound Energy, Inc*., 135 FERC ¶ 61,254, at P 16 (2011) ("The transmission capability associated with these study area import reservations also must be subtracted from the study area's native load to accurately represent the amount of study area native load available to being served by first-tier area generation when the study area native load limits the calculated SIL value. For example, PGE's calculated SIL values exceeded its peak load in each season, so PGE correctly limited its SIL values to peak load. PGE then subtracted its affiliated long-term firm transmission reservations from its seasonal peak load to derive its adjusted or net SIL values, which it used in its updated market power analysis. PGE's calculation appropriately limited its SIL values to the amount of its study area load open to competition from non-affiliated, first-tier generators." (footnotes omitted)).

[viii] *See generally* April 14 Order, 107 FERC ¶ 61,018 at Appendix E ("[T]he applicant shall scale up available generation in the exporting (aggregated first tier areas)…."); *CP&L Clarification Order*, 129 FERC ¶ 61,152 at P 26 & n.16.

[ix] *See generally Public Service Company of New Mexico*, 133 FERC ¶ 61,031 at P 12-13 (accepting SIL values limited by peak load and reduced by amount of transmission reservations allocated to transmission owners' remote resources brought into the study area to serve native load); *AEP*, 131 FERC ¶ 61,146 at P 13 ("Because each of the SPP Transmission Owners was to subtract its own reservations in calculating its final SIL values, this value should account for the largest quantity of transmission reservations into the study area, thus providing a reasonable estimate of remaining import capability to use in the preliminary market power screens."); *CP&L Clarification Order*, 129 FERC ¶ 61,152 at P 26 ("The SIL value reported in the indicative screens and the Delivered Price Test, however, cannot exceed the seasonal historical peak load value.").

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Appendix F to the Final Rule: List of Commenters and Acronyms

Commenter	Short name/acronym
American Antitrust Institute	AAI
American Electric Power Service Corporation	AEP
American Public Power Association and National Rural Electric Cooperative Association.	APPA/NRECA
Avista Corporation and Puget Sound Energy, Inc	Avista/Puget
Barrick Goldstrike Mines	Barrick
Romkaew Broehm and Gerald A. Taylor	Broehm/Taylor
E.ON Climate & Renewables North America LLC	E.ON
Edison Electric Institute	EEI
El Paso Electric Company	El Paso
Electric Power Supply Association	EPSA
FirstEnergy Service Company	FirstEnergy
Golden Spread Electric Cooperative, Inc	Golden Spread
Idaho Power Company	Idaho Power Company
Indicated Western Utilities (Arizona Public Service Company; Idaho Power Company; NV Energy, Inc.; PacifiCorp; and Portland General Electric Company).	Indicated Utilities
National Hydropower Association	NHA
NextEra Energy, Inc	NextEra
Potomac Economics, Ltd	Potomac Economics
Southeast Transmission Owners (Duke Energy Carolinas, LLC; Duke Energy Progress, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company; South Carolina Electric & Gas Company; and Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company).	Southeast Transmission Owners
Southern California Edison Company	SoCal Edison
Julie R. Solomon and Matthew E. Arenchild	Solomon/Arenchild
SunEdison Inc	SunEdison
NRG Companies (over 120 entities wholly or partially owned subsidiaries of NRG Energy, Inc.).	NRG Companies
Transmission Access Policy Study Group	TAPS

[FR Doc. 2015–26908 Filed 10–39–15; 8:45 am]

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Part V

Department of Education

34 CFR Part 668

Program Integrity and Improvement; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AD14

[Docket ID ED–2015–OPE–0020]

Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the cash management regulations and other sections of the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA). These final regulations are intended to ensure that students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, the final regulations update other provisions in the cash management regulations and otherwise amend the Student Assistance General Provisions. The final regulations also clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

DATES: *Effective date:* These regulations are effective July 1, 2016.

Compliance dates: Compliance with the regulations in § 668.164(e)(2)(vi) and (f)(4)(iii) is required by September 1, 2016; § 668.164(d)(4)(i)(B)(*2*) by July 1, 2017; and § 668.164(e)(2)(vii) and (f)(4)(iv) by September 1, 2017.

FOR FURTHER INFORMATION CONTACT: *For clock-to-credit-hour conversion:* Amy Wilson, U.S. Department of Education, 1990 K Street NW., Room 8027, Washington, DC 20006–8502. *Telephone:* (202) 502–7689 or by email at: *amy.wilson@ed.gov.*

For repeat coursework: Vanessa Freeman, U.S. Department of Education, 1990 K Street NW., Room 8040, Washington, DC 20006–8502. *Telephone:* (202) 502–7523 or by email at: *vanessa.freeman@ed.gov;* or Aaron Washington, U.S. Department of Education, 1990 K Street NW., Room 8033, Washington, DC 20006–8502. Telephone: (202) 502–7478 or by email at: *aaron.washington@ed.gov.*

For cash management: Ashley Higgins, U.S. Department of Education, 1990 K Street NW., Room 8037, Washington, DC 20006–8502. *Telephone:* (202) 219–7061 or by email at: *ashley.higgins@ed.gov;* or Nathan Arnold, U.S. Department of Education, 1990 K Street NW., Room 8081, Washington, DC 20006–8502. *Telephone:* (202) 219–7134 or by email at: *nathan.arnold@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Over the past decade, the student financial products marketplace has shifted and the budgets of postsecondary institutions have become increasingly strained, in part due to declining State funding. These changes have coincided with a proliferation of agreements between postsecondary institutions and financial account providers. Cards offered pursuant to these arrangements, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed as a way for students to receive their title IV [1] credit balances via a more convenient electronic means. However, as we describe in more detail elsewhere in this preamble and in the preamble to the notice of proposed rulemaking published in the **Federal Register** on May 18, 2015 (NPRM),[2] a number of reports from government and consumer groups document troubling practices employed by some financial account providers. Legal actions, especially those initiated by the Federal Reserve and Federal Deposit Insurance Corporation (FDIC), against the sector's largest provider reinforce some of these concerns.

According to these reports, the following practices were found:

- Providers were prioritizing disbursements to their own affiliated accounts over aid recipients' preexisting bank accounts;
- Providers and schools were strongly implying to students that signing up for the college card account was required to receive Federal student aid;
- Private student information unrelated to the financial aid process was given to providers before aid recipients consented to opening accounts;
- Access to the funds on the college card was not always convenient; and
- Aid recipients were charged onerous, confusing, or unavoidable fees in order to access their student aid funds or to otherwise use the account.

These practices indicate that many institutions have shifted costs of administering the title IV, student aid programs from institutions to students. Given that approximately nine million students attend schools with these agreements, that approximately $25 billion dollars in Pell Grant and Direct Loan program funds are disbursed to undergraduates at these institutions every year, that students are a captive audience subject to marketing from their institutions, that the college card market is expanding, and because there have been numerous concerns raised by existing practices, we believe regulatory action governing the disbursement of title IV, student aid is warranted.

In addition, we include in these regulations a number of minor changes that reflect updated Office of Management and Budget (OMB) guidance for Federal awards, clarify some provisions to further safeguard title IV funds, and remove references to programs that are no longer authorized.

Finally, we address in the regulations two issues unrelated to cash management—repeat coursework and clock-to-credit-hour conversion—that were identified by the higher education community as requiring review. We believe these regulatory changes will result in more equitable treatment of student aid recipients and simplify title IV requirements in these areas.

The NPRM contained background information and our reasons for proposing the particular regulations. The final regulations contain changes from the NPRM, which are fully explained in the *Analysis of Comments and Changes* section of this document.

Summary of the Major Provisions of This Regulatory Action:

The regulations—

- Explicitly reserve the Secretary's right to establish a method for directly paying credit balances to student aid recipients;
- Establish two different types of arrangements between institutions and financial account providers: ''tier one (T1) arrangements'' and ''tier two (T2) arrangements'';
- Define a ''T1 arrangement'' as an arrangement between an institution and a third-party servicer, under which the servicer (1) performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution, and (2) offers one or more financial accounts under

[1] Throughout this preamble, we refer to title IV, HEA program funds using naming conventions common to the student aid community, including ''title IV student aid'' and similar phrasing.

[2] 80 FR 28484, 28488–28490. The NPRM is available at *http://www.gpo.gov/fdsys/pkg/FR-2015-05-18/pdf/2015-11917.pdf.* We cite to the NRPM in subsequent references as 80 FR at [page].

the arrangement, or that directly markets the account to students itself or through an intermediary;

• Define a ''T2 arrangement'' as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution under which financial accounts are offered and marketed directly to students. However, if an institution documents that, in one or more of the three recently completed award years, no students received credit balances at the institution, the requirements associated with T2 arrangements do not apply. If, for the three most recently completed award years, the institution documents that on average fewer than 500 students and less than five percent of its enrollment received credit balances then only certain requirements associated with T2 arrangements apply;

• Require institutions that have T1 or T2 arrangements to establish a student choice process that: prohibits an institution from requiring students to open an account into which their credit balances must be deposited; requires an institution to provide a list of account options from which a student may choose to receive credit balance funds electronically, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first and most prominent option with no account preselected; and ensures electronic payments made to a student's preexisting account are initiated in a manner as timely as, and no more onerous than, payments made to an account made available pursuant to a T1 or T2 arrangement;

• Require that any personally identifiable information shared with a financial account provider as a result of a T1 arrangement before a student makes a selection of that provider (1) does not include information about the student other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, with the exception of a unique student identifier generated by the institution (that does not include a Social Security number, in whole or in part), the disbursement amount, a password, PIN code, or other shared secret provided by the institution that is used to identify the student, and any additional items specified by the Secretary in a **Federal Register** notice; (2) is used solely for processing direct payments of title IV, HEA program funds, and (3) is not shared with any other affiliate or entity for any other purpose;

• Require that the institution obtain the student's consent to open an account under a T1 arrangement before the institution or account provider sends an access device to the student or validates an access device that is also used for institutional purposes, enabling the student to use the device to access a financial account;

• Require that the institution or financial account provider obtain consent from the student to open an account under a T2 arrangement before (1) the institution or third-party servicer provides any personally identifiable information about that student to the financial account provider or its agents, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37 and (2) the institution or account provider sends an access device to the student or validates an access device that is also used for institutional purposes, enabling the student to use the device to access a financial account;

• Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free automated teller machines (ATMs), and, for accounts offered under a T1 arrangement, by prohibiting both point-of-sale (POS) fees and overdraft fees charged to student account holders, and by providing students with the ability to conveniently access title IV, HEA program funds via domestic withdrawals and transfers in part and in full up to the account balance, without charge, at any time following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

• Require that contracts governing T1 and T2 arrangements are conspicuously and publicly disclosed;

• Require that cost information related to T1 arrangements is conspicuously and publicly disclosed;

• Require that cost information related to T2 arrangements is conspicuously and publicly disclosed when on average over three years five percent or more of the total number of students enrolled at the institution received a title IV credit balance or the average number of credit balance recipients for the three most recently completed award years is 500 or more;

• Require that institutions that have T1 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students; and

• Require that where a T2 arrangement exists and where either on average over three years five percent or more of the total number of students enrolled at the institution received a title IV credit balance, or the average number of credit balance recipients for the three most recently completed award years is 500 or more, the institution establish and evaluate the contract governing the arrangement in light of the best financial interests of students.

The regulations also—

• Allow an institution offering term-based programs to count, for enrollment status purposes, courses a student is retaking that the student previously passed, up to one repetition per course, including when a student is retaking a previously passed course due to the student failing other coursework, and

• Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Costs and Benefits: The expected effects of these final regulations include improved information to facilitate consumer choice of financial accounts for receiving title IV credit balance funds, reasonable access to title IV funds without fees, and redistribution of some of the costs of payment of credit balances among students, institutions, and financial institutions; updated cash management rules to reflect current practices; streamlined rules for clock-to-credit-hour conversion; and the ability of students to receive title IV funds for repeat coursework in certain term programs. Institutions, third-party servicers, and financial institutions will incur implementation costs related to the regulations. The anticipated effects of the regulations are detailed in the *Discussion of Costs, Benefits, and Transfers* in the Regulatory Impact Analysis as well as the *Paperwork Reduction Act of 1995* section of this preamble.

Public Comment: In response to our invitation in the NPRM, 211 parties submitted comments on the proposed regulations. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General Comments

Comments: The Department received many positive comments regarding the proposed regulations. These commenters argued that in light of several recent consumer and government reports and legal actions documenting troubling practices on the

part of financial account providers, the Department was justified in proposing changes to the cash management regulations to ensure title IV student aid recipients are able to access their title IV funds. The commenters praised the Department's proposed regulations and stated that the changes would provide strong protections for students and disclosure rules that would provide incentives for better behavior in the college card marketplace.

Many other commenters had concerns about the regulations or suggestions for how to improve them. These suggestions are discussed in detail in the remaining sections of this preamble.

Other commenters argued that it would be counterproductive for the Department to regulate in this area. One commenter asserted that the fees that students are paying are already lower than the fees they would be charged for a standard bank account. Other commenters argued that providers of both T1 and T2 arrangements would be forced to exit the marketplace, leaving institutions with limited options for delivering title IV credit balances. Another commenter stated that institutions would choose not to renew contracts with account providers. One commenter noted that if this happens, students may be pushed towards higher-fee products. Other commenters contended that the costs of compliance would force institutions to raise tuition. One commenter suggested that the Department assist institutions with the cost of compliance.

Discussion: We thank the commenters who provided thoughtful suggestions for how to improve the proposed regulations, and we also thank those who supported the proposal generally.

We disagree with the commenter who stated that fees under T1 and T2 arrangements are lower than the fees students would encounter in traditional banking relationships. As stated in the NPRM, there is significant evidence that students are incurring unreasonably high fees, particularly, although not exclusively, under T1 arrangements.[3]

We also disagree with commenters who expressed concerns that the new requirements will drive account providers from the marketplace, to the disadvantage of both institutions and students. We note that account providers are still permitted to charge the institution whatever costs the two parties agree to, we have simply limited the amount and types of fees that are charged to title IV recipients (and also note that certain fees, including monthly maintenance fees, can still be passed on to offset costs). In addition, we believe that account providers recognize the long-term value in establishing relationships with students who may, in the future, require other products and services offered by their financial institutions. Because these more transparent and commonplace fees will be allowable under the regulations and because of the future opportunities created by establishing a banking relationship with students, we do not foresee a situation in which account providers will exit the market and students will be forced to choose among options that include even higher fees. Because third-party servicers will still be able to offer savings to institutions, we do not believe that institutions will choose to abandon their providers.

We also note that schools are responsible for the costs of participating in the title IV programs and are required to ensure that students receive the full balance of title IV funds to which they are entitled, without additional financial assistance from the Department.

Changes: None.

Legal Authority

Comments: Some commenters supported the Department's legal authority to regulate issues relating to disbursements of title IV funds, to ensure that institutions and their servicers act as responsible stewards of taxpayer dollars, and to enable students to access the full balance of their Federal student aid.

Several commenters questioned our legal authority to promulgate these regulations, arguing that the Department lacks the legal authority to regulate banks and financial accounts.

Commenters further argued that the Department was acting outside its statutory authority in regulating T2 arrangements, because the bank accounts under those arrangements fall within the purview of other government agencies and not within the authority of the Department under the HEA. Instead, the commenters believed that the Department should limit its regulations to institutions. These commenters also pointed to section 492(a)(1) of the HEA, which states that for purposes of negotiated rulemaking, the Department must consult with ''representatives of the groups involved in student financial assistance programs under this title, such as students, legal assistance organizations that represent students, institutions of higher education, State student grant agencies, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.'' The commenters argued that because banks are not among those groups enumerated in this list, the Department does not have authority to regulate them.

Another commenter argued that the proposed regulations impermissibly expanded the definition of ''disbursement,'' and that the HEA does not authorize the Department to expand the definition of ''disbursement services.''

Another commenter argued that the proposed regulations violate the First Amendment. Specifically, the commenter argued that by requiring institutions to list a student's preexisting bank account as the first and most prominent option, the Department was depriving institutions that believe that a student's preexisting account is not in the student's best interests of the right to more prominently display another account. The commenter argued that a less restrictive means of achieving the Department's goal would be to require that all account options are listed neutrally and with objective information.

Discussion: We appreciate the comments supporting our proposal and agreeing that we have the statutory authority to promulgate the regulations.

We disagree with the commenters who argued that these regulations are outside of our purview under title IV of the HEA. The Department is responsible for overseeing Federal student aid, which annually disburses billions of dollars intended to benefit students, to ensure that the program operates as effectively and efficiently as possible. Multiple statutory provisions vest the Department with broad rulemaking authority to effectuate the purposes of the program. *See, e.g.,* 20 U.S.C. 1094(c)(1)(B); 1221e–3; 3474. As the statute makes clear, foremost among those purposes is ensuring that students actually receive the awards Congress authorized. Thus, for example, Section 487 of the HEA requires that in the program participation agreement an otherwise eligible institution must enter into before it is authorized to award title IV funds, the institution must pledge to ''use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program,'' and ''not charge any student a fee for processing or handing any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance.'' Similarly, section 401(f)(1) of the HEA provides that ''[e]ach student financial aid administrator [at each institution] shall . . . (C) make the

[3] 80 FR at 28506.

award to the student in the correct amount.'' Under section 454(j) of the HEA, ''proceeds of loans to students under [the Direct Loan program] shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.'' Section 454(a)(5) of the HEA provides that the Direct Loan program participation agreement shall ''provide that the institution will not charge fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan.'' Given that these provisions and many more demonstrate an overriding purpose of ensuring that students receive their title IV funds, it is the Department's responsibility to use its rulemaking authority to ensure title IV does not operate as a means to benefit third parties while inhibiting students' access to the full amounts of their awards. The GAO report and other investigations show that college card programs can and sometimes do operate to impair full access. These regulations are narrowly tailored to prevent that from continuing to happen. The regulations address a problem directly within the Department's cognizance and are an appropriate exercise of the Department's rulemaking authority.

We have consistently interpreted the HEA as authorizing regulation of the matters addressed in the regulations, including in the 2007 cash management regulations prohibiting account-opening fees, requiring reasonable free ATM access, and requiring prior consent from a student before opening a financial account, and the 1994 regulations relating to third-party servicers.

Furthermore, we disagree that section 492(a)(1) of the HEA provides evidence that we are acting outside our statutory authority; on the contrary, we believe that section further supports our authority. Section 492(a)(1) provides a list of the groups ''involved'' in the title IV programs, ''such as'' lenders, secondary markets, and collection agencies. The term ''such as'' signifies that the list is illustrative, rather than comprehensive; indeed, the Department has previously included several other types of representative groups in negotiated rulemaking. The rulemaking that led to these final regulations included banking sector representatives who provided helpful expertise in improving the regulations we proposed. In addition, the term ''involved'' denotes Congress's recognition that the Department's regulation of institutions would necessarily impact groups that are not directly regulated, as is the case here. Finally, lenders, secondary markets, and collection agencies are certainly entities that are directly regulated by other government entities, yet are impacted by the Department's regulation of institutions and the title IV programs, similar to financial account providers in these regulations. We are regulating the disbursement process and institutions (and their servicers) that are authorized to disburse title IV funds under the HEA.

We also disagree with the commenter who argued that we do not have the authority to clarify the definition of disbursement services. In section 401(e) of the HEA, regarding Pell Grants, Congress directed that ''[p]ayments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section.'' This section further states that ''[a]ny disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. . . .'' Under section 455(a)(1) of the HEA, Congress directed the Secretary to prescribe such regulations as may be necessary to carry out the purposes of the Direct Loan program. This includes regulations applicable to third-party servicers and for the assessment against such servicers of liabilities for violations of the program regulations, to establish minimum standards with respect to sound management and accountability of the Direct Loan programs. Section 487(c)(1)(B) of the HEA provides that the Secretary ''shall prescribe such regulations as may be necessary to provide for'' reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV programs, in matters not governed by specific program provisions, ''including any matter the Secretary deems necessary to the sound administration of the financial aid programs.'' Third-party servicers are likewise by statute subject to the Department's oversight, including under HEA sections 481(c) and 487(c)(1)(C), (H), and (I) of the HEA.

Finally, we disagree with the commenter who argued that the proposed regulations violate the First Amendment. The regulations do not require an institution to endorse a particular banking product as a vehicle for title IV credit balance funds—in fact, the regulations prohibit institutions from expressly stating or implying that a particular account is required to receive their funds. We included this limitation to counteract the practices employed by some financial account providers that were leading title IV recipients to believe that a particular account was required. The provision requiring that the student be given a neutral list of accounts affords the student the opportunity to select an account that is the best fit for that individual. The requirement that a student's preexisting account be listed first and most prominently, rather than endorsing that option, simply ensures that students can easily locate and select the option to receive their funds via an account they have already chosen without confusion or additional steps. As we described in more detail in the NPRM,[4] we proposed this requirement because government and consumer reports found several examples where it was difficult or impossible for a student to determine how to have funds deposited in a preexisting account. In addition, we have eliminated the requirement for a ''default'' option (please refer to the student choice section of this preamble for further discussion); we believe that this will provide a student with a simple, neutral means of determining the available options for receiving title IV funds and represents the least restrictive means for doing so. For these reasons, among others, the provision does not violate the First Amendment, but is absolutely necessary.

Changes: None.

Possible Conflict With Existing Laws and Regulations

Comments: Some commenters argued that the Department's regulatory efforts are duplicative of, or will conflict with, existing banking regulations from other Federal entities. These commenters argued that other existing federal laws and regulations, including the Electronic Fund Transfer Act,[5] the Dodd–Frank Wall Street Reform and Consumer Protection Act,[6] the Truth in Savings Act,[7] the Expedited Funds Availability Act,[8] and the Federal Trade Commission Act of 1914,[9] already

[4] 80 FR at 28497–28499.

[5] Public Law 95–630, and implemented in Regulation E, 12 CFR part 205.

[6] Public Law 111–203.

[7] Public Law 102–242.

[8] Public Law 100–86.

[9] 15 U.S.C. 41–58.

provide sufficient student choice measures and protections and the Department's efforts would conflict with those provisions.

Commenters contended that the existence of these laws demonstrates a congressional intent to exclude the Department from regulating in this area, and that the Department lacks the expertise to do so. One commenter also alleged that the Department issued the proposed regulations based only on information from consumer advocacy groups and without consulting banking regulators.

Discussion: We disagree with commenters who argued that the proposed regulations would duplicate or conflict with existing banking regulations. As we repeatedly stated throughout the preamble to the NPRM, we are not regulating banks or banking products. As a threshold matter, to the extent that institutions elect to contract with other parties, the regulations may impact those contracted parties. That does not, however, make those parties the subjects of the Department's regulations.

We recognize that there are numerous laws, regulations, and government entities that govern the banking sector and we have specifically limited the reach of the regulations where there might have been conflict or overlap (for example, by not requiring a duplicative disclosure of account terms already required under banking regulations when a student has already selected an account outside the student choice menu). We wish to make clear that these regulations govern institutions and the arrangements they voluntarily enter into that directly affect title IV disbursements, recipients, and taxpayer funds authorized under the HEA.

The commenters did not identify language in any law or regulation administered by another Federal agency that conflicts with the regulations, and neither have we in conducting our review or consulting with other agencies, including the Consumer Financial Protection Bureau (CFPB). Congress entrusted the Department with the responsibility for protecting the integrity of the title IV, HEA programs, and that is the purpose these regulations serve.

We also disagree with the commenter who stated that the Department did not seek out the expertise of banking regulators. As stated in the NPRM, the Department ''consulted Federal banking regulators at FDIC, [the Office of the Comptroller of the Currency] OCC, and the Bureau of the Fiscal Service at the United States Department of the Treasury (Treasury Department), and CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework'' while developing the proposed regulations.[10] We have continued discussing these matters as we developed the final regulations to ensure that any regulatory changes are appropriate given existing banking rules.

Changes: None.

Role of Existing Protections and Validity of Consumer and Government Reports

Comments: Some commenters argued that existing cash management regulations provide sufficient protections for students and these regulations are unnecessary. These commenters noted that existing regulations already contain certain disclosure, notification, and insurance requirements, as well as some fee prohibitions. One commenter argued that existing Federal requirements have already resulted in corrective action.

One commenter questioned the validity of the reports underlying the justification for the proposed regulations. This commenter noted that the Office of the Inspector General (OIG) only studied four schools, just one of which had a T2 arrangement, and that no issues were found regarding the T2 arrangement. This commenter also contended that the Government Accountability Office (GAO) stated that the practices it uncovered already violated current regulations and consumer protection laws.

Discussion: We disagree with the commenters who argued that the Department's existing cash management regulations provide sufficient protections to students. As commenters noted, our long-standing regulations authorized under the HEA already contain requirements relating to disclosures, notifications, fee prohibitions, and several other topics involving the institutional disbursement process. While we believe these protections are important for students, the numerous instances of troubling behavior identified by government and consumer groups and discussed in detail in the NPRM demonstrate that additional protection is necessary. We also note that while the legal system has addressed some issues associated with these types of arrangements, it has not and cannot resolve every issue that has been raised regarding T1 and T2 arrangements, and thousands of title IV recipients would be harmed in the intervening time. We believe the regulatory framework presented in this document is better suited to address the issues and recommendations jointly agreed upon by numerous government and consumer investigations.

We also disagree with the commenter who questioned the Department's reliance on an OIG report. Although the OIG reviewed the practices of only four schools, those schools collectively represent 158,000 enrolled students and 596.6 million title IV dollars in total.[11] The OIG noted in its report that under what would now been defined as T2 arrangements, ''students sometimes misunderstood how the two accounts worked and whether the checking account was required.'' [12] Additionally, the proposed regulations were based on much more than a single report. As we noted throughout the preamble to the NPRM, a number of independently prepared government and consumer reports from the GAO, United States Public Interest Research Group (USPIRG), Consumers Union, and others all came to a consensus (shared by the OIG report) regarding the severity and scope of the troubling practices employed by several financial account providers in the college card market. Additionally, legal actions, both by private individuals and government entities, substantiated many of the claims in these reports. These reports were also in agreement that corrective action and additional protections are needed. For all these reasons—rather than on the basis of a single, limited report as the commenter implied—we proposed regulatory changes to subpart K.

We also disagree that the GAO only found violations of current consumer protection laws and regulations. For example, the GAO specifically recommended several corrective actions for the Secretary to undertake, including developing requirements for distributing objective and neutral information to students and parents.[13] *Changes:* None.

Request for Extension of the Comment Period

Comments: In view of the length and nature of the issues discussed in the NPRM, some commenters requested that the Department extend the comment period. One commenter requested a 30-

[10] 80 FR at 28523.

[11] Office of the Inspector General. ''Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds.'' [Page 3] (2014), available at *www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf.* With subsequent references ''OIG at [Page number].''

[12] OIG at 11.

[13] United States Government Accountability Office. ''College Debit Cards: Actions Needed to Address ATM Access, Student Choice, and Transparency,'' page 35 (2014), available at *www.gao.gov/assets/670/660919.pdf* (hereinafter referred to as ''GAO at [page number]'').

day extension, while another commenter requested an extension of at least 60 days to be consistent with the general recommendations in Executive Order 13563.

Discussion: While we agree that the issues addressed in the proposed regulations are important and deserve thoughtful deliberation and discussion, we also have a duty to protect title IV funds, aid recipients, and taxpayers. If we had extended the comment period beyond 45 days, we would have been unable to comply with the master calendar provision of section 482(c) of the HEA, which requires that the Department publish final regulations before November 1 to take effect on July 1 of the following year. (In this case, we need to publish final regulations by November 1, 2015, in order for the regulations to be effective on July 1, 2016.) An extension of the comment period would therefore allow the abuses identified to persist an additional year. We also believe that 45 days provided the public a meaningful opportunity to comment, and this is supported by the complex and thoughtful comments we received.

Executive Order 13563 seeks, where feasible and in accordance with law, to promote participation and input by and from the public and interested stakeholders in general notice and comment rulemaking that is conducted pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA, in contrast to title IV, does not contemplate proceedings that include negotiated rulemaking—extensive additional participatory proceedings that are generally required by title IV and were in fact conducted as part of this rulemaking. Those negotiations, preceded by regional public hearings, provided opportunities for public participation and stakeholder input far in excess of 60 days. The purposes of the Executive order have been more than met, and a longer comment period would have been neither feasible, consistent with the master calendar provision, nor in the public interest.

We also note that we directly responded to each of the commenters who requested an extension of the comment period with a message similar in substance to the preceding discussion. We sent these responses as quickly as was practicable to provide notice to these commenters that we would not be extending the comment period and to give them sufficient time to submit substantive comments on the proposed regulations prior to the close of the comment period.

Changes: None.

Definitions (§ 668.161(a))

Comments: One commenter generally appreciated the inclusion of credit unions in the definitions of ''financial institution'' and ''depository institution.'' However, this commenter also asked that the Department recognize the unique structure of credit unions as ''member-owned cooperatives'' when drafting future regulations. Another commenter asked that the Department exempt credit unions that serve students and alumni of an institution. Another commenter praised the Department for adding definitions of ''access device,'' ''depository account,'' ''EFT (Electronic Funds Transfer),'' ''financial account,'' ''financial institution,'' and ''student ledger account.''

However, one commenter also asked that we include a clear definition of ''third-party servicer'' in the regulations, stating that it was unclear without such a definition whether certain banking activities could cause a financial institution to become a T1 entity.

Discussion: We thank the commenters for their support of our definitions, and we will take note of one commenter's request to keep the unique structure of credit unions in mind as we draft future regulations. However, on review of the final regulations, we have found no provisions warranting separate treatment of credit unions.

Finally, for a more thorough discussion regarding what types of activities would trigger the T1 requirements, please see the *Tier One (T1) Arrangements* section of this preamble.

Changes: Consistent with the removal of ''parents'' in § 668.164(d)(4)(i), (e), and (f) in this final rule(the reasons for which are discussed in the student choice section of this preamble), we have also removed references to ''parent'' from the definition of ''access device.''

Non-Prepaid/Debit Provisions

Paying Credit Balances Under the Reimbursement and Heightened Cash Monitoring (HCM) Payment Methods (§ 668.162(c) and (d))

Comments: Several commenters objected to the provision in § 668.162(c) and (d) under which an institution must pay any credit balance due to a student or parent before it seeks reimbursement from, or submits a request for funds to, the Secretary. For the benefit of the reader, HCM1 refers to the payment method described under the heightened cash monitoring provisions in § 668.162(d)(1) and HCM2 refers to the provisions in § 668.162(d)(2).

One of the commenters argued that a credit balance does not occur when an institution posts on a student's ledger account, as an ''anticipated disbursement,'' the amount of title IV, HEA program funds that the student is expected to receive. The commenter asserted that at the time the institution submits a reimbursement request such postings are merely transactions on student ledger accounts pending the Department's review and subsequent release of the funds associated with the posted amounts. The commenter argued that without a requirement on the Department to process reimbursement requests in a timely manner, institutions will have to wait for the requested funds through a process than can be arduous and riddled with delays, citing instances where reimbursement requests were delayed for 45 to 60 days because the analysts assigned by the Department to review those requests were out of the office or assigned to other projects. The commenter stated that these delays are further exacerbated by an administrative process under which the Department allows an institution to submit only one reimbursement request every 30 days, which further delays the release of title IV, HEA program funds to the institution to cover a student's direct cost of tuition, books, and fees. However, the commenter believed this proposal was reasonable for an institution placed on HCM1 because under that payment method the institution is not dependent on the Department to act timely—it controls the timing of its cash requests. Finally, some commenters stated that the HCM requirements were not clearly articulated in the proposed regulations, and questioned whether the requirement to first pay credit balances applied to an institution placed on HCM1. The commenters suggested that the Department only require institutions placed in HCM2 to pay credit balances before seeking reimbursement.

Another commenter noted that guidance published in the 2014–15 FSA Handbook already provides that an institution placed on reimbursement must first pay required credit balances before it submits a reimbursement request, but questioned why the Department extended that provision in the NPRM to apply to an institution placed on heightened cash monitoring. This commenter, and others, argued that the Department should consider the nature of the compliance concerns that trigger whether an institution is placed on reimbursement or HCM. For example, where there are serious concerns about an institution's ability to

account appropriately for title IV, HEA program funds an institution would be placed on reimbursement, but for technical reasons or less troublesome compliance and financial issues, the institution could be placed on HCM1. The commenters noted that an institution is typically placed on HCM1 for failing to meet the financial responsibility standards under Subpart L of the General Provisions regulations; but under those regulations the institution must a submit a letter of credit for an amount determined by the Department and payable to the Department. The commenters stated that the letter of credit serves as a sufficient guarantee of the institution's ability to fulfill its financial obligations.

Under the circumstance where administrative capability is not at issue, the commenters questioned why the Department proposed to require the institution, which may be operating at lean margins at the beginning of a payment period, to ''front'' additional funds to pay credit balances to students that may include significant amounts for student housing and other living expenses. Similarly, another commenter believed that an institution would be penalized by having to act as a private lender of their own funds to students to meet the proposed requirement to pay credit balances before seeking funds from the Department. The commenter suggested regulatory language that would allow the institution to pay credit balances upon receiving funds from the Department. Alternatively, the commenter suggested changing the definition of disbursement for an institution placed on HCM or reimbursement to stipulate that funds requested for non-direct costs that would generate a credit balance are considered disbursed after the institution credits the student's account and receives the funds from the Department.

One commenter argued that requiring the institution to pay credit balances with institutional funds would push it into a temporary cash-flow position under which the institution would shoulder the costs of students' decisions about how much to borrow above the cost of tuition and fees, particularly where those decisions are beyond the control of the institution. The commenter stated that under the gainful employment regulations, the Department does not hold an institution accountable for costs that it does not control and should therefore refrain from placing undue financial strain on an institution that stems from decisions made by students. Moreover, because students may add or drop classes early in a payment period, students may move from one category to the other, introducing additional burden. For these reasons, the commenter suggested that an institution placed on HCM should have the option of (1) paying credit balances before seeking reimbursement, or (2) putting in escrow an amount equal to the expected credit balances and subsequently requesting funds prior to paying those credit balances.

One commenter stated that if the intent of the proposed regulations is to require an institution placed on HCM1 to first make credit balance payments, the commenter suggested that the Department explicitly require that as soon as an HCM1 institution initiates an EFT to the student's account, it may immediately request the funds from the Department and that those funds will be available within the same 24–48 hours timeframe that is currently in place.

A commenter questioned whether the Department intended to require an institution to credit all of a student's title IV, program funds at once, thereby creating a credit balance, or prohibit the institution from submitting a reimbursement request that includes a credit balance that has not been paid. The commenter provided the following example: a student is due to receive $15,000 in title IV program funds and institutional charges are $10,000. Can the institution credit just $10,000, get reimbursed, then credit or directly pay the other $5,000, and then get reimbursed for that, or must the institution credit all $15,000 and pay out the $5,000 before it can get any funds back in reimbursement? Along the same lines, another commenter argued that the proposed regulations present a significant administrative burden for an institution placed on HCM1 because the institution would need to seek payment from the Department separately for two categories of students—those who are expected to receive a credit balance and those who are not.

A commenter requested the Department to provide examples of documentation that may be considered appropriate proof that an institution paid credit balances prior to seeking reimbursement, and to outline the steps necessary for the institution to be removed from the HCM and reimbursement payment methods.

Discussion: As a general matter, under the current and previous regulations the payment method under which the Department provides title IV, HEA program funds to an institution does not in any way excuse the institution from meeting the 14-day credit balance requirements under § 668.164(h) or the provisions for books and supplies under § 668.164(m). In the NPRM, we proposed to require an institution placed on HCM or reimbursement to make any credit balance payments due to students and parents before the institutions would be able to submit a reimbursement request under HCM2 or submit a request for cash under HCM1, to assure the Department that the institution made those payments before title IV funds are provided or made available to the institution. We note that an institution may still make credit balance payments at any time within the 14-day timeframe, but if the institution wants to include in its reimbursement or cash request a student or parent who is due a credit balance, the institution must pay that credit balance even if there is time remaining under 14-day provisions to make that payment.

With regard to payment methods, under section 401(a)(1) of the HEA and § 668.162(a), the Secretary has the sole discretion to determine whether to provide title IV, HEA program funds to an institution in advance or by way of reimbursement. The Department places an institution on reimbursement or HCM for compliance, financial, or other issues the Department believes necessitate a higher level of scrutiny. In general, these issues relate directly to the compliance history of the institution or its failure to satisfy financial standards that serve as proxy for the institution's ability to (1) provide the services described in its official publications, (2) administer properly the tile IV, HEA programs in which it participates, and (3) meet all of its financial obligations. Requiring institutions to pay credit balances prior to obtaining funds from the Department is consistent with that higher level of scrutiny.

To provide the reader a more complete primer, under § 668.164(a), a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with (1) funds its receives from the Secretary, or (2) institutional funds used in advance of receiving title IV, HEA program funds. With regard to crediting a student's ledger account, we clarified in the preamble to the NPRM published on September 23, 1996 (61 FR 49878) and in the preamble to the final regulations published on November 29, 1996 (61 FR 60589) that a ''credit memo'' is not a disbursement—it merely represents an entry made by the institution, noting the type and amount of the title IV, HEA program awards the student qualifies to receive, for the purpose of generating invoices or bills

to students for institutional charges not covered by those awards.

With this background in mind, the comment that transactions on the student's ledger account are merely anticipated disbursements pending review by the Department of a reimbursement request is, at best, confusing. If the postings of anticipated disbursements are credit memos, then an institution placed on reimbursement or HCM cannot submit a reimbursement or cash request because it has not properly made disbursements to eligible students. If the postings represent actual disbursements, then regardless of any delays or administrative processes, under current and past regulations the institution is obligated to pay any credit balances due to students regardless of when the institution received funds to make those payments. With regard to comments about processing reimbursement requests timely, the Department takes care to assign adequate staff, but minor delays will occur from time to time. We note that the vast majority of delays in approving reimbursement requests occur because institutions do not provide the requested documentation or acceptable documentation.

With regard to the comments that the Department should distinguish between the alternate methods of payment (*i.e.,* between HCM and reimbursement or between HCM1 and HCM2) in applying the requirement to pay credit balances before requesting funds, we do not believe the distinction is warranted. Regardless of the alternate payment method the institution is placed on, or whether it submits a letter of credit to the Department for failing to satisfy the financial responsibility standards or for other reasons, the institution must still make required credit balance payments to students in a timely fashion. While we agree with the commenters that a letter of credit provides some measure of protection to the Department, it does nothing for students who are the primary beneficiaries of title IV, HEA program funds, and is not tied in any way that we can determine with the institution's fiduciary duty to make timely payments to students.

With respect to the comments that an institution would have to ''front'' institutional funds to students, that has always been and continues to be the nature of the alternate payment methods. As previously noted, in the ordinary course, an institution is placed on an alternate payment method based on concerns about its financial capacity or ability to properly administer the title IV, HEA programs. Requiring that the student beneficiaries are protected under these circumstances is consistent with the purpose behind the alternate methods of payment. In addition, we do not believe it is appropriate to change the disbursement process, such as putting credit balances in escrow or altering when funds are considered disbursed, to accommodate institutions with compliance issues.

With respect to the comment that the Department does not hold an institution accountable under the gainful employment regulations for costs it does not control, we note that a student's loan debt is capped at the total amount of tuition, fees, books, supplies, and equipment in determining the debt to earnings (D/E) rate of a program. So, to the extent that the student borrows funds in excess of that amount to pay for living costs, the excess funds are not counted in calculating the D/E rate, but all of the student's loan funds are counted in calculating the median loan debt of the program that is used for disclosure purposes. In any event, capping loan debt for the purpose of calculating a performance metric has no bearing on paying credit balances to students. Regardless of whether an institution has or exercises control of the amount of title IV, HEA program funds the student elects to borrow, the institution is responsible for disbursing the awards, including making credit payments to those students.

In response to the comment that the Department explicitly allow an institution on HCM1 institution to request funds immediately after it initiates an EFT to the student's account, we note that under § 668.164(a) an institution makes a disbursement on the date it credits a student's ledger account or pays the student directly. As provided in § 668.164(d), an institution pays a student directly on the date it initiates an EFT to the student's financial account. So, the regulations already provide that as soon as an institution on HCM1 makes a disbursement, it may request funds from the Department.

In response to the comment about whether an institution must credit the student's account with all the funds the student is eligible to receive for a payment period, it depends. For example, if the institution determines at or before the time it submits a reimbursement or cash request that a student is eligible for a Federal Pell Grant but not yet eligible for a Direct Loan (either because the student has not signed a master promissory note or for some other reason), the institution may include the student on that reimbursement or cash request. When the student establishes eligibility for the Direct Loan, the institution is required to credit the student's account with the loan funds and pay any resulting credit balance before including that student on a subsequent reimbursement or cash request. In most cases, however, the institution will have determined before submitting a reimbursement or cash request that the student was eligible to receive all of his or her awards for a payment period and therefore the amount of all of those awards will have to be credited, in full, to the student's ledger account and the institution will have to pay any resulting credit balance before including the student on a reimbursement or cash request.

With respect to the request that the Department provide examples of the documentation needed to prove that an institution paid credit balances and outline the steps necessary for an institution to be removed from the HCM and reimbursement payment methods, we believe that both of these issues are best addressed administratively on a case-by-case basis depending on how the payments were made or the steps than an institution takes to correct its financial or compliance issues.

Changes: None.

Institutional Depository Account (§ 668.163)

Comments: Under proposed § 668.163(a), an institution located in a State must maintain title IV, HEA program funds in an insured depository account. Some commenters supported the Department's proposal that an institution may not engage in any practice that risks the loss of Federal funds.

One commenter noted than an institution may have a ''sub'' account for title IV, HEA program funds within its operating account and asked whether this arrangement was acceptable or whether the institution needed to maintain title IV funds in a completely different bank account with no other operating funds and insured at the FDIC limit of $250,000. Similarly, another commenter asked the Department to clarify the insurance requirement because most institutions maintain title IV funds in accounts with balances that exceed FDIC or NCUA insurance limits.

Another commenter asked whether an institution had to disburse title IV, HEA program funds from the same account that the funds were originally deposited into, and, if not, whether the institution could sweep the funds in the account from which they are disbursed.

Another commenter stated that nightly sweeps are a standard practice for large organizations and the commenter is not aware of any losses

stemming from funds held in secured investment accounts. However, because most colleges and universities disburse title IV funds before submitting a cash request or disburse shortly after receiving the funds, the commenter stated the issue of where the funds are held is less important than it was in the past.

Discussion: Under § 668.163(b), the Department may require an institution with compliance issues to maintain title IV, HEA program funds in a separate depository account. However, as a general matter, an institution may use its operating account, or a subaccount of its operating account, as long as the operating account satisfies the requirements in § 668.163(a)(2). With regard to the insurance limit, it does not matter whether an institution maintains title IV, HEA programs funds in a depository account in an amount higher than the insurance limit, it only matters that the account itself is insured by the FDIC or NCUA.

In response to whether an institution must use the same account for depositing and disbursing title IV, HEA program funds, the institution may choose to use the same depository account or different accounts (*e.g.,* a depository account into which title IV, HEA program funds received from the Department are transferred or deposited and an operating account from which disbursements are made to students and parents). Regardless of whether the institution uses the same account or more than one account, it must ensure that title IV, HEA program funds maintained in any account are not included in any sweeps of any account. For example, if an institution transfers funds from its title IV depository account to its operating account, any title IV funds held on behalf of students cannot be included as part of the sweep of other funds in its operating account.

With regard to the commenter who stated no losses have occurred on title IV funds held in secure investment accounts, we reiterate our position that, given the $500 limit on retaining interest earnings, there is no point in placing Federal funds at risk. About the comment regarding the declining importance of maintaining Federal funds in investment accounts, we assume the commenter is referring to the wind-down of the Federal Perkins Loan Program (see Dear Colleague Letter GEN–15–03). Previously, an institution could maintain its Perkins Loan Fund in a secure investment account and any interest earned would become part of the Fund and available to the institution to make Perkins Loans to students. Now that the statutory authority for institutions to make Perkins Loans has ended, there is no need for investment accounts.

Changes: None.

Comments: A commenter agreed with our proposal in § 668.163(a)(1) that the Secretary may approve a depository account designated by a foreign institution if the government of the country in which the institution is located does not have an agency equivalent to the FDIC or NCUA. However, the commenter believed that the requirements in § 668.163(a)(2)—that the name of the depository account must contain the phrase ''Federal funds'' or the institution must notify the depository institution that the account contains title IV, HEA program funds—were not meaningful in a foreign context and should be removed. In addition, the commenter noted that the laws in foreign countries may in some cases preclude an institution from maintaining funds in interest-bearing accounts as required under § 668.163(c). To avoid conflicts with the regulations in these instances, the commenter suggested that the provisions for interest-bearing accounts apply only to domestic institutions.

Discussion: We agree that the provisions for maintaining title IV, HEA program funds in interest-bearing accounts, and for including the phrase ''Federal funds'' in the name of the depository account or notifying the depository institution that Federal funds are maintained in those accounts, may not be meaningful or relevant to foreign institutions.

Changes: We have revised the notice requirements in § 668.163(a)(2) and the interest-bearing account requirements in § 668.163(c)(1) so they apply only to institutions located in a State.

Disbursements During the Current Payment Period (§ 668.164(b)(1))

Comments: Under proposed § 668.164(b)(1), an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive, except for Federal Work Study (FWS) funds or unless the provisions in 34 CFR 685.303 apply. Because § 685.303 contains a number of provisions, one commenter asked the Department to specify the provisions that apply to disbursing funds during the current payment period.

Discussion: We agree with the commenter that a specific cross reference to § 685.303 would be helpful. Under § 685.303(d)(4)(i), if one or more payment periods have elapsed before an institution makes a disbursement, the institution may include loan proceeds for completed payment periods in the disbursement. This is the only circumstance in § 685.303 that is an exception to the general rule specified in § 668.164(b)(1) that an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive.

Changes: We have amended § 668.164(b)(1) to specify that an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive except for FWS funds or unless 34 CFR 685.303(d)(4)(i) applies.

Confirming Eligibility (§ 668.164(b)(3))

Comments: Some commenters objected to the proposal in § 668.164(b)(3) under which a third-party servicer, along with the institution, would be responsible for confirming a student's eligibility at the time a disbursement is made. The commenters stated the current regulations are clear that a disbursement occurs when an institution credits a student's account with title IV funds or pays title IV funds to a student directly. These commenters argued that the proposal contradicts the existing provision in 34 CFR 668.25(c)(4) by expanding the requirement to confirm student eligibility to servicers who have any involvement with the disbursement process and not just to servicers who actually disburse funds as already provided in § 668.25. The commenters noted that many third-party servicers provide, among other services, reporting and reconciliation of institutionally provided data to the Department as a liaison between the institution and the Department. The commenters stated that extensive regulations already cover disbursement of Federal aid to eligible students, and that it is ultimately the institution's responsibility to ensure fiscal accountability and to fulfill its fiduciary duty under the terms of its Program Participation Agreement. The commenters opined that requiring a servicer to confirm a student's eligibility results in a higher standard of care, additional administrative burdens and cost being forced upon institutions that elect to engage a servicer that do not exist for institutions that do not use a servicer. The commenters argued that the additional and duplicative confirmation process would also likely result in unnecessary disbursement delays to eligible students. The commenters also objected to third-party servicers being held jointly responsible for the veracity of any information provided to them by the institution,

arguing that servicers are not officials of the institution, or part of its ownership or on-campus management team. The commenters reasoned that requiring a servicer, or any other unrelated entity, to be responsible for information provided by its client institution is comparable to requiring a CPA or other tax preparation service to be responsible for the accuracy, completeness, and validity of their clients' income, expense, and deduction claims. Because rules are already in place regarding taxpayer and institutional liability for non-compliance with Federal aid disbursements, the commenters argued that expanding institutional liability to third-party servicers that have no authority to control the actions of institutions or their employees is unnecessary. The commenters stated that institutions that typically engage a servicer are small businesses and the significant cost that they would incur to have servicers perform a function that the institution is already required by regulation to perform would result in either school closures, higher tuition costs, or inexperienced aid administrators with no ability to engage a servicer.

Similarly, another commenter opined that the proposed regulations would apply to nearly all servicers since virtually all of them perform activities that could be characterized as ''leading to or supporting'' disbursements. The commenter stated that the function of confirming the enrollment and eligibility status for each student for whom a disbursement is ordered requires review of original source records and information created and maintained by the institution, a process which can entail a considerable amount of time. Although the commenter acknowledged that the Department indicated in the preamble to the NPRM that an institution and a servicer could establish a process under which the servicer periodically affirms that the institution confirmed student eligibility at the of disbursement, the commenter argued that the language in proposed § 668.164(b)(3) appeared to impose a duty on the servicers themselves to confirm enrollment and eligibility status. In addition, the commenter argued that the process discussed in the preamble was ambiguous, with many unaddressed factors including the frequency of servicer reviews, the percentage of files that need to be sampled, the method of selecting files, the level of error that should be cause for concern, and the course of action that should be taken if that error level is detected.

The commenter also inferred that third-party servicers who perform activities leading to or supporting a disbursement will be required to calculate the return of title IV funds for those students who withdraw prior to completing a payment period for which a disbursement is made. The commenter argued this proposal effectively redefines when a servicer is considered to be a servicer who ''disburses funds'' for purposes of 34 CFR 668.25(c)(4). Moreover, the commenter was concerned that if a servicer is considered to have a separate and independent duty to confirm enrollment and eligibility under § 668.164(b)(3), the servicer would be liable under 34 CFR 668.25(c)(3) for paying those liabilities in the event the institution closed. In addition, the commenter opined that the HEA does not authorize the Secretary to impose on servicers, through an expansive definition of disbursement, title IV functions and obligations of an institution that the servicer has not agreed to assume under its contractual relationship with that institution.

The commenter lastly opined that it would be inconsistent to treat a software provider as a third-party servicer if the provider used student aid information from its software product to perform COD reporting, reconciliations, or other business functions, but not treat as a third-party servicer a software provider whose product performs the same functions, including activities that lead to or support a disbursement, that are carried out by an institution. Along these lines, the commenter concluded that third-party servicers and software providers that perform title IV functions on behalf of institutions would potentially be jointly and severally liable for title IV errors, but a software provider whose product is used solely by an institution would not, even though that product performs functions that lead to or support disbursements. For these reasons, the commenter concluded that the proposed regulations likely will preclude many institutions from having access to the expertise and services provided by third-party servicers and software service providers and thereby will result in a higher incidence of title IV errors. In addition, the commenter argued that the proposed regulation likely will put some third-party servicers, software service providers, and institutions out of business.

Another commenter noted that organizations are considered third-party servicers if they deliver title IV credit balances, but opined that the cash management regulations appear to be written for a very small subset of servicers who have complete access to all award and billing information, enabling them to make title IV eligibility determinations and consequently control the disbursement process. The commenter stated that most third-party servicers participate in only a few steps of the overall disbursement process and have very little insight or influence on the process of awarding financial aid. These third-party servicers are not involved in determining the eligibility of students or the corresponding amounts to be disbursed. The commenter was concerned that unless the proposed rule is amended, the responsibility and potential liability of a service provider could far outweigh any reasonable charges for disbursement services, and suggested that the Department clarify the various types of service providers and the degree of responsibility and liability associated with each type.

Discussion: We disagree with the commenters that portray a third-party servicer as merely a liaison between an institution and the Department or as an unrelated entity that simply uses whatever information a client provides to conduct transactions on the client's behalf. As provided in § 668.25(c)(1), when a third-party servicer enters into a contract with an institution, the servicer must agree to comply with the statutory provisions in the HEA and the regulations governing the title IV, HEA programs that fall within the ambit of the activities and transactions the servicer will perform under that contract. In performing those activities and transactions on behalf of the institution, the third-party servicer must act as a fiduciary in the same way that the institution is required to act if it performed those activities or transactions itself. So, in the capacity of a fiduciary, the third-party servicer is subject to the highest standard of care and diligence in performing its obligations and in accounting to the Secretary for any title IV, HEA program funds that it administers on behalf of the institution.

In situations like those described in the NPRM, where a third-party servicer determines the type and amount of title IV, HEA program awards that students are eligible to receive, requests title IV funds from the Department for those students, or accounts for those funds in reports and data submissions to the Department, the servicer has a fiduciary duty to ensure that disbursements are made only to eligible students for the correct amounts. Otherwise, improper disbursements may be made to students that in turn affect the accuracy of the institution's fiscal records and data

reported to the Department. Moreover, where a third-party servicer is engaged to perform one or more of these activities it is not possible to confine the servicer's fiduciary responsibilities to discrete functions, as the commenters proffer, because these activities are interrelated. For example, a servicer that determines the type and amount of awards that students are eligible to receive and requests funds from the Department, would rely on the award amounts for those students in requesting the funds necessary to meet the institution's immediate disbursement needs.

We disagree with the assertion made by the commenters that an institution is solely responsible for disbursement errors simply because the institution makes an entry crediting a student's ledger account. As a practical matter, where a third-party servicer is engaged to determine the type and amount of title IV, HEA program funds that a student is eligible to receive, the institution may reasonably rely on that information in crediting the student's ledger account. Moreover, disbursing funds is a process that begins with determining the awards that a student is eligible to receive and culminates in making payments of those awards to the student. So, the act of crediting the student's ledger account is just part of that process—it simply identifies the date on which the student receives the benefit of title IV, HEA program funds.

With regard to the concerns raised by the commenters that requiring a third-party servicer to confirm eligibility at the time of disbursement would be costly, cause delays, and duplicate the work of the institution, we believe those concerns are overstated. As discussed more fully in Volume 4, Chapter 2 of the FSA Handbook,[14] in confirming eligibility, an institution determines whether any changes or events have occurred, from the date that a student's awards were made to the date the student's ledger account is credited, that may affect the type and amount of those awards. Most of these changes and events relate to the student's enrollment at the institution—whether the student began attendance in classes, the student's enrollment status, whether the student successfully completed the hours in the prior payment period, and whether a first-time borrower has completed the first 30 days of his or her program. Other events include whether the institution has any new information that would cause the student to exceed his or her lifetime eligibility for Federal Grants, or for Direct Loans, whether the student has a valid master promissory note. These are basic enrollment and award tracking functions required of all institutions under the record retention provisions in § 668.24 and applicable program regulations, so we see no reason why it would be costly or time consuming for an institution to implement a process where this information is shared with its third-party servicer.

As we explained in the preamble to the NPRM (80 FR 28495), the institution and its third-party servicer may establish a process under which the institution confirms eligibility and the servicer verifies periodically that the confirmations were made in accordance with that process. With regard to the comments that the Department should specify the requirements or procedures used under these processes, we do not believe that is necessary—the institution and the servicer should be sufficiently motivated to implement credible processes because they are jointly responsible and jointly liable.

With regard to comments that the proposed regulations contradict the existing provisions in § 668.25(c)(4), the Department respectfully disagrees. As discussed previously in this section and in the NPRM, the language holding an institution and its third-party servicer responsible for confirming a student's eligibility is not a new policy or a change in policy—it merely emphasizes current requirements and reiterates institutional and servicer responsibilities.

In response to the comment about whether software providers or the use of their products are treated in the same way as third-party servicers, we would make that determination on a case-by-case basis depending on the how the software products are used and the role of the software provider in performing title IV functions.

With regard to the comments that the proposed regulations require servicers who perform activities leading to or supporting a disbursement to also calculate the return of Title IV funds for students who withdraw, that responsibility already exists in 34 CFR 668.25(c)(4)(ii). Changes to that regulation are beyond the scope of these regulations.

In response to the suggestion that the Department clarify the various types of service providers and the degree of responsibility and liability associated with each type, doing so is beyond the scope of these regulations. However, a third-party servicer is not subject to the provisions for confirming eligibility under § 668.164(b)(4) if, for example, the servicer is engaged only to deliver credit balance payments to students, or only to provide exit counseling to student loan borrowers.

Changes: We have revised § 668.164(b) to clarify that an institution remains responsible for confirming a student's eligibility at the time of disbursement. We also clarify that a third-party servicer is responsible for confirming eligibility if the servicer is engaged to perform activities or transactions that lead to or support a disbursement, and identify the general scope of those activities and transactions.

Books and Supplies (§ 668.164(c)(2))

Comments: Under proposed § 668.164(c)(2), if an institution includes the costs of books and supplies as part of tuition and fees it must separately disclose those costs and explain why including them is in the best financial interests of students.

Several commenters stated that these disclosures were redundant and unnecessary. Some of the commenters cited section 133 of the HEA and the Department's Dear Colleague Letters GEN 08–12 and GEN 10–09 that describe the provisions for textbook disclosures, and noted that, according to these sources, institutions are required to comply with the textbook disclosure requirements even if the textbooks are included as part of the tuition and fees. A few commenters believed the proposed disclosure requirements violate section 133(i) of the HEA, which prohibits the Secretary from regulating textbook disclosures.

In response to our request for comment about how and the frequency with which an institution should disclose the costs of books and supplies that are included as part of tuition and fees, one commenter recommended that the disclosures be made at the time of enrollment and then again at the beginning of each payment period.

Another commenter stated that if these disclosures would be most useful when a student is deciding whether to contract for the program of study, the disclosures should be made prior to a student entering into a financial obligation with the institution for enrolling in a program of study. Further, if the costs of books and supplies are included as part of tuition and fees for all students in a program, the commenter recommended that charges for those materials should be listed in an offer of admission and financial aid, so that students are able to make enrollment decisions that include all mandatory costs.

[14] Available at *https://ifap.ed.gov/ifap/byAwardYear.jsp?type=fsahandbook&awardyear=2015-2016.*

One commenter argued that there are no effective ramifications of the disclosure (*e.g.,* there is no obligation on the institution to reverse those charges so the student can purchase the materials elsewhere) so the only real effect of the disclosure is to persuade the student not to enroll or to seek a similar program elsewhere. However, the commenter did not recommend that an institution be required to reverse the charges, stating that would undermine legitimate efforts by the institution to negotiate better deals for students on a volume basis. The commenter, and others, also suggested that any student consumer information or disclosures should be not be part of the cash management regulations, but in subpart D of the General Provisions regulations.

Another commenter agreed with the Department's concerns regarding institutions artificially inflating the cost of books and supplies, but did not believe that such disclosures are warranted under the statute, and doubted that they would actually address the Department's concerns. The commenter contended that the disclosure provision would be potentially time-consuming and expensive to implement, and confusing or meaningless to students.

A commenter supported the disclosures arguing that the cost of books and supplies should be listed as specific line items on the bill or invoice sent to the student, along with the explanation of why those materials are required, so the student can make appropriate financial aid decisions.

A few commenters did not find compelling or relevant the Department's rationale for initially proposing that institutions may not include books and supplies as part of tuition and fees, and they stated that the attorneys present at the negotiated rulemaking sessions submitted documents that did not include any findings of institutions charging inflated prices. Although there was a report submitted at a Department hearing concerning books and supplies, the concerns raised in that report had more to do with manipulating credit balances to coerce students to buy books directly from the institution rather than the issues raised by the Department in the NPRM. In addition, the commenters stated that the Department's regulatory intent was not clear, with one commenter providing an example where an institution includes as part of tuition and fees the cost of a new hardbound textbook under an arrangement where it negotiated a discount in the student price of that textbook from $400 to $100. In this case, the commenter asked whether the Department would allow that arrangement as in the best financial interest of the student or disallow the arrangement because the textbook is nevertheless available in the marketplace.

The same commenters took exception to the Department's position in the preamble to the NPRM that the costs of attendance provisions in section 472 of the HEA treat books and supplies as separate from tuition and fees. One commenter argued that under the plain meaning of the statute, institutions have the sole discretion to determine what constitutes tuition and fees, pointing to the provision in section 472(1) of the HEA that states that tuition and fees may include the costs for rental or purchase of ''any materials'' or ''supplies.'' The commenter opined that these terms are broad enough to include learning materials like textbooks and digital learning platforms. Where tuition and fees do not include the costs of materials and supplies, the cost of attendance also includes an allowance for books, supplies, transportation, and other expenses under section 472(2) of the HEA. The commenters concluded that instead of providing the Department with authority to limit the institutions' ability to include books and supplies as part of tuition and fees, section 472 of the HEA appears to provide institutions with authority to do just that—*i.e.,* include books and supplies as part of tuition and fees. Moreover, the commenters contended that while section 401(e) of the HEA limits the disbursement of title IV funds to tuition and fees, because it is silent on the question of what constitutes tuition and fees, it does nothing to limit the discretion vested in institutions by section 472.

Some commenters argued that using title IV funds to pay for books and supplies included as part of tuition and fees benefits students in two ways. First, it ensures that students are able to have all the required learning materials in their possession on the first day of class, which educators agree is an important element in overall student success. Second, it often provides students with substantial discounts, because, by including books and supplies as tuition and fees, institutions are able to negotiate volume discounts on behalf of their students. In addition, as more classes are taught using digital learning platforms, institutions will require flexibility to adopt new models for how those materials may be used and purchased. Digital learning platforms fully integrate content with personalized learning technologies and other elements to provide students with a holistic learning experience that can be accessed with a laptop, a tablet, a smartphone or some combination of devices. The commenter stated that the emergence of digital learning platforms will also create new market dynamics. While many of these new dynamics are over the horizon, some are reasonably clear at present. Because digital learning platforms integrate content with personalized quizzes, exercises and problems as well as a calendar of assignments and student-faculty online communication, the platforms are not optional—students must have access to the digital learning platform by the first day of class. Moreover, the commenter contended there can be no legitimate aftermarket for digital learning platforms and there is no way to legitimately access the platforms except through portals authorized by the digital learning company. Consequently, including digital learning platforms as tuition and fees is one way to ensure that students have access to this new technology in a convenient and timely manner.

A few commenters stated that if the Department goes forward with the regulations, it should require that, as proposed by the community colleges during negotiated rulemaking, if an institution includes the cost of books and supplies as part of tuition and fees, it must separately and publicly disclose such costs in the schedule of tuition and fees along with a written statement justifying the reason for this inclusion and the value to students for taking this approach by the institution. The commenters argued that this proposal requires disclosure and promotes transparency, and also incorporates the concept of ''value to the student'' which would include both the financial best interest of the student as well as the pedagogical value to the student. The commenters explained that under the community colleges' proposal, books and supplies could be included as tuition and fees where there is pedagogical benefit to the student but the effect on the student's financial best interest is neutral. The commenters concluded by stating that it is clear that including books and supplies as tuition and fees can provide pedagogical benefits to students: Those benefits should be taken into account by any regulation promulgated by the Department and should be sufficient in and of themselves to justify including books and supplies as part of tuition and fees.

Other commenters agreed with the proposal. Some believed the proposal would provide helpful transparency around the practice of including charges for books and supplies along with

tuition and fees which sometimes limits the ability of students to make purchasing decisions on their own. Another commenter noted this that this provision will prevent institutions from automatically lumping books and supplies into tuition and fees, which simply increases the amount of funds that the institution gets to keep before making credit balance payments to students. In addition, the commenter believed the provision provides students with needed transparency about precisely what is being charged by institutions, arguing that if an institution cannot provide a plausible explanation that it is providing the materials at below market cost or the provided materials are generally not otherwise available, then the institution will not be able to include these costs. Instead, those costs will be treated in the traditional manner as part of the additional cost of attendance and the aid that would have otherwise been used to pay those costs will be forwarded to the student.

While acknowledging the Department's concerns about overcharging for otherwise widely available materials, one commenter disagreed that imposing the ''best financial interest'' requirement on all institutions is warranted or applicable when course materials are not widely available or available electronically only through the institution. Instead, the commenter suggested that the regulations merely require an institution to disclose the amounts separately, arguing that this allows for students to do a cost comparison for materials that may be available through other channels and make an informed decision.

Discussion: After considering all of the comments received on this topic, we are revising the provision to set forth three conditions under which an institution may include the costs of books and supplies as part of tuition and fees. Because the final regulations do not require an institution to make textbook disclosures, we are not addressing as part of this discussion the merits of the comments regarding those disclosures.

We take issue with the notion that institutions enjoy complete discretion to include books and supplies in tuition and fees pursuant to section 472 of the HEA. Books are referenced in section 472(2), a paragraph separate and apart from section 472(1), the provision regarding tuition and fees. Moreover, ''supplies'' are addressed not only in section 472(1), but also in 472(2)—the first covering ''tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study,'' and the second covering ''an allowance for books, supplies, transportation, and miscellaneous personal expenses. . . .'' So section 472 on its face contains no justification for including books, whether paper or digitized, as tuition and fees; and it permits an institution to treat supplies as tuition and fees only if they are ''normally assessed'' and ''required of all students in the same course of study.'' This structure is inconsistent with the commenter's claims.

Furthermore, it would be unlawful to read section 472 in isolation from the other portions of title IV of the HEA. Whenever books and supplies are included in tuition and fees, this results in students having no opportunity to decide for themselves whether or how to obtain these materials or what if anything to pay for them. Two separate provisions of title IV prohibit such a result. Section 401(e) of the HEA, regarding Pell Grants, provides that ''any disbursement allowed to be made [by an institution] by crediting the student's [ledger] account *shall be limited* to tuition and fees and, in the case of institutionally owned housing, room and board. *The student may elect to have the institution provide other such goods and services* by crediting the student's [ledger] account.'' (Emphasis added). Section 455(j)(1) of the HEA, regarding Direct Loans, states that ''Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence *shall be delivered to the borrower* by check or other means that is *payable to and requires the endorsement or other certification by such borrower.''* (Emphasis added). Sections 401(e) and 455(j)(1) serve to ensure students are free to make the choices they regard as in their own best interests as consumers. Under well-settled principles of statutory construction, these consumer rights cannot be read out of the statute through a construction of section 472(1) as permitting institutions broad discretion to designate charges for goods and services that are purchased rather than produced by the institution as tuition and fees. Instead, reading the statute as a whole and in harmony as required by law, any such discretion is circumscribed and must conform to the purposes of sections 401(e) and 455(j)(1) of protecting the rights of students as consumers.

With regard to the request that we adopt the community college proposal under which an institution that includes books and supplies as part of tuition and fees would provide a written statement justifying the reason and the value to student for doing so, we decline. As noted by the commenters, under this proposal an institution could provide a pedagogical reason for including books and supplies. Although well intended, the proposal would allow some institutions to include the costs of books and supplies as part of tuition and fees to the detriment of students. Neither students nor the Department would be positioned to evaluate claims regarding pedagogical value, and under HEA sections 401(e) and 455(j)(1) consumer protection supersedes pedagogy. For these reasons, and to enable to the Department to take enforcement actions, we proposed in the NPRM that including books and supplies had to be in the best financial interests of students. However, we are partially persuaded by the commenters to adopt a different approach that is beneficial to students and institutions, while also addressing the Department's concerns.

Under this approach, an institution may include the costs of books and supplies as part of tuition and fees under three circumstances: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at below competitive market rates, (2) the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or (3) the institution demonstrates there is a compelling health or safety reason.

The commenters made a persuasive argument that including books and supplies would not only enable an institution to negotiate better prices for its students, it would result in students having required course materials at the beginning of a term or payment period. Although the commenters did not elaborate on the extent to which an institution could negotiate better prices, if the price charged to students is not below prevailing market prices, the only remaining benefit to the student is that he or she will have the materials at the beginning of the term. But, that is already addressed by § 668.164(m), which requires an institution to provide a way for many students to obtain or purchase required books and supplies

by the seventh day of a payment period. Therefore, we believe that arrangements with book publishers or other entities must result in books and supplies costs that are below competitive market rates.

However, even if the institution's prices are below competitive market rates, by allowing the institution to include books and supplies as part of tuition and fees, students will not have the option of seeking even lower cost alternatives such as used books, rentals, or e-books. This is the same outcome that may occur by the way an institution provides books and supplies to students under § 668.164(m). Under that section, the student may opt out of the way provided by the institution and use his or her credit balance funds to obtain books and supplies elsewhere. The same opt out provision is needed here to enable students to seek potentially lower cost alternatives. We note that a student who opts out under this section is considered to also opt out under § 668.164(m), and vice versa, because the student has determined to obtain books and supplies elsewhere. But, even with an opt out provision, we are concerned that students who would otherwise seek lower cost alternatives will settle, out of sheer convenience, for the price of books and supplies negotiated by the institution. So, we encourage institutions to negotiate agreements with publishers and other entities that provide options for students. Finally, we adopt for this provision the same approach used in § 668.164(m), that an institution must provide a way for a student to obtain the books and supplies included as part of tuition and fees by the seventh day of a payment period.

We are convinced that digital platforms, and digital course content in general, will become more ubiquitous and that including digital content as part of tuition and fees ensures that students have access to this technology. Similarly, we agree with some commenters that where books and supplies are not available from sources other than institution, those materials may be included as part of tuition and fees.

Lastly, as discussed during the negotiated rulemaking sessions, if there are compelling health or safety concerns, an institution may include, as part of tuition and fees, the cost of materials, supplies, or equipment needed to mitigate those concerns. For example, as part of a marine biology or oceanographic degree program, an institution requires students to take a scuba diving class where it is critical that those students have specific and properly functioning equipment to avoid serious health issues. To ensure the safety of its students, the institution maintained and provided the same equipment to all of the students in the class.

An institution that does not satisfy or choose to exercise at least one these options, may not include the costs of books and supplies as part of tuition and fees for a program. In that case, the institution has to obtain the student's authorization under § 668.165(b) to use title IV, HEA programs to pay for books and supplies that it provides. We remind institutions that under § 668.165(b)(2)(i), they may not require or coerce a student to provide that authorization. Therefore, an institution may not require a student to purchase or obtain books and supplies that it provides. This consequence, and the condition where an arrangement with a publisher or other entity must result in below market prices, addresses the Department's concerns that students may be overcharged for books and supplies.

Changes: We have amended § 668.164(c) to state that an institution may include the costs of books and supplies as part of tuition and fees if: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at below competitive market rates. However, the institution must provide a way for a student to obtain the books and supplies by the seventh day of a payment period and must establish a policy under which a student may opt out of the way provided by the institution, (2) the institution documents on a current basis that the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution, or (3) the institution demonstrates there is a compelling health or safety reason.

Prior-Year Charges (§ 668.164(c)(3) and (4))

Comments: Proposed § 668.164(c)(3) addresses the payment of prior year charges with current year funds. One commenter supported our proposal in § 668.164(c)(3)(ii) to define the terms ''current year'' and ''prior year'' in the same way those terms were defined in our Dear Colleague Letter GEN 09–11. However, another commenter suggested that the Department allow an institution the flexibility to determine the current year period when both loans and other title IV funds (*e.g.,* Pell Grants or campus-based funds) are in play. The commenter also stated that the guidance issued by the Department defining a prior year was confusing in a number of circumstances. In general, the commenter was concerned that the regulation's lack of flexibility could cause some undesirable outcomes when the loan period for a Direct Loan and the award year for a Pell Grant did not match up, for example, situations where there are multiple loan periods within the same academic year, and where institutions assign summer cross-over periods to either the upcoming award year or to the concluding award year. The commenter did not like the fact that in some situations, charges that fell within the same academic year had to be considered prior year charges because a loan period was being used instead of an award year to define the current year for payment purposes. The commenter also took issue with the fact that, because an institution has the authority to assign cross-over payment periods on a student by student basis, the results might vary student by student depending on which award year the institution assigns to a cross-over payment period. Basically, the comment reflected frustrations that others have expressed over the years with the fact that there is a limitation on the amount of a student's ''current year'' aid that can be used to pay for outstanding ''prior year'' charges.

On a separate issue, this commenter asked whether proposed § 668.164(c)(4) would work as intended when aid from different title IV, HEA programs comes in at different times. The commenter posited the example of a student getting Pell Grant and campus-based aid for the fall and spring terms on time, but also getting a Direct Loan (that was intended for the fall and spring) disbursed as a single late payment in the spring term. In view of proposed § 668.164(c)(4) which allows an institution to include in the current payment period allowable charges from a previous payment period in the current award year or loan period for which the student was eligible, if the student was not already paid for such a previous payment period, the commenter asked whether the portion of the loan applicable to the fall could be used to credit the student's account for allowable outstanding fall charges under proposed § 668.164(c)(1) (basically tuition and fees, and room and board charges) without the student's permission even though the student was paid other aid in the fall. The commenter also asked whether there would be an exception to the rule in § 668.164(c)(4) when institutional charges were greater in one term compared to another term, since Pell

Grant and Direct Loan payments are made in equal installments.

Discussion: The basic premise behind the limitation on the use of current year funds to pay for prior year charges is the statutory construct that title IV, HEA program funds are provided to a student to cover educational expenses associated with a particular period of time. Thus, it could be argued that none of a student's title IV, HEA program funds for a given year should ever be used to cover expenses associated with a prior year. However, because students may be prevented from registering for classes because of minor unpaid prior year charges and, more importantly, because these charges are small enough to be construed as inconsequential, the Department has taken the position that it is acceptable to use a corresponding *de minimis* amount of current year funds (currently $200 or less) to pay for prior year charges. It should be an unusual situation when title IV funds for a current period are used for expenses for a prior period, and such a use should only be allowed when the expenses in question are of a *de minimis* nature. This then left us with the issue of how to determine the period of time that should be used to define ''current year'' and ''prior year'' for purposes of this provision. Considering the complicating facts that (1) Federal title IV aid is often given for different periods of time, and (2) schools often comingle a student's aid from different sources in a single student account, the Department proposed a rule that would allow the school to use a single period of time as the current year, depending on whether a Direct Loan was part of the aid package. While this appeared to work well in the vast majority of situations for the past six years, we agree that less than desirable results can sometimes occur. Thus, we are revising the ''current year/prior year charges'' provision in § 668.164(c)(3) to allow a school some additional flexibility in this area, while still maintaining the concept that, except for the $200 that can be used for prior year expenses, aid intended for a current year must be used for expenses associated with that current year.

With regard to § 668.164(c)(4), we agree with the commenter who suggested that Direct Loan funds (or any title IV funds) that are intended to cover previous payment period expenses, but are disbursed late in a lump sum in a subsequent payment period, should be allowed to be credited to a student's account without the student's permission to cover unpaid charges from those previous payment periods, notwithstanding the fact that the student may have already been paid some other title IV aid for those previous payment periods. Had the aid in question been ideally disbursed, it would have been disbursed in all payment periods for which it was intended and such disbursements would have alleviated, or substantially reduced, any carry over charges from the earlier payment periods. In fact, we believe that the institution should be able to bring forward to the current payment period any unpaid allowable charges from previous payment periods in the current award year or current loan period for which the student was eligible for title IV, HEA program funds. The principle behind § 668.164(c)(1) is that an institution should not be able to collect from title IV funds institutional charges for the entire program in the first few payment periods, thereby denying the student the ability to use some of his or her funds for non-institutional educational expenses in those early payment periods. Ideally, some of a student's title IV aid should be available to the student to pay for non-institutional educational expenses in each payment period. However, if the student has allowable outstanding institutional charges associated with previous payment periods in the current award year or loan period, as opposed to charges associated with future payment periods, then we believe it is appropriate for the institution to be able to use title IV funds to cover those expenses before it makes those funds available to the student for non-institutional educational expenses.

Changes: We have revised § 668.164(c)(3)(ii) to state the following rules. If a student's title IV aid package includes only a Direct Loan, the current year is the current loan period. If a student's title IV aid package includes only non-Direct Loan aid, the current year is the award year. If a student's title IV aid package includes both a Direct Loan and other aid, the institution may choose to use either the loan period or the award year as the current year. And, we have clarified that a prior year is any loan period or award year prior to the current loan period or award year.

We have also revised § 668.164(c)(4) to indicate that all allowable unpaid prior payment period charges from payment periods in the current award year or loan period for which the student was eligible for title IV aid can be brought forward and associated with the current payment period.

Prorating Charges (668.164(c)(5))

Comments: When an institution charges a student up front (*i.e.,* it debits the student's account) for more than the costs associated with a payment period, for the purpose of determining the amount of any credit balance, the institution must prorate those charges under the procedures in § 668.164(c)(5) to reflect the amount associated with the payment period.

One commenter asked whether book charges must be prorated in the same way as tuition and fees, and room and board. Another commenter opined that the prorating provisions effectively preclude an institution from charging by the program. A third commenter believed that the proposed method for prorating charges was appropriate, but questioned whether it would have any effect on the regulation addressing the treatment of title IV funds under § 668.22 when a student withdraws from the institution. The commenter also noted that current rules addressing the cost of attendance for loan recipients require an institution that charges for more than one year up front to include all the program charges in the cost of attendance for a loan made for the first year, and include only costs other than the program charges in the cost of attendance for loans made for subsequent years. The commenter reasoned that this loan provision coupled with the proposed requirement to evenly prorate institutional charges over the number of payment periods in the program may result in large credit balances provided to the student for the payment periods covered by the first year loan, while the smaller, subsequent year loan payments applied to prorated charges may not produce any credit balances for the student.

Discussion: Under § 668.164(c)(5), an institution is required to prorate charges for books only if those charges are included as part of tuition and fees under § 668.164(c)(2), and the institution charges the student upfront for an amount of tuition and fees that exceeds the amount associated with the payment period.

Prorating charges under § 668.164(c)(5) does not affect the return of title IV funds calculation under § 668.22.

We acknowledge that that the cost of attendance rules for loans coupled with prorating charges could result in the outcome noted by the commenter. However, we believe the advantages of prorating charges—that students will generally have credit balance funds available to meet current educational expenses—outweigh the anomalous situation created by institutions that charge students upfront. If they choose, institutions can easily avoid the outcome of uneven credit balances by

charging students each payment period, instead of upfront.

Changes: None

Direct Payments by the Secretary (§ 668.164(d)(3))

Comments: Although proposed § 668.164(d)(3) states that the Department may pay title IV credit balances directly to students or parents using a method established or authorized by the Secretary, it does not say that the Department will use that method. However, a number of commenters believed the regulation would set up such a payment system. Those who were against having such a direct payment system argued that it would cause delays for students, and stifle competition that could otherwise lead to improvements in payment systems. Some of these commenters also believed that the government usually does not perform as efficiently as private business and they worried about the transition between the current use of private sector systems and the ''up-coming'' use of a government system. Some commenters also believed that, with a government system set up to disburse title IV funds, there would still need to be a private system to disburse non-title IV funds and that the two systems would be costly and inefficient. One commenter argued that the government should not rely on its experience with the disbursement of Social Security benefits, noting a number of differences between that program and its recipients compared to the Federal student aid programs and its recipients. Several commenters urged the Department to engage in additional notice and comment rulemaking before implementing a governmental payment system.

Those who favored establishing a direct payment system noted that other Federal agencies have successfully implemented such systems and that the receipt of Federal benefits under those systems has gone smoothly. Some commenters also noted that government-issued cards can be a good solution for people without bank accounts; and one noted that the government's negotiating power could compel vendors to create a product with low fees and consumer-friendly features. Thus, some commenters urged the Department to continue to explore such a method of payment and, in fact, to expedite its initiation.

Discussion: Section 668.164(d)(3) states that the Secretary may pay title IV credit balances directly to students (or parents). This regulation does not set up such a payment system, but simply serves as a notice of the Secretary's prerogative in this area. If the Secretary should determine that it would be prudent to put such a system into effect, the Department would provide advance notice to institutions and others that the system will be implemented by publishing that information in the **Federal Register**. If the Secretary should adopt a method that requires a revision to existing regulations through negotiated rulemaking, the Secretary would initiate those proceedings. A determination on that matter, however, cannot be made unless and until the Secretary decides whether and how to exercise his or her authority in this area.

We thank all those commenters who shared their thoughtful analyses of whether such a direct payment system would be in the best interests of students, institutions, private parties, and the government itself. Their comments constitute a good beginning in the overall analysis of the possible benefits and pitfalls of establishing a direct payment system. We will consider this feedback as we continue to determine how title IV credit balance funds may be delivered to students in the most effective, efficient, and convenient manner possible.

Changes: None.

Tier One (T1) Arrangements (§ 668.164(e)(1))

Comments: We received several comments expressing support for our regulatory framework that differentiates the arrangements institutions enter into with third-party servicers that also offer accounts to students from arrangements between institutions and non-third-party-servicers that are typically more traditional banking entities (the accounts offered under these two types of arrangements were described as ''sponsored accounts'' during negotiated rulemaking and not differentiated in the regulations prior to the NPRM). These commenters stated that the proposed approach struck an appropriate balance in light of practices that led to the rulemaking. Some commenters who also served as non-Federal negotiators noted that this issue was particularly difficult for the rulemaking committee and commended the Department for employing an approach with differentiated levels of regulatory scrutiny that appropriately responded to the levels of risk presented by different arrangements. These commenters agreed that government and consumer reports illustrated both the incentives for securing short-term, fee-related revenue for T1 arrangements and the evidence that students opening accounts under such arrangements were more likely to face unusual or onerous fees. The commenters stated that the proposed regulations provided strong consumer protections in situations where USPIRG, Consumers Union, GAO, and OIG noted troubling practices.

Other commenters stated that the Department's increased scrutiny of T1 arrangements and third-party servicers was misplaced and unwarranted. These commenters argued that we did not demonstrate why a higher level of scrutiny was appropriate for third-party servicers that offer financial products than for more traditional banking entities that directly market their products to students.

Discussion: We appreciate the comments supporting our proposed regulatory approach and our decision to bifurcate the level of scrutiny applied to different types of arrangements that govern the accounts offered to title IV recipients. We agree with the commenters that noted the troubling examples cited in government and consumer reports and that led to legal actions against certain account providers, and believe that a higher level of regulatory scrutiny is appropriate for certain types of arrangements, especially with respect to fees, to protect title IV recipients from abusive practices and ensure they are able to access the student aid funds to which they are entitled.

We disagree with the commenters who asserted that we did not provide sufficient justification for subjecting accounts offered under a T1 arrangement to a higher level of regulatory scrutiny. To the contrary, in the preamble to the NPRM, we describe in detail the findings of several consumer groups and government entities. As stated in the NPRM, ''not all arrangements resulted in equivalent levels of troubling behavior, largely because the financial entities and third-party servicers with which institutions contract face divergent monetary incentives.'' [15] Banks and credit unions have incentives to create long-term relationships with college students because such providers are working to establish a relationship (and resultant fee- or interest-based revenue) long after the student has left the institution.[16]

Other types of entities—third-party servicers in particular—are more likely to ''seek to partner with schools to provide fee-based services to both the

[15] 80 FR at 28498.

[16] Consumers Union. ''Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs,'' page 5 (2014), available at: *consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf* (hereinafter referred to as ''Consumers Union at [page number]'').

institution and the student.'' [17] The relationship with a student typically ends once the student is no longer enrolled, and ''the nature of this short-term interaction creates an incentive to increase fee revenue over what traditional banks might charge.'' [18] In addition, third-party servicers have privileged access to systems and data that more traditional banks not serving as third-party servicers do not. As a result, these third-party servicers have been able to brand or market access devices in ways that may be confuse students into assuming the device is required as part of enrollment, can prioritize electronic delivery of credit balances to a preferred account before a preexisting bank account, and access personal student information for targeted marketing purposes.

These issues are not merely theoretical. OIG found that ''schools did not appear to routinely monitor all servicer activities related to this contracted function, including compliance with all title IV regulations and student complaints.'' [19] There have also been a series of legal actions, including allegations by the FDIC of ''unfair and deceptive practices,'' and violations of the Federal Trade Commission Act.[20] [21] Third-party servicer practices were specifically and repeatedly highlighted in recommendations to the Department for a higher level of regulatory scrutiny.[22] For these reasons, and others discussed in the NPRM, we are declining to alter our heightened regulatory scrutiny of T1 arrangements.

Changes: None.

Comments: Several commenters pointed out what they believed were ambiguities in the proposed definition of ''T1 arrangement.'' These commenters stated that such arrangements only involved accounts offered by third-party servicers and that the rule should further clarify that the rules do not apply with respect to practices that do not create a third-party servicer relationship. Specifically, many commenters opined that ''treasury management services'' or ''normal bank electronic transfers'' should not be considered third-party servicer functions under paragraph (1)(i)(F) of the definition of third-party servicer at 34 CFR 668.2(b). These commenters described a situation where an entity contracts with an institution to conduct electronic funds transfer services to bank accounts, and that entity also offers bank accounts to the general public that are not offered in connection with the entity's contractual relationship with the institution. The commenters asserted that the existence of both a contractual relationship with the institution to provide disbursement services and account offerings to the public (some of whom may be students) would create a regulatory obligation on the part of the entity to ensure that all the entity's account offerings comply with the regulatory provisions of § 668.164(e). Consequently, the commenters requested that the Department explicitly exempt bank electronic funds transfers from establishing a third-party servicer relationship that would trigger the regulatory requirements of § 668.164(e).

Many of the same commenters also stated that the regulatory provisions establishing the conditions of a T1 arrangement were, in their opinion, overly broad. They argued that because many banking entities also provide third-party services, and because § 668.164(e)(1) establishes that accounts ''that are offered under the contract *or by the third-party servicer''* (emphasis added) fall under the purview of the regulations, these entities would have to comply with the T1 regulatory requirements regardless of whether the accounts are promoted specifically to students or selected through the student choice menu, noting that such accounts are ones that are also often offered to the general public. Therefore, they argued, such a set of circumstances would effectively require a banking entity that serves as a third-party servicer for even a single institution to ensure all of its accounts offered to the general public comply with the regulatory requirements of § 668.164(e). These commenters argued that it would be impractical, expensive, and outside the Department's legal authority to alter the account terms of such a broad swath of the general banking market. They also argued that such accounts were not those identified by government and consumer reports as requiring regulatory scrutiny. Some commenters recommended eliminating this provision entirely; others proposed that we limit the provisions of § 668.164(e) to only those accounts chosen under the student choice process.

Discussion: We agree with commenters who point out that the definition of ''third-party servicer'' under § 668.2 excludes ''normal bank electronic fund transfers.'' However, that same definition also explicitly includes as third-party servicing the ''receiving, disbursing, or delivering [of t]itle IV, HEA program funds.'' Rather than altering the definition of third-party servicer, these regulations specify that the third-party servicing activities that lead to or support making direct payments of title IV funds are those that are encompassed under § 668.164(e).

We understand and acknowledge that there are some entities that simply provide EFT services to institutions and may deliver funds electronically as a contracted function independent of their marketing of other banking services to the general public. However, contrary to commenters' fears, we are not altering the definition of third-party servicer, which already provides that ''normal bank electronic fund transfers'' does not trigger a third-party servicing relationship. Doing so would be outside the scope of this rulemaking. Because ''third-party servicer'' is a defined term, and these regulations refer to that defined term, we believe it is clear which entities are covered by the regulations and which are not. For entities that are not third-party servicers—for example, those whose sole function on behalf of the institution is normal bank electronic fund transfers—these regulations neither alter their status nor subsume the contract they have with the institution into a T1 arrangement. We therefore decline to include additional language exempting arrangements that do not go beyond normal bank electronic funds transfers from the regulatory description of T1 arrangement because our use of the defined term ''third-party servicer'' already does this.

We appreciate the comments that pointed out the consequences of the proposed definition of ''T1 arrangement,'' and that any third-party servicer that offers accounts generally to the public would fall under the provisions of § 668.164(e). We note, as a threshold matter, that it was not our intention to regulate accounts only incidentally offered to students. As we noted throughout the preamble to the NPRM, these regulations seek to govern institutions, third-party servicers, and the arrangements those entities voluntarily enter into that impact title IV funds.

We are persuaded that a portion of the definition of ''T1 arrangement,'' as

[17] USPIRG. ''The Campus Debit Card Trap,'' page 13 (2012), available at: *www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf* (hereinafter referred to as ''USPIRG at [page number]'').

[18] Ibid.

[19] OIG at 5.

[20] GAO at 24.

[21] ''FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices,'' page 1 (2012), available at *www.fdic.gov/news/news/press/2012/pr12092.html* (hereinafter referred to as ''FDIC at [page number]'').

[22] OIG at 5.

proposed in the NPRM, is overly broad. Section 668.164(e)(1), as proposed, stated that in a Tier one (T1) arrangement, an institution has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third-party servicer to students and their parents. We did not receive comments about the majority of this proposed language; however, we agree that the language ''or by the third-party servicer, or by an entity contracting with or affiliated with the third-party servicer to students and their parents'' would subsume accounts into the regulatory framework that we had not intended to cover.

As we explained in the preamble to the NPRM, our intent for including these additional clauses was to prevent an easily exploitable loophole whereby a third-party servicer who offers one or more accounts to title IV recipients simply omits any mention of such accounts from the contract with the institution. However, commenters correctly pointed out that some third-party servicers are also banking entities that offer several different types of accounts to the general public, and that by fulfilling both the condition of being a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV, HEA program funds and the condition of offering accounts to the public, some of whom may be students, all of the servicer's generally-available accounts would be required to comply with § 668.164(e). This was not our intent, and we agree that the regulations should be modified to reflect these comments.

However, we disagree with commenters who recommended two alternative approaches—eliminating the provision entirely, or limiting the scope of the regulations to accounts chosen under the student choice process. For the reasons explained in the NPRM and the preceding paragraphs of this section, these alternatives would create a loophole easily exploitable by those seeking to evade the regulatory requirements applicable to T1 arrangements; simply omitting mention of the account in question from the contract establishing a T1 arrangement, establishing a separate contract, or involving a third-party as either the servicer or the account provider would render § 668.164(e) without effect. Similarly, limiting the provisions of § 668.164(e) to those accounts selected under the student choice menu would create an incentive to avoid the regulatory requirements by ensuring that students sign up for an account through any other method.

Instead, we believe an appropriate alternative is to continue to cover those accounts offered under the contract between the institution and third-party servicer, but limit other accounts covered by § 668.164(e) to those where information about the account is communicated directly to students by the third-party servicer, the institution on behalf of or in conjunction with the third-party servicer, or an entity contracting with or affiliated with the third-party servicer. This not only limits the scope of the provision to those accounts that are intended for title IV recipients but does so in a way where third-party servicers that also offer accounts to the general public can ensure that general-purpose accounts not actually marketed directly to students need not be covered by the regulations.

In Departmental reviews of accounts offered to students at institutions with contracts that would fall under § 668.164(e) as proposed, we have observed that the predominant practice of account providers under T1 arrangements is to offer a separate, standalone student banking product. While this practice may not be universal, its prevalence indicates that it is both financially and operationally feasible to offer students a standalone financial product that complies with the fee limitations and other requirements of § 668.164(e). To the extent that a student opens an account offered to the general public and not marketed under or pursuant to a T1 arrangement and then elects to use that preexisting account option under § 668.164(d)(4), that account would not be required to comply with the provisions of § 668.164(e). Therefore, if a third-party servicer were concerned that all of its general banking products would be covered by § 668.164(e) because it markets and promotes all of those products to students at the contracting institution, it can elect to establish a standalone banking product that complies with the provisions of § 668.164(e) and limit its direct marketing, promotion, and specialized communications to students at that institution to this latter bank account offering. This practice, which we have observed is already common among many third-party servicer financial account providers, would ensure that only the account designed for title IV recipients at the institution would have to comply with § 668.164(e).

Changes: We have amended § 668.164(e)(1) to replace the second and third references to an account ''offered'' by a third-party servicer or other entity with: An account where information about the account is communicated directly to students by the third-party servicer, the institution on behalf of or in conjunction with the third-party servicer, or an entity contracting with or affiliated with the third-party servicer.

Comments: Some commenters pointed out that they have multiple agreements with institutions and questioned whether it was possible under the proposed regulations to have accounts offered under both T1 and T2 arrangements with a particular institution, where the two accounts would have different regulatory requirements, as opposed to both accounts having to comply with the requirements applicable to T1 arrangements.

Some commenters requested that the Department provide specific examples of what would constitute a T1 arrangement, a T2 arrangement, or neither; these commenters stated that examples would assist institutions attempting to comply with the regulations. One commenter believed that an institution assisting a student in opening an account, regardless of the actual relationship between the institution and the bank, would give rise to a T1 arrangement.

We also received comments arguing that parents should not be included in the regulatory provisions under T1 arrangements because they are not typically the recipients of credit balances; and even when they are, such credit balances are typically transferred to a preexisting account, rather than an account offered under a T1 arrangement.

One commenter requested that we clarify whether the requirements for T1 arrangements continue to apply when the student is no longer enrolled at the institution.

Discussion: With respect to commenters' questions about whether it would be possible to have both T1 and T2 arrangements at a single institution, we note that this scenario would be possible. For this to occur, the institution would have to have separate agreements with *different* financial account providers: One that provided third-party servicing functions and the other that provided accounts that met the T2 arrangement direct marketing definition in some way, perhaps by offering account functionality through student IDs.

To the extent that a single provider serves as a third-party servicer and offers multiple account options to students of that institution, those account offerings must comply with the requirements for T1 arrangements even if, absent the third-party relationship, one or more of those offerings would only constitute a T2 arrangement. This is because the differentiating factor between these two types of arrangements is the presence of a third-party servicer that is offering (or communicating information about) the account to students. If a third-party servicer that contracts with an institution is offering or marketing multiple accounts to title IV recipients at that institution, all of those accounts would be required to comply with the requirements for T1 arrangements. We intended this different treatment because, as we explained earlier in this section of the preamble and in the NPRM, a third-party servicer exerts a tremendous amount of control over the disbursement process and timing. Simply because such a financial account provider offers functionality through, for example, a student ID that would only constitute a T2 arrangement absent a third-party servicer relationship, does not obviate the potential for abuse when such a third-party servicer relationship does exist. Therefore, it would not be possible for a single financial account provider to offer two different types of accounts at a single institution, one that was required to comply with the requirements for T1 arrangements and the other with the requirements for T2 arrangements.

In response to providing examples of what constitutes the two different arrangements under the proposed regulations, we believe the regulatory language and the extensive descriptions of these arrangements in the preambles to the proposed and final regulations provide sufficient detail. In short, accounts offered under the contract with third-party servicers or marketed by third-party servicers, their agents, or the institution on behalf of the third-party servicer, are T1 arrangements that fall under § 668.164(e). Accounts offered by non-third-party servicers and directly marketed to students (either by the institution, through the use of a student ID, or through a cobranding arrangement) are T2 arrangements that fall under § 668.164(f). Accounts offered to students that do not fall under either of these arrangements are not subject to the regulations. Examples of such circumstances include general marketing agreements (*i.e.* no direct marketing) that do not specify the kind of account or how it may be opened, arrangements sponsoring on-campus facilities (*e.g.,* stadium or building naming rights), lease agreements for on-campus branches or ATMs, or a list of area financial institutions recommended generally to students solely for informational purposes.

With respect to the commenter who stated that an institution assisting a student in opening an account would give rise to a T1 arrangement, this is not the case. An arrangement qualifies as a T1 arrangement only if an institution engages a third-party servicer to perform activities on its behalf.

We agree with the commenter who argued that parents should not be included in § 668.164(e). We discuss our reasons for this change in greater detail in the student choice section of this document.

Because the purpose of these regulations is to ensure that students have access to their title IV credit balance funds, we believe the regulations should not apply when a student is no longer enrolled and there are no pending title IV disbursements, because it is not then possible for the student to receive title IV credit balance funds into an account offered under a T1 arrangement. We are therefore adding a provision specifying this treatment; because the considerations are equally applicable to T2 arrangements, we will add an equivalent provision in § 668.164(f). However, we do not believe this should eliminate institutions' responsibility to limit the sharing of private student information and because institutions are already limited from sharing that information under the final regulation, we do not believe a continued limitation would present an additional appreciable burden.

For students who discontinue enrollment but then reenroll at a later date, either at the same institution or a different institution, they would go through the same student choice process described in § 668.164(d)(4)(i) as any other student receiving a credit balance. Such students would either communicate preexisting account information or select an account offered under a T1 arrangement from the student choice menu.

We note that this provision ending the regulation of accounts opened under T1 and T2 arrangements does not limit the requirement that an institution must report the mean and median annual cost information for students who were enrolled in a preceding award year. For example, a student is enrolled and receives credit balance funds in the 2018–2019 award year and then graduates at the end of that year. Although the provisions of § 668.164(e) would no longer apply to that student in award year 2019–2020, the institution would still have to include the student in its report of mean and median annual cost information for award year 2018–2019, even if the reporting itself is completed during award year 2019–2020.

Changes: We have removed references to ''parent'' in § 668.164(e).

We have added § 668.164(e)(3) to specify that the requirements applicable to T1 arrangements cease to apply with respect to a student when the student is no longer enrolled and there are no pending title IV disbursements at the institution, except for § 668.164(e)(2)(ii)(B) and (C), governing the limitation on use and sharing of private student information. We have specified in paragraph (e)(3) that this does not limit the institution's responsibility to report mean and median annual cost information with respect to students enrolled during the award year for which the institution is reporting. We have also clarified that an institution may share information related to title IV recipients' enrollment status with the servicer or entity that is party to the arrangement for purposes of compliance with paragraph (e)(3).

Tier Two (T2) Arrangements (§ 668.164(f)(1)–(3))

Comments: A number of commenters recommended that we apply the fee-related provisions under T1 arrangements to accounts offered under T2 arrangements. These commenters argued that the dangers present for T1 arrangements are equally applicable to T2 arrangements, in that the contracts governing both of those arrangements require direct marketing by the institution and are intended to strongly encourage students to deposit title IV funds into accounts offered under the arrangements. Moreover, the commenters believed there is no functional difference between accounts under these arrangements when those accounts are offered as a part of the disbursement selection process. The commenters noted that the proposed regulations treated the two types of arrangements equally for purposes of the student and parent choice protections (§ 668.164(d)(4)) and argued this was evidence that the fee provisions should apply equally as well. Other commenters noted that institutions benefit from T2 arrangements in the form of bonus payments or a share of interchange fees, and that title IV funds will almost assuredly be deposited into such accounts when title IV credit

balance recipients are present at a particular institution—therefore, they argued, the Department has an interest in regulating such arrangements.

Several commenters argued that agreements that constitute T2 arrangements under the proposed regulations are outside the Department's purview. Some commenters argued that the simple presence of cobranding or direct marketing did not amount to coercion of students to sign up for the financial product in question. Others argued that the government and consumer reports cited by the Department in the NPRM did not single out arrangements that would constitute T2 arrangements as posing additional danger to students, and therefore regulation of these arrangements was unwarranted. Some commenters recommended that the Department eliminate the requirements relating to T2 arrangements; others suggested that we instead require institutions to prominently inform students that no account is required to receive title IV aid.

Discussion: We appreciate that the commenters who urged us to apply the fee limitation provisions for T1 arrangements to T2 arrangements believe that doing so would ultimately be beneficial to students. However, we believe that applying the fee limitations to T2 arrangements would be contrary to the rationale outlined in the NPRM and would effectively collapse any distinction between T1 and T2 arrangements. Although we acknowledge that T2 arrangements, as defined in the proposed regulations, involve products marketed to students with the apparent endorsement of the institution, we believe those products nevertheless represent a lower level of risk than products offered under T1 arrangements.

As we explained in the NPRM, T1 arrangements involve account offerings where the financial account provider acts in place of the institution as a third-party servicer, controlling the mechanics of the disbursement process itself. The arrangements are also geared toward shorter-term fee revenue,[23] whereas T2 arrangements usually involve more traditional banking entities that have an incentive to establish a longer-term banking relationship.[24] Indeed, GAO found that several of these types of providers do not charge fees "higher than those associated with other banking products available to students." [25] The evidence presented in government and consumer reports bears out this difference in risk. The most troubling practices were predominantly employed by third-party servicers, and, in some cases, students with accounts offered under T2 arrangements actually received rates more favorable than available in the general market.

Nevertheless, contrary to the claims of the commenters who urged us to abandon the regulations governing T2 arrangements, these accounts are not without risks to title IV recipients. As we noted in the NPRM, the account offered under a T2 arrangement has an apparent institutional endorsement, and the marketing or branding of the access device associated with that account is likely to lead students to believe that the account is required to receive title IV funds. In addition, offering an account under a T2 arrangement gives students the impression that the terms of the account have been competitively bid and negotiated by the institution, or, at a minimum, represents a good deal because it has been endorsed by the institution. As we detailed in the NPRM, the institution's assistance in marketing activities and apparent seal of approval led to take-up rates far in excess of what would occur in the event of arms-length transactions by consumers choosing a product in their best interest.[26] The CFPB agreed with this conclusion, noting that the mismatched incentives created by these arrangements can lead to skewed adoption rates of these financial products.[27] Specifically, the special marketing advantage enjoyed by a financial account provider under a T2 arrangement, might still encourage providers to offer title IV recipients less competitive terms than those available on the market generally, although not as much as in T1 arrangements.

We believe the best way to mitigate the risks presented by accounts offered under different types of arrangements is the tiered framework we proposed in the NPRM. If we applied the fee provisions applicable to T1 arrangements to T2 arrangements, we believe this distinction would break down and we would not be applying a regulatory framework appropriate to the dangers that different types of accounts present to students receiving title IV aid. If we instead eliminated the proposed, more limited regulatory provisions governing T2 arrangements, the disclosure requirements would not be in place to serve the dual functions of ensuring that students receive adequate information prior to account opening and that institutions are entering into contracts that provide fair terms to aid recipients. We also note that consistent with some commenters' recommendations, the proposed regulations already required that institutions inform credit balance recipients that their receipt of title IV funds does not require that they open any particular financial account. As we explained in the NPRM, we believe the approach proposed strikes the proper balance and targets regulatory action to the areas where it is warranted.

Changes: None.

Comments: Some commenters argued that the Department does not have authority over accounts offered under T2 arrangements. One commenter supported the Department's intent to regulate only these arrangements when the disbursement of title IV funds is involved; another suggested that we only regulate arrangements that specifically address title IV disbursements in the contractual language establishing the arrangement.

We received a number of comments on the provision in the proposed definition of "T2 arrangement" and the limitation where the requirements do not apply if the institution awarded no credit balances in the previous year. Some commenters supported the approach in the proposed regulations and recommended that even if we altered the numerical threshold, we should maintain the structure of the provision, which requires institutions to document that they are exempt from the requirement, rather than establishing the presumption of an exemption.

Other commenters claimed that institutions would not be able to determine whether any students were credit balance recipients in the prior award year. Many commenters believed that a threshold of a single title IV recipient was not commensurate with the cost and burden imposed on institutions to comply with the requirements of § 668.164(f). Several commenters supported a "reasonable" threshold, but did not specify what "reasonable" would constitute. However, only one of these commenters offered an alternative threshold for a safe harbor. That commenter recommended a safe harbor threshold of 5,000 enrolled students (rather than title IV credit balance recipients) before applying the requirements of § 668.164(f), but did not provide any

[23] USPIRG at 13.

[24] Consumers Union at 5.

[25] GAO at 15.

[26] 80 FR at 28499.

[27] Consumer Financial Protection Bureau presentation. "Perspectives on Financial Products Marketed to College Students," pages 14–15 (2014), available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-cfpb-presentation.pdf* (hereinafter referred to as "CFPB Presentation at [Page number])".

basis for why this threshold should be adopted or why it should be based on enrolled students rather than title IV credit balance recipients.

Discussion: We agree with commenters who argued that we should not attempt to regulate arrangements wholly unrelated to disbursing title IV funds. As we stated in the NPRM, ''direct marketing by financial institutions in itself does not always establish that these accounts impact title IV aid. For example, a financial institution may contract with an institution to offer financial accounts to students in circumstances where no credit balances exist (typically at high-cost institutions), and students are therefore not receiving credit balances into the offered financial accounts. In these circumstances, the integrity of the title IV programs is not at issue.'' [28] For this reason, we explicitly proposed to limit our oversight of T2 arrangements to those instances where it is likely the case that title IV credit balance funds are at issue. In the NPRM, we recognized that our authority is limited in instances where no credit balance recipients exist at an institution and requested comment on whether this was an appropriate threshold. We disagree with commenters who recommended that we limit our oversight to those instances where title IV disbursements are explicitly mentioned in the contractual language of the arrangement or where the title IV funds are disbursed as part of the selection process. We believe such an approach would be easily circumvented by, for instance, not explicitly mentioning title IV funds in the contract establishing the relationship or by forcing students to sign up for an account outside the disbursement process in a deliberate effort to avoid the regulatory requirements. Instead, we believe that the combination of (1) the presence of title IV credit balances recipients at the institution, (2) the uptake rates of accounts that are endorsed or marketed by institutions,[29] (3) the requirement that institutions responsible for paying credit balances ensure that funds are disbursed to students in a timely manner, and (4) a contractual arrangement between the institution and financial account provider (evidencing that the account provider has privileged marketing access to a lucrative customer cohort) demonstrates that a T2 arrangement warrants regulations safeguarding the integrity of the title IV funds.

[28] 80 FR at 28499.

[29] Ibid.

As discussed below, we agree with commenters that a higher threshold of title IV recipients at an institution in a given year is appropriate for certain T2 requirements. Nonetheless, we agree with commenters who recommended that, whatever threshold applies, we should continue to require institutions to document that they are exempt, rather than establishing a presumption that institutions are exempt. We believe that for reasons of student protection and ensuring compliance with program reviews, requiring institutions to document that they qualify for an exception is a more appropriate framework.

We reject the assertion that institutions are unable to determine the number of credit balance recipients in a prior award year. Under the record keeping requirements of 34 CFR 668.24 and the 14-day credit balance requirements that have been in effect for many years, an institution is responsible not only for maintaining records of those credit balances, but for showing that those balances were paid in a timely manner to students and parents. Therefore, if a credit balance occurs, the school must not only pay it, but also have records of such payment.

We requested comment on whether the number of recipients should be expanded beyond a single credit balance recipient in the previous award year. While we appreciate that several commenters believed the threshold should be increased, with one exception, commenters did not offer alternatives and supporting evidence, as we requested. We are not adopting the only suggested threshold of 5,000 enrolled students for several reasons. First, there was no reasoning provided for this alternative threshold. Second, this number is based on enrollment rather than the number of title IV or credit balance recipients, and therefore is not sufficiently related to the Department's intent of exercising appropriate regulatory oversight of the title IV programs.

We continue to believe that a number of the T2 protections should apply unless the institution documents that it had no credit balance recipients in at least one of the three most recently completed award years. For example, if an institution had no credit balance recipients two years ago, but had credit balance recipients both last year and three years ago, it would not be required to comply with the regulatory provisions associated with T2 arrangements. This is to ensure that for an institution that had a credit balance recipient in only a single year and for which this was a unique occurrence, it would not be subject to regulatory requirements designed for institutions where credit balance recipients are consistently present. Under these final regulations, if an institution had at least one title IV credit balance recipient in each of three most recently completed award years, the institution: (1) Needs to ensure that students incur no cost for opening the account or initially receiving an access device; (2) must ensure that the student's consent to open the financial account is obtained before the institution or its third-party servicer provides any personally identifiable about the student to the financial institution or its agents (other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37), sends the student a financial account access device, or validates a financial account access device that is also used for institutional purposes; (3) must include the account offered under the T2 arrangement on the student choice menu and disclose as part of that choice process the terms and conditions of the account; (4) must ensure that the account is not marketed or portrayed as a credit card; (5) must disclose the contract between the financial account provider and the institution by posting it on the institution's Web site and providing an up-to-date URL to the Secretary; and (6) must ensure that the provisions in the contract underlying the T2 arrangement are consistent with the regulatory requirements of § 668.164(f)(4).

We continue to believe the above provisions should apply unless there were no credit balance recipients in at least one of the three most recently completed award years for several reasons: To comply with provisions of the HEA; because of the risks present to students absent these protections; and because of the low burden of compliance for institutions. Most importantly, the prohibition on account-opening fees is mandated by, for example, HEA sections 487(a)(2) and 454(a)(5).

In addition, obtaining the student's consent before private information is shared, or an unsolicited access device is provided, is necessary to ensure the protection of student data and that students are given account information before being sent an access device. These provisions ensure that title IV does not become a vehicle for circumventing the privacy protections in FERPA. We also note that under the revisions made in these final regulations, the financial account provider may secure this consent.

The requirements to include the account on the student choice menu and provide the student with the terms and conditions of the account are likewise applicable under the final rule. All of the non-Federal negotiators and numerous commenters stated that a crucial principle in this rulemaking is ensuring that all students are provided account terms up front so they can properly understand the terms and fees of an account before they consent to open it. Because financial account providers will be required to comply with the upcoming CFPB card disclosures, and because those disclosures can be provided electronically, these provisions do not go beyond ensuring that information required to be disclosed anyway is furnished in a time and manner that is effective in helping title IV recipients choose a financial account. The burden associated with providing these disclosures to students as a part of the student choice menu is negligible and occurs at a juncture at which institutions are already required to communicate with prospective credit balance recipients. We see no justification for not providing these disclosures in any circumstance in which title IV credit balance recipients are among the population affected by a T2 arrangement.

We are also requiring that institutions post their T2 contracts to their Web sites and provide the Secretary with an up-to-date URL for that Web site (up-to-date signifying that should relevant documentation no longer be located at that URL, that the institution must provide the Secretary with an updated URL). The Department and the public have a strong interest in knowing the terms of marketing contracts shown to have the *potential* for operating to the financial detriment of the millions of students receiving millions of dollars in Federal student aid. The HEA strongly supports providing important consumer information to students and the public, as evidenced by, for example, Parts C and E of title I, and section 485 of title IV. Increased transparency will help ensure accountability and encourage institutional practices that are in the interests of students. We also note that at least one commenter who is a financial account provider expressed both willingness for contractual disclosure and the ability of all parties to the contract to be able to comply with disclosure requirements. Given that some States already require such disclosure and for the preceding reasons, we believe this requirement is not only important, but of minimal additional burden.

The final requirements for this credit balance recipient threshold, that the access device not be portrayed as a credit card and that the contract comply with the requirements of § 668.164(f)(4), are also important to ensure that even if a limited number of students receive credit balances, those students are not under the false impression that they have received a credit card, and that the institution's contract is in compliance with the regulatory requirements set out for T2 arrangements. We also note that these provisions present little additional burden to the institution. The credit card prohibition is an existing requirement and we do not believe institutions or their financial account providers will have difficulty continuing to comply with a requirement that prevents them from portraying an access device as a credit card. Similarly, because institutions with a contract governing the direct marketing specified in § 668.164(f)(3) will necessarily have to negotiate the terms of that contract, we do not believe appreciable additional burden is entailed by ensuring that such contracts comply with the applicable regulatory provisions outlined in these regulations.

However, we agree with the balance of the comments that one title IV recipient is too low a threshold for several of the other provisions in § 668.164(f)(4); and are therefore establishing a higher threshold of credit balance recipients that would trigger the requirements in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). These requirements are: The yearly posting of certain cost and account enrollment figures on the same institutional Web site that contains the full posted contract—the requirement for which would already exist because of the presence of one credit balance recipient at the institution; the availability of surcharge-free ATMs; and the due diligence of institutions in entering into and maintaining T2 arrangements. While these provisions focus on the terms of the T2 contract and attempt to ensure, through transparency and affirmative requirements, that the accounts that institutions market to title IV credit balance recipients provide favorable terms and convenient access, we recognize that at many institutions that may have T2 arrangements, relatively high tuition and fees mean that students receiving credit balances may be the exception rather than the rule. At these institutions where title IV credit balances are atypical, if the number of credit balance recipients is sufficiently small, a number of factors come into play, drawing into question the benefit of applying one or more of the provisions at § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii):

- As many commenters noted, these provisions do impose some burden. They involve the tracking, compilation, and public disclosure of statistical data and other information; are more likely to require negotiations between the institution and its T2 partner(s); and necessitate providing convenient ATM access and ongoing efforts on the part of the institution in providing the due diligence required.
- An institution with few credit balance recipients will, in all likelihood, be negotiating a T2 arrangement for accounts to be used almost exclusively by more affluent students able to maintain higher account balances. Such an institution will have different goals and account features in mind, and the financial account provider will have different incentives, than would be the case if the students enrolled included a significant number of lower-income credit balance recipients.
- More broadly, as mentioned, a number of financial institution commenters have questioned the link between campus marketing arrangements and title IV administration. Immediate prior history of the enrollment of a significant proportion of credit balance recipients at the institution establishes that credit balance recipients are necessarily among the intended targets of the marketing campaign and in sufficient numbers to justify requiring specific attention be paid to their interests.

After considering all of the above, we believe § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) should not apply to institutions at which the occurrence of credit balance recipients is purely incidental and *de minimis,* and have included in the rules criteria necessary to identify such institutions. Under these rules, institutions will be subject to the provisions in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) unless they document that they fall below both of the following thresholds: (A) Five percent or more of the total number of students enrolled at the institution received a title IV credit balance; or (B) the average number of credit balance recipients for the three most recently completed award years is 500 or more.

The five percent figure is calculated by dividing:

(1) For the numerator, the average number of students who received a title IV credit balance during the three most recently completed award years;

(2) For the denominator, the average of the number of students who were

enrolled at the institution during the three most recently completed award years. We have defined enrollment for purposes of these thresholds as the number of students enrolled at an institution at any time during an award year. For both of these thresholds we are using averages to smooth fluctuations in enrollment or title IV credit balance recipients that may occur year to year. The three-year period for calculating the thresholds is consistent with the period of time for which an institution is required to maintain records under 34 CFR 668.24.

With regard to the threshold based on percentages of credit balance recipients, the Department has found a five percent threshold useful and reliable in other contexts in identifying when an occurrence or characteristic is too infrequent to warrant application of regulatory requirements. In the Department's financial responsibility regulations at 34 CFR 668.174(a)(2), we set a threshold of five percent of title IV funds received as the level at which liabilities assessed for program violations are significant enough to take the violation into account in determining the past performance aspect of financial responsibility. Likewise, 34 CFR 668.173(c) provides that an institution is not in compliance with the refund reserve requirements if a program review or audit establishes that the institution failed to return unearned funds timely for five percent or more of the students in the sample reviewed or audited. Similarly here, the five percent threshold operates to exempt institutions from the requirements in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) where receipt of a credit balance is atypical. At the same time, the data related to the average enrollment among the various sectors of institutions (discussed in more detail in the Regulatory Impact Analysis section) shows that using a threshold of five percent will not stand in the way of these provisions reaching all sectors of institutions identified in the oversight and consumer reports as having card agreements.

We recognize that using a five percent threshold may, in a limited number of cases, affect smaller institutions with relatively few credit balance recipients. For example, an institution with 1000 students could conceivably have as few as 50 credit balance recipients before being required to comply with the entirety of the provisions relating to T2 arrangements. First, we note that such cases will be extremely rare. An institution with so few credit balance recipients is unlikely to provide a sufficiently large potential customer base for a financial account provider to enter into a T2 arrangement with the institution. Furthermore, it is entirely within the institution's control whether they choose to enter into a direct marketing contract with a financial account provider. If the institution decides that it would like to have a financial account available for its students, it can easily provide information about locally-available accounts without entering into a contract with a financial account provider at all. Alternatively, it can enter into a contract with a financial account provider, but ensure that the institution is not directly marketing the account or providing, for example, cobranded card features. By ensuring that the account is only generally marketed to students, the school can choose not to have a T2 arrangement and will not have to comply with the regulatory requirements.

The final rule supplements the five percent threshold with a threshold relating to the average number of credit balance recipients, because at large institutions, a five percent threshold, standing alone, would leave large numbers of title IV credit balance recipients without the protections of § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). We believe § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) should, at a minimum, apply to any institution at which credit balance recipients are numerous enough, standing alone, to significantly impact the commercial viability of entering into a T2 arrangement. Based on the data currently available to the Department, we have determined that a threshold of 500 credit balance recipients satisfies this test and have incorporated that figure as a separate threshold triggering applicability of § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). In establishing that threshold, we note that, in examining publicly available institutional and financial account provider data reflecting the institutions that have elected to enter into agreements with financial account providers, institutions with an average enrollment as low as approximately 2,000 students nevertheless had a sufficiently large student population to lead to formation of these agreements. Five hundred credit balance recipients would represent almost 25 percent of the students receiving T2 marketing materials at these institutions.[30] Furthermore, given evidence gathered by the GAO that the take-up rate for T2 accounts ranges between 20 and 80 percent,[31] a 500 credit balance recipient threshold would approximate, standing alone, a sufficient market to support a T2 arrangement experiencing a take-up rate at the lower end of this range in take-up rates. Accordingly, where on average at least 500 credit balance recipients are included in the school's enrollment, we see no justification for the institution failing to negotiate with their interests in mind and providing them with the protections described in the regulations. In addition, at the average level of 500 credit balances over three years, we believe a high-tuition institution has shown sufficient commitment to low-income students that it will not eliminate tuition discounts as a means of avoiding applicability of these rules.

In sum, we believe that requiring that an institution have credit balance recipients either comprising five percent of enrollment or totaling 500 students, averaged over three years, before § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) are triggered will exclude institutions at which credit balances are atypical and credit balance recipients are few, while maintaining a separate threshold to provide students the other benefits and protections afforded under T2 arrangements and in providing the Department and the public with information regarding the nature of these arrangements. We also note that these thresholds do not preclude schools from providing this information to the Department or negotiating their contracts in the best interests of students, and have added regulatory language reflecting this fact. Ultimately, we believe this will assist in future policymaking to ensure we are properly balancing the considerations discussed in the preceding paragraphs. We recognize that some institutions exempted by our thresholds will nonetheless provide all of the protections described in the final rule, and we are including a provision encouraging them to do so.

Changes: We have revised § 668.164(f)(2) to specify that an institution does not have to comply with the requirements described in § 668.164(d)(4)(i) or (f)(4) if it documents that no students received a credit balance in at least one of the three most recently completed award years, and that it does not have to comply with

[30] While there were few credit balance recipients at some of the smaller institutions in question, we have no evidence that a higher number of credit balance recipients would have adversely impacted the viability of the T2 arrangements. In fact, according to the GAO, some institutions make cards available only to students receiving balances. GAO report at 12. The Department's experience indicates that there may be a variety of factors that cause smaller institutions not to have credit balances.

[31] 80 FR at 28499.

the requirements described in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) if it documents that the average number of students who received a title IV credit balance during the three most recent completed award years is less than five percent of the average number of students enrolled during those years, and the average number of credit balance recipients in the three most recently completed award years is also less than 500. We have defined enrollment for purposes of these thresholds as the number of students enrolled at an institution at any time during an award year. We have added § 668.164(f)(4)(xii), encouraging institutions falling below these thresholds to comply voluntarily with all the requirements of paragraph (f)(4).

Comments: We received a number of comments regarding the proposed definition of ''direct marketing,'' specifically as it relates to cobranded cards. Commenters argued that many cobranding agreements are not marketed to students, but instead offered by the financial account provider to the general public as part of ''affinity arrangements.'' As described by the commenters, under these arrangements cobranded card products are offered to any customer of a financial institution—the cobranded products are not marketed principally to title IV recipients, and the financial institution may have little or no on-campus presence or affiliation with an institution beyond the use of the institution's logo. The commenters stated that affinity arrangements required a contractual agreement with the institution (in order to use the institution's intellectual property) and that cobranded products under these arrangements are offered as a benefit to existing or prospective accountholders rather than used as a method to market accounts to title IV recipients, or to imply an institutional endorsement of the cobranded product. Some commenters recommended that we specifically exempt general affinity cobranding agreements if the cobranded access device is available universally to the public (not just enrolled or prospective students) and the institution does not communicate information about the account underlying the access device to students or parents or assist them in opening that account. Other commenters recommended that we ban cobranding on cards under T2 arrangements entirely. Some commenters requested that we provide further guidance specifying the meaning of cobranding under the regulations.

Some commenters also opposed categorizing student IDs with financial account access features as accounts that are directly marketed to students for purposes of § 668.164(f)(1). These commenters stated that the dual functionality provided by these products are a benefit to students and are not the types of products that students may confuse as a required prerequisite to enrollment or receipt of title IV funds.

Some commenters expressed concern that the definition of a ''T2 arrangement,'' especially with respect to direct marketing, was vague. These commenters argued that the regulations would introduce uncertainty as to whether certain products would constitute directly marketed accounts for purposes of § 668.164(f)(1). Another commenter requested that we specify that the examples cited in the preamble were illustrative, not comprehensive, and that other types of arrangements could also fall outside the definition of ''T2 arrangement'' under § 668.164(f)(1). Some commenters asked that we further define ''direct marketing.'' For example, one commenter asked whether a financial account provider that directly markets a product without assistance from the institution would be conducting direct marketing under § 668.164(f)(1).

Other commenters contended that the proposed regulations would discourage institutions from informing students about the types of accounts available for receiving their student aid funds, arguing, this would constitute direct marketing activity that would create a T2 arrangement. These commenters believed that institutions should be able to inform students and parents of all the options available for obtaining title IV credit balances.

Some commenters requested that we exempt general marketing, lease agreements, and other non-direct marketing activities from § 668.164(f). Commenters also requested that we incorporate the preamble discussion from the NPRM into § 668.164(f) and enumerate through regulation examples of practices to which § 668.164 does not apply.

Discussion: With respect to affinity agreements, we are persuaded that the proposed definition of cobranding under § 668.164(f)(3) may be too expansive because card products under these agreements are generally intended for banking consumers or other groups and not for students with the title IV credit balances.

Nevertheless, based on consumer reports, there are several instances of cobranding arrangements outside of the student ID context in which students are subject to the types of direct marketing specified under § 668.164(f) and therefore the risks we have described are still present. For this reason, although we are narrowing the types of cobranding arrangements that will constitute financial accounts that are directly marketed for purposes of § 668.164(f), we believe it is appropriate to include certain instances of cobranding. Based on program reviews, and as described in the comments, we believe the distinguishing characteristic between affinity agreements and those instances where students are the subject of direct marketing is whether the access device is principally marketed to students, rather than offered as a perquisite to the general public.

We believe that in the vast majority of cases this distinction will be plainly evident from the underlying contracts, based on the descriptions of how those contracts in public comments and the practices identified in consumer and government reports. In affinity agreements, the contract typically covers the use of the intellectual property, whereas in cases where there is a more comprehensive cobranding marketing contract, bonuses or incentive payments may compel an institution to take actions to sign up a certain number of accountholders. This likely explains some of the practices observed during program reviews such as the presence of the financial account provider at registration events or the institution's administrative offices. Therefore, we will limit the requirements relating to T2 arrangements to those cobranding arrangements where the access device is marketed principally to students at the institution. For institutions with affinity agreements, the widespread availability of a cobranded access device (as well as devices with cobranding of entities other than a single institution of higher education) to the general public and the language of the agreement itself will be strong evidence that the underlying agreement is not a T2 arrangement.

However, in order to ensure that institutions and financial account providers are not exploiting this safe harbor, an institution must retain the contract and document, if applicable, why the contract does not establish a T2 arrangement (*e.g.,* because of the widespread availability from the account provider of the institution's cobranded access device, and of access devices cobranded with a variety of entities rather than exclusively with the T2 postsecondary institution). This will enable the Department to determine during program reviews that institutions with T2 arrangements are not evading the disclosure requirements by falsely claiming that cobranded card products

are marketed under an affinity agreement. We believe this is a balanced approach. Rather than banning the use of cobranding altogether in connection with accounts in which title IV credit balances are received or subjecting all cobranded accounts, including those available to the general public, to the requirements of § 668.164(f), it targets the protections to those instances of cobranding that occur in the context of the T2 arrangement and accordingly pose the danger of exposing title IV credit balance recipients to the problematic marketing practices identified in consumer and government reports.

We disagree with the commenters who suggested that student IDs should not be covered under the regulations. While we agree that student IDs with financial account functionality may represent a convenience for some students, that fact does not obviate the concerns regarding marketing and institutional endorsement identified in the NPRM, especially if the terms of the underlying account are not favorable to the student. We disagree with commenters who argued that students would not confuse such functionality with a requirement to use the account as a condition to enroll or receive aid. To the contrary, most student IDs are institutional requirements, provided by the institution itself, and certainly bear the branding of the institution. We believe that students could easily be led to believe that activating financial account functionality on such a student ID is tantamount to activating the student ID itself; and therefore, disclosure requirements for these accounts are necessary under these circumstances.

We disagree with the commenters who argued the definition of ''direct marketing'' is vague. In § 668.164(f)(3) we proposed a general set of actions and circumstances that would be considered direct marketing under the regulations. To ensure the regulations are understandable and because it would not be feasible to address every possible circumstance in detail, we decline to set out a list in the regulations of all specific actions and circumstances that may or may not constitute direct marketing. However, we agree with the commenters who noted that the examples provided in the preamble to the NPRM are illustrative of conduct that does not constitute direct marketing, rather than comprehensive, and decline to include those examples in the regulations. We believe those examples on their face fall outside the plain language of § 668.164(f)(3) and its description of ''direct marketing'' for the purposes of the T2 arrangement requirements. We believe that institutions and financial account providers considering whether their agreements fall under the definition of ''T2 arrangement'' can determine whether the institution itself communicates information directly to its students about the financial account and how it may be opened. If, for example, the institution publishes instructions for opening the account on its Web site, sends students links via text message to a Web page with promotional materials for the account, or sends a mailing to students with account information produced by the account provider, these practices are plainly direct marketing because the institution is directly conveying information about the account itself or how to open it. If, in contrast, the institution includes advertisements for the financial account provider (rather than the account itself) in a magazine or displays the financial account provider's logo in a dining hall or Web site, these practices would not fall under the ''direct marketing'' definition in the regulations and would be considered general marketing, as described in the NPRM. To the extent that a financial account provider markets a product to students without assistance from the institution (and if the product is not a cobranded access device or student ID), that is not direct marketing by the institution under the regulations for the preceding reasons.

We also disagree with commenters who argued that institutions would be discouraged from informing students about the types of accounts available for receiving their student aid funds because that would constitute direct marketing activity and would create a T2 arrangement. Institutions that sincerely believe that an account is a good deal for students can continue to provide information about that account absent a contractual agreement with the financial account provider. However, we believe that when an agreement is entered into, the institution has an obligation to promote the account, resulting in an intensity of effort more likely to prompt students to regard the account as a requirement for receipt of title IV aid.

We also disagree with the commenter who stated that a lease agreement would constitute a T2 arrangement. This is plainly not direct marketing under our definition and was highlighted in the NPRM as an example of general marketing that does not constitute direct marketing.

Changes: We have revised § 668.164(f)(3)(ii) to specify that a cobranded financial account or access device is marketed directly if it is marketed principally to enrolled students. We have also added § 668.164(f)(4)(xi) to provide that if an institution enters into an agreement for the cobranding of a financial account with the institution's name, logo, mascot or other affiliation but the account is not marketed principally to its enrolled students and is not otherwise marketed directly within the meaning of paragraph (f)(3), the institution must retain the cobranding contract and other documentation that the account is not marketed principally to its enrolled students, including documentation that the cobranded financial account or access device is offered generally to the public.

Comments: One commenter pointed out that institutions that did not have to comply with the T2 arrangements provisions under § 668.164(f)(1) because they did not have any title IV credit balance recipients in the preceding award year would still have to comply with the requirements of § 668.164(d)(4) to establish a student choice menu.

Although the commenter did not explicitly argue that this requirement was inappropriate, it appears that the commenter believed that the accounts offered pursuant to a T2 arrangement at an institution where there are no credit balances should not be subject to the student choice requirements.

We also received comments arguing that parents should not be included in the regulatory provisions under T2 arrangements because they are not typically the recipients of credit balances; and, even when they are, the credit balances are typically transferred to a preexisting account, rather than an account offered under a T2 arrangement.

One commenter noted that once a student is no longer enrolled at an institution and therefore will no longer be receiving a title IV credit balance disbursement, the regulatory requirements should no longer apply.

Discussion: We agree with the commenter who pointed out that under the proposed regulations, an institution would have to establish a student choice menu under § 668.164(d)(4)(i), even if no student received a title IV credit balance in the prior year. We have included a cross-reference to § 668.164(d)(4)(i) to address this issue.

We agree with the commenter who argued that parents should not be included in the provisions of § 668.164(f). We discuss our reasons for this change in greater detail in the student choice section of the preamble.

We also added a paragraph specifying that the requirements relating to T2

arrangements no longer apply when a student ceases enrollment at an institution. For a detailed discussion of this issue, please refer to the preamble discussion in the section on T1 arrangements, where we have added an equivalent provision.

Changes: We have removed the references to ''parent'' in § 668.164(f).

We have added paragraph § 668.164(f)(5) to specify that the requirements for T2 arrangements no longer apply when the student is no longer enrolled and there are no pending title IV disbursements at the institution. We have also specified that paragraph (f)(5) does not limit the institution's responsibility to report mean and median annual cost information with respect to students enrolled during the award year for which the institution is reporting. We have also specified that an institution may share information related to title IV recipients' enrollment status with the financial institution or entity that is party to the arrangement to carry out this paragraph.

Student Choice (§ 668.164(d)(4))

Comments: Under proposed § 668.164(d)(4), if an institution has a T1 or T2 arrangement under § 668.164(e) or (f) and plans to pay credit balances by EFT, it must establish a selection process under which a student or parent chooses an option to receive those payments. This selection process must present various options in a neutral manner. One commenter noted that it has been extensively documented by the Department's Inspector General, the GAO, the CFPB, the Federal Reserve, and independent research that institutions and banks engage in a variety of practices intended to steer students into accounts offered under T1 or T2 arrangements. This commenter stated that students have been forced into accounts by deceptive marketing practices that make it seem as if the sponsored account is the only feasible choice, and that the proposed regulations would correctly restore choice to the extent possible without a complete ban on revenue sharing or third-party servicing account offers. Another commenter echoed this sentiment, stating that the reforms proposed by the Department correct a history of deceptive practices and will help students shop for the best accounts that meet their financial needs. In addition, this commenter urged the Department to require schools to communicate with students about their disbursement choices early, before funds are ready to be disbursed, so that students who do not have bank accounts have the opportunity to open an account that works best for them. Students who have existing accounts (or open new ones) should be able to provide the bank account and routing numbers in advance so that funds can be directly deposited as soon as possible. Several commenters noted that the proposed regulations would provide relief for students who have often been compelled to sign up for an institutional-sponsored bank account by: Prohibiting deceitful tactics that enable financial institutions to mail an institutional-sponsored debit card to a student aid recipient before the student gets to campus; stopping the prioritization of financial aid deposits into institutional-sponsored accounts while delaying deposits into existing bank accounts; prohibiting the creation of non-essential barriers that make it more time-consuming for the student to choose his or her existing account over one sponsored by the institution; and requiring marketing material to be presented in a neutral way that enables the student to choose either his or her own account or the campus account without being coerced into choosing the campus account. A number of commenters voiced strong support for the concept of a neutral presentation of options within the school's selection process, with one commenter suggesting that language be added to prevent a school or financial account provider from undermining that neutrality by communicating with the student outside the selection process or telling the student that the institution endorses or otherwise recommends a certain provider or its products. Other commenters suggested that, notwithstanding the desire for an overall neutral presentation of options, the student's existing account should be the prominent first option.

Discussion: Section 668.164(d)(4) of the proposed regulations would require institutions that are making direct payments to students or parents by EFT and that have entered into a T1 or T2 arrangement under § 668.164(e) or (f) to establish a selection process under which students or parents choose how they will receive those payments. Under this selection process in the proposed regulations, the institution must (1) inform the students and parents that they are not required to use a financial account offered by any specific financial institution, (2) ensure that the various options in the selection process are presented in a clear, fact-based, and neutral manner, (3) ensure that initiating payments to the student's or parent's existing account is as timely and easy for the student or parent as initiating payments to any accounts offered in the selection process under T1 or T2 arrangements, and (4) allow the students or parents to change their choice about which account is to be used with written notice provided in a reasonable time. Further, in listing the options in this selection process under the proposed regulations, the institution (1) must prominently present the student's or parent's existing account as the first and default option, (2) must identify the major features and fees associated with any account offered under a T1 or T2 arrangement that the school lists in the selection process, and (3) may provide information about certain other accounts.

We generally agree with the commenters who stated that proposed § 668.164(d)(4) provides relief for students who have often been compelled to sign up for certain institutionally-sponsored accounts, and continue to believe that a number of choices for receiving credit balance payments should be available to students in certain circumstances, such as those associated with the required selection process described above. In particular, for reasons we discussed at length in the NPRM, we believe that the basic requirement that certain options be presented to students in a clear, fact-based, and neutral manner is very important.[32] However, presuming that most students with an existing bank account have already, to some degree, made their choice, we believe that the selection process should continue to prominently list the student's existing bank account as the first option. Certainly, it is possible that one or more of the remaining options offer the student a better deal than his or her existing account, and that the existing account may not have the same protections that are afforded to students under these regulations. However, the clear, fact-based information associated with the required presentation of the student's options will allow the student to compare and choose how to receive his or her title IV funds. In addition, the requirement that the student be allowed at any time to change his or her choice (as long as written notice of such a requested change is provided within a reasonable time) provides even greater assurance that the student has a real opportunity to receive title IV funds in an inexpensive and convenient manner that suits the student's needs.

We agree that it is important for the student to be given neutral information about account choices. However, we do

[32] 80 FR at 28501–28503.

not agree, as one commenter suggested, that there is a need to add language to the regulations that would prevent an institution or financial account provider from undermining that neutrality through communications with the student outside the selection process. Indeed, this outside direct marketing activity is what distinguishes many of the arrangements that are covered by the regulations. Nor do we believe that additional language is needed in the regulations to require institutions to communicate early with students about their disbursement choices. By requiring, in certain situations, that an institution establish a selection process for students to choose how to receive their credit balance payments, § 668.164(d)(4) already sufficiently contemplates that.

Changes: None.

Comments: One commenter stated that the student choice provisions strengthen the student's ability to deposit disbursements into an existing account, which is often the best option. The commenter further noted that ensuring that direct deposit remains a choice has been a consistent challenge in the face of attempts to mandate use of a specific product under contract. Another commenter suggested that we require the institution to make direct deposit to an existing account the most prominent and default option for receiving funds. However, several commenters objected to requiring institutions to list an existing account as the prominent first option, arguing that it may mislead individuals into thinking that it is the best option (which may not be the case). These commenters stated that existing accounts would not be subject to the same requirements as would accounts offered under T1 or T2 arrangements and, thus, students would not receive the benefit of the protections provided under the regulations related to those accounts. They also noted that it is problematic to make an existing account the default option if an election is not made as to how to receive the credit balance. Without existing account EFT information, an institution would have no way to disburse funds into the appropriate account. In the absence of an election, the sole way to comply with the 14-day credit balance regulation would be to issue a check (a far less efficient and manual process). The commenters contended that setting an existing account as the default option would imply the school's endorsement of the existing account (about which the school has no information). Institution would be steering recipients toward their existing accounts, with no way of knowing whether those accounts are the best option. Further, a number of commenters stated that making the existing account the default option goes against the Department's encouragement of a clear, fact-based, and neutral presentation of options. This, the commenters argued, could discourage students' review of other options that could be more affordable and more convenient for their needs. Other commenters noted that many students with existing accounts do not attend college in the same city where the existing account is located. They stated that participation in institutional-sponsored accounts ensures that those accounts are ones that provide ATMs on campus (whereas the existing account might not). Another commenter stated that experience has shown that many students prefer not to put their credit balance payments in their checking accounts in order to keep those funds separate from their other funds. Still another commenter stated that the majority of students at many colleges come to campus without a banking relationship, and that creating a default to an existing account will cause confusion among those students and result in their receipt of a check. This commenter noted that EFT is a more appropriate solution based on its security, convenience, and efficiency and that any action that will hinder this process should be reconsidered. One commenter contended that the vast majority of college students either already have bank accounts when they enroll, or would be able to easily obtain a bank account on the open market. This commenter stated that the neutrality provision of the proposed regulations encourages an open and free market, and that this competition will result in better and more innovative financial products and accounts for students that have low fees and meet their needs.

One commenter noted that, in its 2014 report, the GAO identified situations in which schools did not present disbursement options in a clear and neutral manner, and appeared to encourage students to select school-sponsored accounts. In some cases, choosing a different option—such as the student's existing bank account—required additional documentation that was time-consuming to locate, and often was not readily available online. This commenter noted that, when making a disbursement selection, a student is effectively at the point of sale and, therefore, most vulnerable to steering practices, and that the Department may want to further specify the order in which the disbursement options must be displayed. The commenter pointed out that, at the negotiated rulemaking session, some negotiators recommended a two-step approach whereby the disbursement selection screen would offer the direct deposit option in a prominent and central location, and then include links further down the page that students could click on if they did not have existing account information to provide.

Discussion: It was not our intent under the proposed regulation that a student's existing account be used for the receipt of credit balances in the event that a student makes no affirmative selection or does not provide his or her existing account information. Rather, our intent was that the existing account option would be preselected on the choice menu. This was proposed in response to concerns that institutional-sponsored accounts had been preselected in the past. However, the menu would allow students to change that account by selecting any other option (account). Certainly, the student must provide the necessary information associated with his or her account to enable the institution or third-party servicer to use it. If a student does not make an affirmative selection from the student choice menu, the institution will still have to comply with the appropriate 14-day time-frame in § 668.164(h)(2) and pay the student the full amount of the student's credit balance due by EFT, issuing a check, or dispensing cash with a receipt signed by the student.

However, based on the concerns expressed, we are eliminating the proposed requirement that the student's existing account must be pre-selected on the choice menu (*i.e.,* that it must be a ''default'' option). Instead, no option may be pre-selected, making the selection process more neutral in terms of how options are presented. We do not believe that it is necessary to further specify the order in which disbursement options are presented. Instead, we are convinced that the approach of establishing a clear, fact-based, and substantially equal presentation of options (with the student's existing account being prominently presented first) is sufficient to prevent institutions or others from unfairly steering students toward accounts that may not be in their best interest.

Changes: We have revised § 668.164(d)(4)(i)(B)(*1*) by removing the reference to ''default'' to indicate that the student's existing financial account must be prominently presented as the first option in the selection process without requiring that it be a default option. We have added § 668.164(d)(4)(i)(A)(*5*) to indicate that

no option can be preselected in the student choice process. We have also added § 668.164(d)(4)(i)(A)(*6*) to specify that if a student does not make an affirmative selection from the student choice menu, the institution must still pay the full amount of the student's credit balance within the time-period specified in § 668.164(h)(2), using a method specified in § 668.164(d)(1), *i.e.,* by initiating an EFT to the student's financial account, issuing a check, or dispensing cash with a receipt signed by the student within the appropriate 14-day time-period.

Comments: One commenter indicated that an institution should not be forced to offer any sponsored accounts to students under a selection process, and another commenter argued that establishing a selection process places a burden on colleges that are trying to find ways to cut costs and operate more efficiently under budget limitations. This commenter questioned whether the college would have to act as a personal banker during the admissions process. The commenter also asked whether the college would have to compare account options and, in essence, become an extension of the financial (banking) industry, or whether communicating to students that they can use an existing account or utilize a sponsored account would be enough.

Discussion: We disagree with the commenter who stated that institutions should not have to include sponsored accounts in a selection process. And, we disagree with the commenter who stated that institutions should not have to establish a selection process. When an institution chooses to make direct payments to a student by EFT and has entered into an arrangement under § 668.164(e) or (f) (a T1 or T2 arrangement), the Department believes that it is imperative that students be given a choice as to where they will receive their title IV credit balances. As discussed elsewhere in this document, students have too often been forced to receive their credit balances in accounts that have proven to be too costly for them. Establishing a selection process under which the student is presented information about various options (financial accounts) and is able to choose one of them for receiving his or her title IV credit balance payments corrects many of the problems that students have encountered in the past. Institutions do not have to act as a personal banker under this requirement. However, in compliance with § 668.164(d)(4), if they have a T1 or T2 arrangement, they will have to describe the student's options, including listing and identifying the major features and commonly assessed fees associated with financial accounts described in § 668.164(e) or (f) (T1 or T2 arrangement accounts) that are options in the selection process.

Changes: None.

Comments: One commenter indicated that banks embrace informed choice as a vital consumer protection, and stated that it is critical for a student refund selection process to offer information about credit balance payment options in a clear, fact-based, and neutral manner. But, the commenter argued that, only if the credit balance payment process facilitates the opening of an account as an integrated step within the process, should the account be part of the selection process. Thus, the commenter stated that it is critically important to distinguish between accounts opened for receipt of title IV credit balances within the selection process, and ordinary bank accounts opened for general use—including accounts available for use with a validated access device that is also used for institutional purposes (such as a student ID), enabling the student to use the device to access a financial account (previously we had referred to this type of arrangement as an account linked to a card used for institutional purposes, but we have changed our terminology to better conform with banking regulations). This commenter contended that the proposed regulations would convert traditional, general-use, deposit accounts into accounts regulated by the Department, and that it would, therefore, obligate institutions with stand-alone campus card or cobranded debit card programs—T2 arrangements as described in § 668.164(f)—to list all such T2 accounts within the institution's credit balance payment selection process, even though the card programs operate completely independently from those arrangements. The commenter noted that, because some T2 arrangements allow a student ID card to become a validated access device, enabling the student to use the device to access a financial account, the proposed regulations could require schools to list terms and conditions for not just one account, but for a bank's entire selection of eligible consumer-deposit accounts. The commenter concluded that the appropriate focus for the proposed regulations should be on non-standard deposit accounts opened through the title IV credit balance payment process. Thus, the commenter argued that T2 accounts should be excluded from the scope of the student choice process.

Another commenter echoed this sentiment, stating that colleges and universities should not be required to bring T2 financial accounts into the selection process for title IV refunds. This commenter noted that at many schools T2 arrangements are completely independent of the credit balance payment process and are not explicitly offered as a choice at the time a student is asked to tell the school how he or she prefers to receive credit balance payments. The commenter noted that this is particularly true when the student financial accounts offered under a T2 arrangement take the form of a checking account. The commenter argued that the college typically has no role in the student's effort to open an account. With respect to the selection process, this commenter argued that students who have opted to open an account at a bank with a T2 arrangement should simply be viewed as having an existing account that they will designate for direct deposit of their credit balances. Along similar lines, another commenter urged the Department to amend proposed § 668.164(d)(4) to provide that an institution does not have to provide students with specific options for receiving title IV payments if it: (1) Requests that students or parents simply identify a deposit account to receive their funds when setting up credit balance payment plans, and (2) makes no specific recommendations on the deposit account to be used during the process of setting up those plans.

Discussion: We disagree with the argument that an account offered under a T2 arrangement should only be required to be part of the selection process if the account is opened for the purpose of receiving credit balance payments. T2 arrangements involve accounts that are opened under institutional contracts with financial entities (such as banks or credit unions) and that are offered and marketed directly to students. When a financial entity enters into a contract with an institution with 500 credit balance recipients or five percent or more of its enrollment comprised of credit balance recipients and, pursuant to that contract, it or the institution markets financial accounts directly to students, it is reasonable to conclude that the parties anticipate that some or all of the students opening the accounts will use them to receive title IV credit balances. This is true regardless of whether the contract or arrangement is agreed to independent of the credit balance payment process, and regardless of whether the institution makes any specific recommendations on the deposit account to be used when setting

up credit balance payment plans. Thus, we believe it is reasonable to require that accounts offered under a T2 arrangement be a part of the selection process in all situations. By doing so, we are making it easier for students to make informed choices regarding where their credit balances are to be sent. Financial entities that have objected to having accounts offered under a T2 arrangement be part of the selection process have done so on grounds that institutions must list the major features and commonly assessed fees associated with such accounts and that these accounts may include a number of general use deposit accounts that happen to be campus card or cobranded debit card accounts. However, we are unpersuaded by these concerns. Both the financial entities offering these accounts and the institutions that have contracted with them are benefitting from the direct marketing of those accounts to students. These students, if they are receiving title IV student aid, should be afforded the benefits and protections associated with having these accounts be a part of the selection process for the payment of credit balances. As noted above, the parties to a T2 arrangement are free to develop a standalone account for purposes of the arrangement and avoid subjecting general use deposit accounts to these rules.

Changes: None.

Comments: One commenter suggested that an institution that enters into a contractual arrangement with a third party to provide deposit services or distribute title IV funds should be required to establish a review process or panel to ensure that certain benefits and protections are provided to its students. As envisioned by this commenter, this panel or process would:

(1) Ensure that bank account fees and ATM locations meet regulatory requirements;

(2) Guarantee that all bank accounts are insured ones and that any fees are charged and received by the insured (banking) institution;

(3) Decide the order in which the various options to receive credit balances are presented to the student, based on how well each account provides banking services, considering costs, convenience and other factors;

(4) Ensure that all student options are presented in a neutral manner;

(5) Ensure that student payments are made as expeditiously as possible;

(6) Share appropriate personal information in a timely manner so that each depository institution can meet its obligations to verify the student's identity and other information necessary to expedite the delivery of funds;

(7) Require third-party servicers who disburse or accept title IV funds to enter into non-disclosure agreements to protect student privacy and commit to not using the personal information for anything other than its intended purposes without the student's consent;

(8) Allow the depository institution to charge a reasonable fee for more than one overdraft a month; and

(9) Require that financial literacy education be provided to students as part of each bank offering.

Discussion: We disagree. Institutions are required to ensure that they comply with all aspects of the regulations and, in order to ensure that compliance, an institution could establish a panel or process, but it could also ensure compliance in other ways. The Department has also decided not to adopt some of the requirements that the commenter suggested with regard to a panel or process. For example, the final regulations do not require an institution to base the order in which student options are presented on how well each account provides banking services, considering costs, convenience, and other factors. We believe that the existing regulatory requirements that the student's options be presented in a clear, fact-based, and neutral manner are sufficient to ensure that necessary protections are provided to the student. Thus, after prominently listing the student's existing account as the first option, there is not any other mandatory order in which the options must be presented. And, while we agree that financial literacy education would benefit students, we believe that the required disclosures that institutions must make with regard to the major features and commonly assessed fees associated with accounts described in § 668.164(e) and (f)(T1 and T2 accounts) will provide students with sufficient information to make an informed choice. Many of the commenter's other suggestions that certain benefits and protections are provided to students—such as requiring institutions to present options in a neutral manner, ensure that student payments are made expeditiously, share only appropriate personal information, and not use such information for anything other than its intended purposes without the student's consent—are incorporated in various ways in other parts of the regulations and are discussed elsewhere in this preamble.

Changes: None.

Comments: One commenter noted that few institutions offer parents the option to receive credit balance payments for PLUS loans by EFT. This is generally because institutions do not maintain separate records for parents in their databases and are not inclined to gather and manage this additional information. Further, the commenter stated that it is rare for institutions to include financial accounts for parents within the scope of their agreements with servicers and financial institutions. Thus, this commenter argued that, even if the institution offers parents a choice of an EFT or check, it does not make sense to require the institution to provide information and disclosures to parents unless the institution also offers them an account under a T1 or T2 arrangement.

Discussion: We agree that it may not be necessary to require institutions to provide information and disclosures to parents in their credit balance selection process. Credit balance payments for PLUS loans to parents are often sent to the student's account (on whose behalf the parent borrowed the money), even though the parent can choose to have the money sent to himself or herself. And, even if the credit balance portion of the PLUS loan is sent to the parent, the parent generally has more experience with, and a better understanding of, banking account options, and is more likely to already have a bank account, than a student. Thus, we are changing the final regulations so that § 668.164(d)(4) addresses ''student'' choice, and not ''student or parent'' choice, in the institution's selection process for an EFT option for the receipt of title IV funds. Section 668.164(e) and (f) (T1 and T2 arrangements) will similarly be modified to clarify that they apply only to students. Thus, institutions may, but will not be required to, provide the parents of students with a choice of options as to how they will receive title IV funds, and they may, but will not be required to, have the accounts offered pursuant to their T1 and T2 arrangements to the parents of their students comply with the provisions of § 668.164(e) and (f) when those parents receive parent PLUS loan credit balance funds.

Changes: We have removed the references to ''parents'' in § 668.164(d)(4)(i). However, we retained the reference to ''parents'' in § 668.164(d)(4)(ii) to specify that an institution does not have to set up a student choice menu if it has no T1 or T2 arrangement but instead makes direct payments to a student's or parent's existing financial account, or issues a check or disburses cash to the student or parent.

Comments: Several commenters stated that there should be no delays in receiving funds via direct deposit to an existing account, *i.e.,* that it should be as fast as when funds are deposited into an institutional-sponsored account. On the other hand, numerous commenters noted that while institution can indeed initiate electronic payments in a timely manner without regard to which account the funds are being sent, as required under § 668.164(d)(4)(i)(A)(*3*) of the proposed regulations, they have no way to ensure that electronic payments made to existing accounts are received in as timely a manner as disbursements made to accounts offered under T1 or T2 arrangements. According to one commenter, after an institution initiates an EFT, it can take between two and four business days for the funds to be received at the financial account in question, depending on the receiving bank's policy. This commenter also pointed out that there are currently disbursement methods that provide students with access to their funds within 15 minutes when those funds are directed to a prepaid card.

Discussion: If the student chooses to use an existing account, there should be no delay in transmitting funds, *i.e.,* the deposit to an existing account should be initiated as quickly as it would be if funds were deposited into an institutional-sponsored account. The requirement that deposits be as timely regardless of which account a student chooses pertains to initiating electronic payments by the institution or its servicer, not the actual date when funds are received by the bank in question. The proposed regulation reflected this concept. The Department understands that once an electronic payment is initiated the institution does not have any control over the practices of the bank offering the student's existing account with respect to when that bank makes the funds in question available to the student.

Changes: None.

Comment: Another commenter raised a couple of technical concerns with proposed § 668.164(d)(4)(i)(A)(*3*), recommending that we replace the phrase ''initiating direct payments electronically to a financial account'' with the phrase ''initiating direct payment by EFT . . .,'' since the term EFT is used in other places in the regulations, and also pointed out that technically an EFT would not be made to an access device, but rather to the financial account underlying that device.

Discussion: The Department agrees to use the term ''EFT'' in place of the word ''electronically'' in § 668.164(d)(4)(i)(A)(*3*), and that we should eliminate the concept that payments can be made by EFT to an access device.

Changes: We have revised § 668.164(d)(4)(i)(A)(*3*) to indicate that initiating direct payments by EFT to a student's existing financial account must be as timely and no more onerous to the student as initiating direct payments by EFT to an account offered pursuant to a T1 or T2 arrangement. We have also revised § 668.164(d)(4)(i)(A)(*3*) by removing the reference to an ''access device'' to indicate that, even if an access device is used, the direct payment is made to the financial account that is associated with that access device, and not to the access device itself.

Comments: One commenter contended that the requirements related to student or parent choice with respect to a selection process for receiving credit balance funds are impractical for a foreign institution wishing to provide timely processing of student loan funds. According to the commenter, in many cases, it may not be possible to use the various alternative methods of processing payments anticipated by the proposed regulations. This commenter argued that if this provision is applied to foreign institutions, the result will be delays in processing payments, which not only can be inconvenient but can result in visa problems for the students, who often must be able to show that they have sufficient funds to support themselves before they are permitted to travel to the foreign institution. Thus, this commenter stated that the provisions of § 668.164(d)(4) should apply only to domestic institutions.

Discussion: We agree that the requirements related to student choice in a selection process for receiving credit balance funds may be impractical for many foreign educational institutions wishing to provide timely processing of student loan funds. We recognize that both the foreign educational institutions and the students attending them often face problems that domestic institutions and their students do not—including potential visa problems. Thus, we agree that the provisions of § 668.164(d)(4) should apply only to domestic institutions.

Changes: We have revised § 668.164(d)(4) to state that the student choice provisions apply only to institutions located in a State.

Comments: With respect to § 668.164(d)(4)(i)(A)(*4*) (the requirement that schools allow students the option to change their choices as to how the payment of credit balances are to be made, so long as they provide the school with written notice within a reasonable time), one commenter questioned what a reasonable time would be and encouraged the Department to offer some guidance in this area.

Discussion: The institution should accommodate a student's written request to change financial accounts or payment options as soon as administratively feasible. We recognize, however, that in cases where the institution or third-party servicer receives the student's request shortly after it has initiated an EFT or issued a check, there may be delays in honoring the student's request pending the disposition of the funds disbursed. In these cases, the institution may have a policy regarding how or whether it will reissue the check, initiate an EFT to the new account, or recover the funds disbursed. Consequently, we are not specifying a timeframe.

Changes: None.

Requirement To Include Checks as an Option for Receipt of Title IV Credit Balance Funds (§ 668.164(d)(4)(i)(B)(4))

Comments: A number of commenters stated that including checks as a disbursement choice is impractical, short sighted, and old fashioned. Others stated that checks are a costly and inefficient option that many institutions are trying to avoid as they will cause a delay in the receipt of funds by students. Several commenters noted that a large number of institutions offer only electronic disbursement options upfront for security and efficiency. One commenter specifically mentioned the time and expense required to issue checks and postage, to reissue lost checks, to complete stop payment processes, and complete escheatment processes for uncashed checks. Other commenters noted that some students have to take their checks to a check-cashing facility and pay significant fees, which undermines a goal of the regulations—to give students fee-free access to their funds. Some commenters also stated that fraud is more prevalent with checks, and several noted that checks are easily lost, misplaced, or stolen. Several commenters noted that the check option creates greater risk than other options, particularly with putting unbanked students in a position where they are carrying large amounts of cash. They argued that even if students have bank accounts and deposit their checks into those accounts, they will typically have their funds held for 3–5 business days, negating the intended benefit of the regulations to give students timely access to their financial aid funds. Another commenter

stated that the Department's goal should be to enable students to have access to a cost-effective, low-risk, FDIC-insured account, so that they have an opportunity to manage their title IV funds wisely for the entire school year. This commenter argued that, with the fee restrictions proposed on accounts offered under T1 arrangements, there is no reason not to continue to pursue a goal of 100 percent electronic disbursement to an FDIC-insured account. Several commenters also mentioned that the requirement to offer a check option to students runs counter to the regulations encouraging electronic disbursement of refunds and certain Federal requirements for electronic disbursement of Federal benefits. The commenters noted that, according to the Treasury Department, direct deposit is safer, easier, faster, and more convenient than checks. One commenter argued that the use of prepaid cards in lieu of checks has enabled government agencies to outsource many of the administrative responsibilities associated with managing a payment program and, in the process, reduce costs. The commenter noted that prepaid cards also offer numerous advantages to students over checks, such as real-time access to funds, a means to participate in the modern economy, and access to the same consumer protections that apply to traditional debit cards. The commenter stated that requiring schools to specifically offer students the option of receiving their credit balances by check ignores this trend and that including this method of disbursement as a student choice would signal a backward movement in getting funds to students in a safe and efficient way. Reiterating that direct deposits are usually a better option than checks, several commenters suggested that the Department keep its current practice of allowing an institution to ''establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students.''

On the other hand, several commenters supported the requirement that schools include checks as an option in their selection process for the receipt of credit balances. One commenter stated that, while most students today may opt for electronic receipt of their financial aid funds, some may find that a check better meets their needs. Further, some institutions such as community colleges may not have direct control over how funds are disbursed due to State or municipal regulations, and may not be able to provide direct deposit as a disbursement option at the present time. The commenter argued that, for these reasons, retaining the check option makes sense at least in the short term. The commenter suggested that the Department could consider a gradual phase-out of checks in three to five years as an alternative approach that would encourage States and municipalities to facilitate a move toward EFT options for impacted institutions. Another commenter noted that, in fiscal year 2014, his school issued 18,999 refunds, totaling $23.9 million. Of those 18,999 refunds, 10,794 were checks and 8,205 were EFT direct deposit (*i.e*, 57 percent of students at this school chose the check option). Based on this, the commenter encouraged the Department to maintain the check option. The commenter further suggested that the Department should consider eliminating the cash option, as institutions of higher education should not be placed in the position of handling potentially millions of dollars in cash. Another commenter stated that offering a check as an option provides some benefit toward student choice. While acknowledging that a check may represent the least convenient option for students, and is potentially a more costly option for schools, this commenter suggested that the presence of a check option, which permits a student to fully ''opt out'' of the processes associated with EFT, may serve a purpose in providing an incentive for all parties to ensure that EFT methods work well, are convenient to access, and are priced appropriately.

Discussion: We invited comments in the NPRM as to whether the option to receive a check should be affirmatively offered to students through a school's selection process, and we received a number of comments on both sides of that issue. However, the majority of commenters believed that checks, in most circumstances, should be used only as a last resort. We agree that, in many circumstances, checks are a less efficient means of transferring money and understand the desire of many to move exclusively (to the extent possible) to electronic banking methods. We also find persuasive the fact that many government agencies are moving away from checks to electronic banking methods because direct deposit is safer, faster, easier, and more convenient, and the argument that the Department should not ignore this trend. While we understand that some students may prefer to receive a check, we do not believe that fact should dictate to an institution that it must write checks to anyone who wants one when the institution wishes to move forward to a more cost-effective and secure method of disbursing money to its students. This does not mean that the institution cannot choose to use checks in those situations where it finds doing so is to its benefit, just that it should not be forced to affirmatively offer a check option to its students. Similarly, with regard to institutions that find themselves in a position in which they cannot use electronic banking options, such institutions always have the option of choosing to use checks or including them in the student choice selection process. For similar reasons, we do not find persuasive the suggestion that the Department implement a gradual phase-out of paper checks over three to five years. If an institution wants to continue to use checks or include them in a student choice selection process, it may do so. With regard to the comment that acknowledges that checks are an inferior way of disbursing money in most instances, but that the check option should perhaps be preserved anyway to provide an incentive for all parties to ensure that EFT methods work well, are convenient to access, and are priced appropriately, we do not believe that that is the best way to achieve that goal. We believe that the regulations sufficiently address these goals and that any incremental value in keeping checks for this purpose is outweighed by the costs to institutions of requiring checks as a payment option.

The Department acknowledges that there are times when issuing a check will be necessary to pay a credit balance to a student. As is the case under the current regulations, when an institution wishes to pay a student with an EFT, but the student does not choose such an option, or otherwise fails to supply the institution with sufficient information in a timely manner to allow the institution to disburse the title IV credit balance in the desired fashion, the institution must still pay the student. The institution can then issue a check to that individual to fulfil the requirement. And we acknowledge that some institutions may choose to use checks exclusively or in limited circumstances. However, after considering the arguments made by the commenters, we agree that a check is not usually the best choice for the institution or the student and that the Department should not require it to be offered as an option to the student in the selection process. The institution should be left with the option here, and

be able to choose to use checks exclusively or move its disbursement process towards electronic processes and only have to issue a check (or pay with cash) as a last resort.

Finally, with regard to the suggestion to eliminate the cash option, the Department believes that, while it is probably only rarely used, it may be a convenient way for an institution to pay a student in some circumstances and, therefore, is being retained. However, this option is not required to be listed in a school's selection process and, thus, is not one that a student can choose.

Changes: We have revised § 668.164(d)(4) by removing the requirement that an institution must include checks as an option in its selection process, and we are adding a requirement that indicates that the institution must be able to issue a check or disburse cash in a timely manner to a student in situations where the student does not provide the institution with the necessary information to receive a disbursement under one of the methods in the institution's selection process.

Ban on Sharing Student Information Prior to Account Selection (§ 668.164(e)(2)(i)(A) and (f)(4)(i)(A))

Comments: Several commenters expressed support for limiting the amount of personally identifiable information shared between schools and financial institutions or third-party servicers that offer financial products to students. However, other commenters expressed concerns that the Department's proposal, as written, would not allow institutions to share enough information with their servicers to prevent fraud and ensure accuracy. These commenters suggested that, at minimum, a servicer would need a student ID number to authenticate a student's identity. Commenters also suggested that a photograph, a unique identifier, the amount of the disbursement, the date of birth, and a ''shared secret'' would also be necessary to ensure the security of title IV funds.

One commenter stated that universities have the right to share information relating to their business practices with third-party servicers without requesting prior permission and that this provision could cause delays in transferring title IV funds to students. Another commenter stated that the allowable data that could be disclosed under the proposed regulations would be more limited than what educational institutions are permitted to disclose under the directory information exception to consent under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g(a)(5) and 34 CFR 99.31(a)(11) and 99.37.

Commenters also expressed concern that the proposed regulations could cause increased administrative burden for institutions. One commenter suggested that institutions would have to implement a roundabout process wherein institutions themselves would ask students if they wanted to open a financial account and then, only upon receiving consent to the opening of the account, share the information necessary to permit the third-party servicer to authenticate the student's identity or cut a disbursement check. That commenter noted that such a process would be impractical. Other commenters suggested that the proposed language would interfere with a student's ability to select another disbursement option such as a check or EFT to a preexisting account.

One commenter suggested that current regulations prevent student information from being used for purposes other than identification, and noted that other government programs use Social Security numbers or dates of birth for identification purposes. Another commenter recommended that the Department revise the regulations to clarify that third-party servicers are still able to obtain information required to perform general administrative purposes.

However, other commenters suggested that the proposed regulations did not go far enough. These commenters expressed concern that even the limited personal information that servicers and financial institutions can receive prior to a student giving consent allows account providers to market accounts to students and that the materials received by students under these circumstances imply a school's endorsement of those accounts. Commenters also suggested that we include a provision strictly limiting use of data shared with a third-party servicer to the processing of title IV disbursements, and prohibit institutions from disclosing this information to any other entity except for the purposes of fulfilling title IV duties.

Discussion: We generally agree with the commenters who stated that some additional information is necessary for third-party servicers to ensure that title IV funds are safely transferred to the students for whom they are intended. For example, we agree that sharing a student ID number (as long as it does not include the Social Security number of the student); the amount of the disbursement; and a password, PIN code, or other shared secret provided by the institution that is used to identify the student serves a legitimate authentication purpose. We also believe the regulations should provide for the sharing of any other data deemed necessary by the Secretary in a **Federal Register** notice, so as to ensure that the regulations can be kept up to date with technology and changes in best practices. As a result, we have added these items to the list of data an institution may share with an account provider under a T1 arrangement. We have also accommodated the need of servicers for additional information by making this information available upon selection by the student of the servicer's account in the student choice process. We note that this information sharing is unnecessary if the student opts to use an existing account, but if the student chooses the servicer's account, we regard that as tantamount to consent to sharing by the institution with the servicer of the information necessary to authenticate the student's identity for purposes of making the title IV payment. We did not wish to delay disbursement in the latter situation.

We disagree with the commenter who stated that universities have the right to share any information they choose with their business partners without prior consent. FERPA, 20 U.S.C. 1232g and 34 CFR part 99, contains broad limits on the right of educational institutions and agencies receiving funding under a program administered by the Department to disclose an eligible student's personally identifiable information from education records without the student's prior, written consent. Wholesale sharing of information, beyond the information needed to perform the servicing tasks, is not within the servicer's purview under title IV.

We also disagree that this regulatory provision, with the changes described above, will cause significant delays with regard to transferring title IV credit balances to students. An institution desiring to share additional information needed by the servicer only has to ensure that the student made a selection in the student choice process that triggers additional disclosure of personally identifiable information.

We agree with the commenter who stated that the provision, as proposed in the NPRM, would have been more restrictive than FERPA with respect to the disclosure of directory information. As a result, for accounts offered under T1 arrangements, we have clarified that an institution may share directory information, as defined in 34 CFR 99.3 and in conformity with the requirements of 34 CFR 99.31(a)(11) and 99.37, in addition to the student ID

number; the amount of the disbursement; and a password, PIN code, or other shared secret provided by the institution that is used to identify the student prior to selection of the account in the student choice process. For accounts offered under T2 arrangements, we have clarified that an institution may share directory information, as defined in 34 CFR 99.3 and in conformity with the requirements of 34 CFR 99.31(a)(11) and 99.37—but nothing else—with the account provider prior to obtaining consent to open an account.

We acknowledge that the restrictions on information sharing may create additional administrative burden for institutions. However, we believe that the changes made to these provisions ensure that institutions that have T1 arrangements will not have to engage in the two-step process envisioned by these commenters to deliver a credit balance. We believe that the changes to the regulations ensure that institutions can continue to use third-party servicers to contact students, safely identify them, and guide them through the selection process. A student can then either choose an account offered under a T1 arrangement, prompting the sharing of additional information, or provide his or her banking information at the selection menu. For this reason, we do not believe these regulations will interfere with a student's ability to select his or her own, preexisting account.

In addition, we do not believe that the restrictions on information-sharing as they apply to accounts offered under T2 arrangements are problematic from a credit balance delivery perspective since account providers under T2 arrangements do not manage direct payments of title IV funds. Before the student has agreed to open the account, there is no need or justification for sharing the student's non-directory information with the account provider. We disagree with the commenter who suggested that current regulations have been sufficient to deter unwarranted sharing of personally identifiable information. Oversight reports [33] have shown otherwise. Moreover, while other government programs may use Social Security numbers or dates of birth for identification purposes, in light of the noted concerns about unwanted (and unnecessary) sharing of student personally identifiable information, we do not believe that there is any need for sharing personally identifiable information beyond that permitted by the regulations, as revised, prior to selection by the student of the servicer's account or consent from the student to the opening of an account offered under a T2 arrangement.

We disagree with the commenter who suggested that we clarify that third-party servicers are still able to obtain information required to perform general administrative purposes. We believe such a statement is too broad and would undermine our ability to ensure that student information is not used for purposes other than the delivery of title IV credit balances.

We agree with the commenters who suggested that the provision as drafted did not address the fact that shared information should only be used for legitimate title IV purposes and not the marketing of financial accounts. As a result, we have revised the section on T1 arrangements to state that institutions must ensure that information shared prior to student selection is used solely for activities that support making direct payments of title IV funds and cannot be shared with any other affiliate or entity. We have not made a similar change to the provisions governing accounts offered under T2 arrangements because those account providers do not process title IV funds. Furthermore, under the regulations account providers under T2 arrangements will not have any non-directory information to disclose prior to the student's consent to opening the account.

Changes: We have revised § 668.164(e)(2)(ii) to state that, under a T1 arrangement, the institution must ensure that any information shared as a result of the institution's arrangement with the third-party servicer before a student makes a selection of the financial account associated with the third-party servicer as described under paragraph (d)(4)(i) of the section does not include information about the student other than directory information under 34 CFR 99.3 and disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, beyond—

- A unique student identifier generated by the institution that does not include a Social Security number or date of birth, in whole or in part;
- The disbursement amount;
- A password, PIN code, or other shared secret provided by the institution that is used to identify the student; or
- Any additional items specified by the Secretary in a notice published in the **Federal Register**.

We have also revised § 668.164(e)(2)(ii) to provide that the institution must ensure that the information—

- Is used solely to support making direct payments of title IV, HEA program funds and not for any other purpose; and
- Is not shared with any other affiliate or entity for any other purpose.

We have also revised § 668.164(f)(4)(i)(A) to state that, under a T2 arrangement, the institution must ensure that the student's consent to open the financial account is obtained before the institution provides, or permits a third-party servicer to provide, any personally-identifiable information about the student to the financial institution or its agents, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37.

Sending an Access Device Prior to Consent (§ 668.164(e)(2)(i) and (f)(4)(i)(B))

Sending an Access Device Not Used for Institutional Purposes

Comments: While many commenters expressed strong support for the provision preventing institutions from sending an access device to a student before receiving consent to open an account on the grounds that this procedure implies that the card is required to receive title IV funds, some commenters did object to the ban on sending access devices prior to receiving consent.

Several commenters who objected stated that this provision would slow the speed with which students are able to receive their title IV funds and that this provision would create more administrative burden for institutions, financial institutions, and third-party servicers in delivering credit balances to students. Other commenters also stated that this provision disproportionally disadvantaged unbanked students and students who do not currently have a preexisting bank account by delaying their access to title IV funds.

Several commenters contended that requiring institutions to obtain consent would greatly increase administrative burden. One commenter in particular noted that, while they supported the provision generally, the regulatory language suggests that a school must obtain the consent from a student to open an account, even if the student has already provided consent to the third-party servicer or a financial institution. This commenter suggested that requiring a school to obtain consent could confuse students. The commenter requested that we clarify that a third-party servicer or financial institution is able to obtain the consent necessary to receive an access device.

Finally, several commenters suggested that existing laws and regulations make

[33] OIG at 19.

this provision unnecessary, and that the existing requirement to disclose terms and conditions of an account prior to its opening provides sufficient consumer protections for students. Commenters also argued that strict requirements regarding financial accounts already exist and that it could be difficult for financial account providers to comply with new requirements.

Discussion: While we acknowledge that prohibiting an institution or third-party servicer from sending an access device to a student prior to the student's consent may in some cases cause delays in disbursing title IV funds, we do not feel those delays outweigh the concerns stated in the NPRM that the pre-mailing of an inactive access device implies that the associated account is required by the institution.[34]

We also acknowledge the commenter's concerns that this provision would disproportionally disadvantage students without existing bank accounts by delaying their access to title IV funds. However, we do not feel that this provision creates a significant disadvantage since students will still be able to obtain an access device after providing consent to open an account. Institutions may time their student choice process so as to accommodate these students.

With regard to the comment that the proposed regulations implied that the institution, not the third-party servicer or financial institution, would have to obtain consent to open a financial account before sending an access device, we note that this was not our intention. We have revised § 668.164(e)(2)(i)(A) and § 668.164(f)(4)(i)(B) of the final regulations to clarify that a third-party servicer or financial institution can obtain the consent before sending an access device. We believe this also addresses the commenters who raised concerns about administrative burden for institutions. However, we note that institutions are responsible for ensuring that a process is in place to obtain consent before an access device is sent.

We respectfully disagree with the commenters that argued that sufficient consumer protections already exist in current law or in other provisions of these regulations that render this provision unnecessary, especially in light of adoption rates ranging from 50 percent to over 80 percent at some institutions.[35] We also agree with the commenters that stated that this provision is necessary to dispel the implication that these cards are required for students to access their title IV funds.

Changes: We have condensed the two separate provisions regarding sending and validating an access device into a single provision. We also have revised § 668.164(e)(2)(i)(A) and (f)(4)(i)(B) to remove language specifying that it must be the institution that obtains the student's consent to opening the financial account before an access device may be sent to a student.

Sending an Access Device Also Used for Institutional Purposes

Comments: Many commenters expressed support for the provision that would ban the practice of allowing an access device used for institutional purposes to be validated to enable the student to access the financial account before the student consents to open the financial account. However, several commenters stated that this provision still does not go far enough, arguing that allowing access devices used for institutional purposes to be validated still suggests that such an account is a preferred option. Other commenters expressed concern that sending a cobranded student ID card that has this capability still allows a third-party servicer or financial institution to send access devices to students before they have consented to open an account. One commenter requested that the Department prohibit all cobranding of student ID cards.

Finally, one commenter suggested that, while they agree with the provision, third-party servicers and financial institutions should be allowed to collect the consent needed to validate an access device that is also used for institutional purposes, arguing that forcing the institution to do so creates unnecessary administrative burden.

Discussion: We acknowledge that allowing access devices used for institutional purposes to be validated, enabling the student to access a financial account, still implies that such an account is preferred or required. However, we do not feel that concerns over this implication outweigh the benefits a student might receive from such an arrangement and have chosen not to regulate this practice beyond what was proposed in the NPRM.

We also acknowledge that this provision may allow an institution and its third-party servicer or financial institution to send unsolicited access devices that also function as school ID cards before a student consents to open an account. One possible approach to this circumstance would be to prohibit an institution from sending a student ID with an inactive access device and effectively require institutions and their third-party servicer or financial account provider to send a second student ID with an activated access device only after the student consents. As we explained in the NPRM, we recognize the costs to institutions with mandating such a framework and therefore declined to require this two-step process in the regulations. Nevertheless, we note that financial institutions must still comply with consumer protection rules regarding unsolicited access device issuance (as set forth in Regulation E, 12 CFR 1005.5).

We disagree with the commenter who requested that we ban all cobranding on access devices used for institutional purposes. Our concern with respect to these arrangements is the effect of cobranding on a participating institution's discharge of its responsibilities for delivering title IV funds. The related requirements in the regulations are tailored to that purpose.

Finally, as with the provision requiring institutions to obtain consent to open an account before sending an access device, we have clarified that a third-party servicer or financial institution can collect the consent required prior to validating an access device that is also used for institutional purposes.

Changes: We have condensed the two separate provisions regarding sending and validating an access device used for institutional purposes into a single provision, and we have changed the language referencing ''linking'' an access device used for institutional purposes to ''validating'' in order to better conform with banking regulations and terminology. We also have revised § 668.164(e)(2)(i)(B) and (f)(4)(i)(C) to remove language specifying that it must be the institution that obtains the student's consent to open an account or validate an access device.

Disclosure of Account Information (§ 668.164(d)(4)(i)(B)(2))

Comments: Several commenters expressed concern that the disclosure requirements in § 668.164(d)(4)(i)(B)(*2*) could conflict with the disclosure forms the CFPB is developing. Commenters also noted that having duplicative disclosures could confuse students and significantly increase costs for account providers. Some of these commenters also requested that the Department specify that any disclosures required by the CFPB would satisfy the requirements under these regulations. One commenter contended that a

[34] 80 FR 28504.

[35] Consumer Financial Protection Bureau, Request for Information Regarding Financial Products to Students Enrolled in Institutions of Higher Education (Feb. 2013) (hereinafter referred to as ''CFPB RFI'').

standard disclosure would not capture the disparate needs of various institutions and the students they serve.

Some commenters also expressed concern over transparency, and other risks of duplicative or conflicting requirements. One commenter stated that standard banking disclosures are sufficient to inform students of the terms and conditions of an account and asked that we strike this requirement entirely. Another commenter stated that transparency was already in the best interests of the financial institutions as they compete for business. Another commenter contended that requiring disclosures for only accounts offered under T1 or T2 arrangements would not be helpful or transparent for students since they would not receive comparable information regarding check fees or preexisting financial accounts. Finally, one commenter suggested that requiring these disclosures may inadvertently compel institutions to market these accounts to students.

Commenters also stated that there may be insurmountable difficulties in delivering these disclosures in certain situations. For example, some commenters noted that, for a student opening a bank account at a financial institution prior to enrolling in an institution of higher education, it would be impossible to give that student the disclosure, as the financial institution would not know that the prospective accountholder was planning to become a student at an institution where a T1 or T2 arrangement exists.

Other commenters expressed concerns with the process of developing the disclosures. One commenter expressed disappointment that a prototype of the disclosures was not included in the NPRM. Other commenters opposed the creation of a disclosure form without notice and comment rulemaking. One commenter expressed concern that the NPRM did not elaborate on what would constitute a ''commonly-assessed fee'' and how we would determine which fees would be included in the disclosure. Another commenter asked that we create a consumer-friendly and consumer-tested format for these disclosures, and that the Department seek feedback from students, families, and other groups when developing the form in a process similar to the development of Truth in Lending Act disclosures for private student loans.

One commenter stated that the Department should ensure that there is adequate time for financial institutions to develop and begin delivering disclosures to students.

However, several commenters noted that they supported the idea of increased transparency for students and the creation of the new disclosures. One commenter in particular requested that the Department create a database containing all of the disclosures collected from financial institutions with T1 or T2 arrangements.

Finally, one commenter noted the importance of disclosing the manner in which a financial institution calculates overdrafts in the forms, including the order in which transactions are processed, the maximum number of overdrafts that can be charged in a day, any exceptions to the overdraft fee, sustained overdraft fees and the number of days before that fee is charged, and alternatives to overdraft fees.

Discussion: The Department appreciates the commenters' concern that having duplicative disclosures could be both confusing for students and expensive for financial account providers to develop. However, as explained in the NPRM, because the CFPB's disclosure forms have not yet been finalized and because, as proposed, they would apply only to certain kinds of accounts, we are unable to determine that those specific disclosures will be appropriate for all accounts offered under T1 and T2 arrangements.[36] These disclosures also would not necessarily be triggered by the student choice process established by these regulations. Nevertheless, we will continue to work with the CFPB as it finalizes its disclosure forms to ensure that our forms do not conflict with the CFPB's final disclosures and, to the maximum extent possible, we will work to ensure that the CFPB's disclosures and the disclosures required for accounts offered under T1 and T2 arrangements are as similar as possible to mitigate confusion and administrative burden.

We disagree with the commenter who stated that the disclosures would not be helpful because different institutions and different students have different needs, and we believe the nature of these disclosures will make it easier for students to determine whether the accounts meet their needs, since the information will be presented in a standardized way.

We continue to believe that clear, short-form disclosures are necessary for students to make informed choices regarding financial accounts opened for deposit of title IV funds. For the reasons expressed in the NPRM,[37] including concerns regarding the need for objective and neutral information laid out in numerous government and consumer reports,[38] [39] we do not believe that current banking disclosures and free-market principles regarding transparency guarantee that title IV recipients are fully informed of the most relevant terms of their accounts or their rights and options when asked by or on behalf of their educational institution to select a financial account into which their title IV funds will be deposited.

We disagree with the commenter that stated that these disclosures would not be helpful to students since they do not receive comparable information for other account options. Because accounts are marketed specifically to students through T1 and T2 arrangements by institutions of higher education that participate in the title IV, HEA programs, we believe that a higher standard of disclosure is required to ensure that students are informed of the terms and conditions of the account before the account is opened, enabling them to make the choices best suited to maximizing the value of their title IV awards. We also disagree that objectively disclosing the terms of the accounts in the selection menu constitutes marketing by the school or the financial institution because the information is given as a standardized disclosure of consumer information and a student's own bank account is required to be the first, most prominent choice in the selection menu.

We thank and agree with the commenters who stated that it would be impossible for financial institutions to guarantee that students receive disclosures in cases where students open an account at a location outside the selection menu, such as at a bank branch. In response, we would like to note that these disclosures only have to be made in the selection menu in order for institutions to meet the requirements of § 668.164(d)(4)(i)(B)(*2*). In addition, the regulations impose no requirements in the student choice process as to disclosures with respect to pre-existing bank accounts.

We understand the concerns of the commenters who would have preferred for the forms to be published as part of the NPRM. However, because some of the accounts will be subject to CFPB disclosure requirements, we believe it is crucial to ensure that the student choice disclosures for those accounts dovetail with the CFPB's requirements once finalized to avoid confusion. When the Department's disclosures are developed, they will be published in the **Federal**

[36] 80 FR 28503.

[37] 80 FR 28503.

[38] USPIRG at 28.

[39] GAO at 35.

Register, and we will provide notice and an opportunity for comment at that time. This process will provide interested parties with the opportunity to comment to the Department and for the forms to ultimately reflect input received from both the CFPB and the Department. The Department's notice will also clarify which fees the Department considers to be ''commonly assessed.''

We agree with the concern that there may not be enough time for institutions to implement this requirement given that the disclosures have not yet been developed. For this reason, we have delayed implementation of this requirement to July 1, 2017.

We thank the commenter who suggested that we create a database of these disclosures. However, we believe that this is contrary to the purpose of the disclosures. The disclosures are meant to be given to students at the time they select an account for title IV purposes to ensure that they understand the features and fees associated with the account. We believe that creating such a database would not be consistent with this function and may in fact cause unnecessary confusion for students.

We thank the commenter who asked that we use consumer-testing and seek feedback from student and families. However, since we intend to work closely with the CFPB to mirror their consumer-tested forms and since we will subject the disclosures to publication in the **Federal Register** and notice and comment, we believe that additional formal consumer-testing is unnecessary in this case.

Finally, we thank the commenter who asked that we require institutions to disclose the manner in which overdrafts are calculated. We will take this feedback into account as we work to develop the disclosures.

Changes: We have revised § 668.164(d)(4)(i)(B)(*2*) to specify that institutions will not be required to list and identify the major features and commonly assessed fees associated with accounts offered under T1 and T2 arrangements until July 1, 2017.

General Comments on Fees (§ 668.164(e)(2)(iii)(B) and (f)(4)(ix))

Comments: There was strong support from several commenters for the fee limitations proposed in the NPRM. These commenters noted the importance of providing students protections sufficient to ensure they have reasonable opportunities to access their title IV aid without fees and are not charged unreasonable, onerous, or confusing fees. The commenters also agreed with the extensive documentation of unreasonable fee practices in consumer and government reports and discussed at length in the NPRM in support of these fee limitations.

Several other commenters opposed the proposed limitations on fees, arguing that student choice was a sufficient protection, and students affirmatively choosing to select a particular account will have a reasonable understanding of the fees associated with that account. These commenters also argued that the fee limitations would increase costs and burden on institutions and financial account providers because they would limit the costs that could be assessed to accountholders for the convenience of utilizing the accounts. Some commenters argued that limitations on fees would discourage responsible behavior on the part of accountholders—specifically, that learning to deal with account fees is part of becoming a responsible accountholder.

Some commenters also expressed support for the existing provision, maintained in the proposed regulations, that prohibits a fee for opening an account.

Commenters also submitted numerous additional recommendations specific to the individual fee provisions. We discuss those comments in subsequent sections of the preamble.

Discussion: We appreciate the support from numerous commenters for the proposed limitations on fees under § 668.164(e)(2)(iii)(B) and (f)(4)(ix). We agree with commenters that the specific fees prohibited are especially confusing, uncommon, or onerous, or otherwise have a high likelihood to deprive title IV recipients of an opportunity to reasonably access their student aid. We also thank commenters for supporting our decision to maintain the prohibition on a fee for opening an account.

We disagree with those commenters who argued that the fee limitations are unnecessary. We discussed in great detail our reasons for proposing to limit fees in the NPRM, and we believe the comments generally support those limitations.[40] We also believe the extensive documentation of troubling behavior by financial account providers in consumer and government reports reflects structural problems that prevent market mechanisms—disclosures and choice alone—from sufficiently protecting title IV recipients. We also disagree with commenters who argued that the fee limitations would lead to irresponsible accountholder behavior. On the contrary, government and consumer reports documented that the practices of account providers in the college banking market are troubling and not representative of the typical banking practices in the broader marketplace. These fee limitations are designed to eliminate the confusing, uncommon, and onerous fee practices of financial account providers that act in place of the institution and provide students with account options that allow them to access their title IV aid.

We agree with the commenters who argued that the proposed provisions will limit the ability of institutions and financial account providers to pass the costs of administering the title IV, HEA programs on to students. While we have allowed a reasonable fee structure to remain in place, an important impetus behind this rulemaking was a recognition that too many institutions were passing along the costs of administering financial aid programs to the aid recipients through these arrangements and generating artificial demand for otherwise uncompetitive financial accounts. This also resulted in the financial account providers profiting at students' and taxpayers' expense. In light of the fiduciary role of institutions as stewards of the title IV, HEA programs, we believe that this institutional cost shifting is an impermissible development and that students should not be in the position to pay significant, unavoidable, and misleading costs as a prerequisite to obtaining their Federal student aid.

Changes: None.

Prohibition on Charging an Account-Opening Fee (§ 668.164(e)(2)(iv)(B)(1) and (f)(4)(x))

Comments: Some commenters expressed concern over prohibiting a fee for account opening as it relates to student ID cards that serve both institutional and financial purposes. They suggested either altering or removing this provision, arguing that these multi-function cards primarily serve institutional purposes.

One commenter described student ID cards as primarily serving an institutional need and only including payment functionality as an ''incidental'' mechanism. The commenter expressed concern that under the account-opening fee provision, schools could not charge students to obtain these cards, resulting in a lack of funding for other programs. The commenter also expressed concern that this provision would prohibit charging a student for replacing an ID card.

[40] 80 FR 28505–28509.

Another commenter noted that a fee normally charged for opening a student ID card is allotted to a ''campus access control system,'' and eliminating the fee would result in less robust campus security.

Both commenters recommended that the Department exclude student ID cards from the provision prohibiting fees for account opening.

Discussion: We believe the concerns expressed by these commenters address an issue separate from the account-opening fee subject to these regulations. We understand that student IDs are by their nature primarily used for institutional purposes—whether for simple identification or to access student services, such as libraries, fitness facilities, and on-campus housing. However, the prohibition on fees charged for opening an account has been a longtime requirement under existing regulations.

Existing § 668.164(c)(3)(iv) requires that an institution ensure that the student does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of [ATM] card, or similar transaction device that is used to access the funds in that account. We have retained this existing requirement in the final regulations—specifically, § 668.164(e)(2)(iv)(B)(*1*) and(f)(4)(x) require that an institution ''ensure students incur no cost for opening the account or initially receiving an access device.''

It appears that the commenters' concern derives from the use of the term ''access device.'' However, this term is distinguished in the regulations from ''a card or tool provided to the student for institutional purposes, such as a student ID card'' (see, *e.g.,* §§ 668.165(e)(2)(i)(C) and 668.164(f)(4)(i)(C)). To the extent that an institution recoups the costs of disseminating a student ID card to all its enrolled students through direct fees, tuition costs, or other measures, this is not prohibited under the regulations. However, we maintain in the regulations the prohibition on charging a fee when a student ID card is validated, enabling the student to use the device to access a financial account or when the underlying financial account is opened.

While we intended this distinction in the proposed regulations and we are making no substantive change to the proposed regulations, we recognize that additional clarifying language will ensure that students are not charged a fee to open an account into which title IV funds will be deposited.

Changes: We have revised § 668.164(e)(2)(iv)(B)(*1*) and (f)(4)(x) to clarify the prohibition of a fee for allowing a card or tool provided to the student for institutional purposes, such as a student ID card to be validated, enabling the student to use the device to access a financial account, in addition to the existing prohibition on opening the account or initially receiving an access device.

ATM Access (§ 668.164(e)(2)(iii)(A) and (f)(4)(v))

Comments: Several commenters praised the Department for proposing regulations that would provide for the availability of free access to ATMs. These commenters noted the problems cited in consumer and government reports demonstrating that in several instances students attempting to withdraw their title IV funds were faced with an insufficient number of ATMs, ATMs running out of cash, ATMs in locked buildings, and other factors forcing students to out-of-network ATMs where they incurred quickly mounting fees. These commenters encouraged the Department to maintain requirements ensuring ATM access to title IV recipients.

Some commenters expressed support for the Department's approach of providing more specificity for the term ''convenient access'' than exists under the current regulations, while still allowing sufficient flexibility to provide ATM access tailored to individual institutions. Other commenters requested that the Department provide additional detail, expressing concern that without explicit guidance, financial account providers would be reluctant to offer campus cards for fear of running afoul of the regulatory requirements.

Several commenters argued that the requirement for access to a national or regional ATM network was both unnecessary and economically infeasible. One commenter argued that the OIG report showed that ATM access at the reviewed institutions was not an issue and that students had sufficient access to funds. Other commenters stated that the ATM access requirements would prevent providers from offering cost-efficient services and the costs of providing a fee-free network would be passed on to students or result in financial firms exiting the campus financial products marketplace. Other commenters also contended that the ATM access requirements are unnecessary, arguing that cash is increasingly becoming an outmoded method of payment, especially among students.

Some commenters stated that the requirements for access to a national or regional ATM network should apply equally to T1 and T2 arrangements. One commenter also stated that solely applying the requirements to T1 arrangements demonstrated the Department's unjustified preference for preexisting accounts. Another commenter recommended that the requirements be applied to T2 arrangements to ensure that students have sufficient access to their student aid credit balances.

One commenter expressed concern regarding withdrawal limits and noted that for students with large credit balances, daily limitations on the amount of funds that can be withdrawn would effectively eliminate the convenient access requirements under the regulations. This commenter recommended that we provide a mechanism by which students have fee-free access to their title IV refunds throughout the payment period.

Several commenters expressed concern that the convenient access requirements would be difficult for campuses located in rural, less populated areas. These commenters argued that ATMs have relatively high maintenance costs (one commenter stated that these costs are $20,000 to $40,000 per year), making it economically infeasible to install an ATM at those locations. Most of these commenters suggested that the Department establish a safe harbor providing a minimum number of students before the ATM access requirements would apply at a location; however, no commenters provided a recommendation for such a numerical threshold or justification for a particular number of students. Another commenter suggested that the Department should, rather than quantifying a required threshold for ATM access, evaluate each school on an individual and ongoing basis to ensure that students had sufficient ATM access. Other commenters recommended that we simply remove the convenient-access requirement from the regulations.

Some commenters noted that ATM access provided to accountholders in the general financial products marketplace rarely includes international access to ATMs. These commenters recommended that the provision governing convenient access to ATMs apply only to domestic ATM access.

Some commenters also noted that certain ATMs provide functionality unrelated to more traditional banking services, such as purchasing postage or other services. These commenters recommended we limit fee-free access to the more traditional banking services.

Finally, some commenters stated that out-of-network ATM fees are instrumental in recovering the funds lost in allowing out-of-network activity. These commenters recommended that the Department not prohibit fees charged for out-of-network ATM access for students.

Discussion: We appreciate the support from numerous commenters for the Department's proposal to provide specificity to existing regulations requiring that title IV recipients have convenient access to ATMs. As we explained in detail in the NPRM, there have been numerous troubling instances of students without the access required under the regulations, especially among third-party servicers offering financial accounts. An example of this included a financial provider which is responsible for disbursing title IV funds at about 520 schools, but, with 700 ATMs in service,[41] the number of ATMs at a given location may be insufficient for students to have a reasonable opportunity to access their funds at the surcharge-free ATM. As we explained in the NPRM, in the worst cases, this can cause a ''run'' on surcharge-free ATMs, especially during periods when funds are generally disbursed to students, that can result in these ATMs running out of cash[42] or causing dozens of students to line up to withdraw their money.[43] This raises a number of concerns regarding student access to title IV funds, not the least of which is the numerous fees many students incur when they are forced to withdraw their funds from out-of-network ATMs, sometimes at $5 per withdrawal.[44]

We also appreciate commenters' recognition, discussed during the negotiated rulemaking, that the Department has provided more specificity to the meaning of ''convenient access,'' while still recognizing that different institutional profiles require that we provide flexibility for account providers to meet this requirement. While we appreciate the request from some commenters that we provide even more detail, we believe that, by setting a clear standard without specifying one particular method by which providers ensure there are sufficient funds available, we take a balanced approach that recognizes the challenges of serving a varied higher education market.

In general, we disagree with commenters who claim access to a regional or national ATM network is unnecessary and economically infeasible. As described by the GAO report, and not disputed during negotiations by those representing financial institutions and servicers, the common approach in the financial products market is to provide a network, either regional or national, of surcharge-free ATMs. Even third-party servicers who, for some product offerings, restrict surcharge-free access still provide broader network coverage for a flat monthly fee, indicating this requirement should be feasible for providers.[45] We believe that this practice is already employed in the market, demonstrating that such products are economically feasible, and will not force account providers to stop providing cost-efficient services, or opt out of the market entirely. For these reasons, we also agree generally with commenters arguing that the ATM requirements should apply to both T1 and T2 accounts.

As discussed in a prior section we have, however, limited the ATM requirements applicable to T2 arrangements at institutions where the incidence of credit balances is *de minimis* as measured against thresholds of five percent of enrollment or 500 students.

With respect to the commenter who expressed concern that students would not have sufficient access to their title IV aid due to withdrawal limits, we believe this concern, while well-intentioned, will have limited practical impact because of the other regulatory provisions. Most relevant are the changes we describe in the section discussing the NPRM's 30-day fee restriction (discussed subsequently), which we proposed in part to address the situation described by this commenter. We believe that by providing students a method to withdraw a portion or the entirety of their aid free of charge students will be ensured sufficient access to funds to cover educationally related expenses. We also believe that the requirement for neutral presentation of account information will allow students to make an account choice that further limits the negative circumstances the commenter describes. Similarly, we see no utility in regulating for a cash-free economy that does not yet exist, at a time when cash remains a convenient means of exchange readily accepted from and usable by all students.

We recognize the merit of commenters' concerns about providing ATM access to all institutional locations, especially those with few title IV recipients. While we do not agree with the cost estimates provided in the comments—especially for ATMs located in less populated areas[46]—we believe it is important to balance the cost and burden of providing ATMs against the real need for students to have convenient access to their student aid, which is an existing regulatory requirement. We agree that institutions and their partner financial account providers' responsibility for providing an ATM at an institutional location should depend on the title IV credit balance recipient population at a particular location. Because commenters did not provide any estimate of what such a limit should be or basis on which such a limit should be calculated, we believe it would be overly proscriptive to set a particular numerical threshold that may bear little resemblance to the varied needs of divergent institutional locations. Instead, we believe that the additional detail we included in the NPRM with respect to the meaning of ''convenient access'' provides sufficient specificity. By requiring that there are in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, the students will have access to their funds while institutions will have flexibility in instances where few credit balance recipients are enrolled. For example, at a large campus with thousands of title IV recipients, it is likely that several ATMs would be required. In contrast, if an institution has a location with only a few credit balance recipients, or a location where students are only taking one class, an ATM that is part of a larger regional network at a store several blocks away may be sufficient. A location of an institution providing students with 100 percent of an educational program in a small town in a rural region would need to provide ATM access on campus if students would otherwise have no free access to their funds through an in-network ATM or branch office of the account provider located in the town.

We believe that § 668.164(e)(2)(viii) and (f)(4)(viii), which govern the best interests of accountholders, will enable institutions to ensure they are complying with this provision. If there continues to be ''runs'' on fee-free ATMs, or if students are forced to incur an abnormally high number of out-of-network ATM fees, or if the institution receives complaints about the number and location of its ATMs (all indicators that were cited in consumer and

[41] USPIRG at 16.

[42] Ibid. at 17.

[43] GAO at 22.

[44] USPIRG at 17.

[45] GAO at 22.

[46] The cost of providing such ATMs is discussed in further detail in the *Regulatory Impact Analysis* section of this preamble.

government reports), there would be good evidence that the institution is not complying with the fee-free convenient ATM access provisions of the regulations and would need to evaluate whether additional ATMs or different locations would be necessary.

It is also our expectation that, in practice, student access to a national or regional ATM network required under T1 arrangements will compensate for the absence of ATMs at very sparsely attended locations and will help bolster the number of fee-free ATMs at highly attended locations where market demand would be met by ATMs provided by a national or regional network. We believe that this approach will obviate the need for the Department to conduct ongoing monitoring of ATMs at each institution, which we think is unworkable. Instead, we think that periodic compliance reviews, in combination with access to fee-free ATM networks, will significantly improve student access to ATMs.

We also agree that fee-free international ATM access is not a common feature of the financial products marketplace, and we are accepting the commenters' suggestion that we limit this provision to domestic ATM access. In addition, we clarify that it was our intent to limit this provision to the basic banking functions of balance inquiries and cash withdrawals, and we did not intend to include more atypical or nonfinancial transactions.

Finally, we recognize that out-of-network ATM fees are both a common feature of the market and necessary in recovering the costs of providing access to such ATMs. While we never prohibited the owners of ATMs from assessing fees, we proposed to limit the imposition of an additional fee by the *student's* financial account provider for 30 days following each disbursement of title IV funds. However, due to changes we are making to that provision, which are discussed in detail in the section on the 30-day fee-free restriction, we are no longer limiting those fees.

Changes: We have revised § 668.164(e)(2)(iv)(A) and (e)(2)(iv)(B)(*3*) to specify that the institution must ensure that a student enrolled at an institution located in a State, has convenient access to the funds in the financial account through a surcharge-free national or regional ATM network that has ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into the student financial accounts. Similarly, for financial accounts under T2 arrangements, we have revised § 668.164(f)(4)(vi) to specify that an institution located in a State must ensure that students have access to title IV funds deposited into those accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution makes direct payments of those funds. Finally, we have revised both provisions to limit the fee-free access requirement to balance inquiries and cash withdrawals.

Prohibition on Point-of-Sale (POS) Fees (§ 668.164(e)(2)(iii)(B)(2))

Comments: There was universal support among commenters for prohibiting POS fees that accompany the debit and PIN transaction system for T1 arrangements. Commenters characterized these fees as unusual, expensive, and atypical of the financial products marketplace. Since POS fees are generally not part of regular banking practices, commenters argued that students do not realize that the fees exist when opening an account. Commenters contended that it is entirely appropriate for the Department to ensure a fee is not charged to title IV recipients when that fee is not generally assessed in the banking market.

Some commenters suggested broadening the provision to ban all fees that serve to steer accountholders to a particular type of payment network. One commenter also explained that evolving payment systems may lead to additional, unforeseen fees that should be covered in the POS fee provision. This commenter recommended that the Department prohibit ''any discriminatory cost . . . for the use of any particular electronic payment network or electronic payment type.''

One commenter noted that it is customary practice for banks to charge per-purchase transaction costs for international purchases and recommended that we limit the POS fee prohibition to transactions conducted domestically.

Discussion: We appreciate the support of commenters for this provision and the idea that students' title IV aid should be protected from fees that are difficult to understand or anticipate, and are unusual or present particular danger to student aid recipients.

As we stated in the NPRM, most campus cards are portrayed as debit cards (or having functionality more similar to a debit card than a credit card) and students are therefore likely to misunderstand that selecting a ''debit'' option is not required to complete a transaction, or that doing so would result in a fee.[47] [48] Because these POS fees can quickly add up, depriving students of the title IV funds to which they are entitled,[49] [50] and because these fees are atypical to the market,[51] we agree with commenters that it is especially troubling that these fees are charged to student aid recipients, many of whom may still be gaining a familiarity with banking products. Because of the practices employed by certain providers and identified in consumer and government reports, we continue to believe that a prohibition on this fee for T1 arrangements is appropriate.

While we appreciate the principle underlying commenters' recommendation to expand this prohibition, we continue to believe that doing so to include T2 arrangements is unwarranted at this time. For the reasons discussed at length in the NPRM and reiterated in the section discussing fees generally, we believe it is appropriate to apply the fee restrictions only to T1 arrangements. Because POS fees are not charged by traditional banking entities [52] we are not expanding this provision to T2 arrangements.

We acknowledge the commenter's interest in protecting students against unforeseen fees that may become established as technology progresses and other payment methods gain widespread use. Throughout the negotiated rulemaking process, we received a significant amount of feedback emphasizing that the financial products marketplace is changing and will continue to change rapidly. We have made a significant effort throughout this rulemaking process to protect student aid recipients and safeguard taxpayer dollars, while remaining mindful of possible unintended consequences, such as the restriction of technological progress. We believe we have struck a balance in the regulations that will allow students the opportunity to make an individualized choice of account option with sufficient protections, while giving account providers flexibility to develop new student-friendly payment methods.

The commenter's suggested language to prohibit all unanticipated fees is well intentioned, but we believe it is overly broad. We believe that it would be infeasible to determine the

[47] OIG at 13.

[48] GAO at 20.

[49] Ibid.

[50] CFPB RFI.

[51] GAO at 20.

[52] USPIRG at 27.

permissibility of a fee based on whether a cost is ''discriminatory.'' Instead, we have designed § 668.164(e)(2)(viii) and (f)(4)(vii) to accomplish the goals implicit in the commenter's suggestion. By requiring that institutions conduct reasonable due diligence reviews regarding the fees under the contract, we believe the regulations will help prevent fees similar to POS fees from being charged to students.

Finally, we agree with the commenter that international per-purchase transaction fees are a common characteristic of financial products, and it is reasonable for students to expect those fees. We are therefore altering the POS fee prohibition to reflect that it will apply only to domestic transactions.

Changes: We have revised § 668.164(e)(2)(iii)(B)(*2*) to specify that the institution must ensure that the student does not incur any cost assessed by the institution, third-party servicer, or third-party servicer's associated financial institution when the student conducts a POS transaction in a State.

Overdraft Fee Limitation/Conversion to Credit Instrument (§ 668.164(e)(2)(v)(B) and (f)(4)(vi))

Comments: Several commenters expressed support for the overdraft fee limitations, citing not only the supporting research we highlighted in the NPRM, but also additional support from government sources including the CFPB, as well as their own experiences with overdraft fees, particularly those imposed on students at their institutions. These commenters noted that students may be particularly vulnerable to overdraft fees because of their relative inexperience with banking products. They also noted that title IV recipients would be vulnerable to these fees, because many have relatively lower incomes. Commenters further stated that overdraft fees are of particular concern because overdrafts are more likely to occur without the knowledge of the student.

Multiple commenters stated that the overdraft fee limitation should extend to students with accounts offered under T2 arrangements as well, arguing that the dangers of overdraft fees for T1 arrangements are equally present in T2 arrangements.

In contrast, other commenters argued that overdrafts represent a benefit to accountholders. These commenters argued that overdrafts (and their associated fees) represent a protection, allowing recipients to utilize the overdraft feature in the case of an emergency, which would be impermissible with the overdraft fee limitation. These commenters also stated that the proposed fee limitation ignores current regulatory procedures (including Regulation E and Regulation DD) that require accountholders to opt-in to enable overdrafts and the related fees. These commenters argued that overdraft fees are common to the banking market and that it would be operationally difficult to apply a particular fee limitation to a subset of accountholders. For these reasons, these commenters recommended removing the limitation on overdraft fees in the regulations.

Some commenters suggested that the regulations specify that the overdraft fee limitation does not apply to bounced checks or Automated Clearinghouse (ACH) over-withdrawals. Another commenter asked for clarification on whether the provision only applies when the student is using a card or if it applies to any transaction that exceeds the balance of the financial account. Another commenter requested clarification as to whether schools would automatically violate the provision if a student with pre-approved overdraft services retains his or her account when enrolling.

That commenter also stated that the term ''credit card'' is not defined in the proposed regulations, and suggested that we clarify that the provision does not apply to financial institutions when they are marketing credit cards outside of a T1 or T2 arrangement. Finally, the commenter recommended that we clarify that the provision does not apply to linking an account to a credit card for the purpose of making credit card payments or covering insufficient funds when a credit card product is opened under a mechanism separate from the depository account.

We also received a limited number of comments from a financial account provider and its payment processer that currently offer a financial product that does not allow overdrafts or charge any related fees. These comments were more technical in nature and laid out a set of scenarios where the proposed regulations would create significant operational difficulties for the functioning of their voluntary prohibition on overdrafts. While the commenters' specific accounts prevent accountholders from exceeding the balance in their accounts, the commenters pointed out that there are circumstances where an overdraft of the account is unavoidable. The simplest iteration is force-post transactions (where a matching authorization is not received prior to the settlement of the transaction, often when a merchant authorizes a transaction but does not settle it with the issuer until a later date). An example of such a transaction would be if an accountholder has sufficient funds to charge a restaurant bill and the transaction is therefore approved, but the accountholder adds a tip after the transaction is approved that exceeds the remaining account balance; when the transaction processing is completed, the accountholder has a negative balance. The commenters stated that the financial account provider is unable to know of these circumstances at the point of the transaction is approved and thus cannot deny the initial transaction without overly onerous transaction-denial practices (*e.g.,* denying a charge on a card if the remaining balance after the charge would be less than $50).

These commenters identified three other types of situations where similar circumstances exist: Stand-in processing (where the amount charged cannot be determined due to a communication error between the account provider and the transaction processer but the parties have an agreement for a limited pre-approved charge amount); batch processing (when transactions are not approved in real time but are instead ''batched'' and approved in 24-hour increments or a similar time period); and offline authorizations (where a communication error occurs in the merchant's system, the merchant nevertheless accepts the charge but the payment cannot be reconciled by the issuer or account provider at the moment of the transaction, so the accountholder's balance will not accurately reflect the balance or prevent future overdrafts). In all of these cases, the commenter noted, the overdraft is inadvertent on the part both of the account holder and the account provider, and a product of the operational realities of the payment processing system common to financial accounts. For the commenters' customers, no fees are charged to the accountholder for these overdrafts.

The commenters noted that while we acknowledged these scenarios in the preamble to the NPRM, we did not create an exemption for these technical limitations. They encouraged the Department to create an exception for these limited, more technical overdrafts without changing the overall structure of the overdraft fee limitation, arguing that in the absence of such an exception they would not be able to offer accounts that already disallow overdrafts and related fees.

Discussion: We appreciate the commenters who supported our decision to propose an overdraft fee limitation in the NPRM. As we explained in detail in the NPRM, there

are numerous reports that document the many dangers of overdraft fees, particularly to title IV recipients.[53] These fees can quickly add up with little notice to the accountholder, can exceed some students' total credit balance, and are easily misinterpreted as a benefit when in fact a transaction can easily be denied at no cost to either the accountholder or account provider. We believe these concerns are further supported by the successful implementation of accounts such as those described by commenters that generally do not allow accountholders to overdraft and thus prevent the student from incurring multiple fees that can potentially cost hundreds of dollars.

The facts supporting the overdraft fee limitation were not sufficiently rebutted by commenters who recommended that we eliminate the limitation. Contrary to commenters' arguments, we believe a financial institution that charges accountholders a fee that often far exceeds both the cost of the underlying transaction and the cost of providing the service itself is not providing a benefit, especially when the charge can be denied prior to a cost being incurred. The evidence that some account providers purposefully reorder transactions to maximize overdrafts fees helps persuade us that charging overdraft fees in general is simply a way to extract the maximum amount of fee revenue from accountholders, rather than serving as a benefit to accountholders.[54]

While we acknowledged in the NPRM that, under other Federal regulations, an opt-in is required before overdraft charges are assessed, the research we cited[55] demonstrating that individuals are easily misled into believing that overdraft ''protection'' actually prevents the account provider from charging overdrafts calls into serious question commenters' claim that we were disregarding the existing opt-in requirements as providing sufficient protection for title IV recipients. With respect to commenters' argument that overdraft fees are common in the banking market, given the general confusion about them, we think additional protection for title IV recipients is warranted in the interests of responsibly administering the title IV programs. Notwithstanding the prevalence of these charges, we detailed in the NPRM why overdraft charges are particularly dangerous for students and title IV credit balance recipients specifically.[56]

With respect to commenters that stated it would be operationally difficult to apply the overdraft fee limitation to a subset of accountholders, where an institution and a financial account provider choose to voluntarily enter into a contract that gives rise to a T1 arrangement but nevertheless regard this operational hurdle as impossible to overcome, we believe that one alternative would be to offer title IV recipients at the contracting institution a standalone bank account that complies with the requirements for T1 arrangements. For a further discussion of this issue, please refer to the discussion under the section discussion T1 arrangements generally.

However, we decline to expand the overdraft provision to T2 arrangements for the same reasons we are not expanding the other fee-related provisions applicable to T1 arrangements. As we discuss in more detail in the other relevant sections of this preamble, we believe that expanding the fee provisions as commenters suggested would collapse the distinction between T1 and T2 arrangements and would not properly reflect the respective levels of control over the disbursement process and risk presented by different types of arrangements.

With respect to commenters' questions regarding what types of practices are included in this overdraft limitation, the text of the regulations make clear that it is any transaction that causes the balance to be exceeded, whether completed at an ATM, online, or with a physical card or access device. However, it was not our intent to include bounced checks or inbound ACH debits (*i.e.,* those authorized to a merchant and merchant's financial institution) as a part of this limitation because the consumer's institution is unable to decline such transactions when these transactions are initiated. On the other hand, we do not find this same distinction in the case of outbound ACH payments (*i.e.,* bill payments in which the consumer provides authorization and instruction directly to his or her institution). In contrast to checks and inbound ACH, an account provider could deny an outbound ACH payment request before the transaction is submitted to the ACH network, regardless of whether the payment is a standalone request or recurring preauthorized payment.

We appreciate the detailed comments laying out the specific circumstances under which overdrafts are unavoidable as an operational matter even for products that do not allow accountholders to overdraft. We are persuaded that there are circumstances outside the control of both the accountholder and financial institution in which inadvertently authorized overdrafts can occur. We also understand that these circumstances are relatively limited in nature, are all characterized by the fact that the overdraft cannot be preempted, and do not prevent the financial account provider from preempting the more typical and more harmful overdrafts that occur when the transaction exceeds the account balance at the time of authorization. Most importantly, accountholders are not charged a fee for these transactions. In these instances, the accountholder would be informed that they have exceeded the balance on their account when the student checks their account balance, the financial institution notifies the student (such as through text message), or when a subsequent transaction is rejected, and would therefore be quickly informed that additional funds should be deposited on the account without incurring a fee. Permitting these inadvertently authorized overdrafts would also allow the account provider to continue offering its present services. We are persuaded that it is reasonable and practical to allow for a limited set of circumstances in which accounts may exceed the remaining balance, but do not result in fees imposed on students. We were initially concerned that negative balances arising from inadvertently authorized overdrafts would result in inquiries and negative ratings on accountholders' credit bureau reports. However, following conversations with the CFPB, we believe these concerns are not sufficient to disallow this practice. Based on these conversations, we believe that credit bureau reporting would be unlikely, both because financial account providers would be unlikely to report them, and because accountholders, in most cases, would be able to easily replenish the negative balances on their accounts. Even in the event of credit bureau reporting, the amounts in question are so small that it would be relatively easy to cure such a negative report.

For these reasons, we are establishing an exception for the overdraft limitation where, in the case of an inadvertently authorized overdraft (specifically, force-post transactions, stand-in processing, batch processing, and offline authorizations), it is permissible for an

[53] 80 FR 28508–28509.

[54] 80 FR at 28508.

[55] Ibid.

[56] Ibid.

account balance to be negative so long as the accountholder is not charged a fee for the inadvertently authorized overdraft.

For accounts that are offered under a T1 arrangement, such accounts would have to be in compliance with the overdraft provision on or before the effective date of the final regulations. We also note that accounts offered under T1 arrangements would have to comply with this provision regardless of whether the student has already elected to receive an account with overdraft services.

We believe the term ''credit card'' is sufficiently clear—the credit card prohibition has long been part of the cash management regulations and, to our knowledge, has not caused any confusion. For accounts that link a preexisting credit card or a credit card that is opened in a distinct process and that complies with existing credit card regulatory and statutory requirements, we do not believe that credit is being extended to the account offered under a T1 arrangement and therefore the overdraft limit is not at issue. In this circumstance, the credit is being offered under a distinct product and account that must comply with separate banking and credit card requirements.

Changes: We have revised § 668.164(e)(2)(v)(B) to allow for an inadvertently authorized overdraft where an accountholder has sufficient funds at the time of authorization but insufficient funds at the time of transaction processing, so long as no fee is charged to the student for the inadvertently authorized overdraft.

30-Day Free Access to Funds (§ 668.164(e)(2)(iii)(B)(4))

Comments: The overwhelming majority of commenters objected to this provision for several reasons. Many commenters noted its broad application, which would effectively prohibit fees assessed to students for banking transactions that are unusual or not typically provided free of charge. Such transactions identified by commenters included, among others, wire transfers, bounced checks, replacement cards, and international transactions. These commenters noted that this broad application would allow students to use their accounts in irresponsible ways, would force account providers to cover costs not typically provided for free to the general market, and would increase costs to an extent that account providers would exit the student market.

Several commenters argued that this provision would ultimately harm students. These commenters suggested that a 30-day window would provide strong incentives for students to spend their funds more quickly than they otherwise would, encouraging irresponsible spending at the expense of building good savings habits. These commenters also suggested that because such a provision is so at odds with normal banking practices, it would be counterproductive from a financial literacy standpoint because it would not paint a realistic picture of the banking options students will have upon graduation.

Many commenters presented operational concerns about the 30-day fee restriction, arguing that tracking separate, perhaps overlapping 30-day timeframes for multiple disbursements would be overly complex and expensive. These commenters noted that some disbursements to financial accounts contain title IV funds, but others do not, or may contain a combination of Federal funds, State funds, and private or institutional funds. The commenters asserted that the difficulty associated with separately identifying and tracking a 30-day period associated with only certain disbursements vastly outweighs the benefits provided to the student. Some commenters also noted that for institutions that offer FWS funds or make multiple disbursements within a payment period, additional disbursements may occur more frequently than every 30 days. They noted that for these institutions and their title IV recipients, such a circumstance would effectively create a perpetual fee prohibition. They noted that this may have the unintended consequence of discouraging institutions from experimenting with methods involving multiple, smaller disbursements.

Some commenters noted that the underlying purpose of this provision was to provide students a reasonable opportunity to access their title IV funds free of charge, and contended that by providing ATM access and banning POS fees and overdraft fees, the Department had already met that goal. These commenters also asserted that this provision in particular runs contrary to the Department's goal of allowing a reasonable fee structure to remain in place to support the continued viability of account offerings, as account providers generally incur some costs. A few commenters in particular recommended that as an alternative to the Department's proposal, students should have a method by which to access their funds without charge, and without regard to a time period.

One commenter suggested that we expand the time period for access to funds for the entire payment period, to ensure that the student is able to withdraw their funds without fees at any time. Another commenter suggested that 30 days is too long and that the time frame should be changed to 14 days. Some commenters argued that this prohibition is necessary to ensure students have fee-free access to their accounts when it is most likely that title IV funds will be present. Other commenters noted that this provision would be less beneficial to the student than intended, because it assumes that the student knows and is able to keep track of when the 30-day window begins and ends. These commenters stated that students may incur fees, believing they are still protected when in fact the relevant time period has elapsed.

Discussion: In our discussion of the 30-day fee restriction in the NPRM, we stated that ''[t]he proposed regulation barring servicers or their associated financial institutions from assessing a fee for 30 days following the receipt of title IV funds is also consistent with our objective of affording students a reasonable opportunity to access their full title IV credit balance.'' [57] We continue to believe that title IV recipients should have a reasonable opportunity to access their student aid funds without charge. This principle endures notwithstanding how common such a practice may be in the general banking market, because the HEA directs the Department to ensure that students are provided with the full amount of their Federal student aid. However, we are persuaded by the commenters' arguments that, for several reasons, the provision as proposed is too broad to achieve this objective.

Commenters correctly pointed out that, as proposed, the provision allows students to conduct unusual or ancillary transactions that would incur a fee under nearly all typical banking arrangements. Commenters are also correct that for some students and some institutions, multiple frequent disbursements would create a situation where an account provider is effectively prohibited from charging any fees at all. These outcomes are inconsistent with our intent. We acknowledged throughout the NPRM that we believe account providers delivering services beyond simple delivery of credit balances should be allowed to charge reasonable fees to provide student banking products.

We are also persuaded that the time-based structure of the proposed provision is impractical for operational reasons. We agree that tracking

[57] 80 FR 28509.

individual disbursements on an ongoing basis and logging multiple, perhaps overlapping time frames and matching such time periods with fee limitations would present an operational burden and costs in excess of the benefit it would provide to students. For these reasons and consistent with commenters' recommendations, we have decided to eliminate the 30-day time frame in this provision. We are also persuaded that the treatment should be adjusted in a way that does not preclude fee structures that are reasonable and that support continuing availability of accounts, without increased costs to students.

Nonetheless, we continue to agree with the commenters who recommended that we provide a mechanism by which title IV recipients can have reasonable, fee-free access to their student aid. As an alternative to our proposed provision, we are instead requiring that under a T1 arrangement, students must be provided with convenient withdrawals to access the title IV funds in their account, up to the remaining balance in their account, in part and in full, at any time without charge for the withdrawal.

From the student perspective, we believe this approach is an improvement. It maintains the overarching goal that aid recipients have fee-free access to withdraw their title IV funds, up to the remaining balance in the account. It relieves students and financial institutions of having to keep track of a 30-day period, limits confusion about why fees are charged at certain times but not others, and no longer forces students to spend or withdraw their funds more quickly than they might want or actually need to. It ensures that at any time, even more than 30 days following a disbursement, a student can still have full access to his or her funds, up to the remaining balance in the account, without a fee charged for the withdrawal.

From the perspective of financial account providers, we also believe this approach is an improvement. We believe it addresses all commenters' concerns, especially regarding the effective blanket prohibition on all fees and the operational burdens of having to track 30-day windows for multiple disbursements and determine whether such disbursements trigger the requirement. Instead, providers will have to determine at least one method by which the aid recipient may withdraw or use his or her title IV funds, up the remaining balance in his or her account, in whole or in part, without charge. For example, a more traditional bank may find it more feasible to allow fee-free withdrawals from a local branch location. Another provider may instead allow unlimited fee-free withdrawals from in-network ATMs without daily or monthly withdrawal limits. This also limits the burden on financial account providers of having to track the source of the funds deposited into the account and determine whether those funds stem from title IV aid programs or originate from another source. The basis of the limit will be the total title IV dollars deposited—*i.e.,* once a student has exhausted the amount of title IV funds in the account, the fee-free access requirement no longer exists. To the extent that financial account providers do not want or are unable to track the amount of each title IV deposit, they can continue to offer the withdrawal method(s) to accountholders. We believe that, in contrast to the proposed rule, continuing to offer the withdrawal method(s) represents a small marginal cost after establishing the withdrawal method(s) initially.

This approach will also address commenters' concerns (addressed in the section of the preamble discussing ATM access) that limits on ATM withdrawals will limit the effectiveness of that provision. This provision would require that the provider either eliminate such withdrawal limits or provide another convenient method for students to access their title IV funds.

Changes: We have revised § 668.164(e)(2)(v)(C) to specify that under a T1 arrangement, an institution, third-party servicer, or third-party servicer's associated financial institution must provide convenient access to title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers without charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account.

Disclosure of the Full Contract (§ 668.164(e)(2)(vi), (e)(2)(viii), (f)(4)(iii), and (f)(4)(v))

Comments: Many commenters supported the provision requiring institutions to post the full contract for T1 or T2 arrangements on their Web site, stating that the release of the contract would allow policymakers to analyze these agreements and help make sure that students are well-informed about their financial choices. One of these commenters also noted that this provision was likely to promote competition by encouraging new providers to enter the market.

However, some commenters raised concerns about the provision. Several commenters noted that the posting of a lengthy legal document would do little to inform students about the arrangement between an institution and a third-party servicer or financial institution. Another commenter suggested that students already have enough information to make an informed decision, rendering the disclosure of the contract and summary unnecessary. Some commenters suggested that, rather than posting the full contract, we should consider simply requiring institutions to post a statement informing the public that an arrangement exists between the institution and third-party servicer or financial institution. Another commenter suggested that we require disclosure of the contract data only and not the publication of the full contract. One commenter also expressed concerns that this requirement may be duplicative of some State laws.

Other commenters raised concerns about the effect the posting of the full contract may have on their business models. For example, some commenters argued that this requirement, even with the option to redact information regarding personal privacy, proprietary information technology, or the security of information technology or of physical facilities, would still require third-party servicers and financial institutions to disclose confidential business information that could damage competition in the marketplace. One commenter contended that the proposed allowable redactions did not allow third-party servicers or financial institutions to redact proprietary business information. Another commenter asserted that one unintended consequence of this could be that financial institutions would be less likely to enter into specialized deals with institutions. One commenter stated that the release of this information raises antitrust concerns that could conflict with the Federal Trade Commission's restrictions on price fixing.

Discussion: We thank the commenters that expressed support for this provision on the grounds that increased transparency will help ensure that students are protected from abusive practices in the future. We agree that posting the full contract to an institution's Web site is necessary to ensure that these agreements are more beneficial to students in the future and that this requirement is likely to increase competition in the marketplace.

We disagree with the commenters who stated that disclosure of the full contract would not help inform students about the terms and conditions of T1 and T2 arrangements. A common criticism of these agreements between institutions and financial institutions is the lack of transparency, and we believe that posting the full contract will allow all interested parties to review these agreements and ensure that the terms of T1 and T2 arrangements are fair for students.

We also disagree with the commenters who stated that a summary of the contract would be sufficient for consumer information purposes. The contract data, while helpful, will not allow interested parties to view the agreement as a whole and will not be available at all institutions with T2 agreements. We are also concerned that the required disclosures in the summary alone will not allow students, researchers, and policymakers to understand the entire scope of the agreement. A summary by its nature is selective, and we do not agree that it would enhance competition or work to prevent abuse to allow those parties broad discretion to decide which terms will be made public and which will not.

We disagree with the commenter who suggested that students already have enough information to make an informed decision. As stated elsewhere in this preamble, because these financial products are so specifically targeted to students, and because the title IV disbursement system creates unique consumer protection challenges, we believe that this additional disclosure, specific to the title IV context, is necessary.

While we recognize that certain institutions are subject to very strict State ''sunshine'' laws that similar to these requirements, we note that not all institutions are subject to those laws, and that even where they apply, the difficulty interested parties face in attempting to access these contracts varies by institution. For the sake of consistency, we believe it best to ensure that these disclosures are adopted uniformly across all institutions that receive title IV aid and have T1 or T2 arrangements with third-party servicers or financial institutions.

We disagree with the commenters who stated that disclosures of contracts with only specific information redacted would result in decreased competition. We continue to believe that disclosures of this type increase competition, and in the absence of very specific recommendations regarding other types of information that should be redacted from the contract posted to an institution's Web site, we have made no changes to the types of information that may be redacted from a contract.

We disagree with the commenter who suggested adding proprietary business information to the list of allowable redactions as we believe that the reference to ''proprietary information technology'' addresses this concern in part. In addition, we believe that ''proprietary business information'' is too broad a term and that, if added, it could undermine our efforts to ensure transparency of T1 and T2 arrangements.

While financial institutions may no longer enter into special or unique agreements with institutions, this is a decision that will lie with financial institutions. Financial institutions will have the option to decline to offer the same arrangement to every institution if they wish. However, we agree with the commenter who stated that posting these agreements may encourage new providers to enter the market. With more than one provider offering services to an institution, access to this information could allow new providers to offer more competitive deals to institutions.

We also disagree that the posting of contracts governing T1 and T2 arrangements could result in price fixing or antitrust concerns, especially since other Federal laws already require the disclosure of contracts for public review. For example, the Credit CARD Act of 2009 requires institutions to ''publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.'' [58] We also continue to believe that posting these agreements increases competition in the marketplace.

Changes: In § 668.164 (f)(4)(iii), we have removed the phrase ''provide to the Secretary'' in order to clarify that institutions need only post the contracts to their Web sites and provide the URL to the Secretary for publication in the database. We have also clarified the regulatory language to state that institutions must comply with this requirement by September 1, 2016.

Disclosure of Contract Data (§ 668.164(e)(2)(v)(B)–(C) and (f)(4)(iii)(B)–(C))

Comments: Many commenters expressed support for the publication of contract data, stating that it would be easier for students to understand than the full contract document and would act as an important source of consumer information. In addition, other commenters asked that we include additional information, such as: The duration of the contract, any benefits that the institution might accrue under the contract, any minimum usage requirements, the number of students receiving a disbursement, the amount of disbursed funds issued, and the frequency of each method of disbursement delivery.

Many commenters expressed concerns about how institutions would calculate the data required in the disclosure. Specifically, commenters asked how institutions could calculate the number of accountholders and the mean and median of the actual costs incurred by those accountholders, especially in cases where a student opened a bank account before choosing to enroll in an institution. One commenter noted that universities do not typically track the costs of the accounts their students use. Other commenters stated that it would be difficult for financial institutions to know who is and is not a current student at an institution without a list of current students. These commenters also pointed out that this list would have to include personally identifiable information about those students in order to ensure that the calculations are accurate. Another commenter stated that tracking costs becomes even more difficult in cases where the accountholder has received a parent PLUS loan. One commenter also stated that calculating the mean and median costs would be impossible without defining which costs must be included in that calculation. Another commenter expressed concerns that inactive accounts or accounts that are used for short periods (such as a semester) could skew the data and that publishing fee information violates a student's privacy.

Other commenters expressed concerns that the statistics disclosed may not be helpful. Specifically, one commenter stated that information about whether or not a school receives remuneration under the contract would not be likely to impact a student's decision whether or not to open a financial account. That same commenter, along with others, stated that the size of the student population, the differing needs of students at different types of institutions, and the behavior of accountholders could result in higher or lower fees, rather than reflect the behavior of a financial institution. One commenter stated that because these data only contain information about one account, they lack context for students to be able to evaluate the information most effectively. Other commenters stated

[58] 15 U.S. Code section 1650(f).

that these requirements may result in account providers offering fewer services to students in order to keep costs low. One commenter asked that we exempt an institution from this requirement if it can prove that the institution receives no form of compensation under the contract. Another commenter stated that publishing fee schedules did enough to ensure transparency for students. One commenter also suggested that the Department create a disclosure template that would summarize important details of a contract for students.

Discussion: We thank the commenters who supported the release of contract data on the grounds that they would provide easily understandable information to students and families and appreciate the suggestions for additional data disclosure. However, we believe that the data we have identified would be the most useful information for students. We are also concerned that additional information may confuse students and families, diluting the effect of disclosing data at all.

We disagree with the commenter who asked us to remove these requirements because institutions do not typically track this information and who concluded that compliance with this provision would be too difficult. While we believe that the parties will be able to design their T1 or T2 arrangement to allow a third-party servicer or financial institution to perform this type of tracking, we have chosen to exempt institutions from this requirement in cases where on average less than 500 students and five percent of the total number of students enrolled at an institution with a T2 arrangement receive a credit balance for reasons discussed earlier in this preamble. In response the commenter who asked whether previously opened accounts should be counted, we note that accounts that are not opened under a T1 or T2 arrangement are not included in the contract data.

We acknowledge the concerns about how to calculate the number of accountholders and mean and median costs associated with accounts offered under T1 and qualifying T2 arrangements. However, in a T1 arrangement, the third-party servicer will know which accounts are opened under the student choice process and can communicate that information to the account provider (if the two are different entities), so that the account provider under a T1 arrangement will know which individuals and accounts to track for purposes of determining and disclosing this data. Institutions with a sufficient number of credit balance recipients and financial account providers entering into a T2 arrangement will need to include in their contracts a mechanism for meeting these requirements. For example, the terms of the contract may include requirements that the institution keep the account provider apprised of the names and addresses of its currently enrolled students, and the institution would include this sharing of directory information in the directory information policy it is required to publish under FERPA.

We agree, in part, with the commenters who stated that it would be impossible for financial institutions to know that an accountholder is a student at an institution without sharing student information. However, we disagree that the information would have to include personally identifiable information that is protected under FERPA. The final regulations do not preclude sharing of directory information, as well as, for accounts offered under T1 arrangements, the sharing of the specified information necessary to authenticate the of students. Additional information may be shared with these account providers following the student's selection of the account in the student choice process, wherein an institution will know the students who chose to open an account offered under a T1 arrangement. In the case of T2 arrangements, the institution may periodically provide to its partner financial institutions a list of currently enrolled students that includes directory information. We believe that student directory information will provide a financial institution with enough information to calculate contract data for enrolled students.

We agree with the commenter who noted that tracking parent PLUS loans that are deposited into parent accounts would be particularly difficult. In response to these concerns, we have removed the references to parents in § 668.164(e)(2)(vii)(C) and (f)(4)(iv)(C).

We disagree with the commenter who stated that tracking the costs incurred under accounts offered under T1 or T2 arrangements will be impossible without a list of costs to be included. Because of the changing nature of the marketplace, we believe that it is best for all fees incurred by accountholders to be included in the contract data. While some accountholders may incur unusually high fees, this should be offset by a higher number of more moderate users; there is no basis for presuming this factor will unfairly affect one provider's accounts more than another. We also believe that if there are a high number of students incurring large amounts of fees and charges, it may be indicative of a larger issue at the institution that should be disclosed.

We agree with the commenter who stated that inactive accounts or accounts open for a short time could skew the mean and median fees incurred. However, we believe that the changes to § 668.164(e)(3) and (f)(5) stating that the requirements of this section, including the reporting requirements, cease to apply when the accountholder is no longer a student addresses the issue of inactive accounts.

We do not agree that data from accounts opened for a short time are necessarily less relevant consumer information than those from accounts opened for a longer time period. For example, arrangements for some schools may serve otherwise unbanked students who attend an institution for a short period of time and then withdraw, closing their accounts in the process. It may be useful for such students to have data from students like them incorporated into the consumer information. There is no reason to regard that group of students as uniquely atypical.

We agree with the commenter who stated that the publication of fee information in the form of contract data raises privacy concerns. In the final regulations, we require that an average of at least 500 title IV credit balance recipients or five percent of the total number of students enrolled at an institution with a T2 arrangement have to receive a credit balance during the three most recently completed award years for these requirements to apply. However, we acknowledge that disclosing annual cost information could present privacy and data validity issues in cases where a small number of students enrolled at an institution during an award year open an account offered under a T1 or qualifying T2 arrangement. In these cases, the privacy of those students may be compromised because it may be possible to discern their identity or establish a picture of students' (or groups of students, such as low-income students) account behavior, especially if the mean and median fee figures were sufficiently divergent (suggesting a small number of students may be accruing particularly high levels of fees). In such cases, the validity of the data would also be at issue, given the small sample size.

In the unlikely event that a small number of students open an account at an institution with a T1 or qualifying T2 arrangement, we exempt institutions from disclosing contract data in cases where fewer than 30 students have the account in question. We have chosen an

n-size of 30 to address privacy and data validity concerns consistent with other instances of a minimum *n*-size being used to ensure both the protection of students' privacy and the validity of the data presented, such as the calculation of cohort default rates. We do not believe that, with these changes, aggregated data present a threat to student privacy or data validity.

We disagree with the commenter who opined that it is not useful to consumers to know whether or not the school receives remuneration under the contract. We believe that the knowing whether or not a school receives payment from a partnership with an account provider may well impact a student's decision to open a particular account. We believe this transparency will also dissuade institutions from using T1 and T2 arrangements to profit at students' expense and shift the cost of disbursement of title IV funds to students. We note that consumer advocates and Federal negotiators emphasized the importance of these data,[59] and commenters further stressed the need for this information in absence of a ban on the practice of revenue-sharing.

While we do agree with the commenter that students at different institutions may exhibit differing financial habits, resulting in higher fees, we also believe that the fees that students are charged to access their money reflect how well a third-party servicer or financial institution serves the student population, and how well an institution has analyzed students' best interests in entering into the arrangement. As a result, we feel that these disclosures are necessary for students and institutions to make financial choices that are consistent with the goals of the title IV programs. In addition, we believe that most interested parties will be able to take into account characteristics of the student body that may impact the data, such as socio-economic status or student background. For example, a community college researching these agreements will most likely look at data pertaining to other community colleges.

We disagree with the commenter who contended that because the contract data only cover accounts offered under T1 and T2 arrangements, and not the other types of accounts a student may choose, the contract data will not be helpful consumer information. As we have stated elsewhere in this preamble, we believe that the preferential status that a third-party servicer or financial institution receives from a T1 or T2 arrangement necessitates a higher standard of disclosure.

While it is possible that these requirements could result in account providers offering fewer services to students in order to keep costs low, we do not believe that that this outcome negates the benefits of these disclosures. We continue to believe that these requirements will result in students choosing better accounts and accordingly being able to access more of their title IV funds.

We disagree with the commenter who suggested that institutions that do not receive direct compensation as a result of their arrangements with third-party servicers and financial institutions should be exempt from these requirements. Because the benefits an institution receives are not always in the form of direct payments, and because a school-sponsored account may be less than favorable to students even if the institution does not profit from it, it is important to ensure that all forms of remuneration and the effects of these arrangements on students are disclosed.

We disagree with the commenter who stated that disclosing the fee schedules is enough to inform students of account terms and conditions. We continue to believe that disclosing the nature of the relationship between an institution and third-party servicer or financial institution is essential to ensure that students are both well-informed and not subject to abusive practices. We also continue to concur with the OIG on the point that institutions should be required ''to compute the average cost incurred by students who establish an account with the servicer and at least annually disclose this fee information to students'' [60] and have kept the informative data points that we proposed in the NPRM.[61]

We agree that it is necessary for the Department to create a disclosure template for the contract data, and we will release that format at a later date. Standardizing the format of the contract data will not only improve the consistency and clarity of the disclosures, as suggested by commenters, but it will also enable third parties to more easily perform analyses on contract data. Specifically, standardizing the format will allow the contract data to be presented in a way that can be read by software and aggregated more quickly.

Finally, while we feel that the contract data provide essential consumer information, we understand that it will take institutions and their third-party servicers or financial institutions time to implement these requirements, and we have chosen to delay implementation of this requirement until September 1, 2017.

Changes: We have revised § 668.164(e)(2)(vii) and (f)(4)(iv) to state that this requirement will not go into effect until September 1, 2017. However, we note that institutions will still be expected to post the full contract to their Web sites by September 1, 2016, the effective date for the rest of the provisions of the regulations.

We have also changed these provisions to state that the contract data must be disclosed in a format established by the Secretary; and that this requirement will not apply at institutions with T2 arrangements where there are fewer than 500 title IV credit balance recipients and less than five percent of the total number of students enrolled at an institution receive a credit balance. In cases where fewer than 30 students have the account in question, an institution with either a T1 or T2 arrangement will be exempt from this requirement.

We have also added § 668.164(e)(3) and (f)(5), which state that the requirements of this section, including reporting requirements, no longer apply when the accountholder is no longer a student.

We have also clarified the regulatory language to state that institutions must comply with this requirement by September 1, 2017.

Finally, we have removed ''and parents'' from § 668.164(e)(2)(vii)(C) and (f)(4)(iv)(C).

Submission of the URL for the Contract and Summary to a Centralized Database (§ 668.164(e)(2)(viii) and (f)(4)(iii) and (v))

Comments: Some commenters expressed concerns about posting contract data in an online database, stating that the information contains confidential or proprietary information. However, many commenters expressed support for maintaining a database of contract internet addresses for the sake of transparency. One commenter suggested that account providers should be required to send contract information to the database within 30 days of the regulations becoming effective and that the contracts should also be cross-posted to institutional Web sites. However, another commenter pointed out that the CFPB recently delayed implementation on requiring financial institutions to submit credit card agreements to a centralized database due to the administrative burden involved.

[59] 80 FR 28510.

[60] OIG at 15.

[61] 80 FR 28510.

Discussion: We disagree with the commenter who stated that a centralized database of URLs of contracts and their data could compromise confidential and proprietary information for reasons explained in the *Disclosure of the Full Contract* section of this preamble.

We thank the commenters that expressed support for the database. While we do not yet have a target date for the creation of the database, we will require institutions to post to their institutional Web sites the full contracts by September 1, 2016 and the contract data by September 1, 2017. Soon after the system is created, we will require institutions to send us the URL for the contract and the contract data, and we will make this information available to the public.

Changes: We have added the phrase ''accessible to the public'' to § 668.164(e)(2)(viii) and (f)(4)(v) to clarify that the information in the database will be publically available. We have also changed the regulatory language to clarify that institutions with T2 arrangements where there are, on average, fewer than 500 title IV credit balance recipients, and less than five percent of the total number of students enrolled at an institution receive a credit balance will not be required to post account holder cost data, though they will still be required to post their full contracts and provide to the Department the URL where those contracts are posted. Similarly, an institution with either a T1 or T2 arrangement where fewer than 30 students have the account in question will be also not be required to post account holder cost data.

Best Financial Interests of Account Holders (§ 668.164(e)(2)(viii) and (f)(4)(vii))

Comments: Commenters universally supported the principle that student accountholder interests should be paramount under T1 and T2 arrangements, but there was disagreement about how to achieve this goal.

Several commenters strongly supported the proposal that accounts offered under T1 or T2 arrangements not be inconsistent with the students' best financial interests. These commenters argued that it was a key mechanism to ensure that institutions place the interests of their students first; one commenter stated that this provision was the single most important regulatory change proposed in the NPRM. Some commenters supported this provision because, they argued, additional types of fees may be introduced in the future and this provision would continue to proactively provide student protections for fees or practices that are presently unknowable.

However, many of these same commenters argued that the language proposed in the NPRM represents a weakened standard relative to the drafts discussed during negotiated rulemaking because those proposals included references to nonmonetary metrics such as customer service and because the language required that the terms offered to students be equal or superior to those offered in the general market, not simply that the terms not be worse than those offered in the general market; the commenters recommended incorporating these characteristics into the final regulation. Some commenters suggested that we expand this provision to account for considerations beyond financial ones—for example, customer service and account features. Other commenters recommended that the provision should require that contracts are established with the best interests of students as the primary consideration, not simply that the contract is not inconsistent with the best interests of students. These commenters argued that absent such a change, an institution could still select a proposal if it provided the most revenue to the institution, even if another proposal offered better rates for students. Other commenters argued that T1 and T2 arrangements should be held to a higher standard than prevailing market rates.

Many commenters asserted that the proposed provisions were unnecessary, excessively vague, and did not provide objective standards against which account terms would be compared. These commenters argued that prevailing market rates varied in different parts of the country and for different institutions. Commenters also noted that the uncommon and unreasonable fees we highlighted in the NPRM were already prohibited and therefore additional protections were unworkable and unnecessary. Commenters also argued that termination on the basis of accountholder complaints was a vague standard—they questioned whether an official complaint process would be necessary or whether institutions would be permitted to discount frivolous complaints. One commenter recommended that we require a formal mechanism for collecting and reporting complaints. Another commenter recommended that we limit this provision to ''valid'' complaints. Commenters expressed concern that the lack of an objective standard for contract termination would allow institutions to terminate contracts for inconsequential reasons and, therefore, induce financial account providers to exit the college card market. Some of these commenters argued that the best interest provision be retained for contract formation but recommended we remove the remainder of the provision specifying how an institution would determine that students' best interests were not being met. Others strongly supported the continued inclusion of termination clauses to allow sufficient flexibility to address student complaints. One commenter noted that many institutions already include such clauses in their contracts with financial institutions.

Another frequent comment regarding vagueness concerned the requirement that ''periodic'' institutional due diligence reviews be conducted. Commenters pointed out that fees were unlikely to change repeatedly or frequently and that the term periodic did not give institutions sufficient guidance regarding the timeframes of such reviews. Some commenters recommended that we specify a number of years for this period, and several noted that either two or three years would be a reasonable standard.

Some commenters argued that institutions and financial account providers do not have the information or expertise necessary to determine whether the fees charged to accountholders are not excessive in light of prevailing market rates. These commenters argued that this puts a burden on institutions to evaluate a complex banking market to determine what types of fees are reasonable. One commenter argued that this provision would require schools act as de facto financial regulators.

A commenter that served on the negotiated rulemaking committee as representative of financial institutions argued that this provision would not present an excessive burden because in many cases the financial account provider would assist the institution in securing the information necessary to enable the due diligence reviews. The commenter further noted that financial account providers produce extensive fee-related (and other) information as part of requests for proposals and institutions would therefore have extensive information about the rates and fees charged in the market. The commenter also noted the financial industry's expectation that the CFPB will release a scorecard that will further support this information gathering function.

Other commenters argued that institutions are not in a position to objectively review the contracts to which they are a party. These

commenters noted that because institutions are receiving payment as a part of these contracts, the regulations should instead require that a neutral third party should review the contract to determine whether it is in the best financial interests of students.

One commenter suggested that rather than requiring annual reporting, we require institutions demonstrate at the time the contract is established, and upon its renewal, that students are being charged reasonable fees and that the institutions disclose the payment amount they are receiving for the contract.

Discussion: We appreciate the comments we received in support of this provision and agree that it is a vital element to ensure not only that students will receive sufficient protections to access their title IV aid at the time the regulations are published, but that the regulations continue to be effective in the future.

We agree with commenters who noted that this provision is necessary to provide protections to title IV recipients in instances where their institutions enter into arrangements with financial account providers to offer accounts to those aid recipients. As we explained in the NPRM, we believe that the many examples cited by government and consumer reports demonstrated that institutions were frequently entering into arrangements where the interests of their students were not a consideration. Instead, title IV recipients were often subject to substandard account offerings so that institutions could save on the costs of administering the title IV, HEA programs or receive large lump-sum payments in consideration for the group of new customers offered to the financial account provider. These recipients were often unable to access their title IV funds without incurring onerous or uncommon account fees, had difficulty having their funds deposited into a preexisting account, or were not fully informed of the terms of the account the institution was promoting. For institutions that have a fiduciary duty to ensure the integrity of the student aid programs, we believe this outcome is unacceptable. This provision, along with the other regulatory changes we are making, will mitigate such practices.

Equally important, however, is the point made by several commenters that this provision will provide student protections into the future. As was repeatedly noted during the negotiated rulemaking process, the financial products marketplace is a rapidly changing sector. In promulgating regulations that cover institutions choosing to enter into arrangements with financial account providers, we are aware that parts of these regulations could be rendered obsolete by virtue of these changes. For this reason rather than trying to predict future developments, we identified the most problematic practices identified by consumer groups and government entities. For future practices, which are difficult if not impossible to predict, this provision will provide assurance that institutions are still entering into and evaluating agreements with the best interests of their student accountholders.

We disagree with commenters who argued that the provision as proposed represented a weaker standard than what was proposed at the close of negotiated rulemaking because it omitted from consideration nonfinancial factors such as customer service and account features. On the contrary, we believe that this change strengthens the rule. By narrowing the scope of what is actively considered to be an objective metric, we believe it will be more difficult to circumvent these requirements using difficult to measure alternatives as justification for charging students higher account fees. However, we agree that the proposed standard of ''not excessive'' in light of prevailing market rates is too weak. Instead, we agree that such fees should be ''consistent with or below'' market rates—that is, roughly in line with rates charged in the general marketplace or below such rates.

Furthermore, we believe that the fees charged in the general market, for the most part, represent a level of revenue that can support the offering of such products while providing a product that the public is willing to purchase. While some institutions may be able to negotiate better terms for their students—and the regulations permit them to do so—we decline to force institutions to secure such terms when it may not be within their power to do so. Some institutional characteristics may drive certain financial account providers to offer below-market rates to serve a loss-leader function and secure a lucrative future customer cohort, but we believe that not all institutions will be able to accomplish such terms. By setting a minimum permissible threshold for arrangements impacting title IV recipients and taxpayer funds under the regulations, we believe we have provided protections that represent a significant improvement over current practices at many institutions, where market pressures are not brought to bear because students often believe they have no alternative method for receiving title IV funds. If we amended the regulations to go beyond such protections, we are concerned that we would simply drive good actors from the market and deprive many students of account options.

We disagree with commenters who argued that this provision must require that the best interests of students be the ''primary'' consideration in formalizing the arrangement. By enumerating a set of objective, measurable metrics by which the institution has to ensure that the best interests of students are being met, we believe the commenters' arguments will be addressed. Put simply, if the institution's sole consideration in entering into an arrangement is the fee revenue that will be generated by the contract, and such an arrangement results in fees that are not at or below market rates or that results in numerous student complaints, the institution will be in violation of this provision of the regulations. We believe this has the benefit of clarity for institutions and protections for title IV recipients.

We disagree with commenters that the other fee limitations for T1 arrangements render this provision redundant. Not only does the provision help protect students against similarly onerous, confusing, or usual fees that financial account providers could develop at some future point, it also protects students from being charged overly onerous and excessive fees that are not expressly prohibited under the regulations (*e.g.,* a $100 monthly fee, which is plainly excessive, and an account feature clearly not in the best interests of students, in light of prevailing market rates).

We also disagree with commenters who argued that the proposed standards are impracticable as a general matter. While commenters are correct to note that often prices and practices can vary from market to market, such differences are usually marginal. In contrast, the various consumer groups, government agencies, and numerous lawsuits were able to clearly delineate the types of practices and fees that were outside the mainstream of typical account providers. The regulations do not require institutions to conduct a market-by-market comparison of all the various fees that are charged. Rather, institutions are required to recognize, based on student complaints and the general practices of the market at large, whether the account provider is charging fees of a type or in an amount that is consistent with or lower than rates charged in the general market. As commenters noted, this responsibility will be aided significantly by the financial institutions through the

proposals they submit and by the upcoming release of the CFPB scorecard. While it was not explicitly mentioned by commenters, we also believe that the full contract disclosure and contract data, including mean and median annual costs to accountholders, will similarly aid in this function. As we noted in the preamble to the NPRM, when an institution discovered that the fees that were being charged to students exceeded prevailing market rates, it was able to successfully negotiate that provision out of its existing contract. As noted in a prior section, we have made the ''best interest'' provisions binding on institutions that have made T2 arrangements only if there are on average 500 or more credit balance recipients or credit balance recipients on average comprise five percent or more of total enrollment.

We also disagree with commenters that argued institutions do not have the expertise to make the best interest and market rate determinations. Institutions enter into many contracts as a part of their operations. We trust that institutions that choose to voluntarily enter into these contracts have the expertise necessary to understand and evaluate the associated costs and benefits.

We also believe that institutions with sufficient knowledge to contract with financial account providers for accounts to be offered to their title IV recipients have the ability to reasonably discern which complaints have merit and which are frivolous. The volume, nature, and severity of these complaints should inform institutions of whether renegotiation or termination of the contract is warranted under this provision. We also believe several avenues already exist to handle student complaints to their institutions and regulating a separate process would be duplicative. Again, we point to the example laid out in the preamble to the NPRM demonstrating that student complaints led to awareness at an institutional level that certain fees were excessive, and the institution was able to successfully renegotiate the contract to benefit of students. We reject the notion that an institution's contractual right to cancel a marketing arrangement for accounts that generate undue student complaints will dissuade responsible financial institutions from entering into the arrangement.

We are persuaded that the requirement to conduct ''periodic'' reviews would benefit from additional specificity. While we used this term in our proposed rule to provide flexibility to institutions, the comments we received convinced us that institutions would prefer a concrete timeframe. For that reason, and because we agree with commenters who argued that fees are unlikely to change on an annual basis, we are accepted in the recommendation of several commenters to specify that due diligence reviews must occur at least every two years.

We disagree with the commenter who suggested that we only require review of the contract at the time of contractual formation and upon its renewal. For contracts that are several years in length, this would not provide sufficient protection to title IV recipients in the event that fee structures change significantly or in situations where many student complaints have been received.

Finally, we do not believe that independent oversight of each contract at its formation is either necessary or practicable. We trust that institutions will comply with the new regulations and ensure that the contracts in question are made with the best financial interests of accountholders in mind. In addition, as a reminder, the contracts that are governed by this provision will be posted on institutions' Web sites and will be available publicly in a Department database. To the extent that our program reviews find that the fees being charged to students are not consistent with or are higher than market rates or that institutions are not responsive to complaints, institutions will be subject to the enforcement actions associated with regulatory noncompliance.

Changes: We have revised § 668.164(e)(2)(viii) and (f)(4)(vii) to specify that due diligence reviews must be conducted at least every two years, rather than ''periodically,'' and that institutions conducting the reviews must consider whether fees imposed under the arrangement are, as a whole, consistent with or below prevailing market rates.

Miscellaneous Comments on Financial Account Provisions

Comments: Several commenters asked the Department to restrict other common practices. For example, multiple commenters asked the Department to ban ''binding arbitration'' provisions on the grounds that they limit student access to the judicial system. Several commenters also asked that the Department ban revenue sharing, arguing that this practice presents a conflict of interest for institutions. One commenter requested that the Department ban T1 and T2 arrangements entirely.

A number of commenters focused on the role of students in the financial aid disbursement process. Some commenters stated that students should be required to undergo more financial literacy education so they can better understand their options regarding financial accounts, and another stated that many students come to campus with little financial experience. One commenter noted that financial account providers often provide financial literacy training. One commenter noted that students often demand quick access to their title IV funds. Other commenters stated that some students may not have access to bank accounts due to minimum balance requirements, and that third-party servicers alleviate this concern. One commenter noted that because they offer their products to all students regardless of past banking behavior, they take on a higher risk than other financial institutions.

Another commenter noted that these accounts exist to provide access to banking services to students, not to attract title IV funds. One commenter stated that the creation of a disbursement selection process and the fee restrictions for in-network ATMs, opening accounts, and point-of-sale fees alone would provide enough protection for students.

One commenter stated that no student or parent should be charged a fee for the processing or delivery of title IV credit balances. Another suggested that the Department mandate a specific financial institution review process.

Finally, one commenter asked that foreign institutions be completely exempt from the proposed regulations on the grounds that many foreign institutions have a small number of Americans in their student body and that overly proscriptive regulations could limit access to programs overseas.

Discussion: We are not addressing the issues of binding arbitration, revenue-sharing, or outright banning T1 and T2 arrangements in this rulemaking. We declined to add these issues to the agenda during negotiated rulemaking, because we concluded these topics would be best addressed in another context. Accordingly, we believe it is inappropriate to take up these issues at this stage in the rulemaking.

While we agree with the commenters who stressed the importance of financial literacy education, this topic is outside the scope of this rulemaking effort. We note that nothing in the regulations limits the ability of institutions to offer financial counseling to students.

We also believe that, as one commenter stated, because some new students have little financial experience, clear disclosures are all the more important to help them avoid

unnecessary charges. While students may demand quick access to their funds, that does not negate the role that institutions must play in ensuring that students receive their money safely and are not coerced into any particular option. To the commenter who noted that some students do not have access to banks because of minimum balance requirements, we note that the regulations do not ban T1 and T2 arrangements, and the range of financial options for students without access to the banking system should remain unchanged by these regulations.

We acknowledge that third-party servicers often take on more risk because they do not prescreen their customers. However, our regulations do not ban all fees outright, but rather limit abusive practices, certain fees that can cost students access to excessive amounts of their title IV dollars, and, indirectly, certain cost shifting.

To the commenter who stated that these accounts do not exist to attract title IV funds, we disagree that these accounts can be fairly characterized as existing primarily to provide students with banking services generally, based on the proliferation of the accounts subject to these regulations among institutions having the highest percentage of credit balance recipients. Even if this were not the case, the fact is that these accounts *do* attract title IV funds as a result of their close affiliation with institutions. As stated in the NPRM, ''for many card providers, adoption rates were close to 50 percent of students; some providers' rates exceeded 80 percent.'' [62] As a result, we believe that Departmental intervention is required to protect both students and their title IV funds from excessive charges. We also believe that, while the fee restrictions and establishment of a disbursement selection process are important, the required fee disclosures, posting of contracts and summaries, and provisions regarding the best interests of the students are equally important consumer protections for the reasons described in the NPRM and in the respective preamble sections of this document.

We thank the commenter who suggested that the Department ban fees for the processing and delivery of financial aid. However, we believe that the ban on fees for opening an account addresses this concern. We also do not believe that mandating a specific institutional review process would be helpful for institutions as they work to comply with the new regulations. Instead, we believe that institutional flexibility will be most helpful as institutions decide how to comply moving forward.

[62] CFPB RFI.

We agree that the requirements for these arrangements may be impractical for many foreign educational institutions wishing to provide timely processing of student loan funds. We recognize that both the foreign educational institutions and the students attending them often face problems that domestic institutions and their students do not—including potential visa problems. Thus, we agree that the provisions of § 668.164(e) and (f) should apply only to domestic institutions.

Changes: We have revised § 668.164(e)(1) and (f)(1) to apply only to institutions located in a State.

Credit balances (§ 668.164(h))

Comments: A commenter noted that proposed § 668.164(h) refers to ''funds credited to a student's account,'' and suggested for clarity and consistency with proposed § 668.161 that we change this reference to ''funds credited to a student's ledger account.''

Discussion: We agree.

Changes: We have revised § 668.164(h) to include the phrase ''student ledger account.''

Retroactive Payments (§ 668.164(k))

Comment: Under proposed § 668.164(k) an institution may make retroactive payments to students. One commenter noted that if the provisions in this section are subject to the requirements of 34 CFR 690.76(b) of the Federal Pell Grant regulations, then a reference to the Pell regulations would be useful.

Discussion: Yes, retroactive payments of Pell Grant funds under § 668.164(k) would be subject to § 690.76(b). Under § 690.76(b), when an institution pays Pell Grant funds in a lump sum for prior payment periods within the award year for which the student was eligible, but for which the student had not received payment, the student's enrollment status for those prior payment periods is determined according to work already completed. For example, if the student started such a prior payment period as a full-time student, but only completed work within that payment period as a half-time student, eligibility for that payment period would be based on the student's half-time status. Thus, we agree with the commenter that there should be a reference to § 690.76(b) in § 668.164(k).

Changes: We have revised § 668.164(k) to state that a student's enrollment status for a retroactive payment of a Pell Grant must be determined according to work already completed, as required by 34 CFR 690.76(b).

Presumptive Credit Balances, Books and Supplies (§ 668.164(m))

Comments: Several commenters were concerned that the Department did not explain in the NPRM why it was expanding the books and supplies provision in § 668.164(m) to include not just Federal Pell Grant recipients but all title IV, HEA program recipients. Some of the commenters noted the Department's original stated intent in 2010 was to enable very needy students to purchase books and supplies at the beginning of the term or enrollment period and to prevent disbursement delays at some institutions from forcing very needy students to take out private loans to pay for books and supplies that would otherwise be paid for by Federal Pell Grant funds. Further, in response to public comment in 2010, the Department declined to expand the scope of the requirement to apply to students who are eligible for other title IV funds.

One commenter explained that if an institution is required to advance funds to students during the first seven days of a payment period, but then cannot later show that the students began attendance during the payment period, under § 668.21(a)(1) the institution would have to return those funds. The commenter opined that when the number of students for whom an institution must make provisions for books and supplies increases dramatically under the proposed regulation, the potential institutional liability increases accordingly.

Another commenter stated that due to the lack of explanation of this change in the preamble to the proposed regulation, many interested parties may not have noticed the proposed expansion and therefore did not submit comments. Although the commenter noted the expansion was a significant change, the commenter did not object because the commenter stated that many institutions have already expanded the current requirement to most students. In addition, the commenter requested that the Department clarify in the final regulations whether first-time students who are subject to the 30-day delayed disbursement provisions for Direct Loans would be included or excluded from this provision.

Another commenter agreed that because it is reasonable to assume that students who receive forms of need-based aid other than Pell Grant recipients have limited resources to buy books, students whose only title IV aid

is unsubsidized, or who only benefit from parent PLUS loans, should not be included in the provision. In addition, the commenter noted that many institutions make accommodations for students regardless of type of aid received, but that should be an institutional choice based on the best use of limited resources.

One commenter stated that the institution pays credit balances to students beginning ten days before the start of a semester, thus providing students with access to funds for books and supplies purchases. In addition, the commenter stated that the proposed books and supplies provision would be limited to the on-campus bookstore for both legal and practical reasons, even though many students choose to purchase their books online or off-campus. The commenter concluded that this provision would be administratively burdensome, particularly when weighed against the limited benefit to students at that institution, and urged the Department to withdraw the proposal.

Other commenters supported the proposed expansion, noting that that while Pell Grant eligible students are likely to need assistance for purchasing books and supplies, they are not the only students who need assistance. The commenters believed the proposed provision will ensure that title IV funding is made available to students to purchase required books and supplies to prepare them for academic success.

Discussion: Although this provision was included in the regulations section of the NPRM, we inadvertently omitted discussing it in the preamble to the NPRM and apologize to the community for this oversight. We note that this provision was discussed during the negotiated rulemaking sessions preceding publication of the NPRM. The reason for expanding the provision to include all students who are eligible for title IV, HEA program funds is simple—we no longer hold the view that only the neediest students should benefit from having required books and supplies at the beginning of a term or payment period. As noted by some of the commenters, students who qualify for loans and other title IV aid also need assistance and we see no reason to deny assistance to those students.

With regard to the comment that expanding the current books and supplies provision will dramatically increase the potential liability of an institution, we note that under § 668.21(a)(1) and (2), an institution would have to return any title IV grant or loans funds that were credited to the student's ledger account or disbursed directly to the student if the student did not begin attendance during the payment period or period of enrollment. Under § 668.164(m), an institution has until the seventh day of a payment period to provide a way for a student to obtain or purchase books and supplies, and if it does so, may wait that long to document that a student began attendance to mitigate liability concerns. Or, the institution may mitigate liability concerns stemming from providing title IV funds directly to a student to purchase books and supplies, by issuing a voucher to the student redeemable at a book store or establishing another way for the student to obtain books and supplies.

With regard to students who are subject to the 30-day delayed disbursement provision under the Direct Loan Program, because an institution may not disburse those funds 10 days before the beginning of a payment period, those loan funds are not included in determining whether the student has a presumptive credit balance.

In response to the commenter whose institution generally pays credit balances 10 days before the beginning a payment period, we note that the institution satisfies the books and supplies provision for students who receive those credit balances. This institution will still need to provide a way for the remaining students to obtain or purchase books and supplies, but the burden for doing so should be minimal in view of the institution's general credit balance practice.

Changes: None.

Holding Credit Balances (§ 668.165(b)(1))

Comments: A commenter stated that it was inappropriate for the Department to assert in the preamble for proposed § 668.165(b)(1)(ii) that when an institution obtains written authorization from a student or parent to hold title IV, HEA program funds on his or her behalf, the institution would be acting ''to circumvent the proposed requirement that it directly pay credit balances to students and parents.'' The commenter stated that any institution participating in the title IV, HEA programs—including an institution participating under the reimbursement payment method or the HCM payment method—must hold all title IV funds in trust for the intended student beneficiaries or the Secretary. The commenter argued that while the Department may justifiably prohibit an institution on HCM or reimbursement from holding credit balances under the current regulations where there is a demonstrated weakness in the institution's administrative capability that could put in jeopardy the institution's ability to act as a trustee of Federal funds, in other circumstances removing the ability of students to authorize institutions to hold a portion of their credit balance is an ill-targeted reform with negative consequences for students. Many students who affirmatively authorize institutions to hold a portion of their title IV credit balance do so as a means of managing those funds during an award year, consistent with the Department's original stated intent for permitting such authorizations. The commenter opined that restricting a student's ability to partner with an institution in this way unnecessarily limits the student's attempt to act as an informed, responsible consumer and undercuts the Department's ongoing efforts to encourage institutions to counsel and empower students to be responsible borrowers. Furthermore, the commenter stated that any concerns that the Department may have about an institution's administrative capability or financial responsibility that result in the institution being placed on an alternate payment method should not prevent students from reaping the full benefit of the title IV programs available to students enrolled at other title IV-participating institutions. As an alternative, the commenter suggested that the Department allow an institution placed on the reimbursement or HCM payment method to hold credit balance funds on behalf of students or parents if the institution holds those funds in escrow. Doing so would provide students the benefit currently available to budget their funds over the course of a payment period while ensuring that the institution acts as a responsible trustee of Federal funds.

Another commenter objected to proposed requirement arguing that it would essentially remove an institutional authority to ''carry'' credit balances from one term to the next. For example, a student may receive a credit balance in his or her first payment period but owe a payment back to the institution in the second payment period when tuition is charged. The commenter stated that, as proposed, this requirement would remove the choice from students and parents who request to have their credit balances applied toward future educationally related charges instead of pocketing the overage, impacting students who potentially are the most fiscally responsible. With such a heightened focus on financial literacy and rising default rates in recent years, the

commenter believed the proposed rule would remove an important choice from responsible borrowers, thus restricting an institution from helping students and parents borrow responsibly to reduce indebtedness. For these reasons, the commenter suggested removing the proposed restriction and amending the regulations to provide that if a student or parent does not authorize an institution to hold Direct Loan funds, then the current provisions under § 668.164(e)(1) and (2) would apply.

Discussion: As we noted in the NPRM, and described more fully under the heading ''Paying credit balances under the reimbursement and heightened cash monitoring payment methods,'' the impetus for placing institutions on HCM or reimbursement payment methods, generally speaking, is material compliance or financial issues. We believe that institutions who have jeopardized or compromised their fiduciary duties under the title IV, HEA programs should not be allowed to handle or maintain title IV program funds any longer than needed and for no purpose other than making timely disbursements to students and parents. Although we do not discount the value of helping students properly budget their funds, that reason alone does not outweigh the risk that affected institutions will use Federal funds for other purposes or cease to be going concerns.

With respect to the comment that an institution placed on an alternate payment method maintain credit balance funds in an escrow account, the commenter did not specify the controls that would need to be in place to ensure that the institution immediately transferred the funds to the escrow account or how an escrow agent or trusted third party would make those funds available to students. We believe the complexity in administering, monitoring, and later auditing an escrow arrangement, and the costs associated with these activities, is not warranted for this purpose.

With regard to the comment that the prohibition on holding credit balances will remove the ability of an affected institution to carry credit balances from one term to the next, while we agree that is a consequence of this provision, we do not believe it will have the impact envisioned by the commenter because the institution will still be able to carry forward charges from one term to another term within the current year, as defined under § 668.164(c)(3)(ii)(A)—the charges carried forward may be paid by the title IV.

Finally, in the NPRM under § 668.165(b)(1)(ii) we erroneously cross referenced ''§ 668.162(c)(2) or (d)(2).'' These cross references should have referred to ''§ 668.162(c) or (d).''

Changes: We have revised § 668.165(b)(1)(ii) to cross reference § 668.162(c) or (d).

Retaking Coursework (§ 668.2)

Comments: Many commenters supported our proposal to eliminate the provision in the current regulations that prohibits an institution from counting for enrollment purposes any course passed in a previous term of the program that the student is retaking due to having failed other coursework.

One of the commenters specifically supported the applicability of the amended regulations to undergraduates, graduates, and professional students, because this change will be a benefit to students. The commenter asked the Department to clarify in the Federal Student Aid Handbook that the amended regulation applies to these groups of students because this is a change in policy that is not reflected in the regulations.

Discussion: We thank the commenters for their support, and agree that amending the definition of full-time student in § 668.2(b) will be beneficial for students who retake coursework.

In regard to the commenter's recommendation that we clarify the applicability of the amended regulations to undergraduates, graduates, and professional students, we plan to update the Federal Student Aid Handbook, as well as all other applicable Departmental publications and Web sites, to reflect the changes to the retaking coursework provision after the final regulations become effective.

Changes: None.

Comments: One commenter disagreed with the Secretary's proposal to allow a student to receive title IV aid to retake a previously passed course. This commenter expressed concern about the availability of funding, and stated that a more reasonable approach would be for an institution to not charge students for courses that a student could bypass through a challenge process such as an exam.

Discussion: In general, the regulations do not dictate whether a student may retake coursework in term-based programs, including repeating courses to achieve a higher grade. The regulations only apply to determining enrollment status for title IV, HEA program purposes. We allow an institution this flexibility as long as it does not use title IV program funds for repeated coursework where prohibited by the regulation.

Moreover, the regulations do not limit an institution's ability to establish policies for title IV, HEA program purposes so long as those policies are not in conflict with title IV, HEA program requirements. An institution may, for example, allow a student to challenge, or ''test out of,'' a course or courses. Title IV funds cannot be used to pay for any courses that a student ''tests out of''; and an institution may establish its own policies for these situations, including passing the costs of the tests on to the student. However, with respect to repeating coursework previously passed by a student in a term-based program, under the final regulations, a student may use title IV, HEA funds for retaking previously passed coursework, but only one time per course. For example, the student may need to retake a course to meet an academic standard for that particular course, such as a minimum grade. Additionally, a student may use title IV, HEA funds for retaking coursework if the student is required to retake the course because the student failed the course in a prior term.

We believe the rule serves to prevent potential abuse from courses being retaken multiple times, while providing institutions sufficient flexibility to meet the needs of most students.

Changes: None.

Clock-to-Credit-Hour Conversion (§ 668.8(k))

Comments: The majority of commenters expressed strong support for the proposal to streamline the requirements governing clock-to-credit-hour conversion, with one commenter thanking the Department for responding to the concerns that institutions have expressed since publication of the previous rules. Generally, the commenters stated that the simplification of the regulations proposed in the NPRM will reduce burden and be a positive change. One commenter also noted that since accrediting agencies are already required to review the assignment of credit hours under 34 CFR 600.2 and 602.24, the requirements outlined in § 668.8(k)(2) of the final regulations published on October 29, 2010 were unnecessary. Another commenter noted that the provisions previously in § 668.8(k)(2), which required some programs to be treated like clock hour programs for title IV purposes even after they were converted to credit hour programs, were confusing. This commenter further noted that those provisions interfered with State requirements relating to program delivery and that the current conversion

formulas contained in § 668.8(l) are sufficient to ensure that clock hours are appropriately converted to credit hours.

One commenter who supported the proposal stated that the Department should not remove the part of the current and familiar definition of a credit hour that is contained in 34 CFR 600.2, which equates one hour of classroom instruction and at least two hours of out-of-class student work per week (for 15 weeks, for example, for a semester credit).

Discussion: We appreciate the overall support offered in the comments. With regard to the comment requesting that we keep the part of the current and familiar definition of a credit hour that is contained in 34 CFR 600.2, which equates one hour of classroom instruction and at least two hours of out-of-class student work per week (for 15 weeks, for example, for a semester credit), we note that we are not changing the definition of a credit hour in 34 CFR 600.2. However, in that definition of a credit hour, there is a reference to § 668.8(k) and (l), which together contain the requirements that must be met when certain programs are offered in credit hours. In particular, § 668.8(l) provides the formulas that must be used to determine how many clock hours of instruction each semester, trimester, and quarter credit hour must have for certain credit hour programs. The formulas in § 668.8(l), for the educational programs covered by that section of the regulations, are used in lieu of the general definition of a credit hour found in 34 CFR 600.2. Those formulas are based on a comparison of the definitions of an academic year for credit hour and clock hour programs: A clock hour program requires 900 clock hours; and credit hour program requires either 24 semester or trimester credit hours or 36 quarter credit hours. Thus, 900 divided by 24 equals the 37.5 clock hours that are generally needed for a semester or trimester hour; and 900 divided by 36 equals the 25 clock hours that are generally needed for a quarter credit hour.

This approach to the determination of what a credit hour consists of is somewhat different than the approach used in the definition of a credit hour in 34 CFR 600.2, and, thus, appears to result in a different number of clock hours associated with each credit hour than what would be the case if the definition of a credit hour in 34 CFR 600.2 were used. However, with respect to programs covered by § 668.8(l)(1), the formula assumes that there is some outside of class work; and with respect to programs covered by § 668.8(l)(2), the formula specifies a minimum amount of outside of class work required. When these aspects of the formulas in § 668.8(l) are considered, it is assumed that the amount of work required for a student to earn a credit hour is roughly equal in all cases. Nevertheless, as stated above, the appropriate formula in § 668.8(l) is what is used to determine the number of credit hours in a program covered by that section of the regulations in lieu of that part of the definition of a credit hour in 34 CFR 600.2 that specifies that each credit hour includes 1 hour of classroom work plus at least two hours of out of class work.

Changes: None.

Implementation

Comments: Several commenters requested a longer implementation period to give institutions time to comply with the new requirements.

Commenters stated that certain requirements of the proposed regulations include many different components that present major obstacles for institutions and their partner financial institutions. For example, some of the key portions of the proposed regulations that commenters stated may be particularly difficult to implement by July 1, 2016 include updating disclosure materials and network systems; identifying the major features and commonly assessed fees associated with all financial accounts described in paragraphs; posting contract data to the institution's Web site; revising agreements between institutions and financial institutions; ensuring convenient access to ATMs for students; reviewing agreements to make sure that they are in the best interests of the students, as defined in the regulations; updating the physical debit and campus cards to comply with requirements; and adopting new policies and procedures to ensure that title IV funds are delivered to students in compliance with the new requirements. Another commenter noted that other agencies frequently allow a longer implementation period, and suggested 24 months as a reasonable timeframe.

Several commenters asked the Department to address how existing products and services will be affected by the regulations, and some commenters suggested that the regulations should only be applied prospectively to new T1 and T2 arrangements.

Discussion: While we will not delay implementation of all of the final regulations, we agree that it may be difficult for institutions to implement certain components of the regulations by July 1, 2016. Consequently, we have chosen to delay implementation of the required disclosures identifying the major features and commonly assessed fees associated with all T1 and T2 financial accounts until July 1, 2017, to delay the posting of the contract until September 1, 2016, and to delay the posting of the contract data until September 1, 2017. We believe that institutions will be able to comply with the other requirements in the regulations by July 1, 2016.

We disagree with the commenter that suggested that the regulations should apply only to T1 and T2 arrangements entered into after the effective date. T1 and T2 agreements are already a common practice at institutions, and we believe that enforcing these regulations uniformly across all institutions is the best way to protect title IV funds. Institutions will have the time required under the HEA's Master Calendar provision—until July 1, 2016—to take all necessary steps to conform their arrangements to the final regulations.

Changes: We have revised § 668.164(d)(4)(i)(B)(*2*) to specify that implementation of the required consumer disclosures will not be required until July 1, 2017. We have also revised § 668.164(e)(2)(vii) and (f)(4)(iv) to state that the posting of the contract data will not be required until September 1, 2017. We have revised § 668.164(e)(2)(vi) and (f)(4)(iii) to state that the posting of the contract will not be required until September 1, 2016.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

As described in the NPRM, the Department is issuing the regulations in order to address a changing marketplace as it relates to financial aid disbursement by third-party servicers. In doing so, the Department believes that these current arrangements, along with future arrangements, will be more beneficial and transparent to students and other parties.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into six sections. The ''Need for Regulatory Action'' section discusses why amending the current regulations is necessary. Reports from GAO, USPIRG, and OIG, among others, document the troubling practices that necessitated this regulatory action and affect a potentially large number of students.

The ''Summary of Changes and Final Regulations'' briefly describes the changes the Department is making in the regulations. The regulations amend the cash management regulations, as well as address two issues unrelated to cash management: Retaking coursework and clock-to-credit-hour conversion.

The ''Discussion of Costs, Benefits, and Transfers'' section considers the cost and benefit implications of the regulations for students, financial institutions, and postsecondary institutions. Specifically, the Department considered the costs and benefits of interest-bearing bank accounts, accounts offered under T1 and T2 arrangements, retaking coursework, and clock-to-credit-hour conversion.

Under ''Net Budget Impacts,'' the Department presents its estimate that the final regulations would not have a significant net budget impact on the Federal government.

Under ''Alternatives Considered'' the Department discusses other regulatory approaches we considered for key provisions of the regulations.

Finally, the ''Final Regulatory Flexibility Analysis'' considers the effect of the regulations on small entities.

Need for Regulatory Action

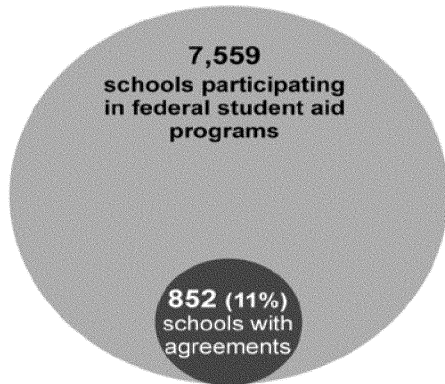
The Department's main goal in promulgating the regulations is to address major concerns regarding the rapidly changing financial aid marketplace wherein products are offered by financial institutions under agreements with institutions to students who receive title IV, HEA credit balances.

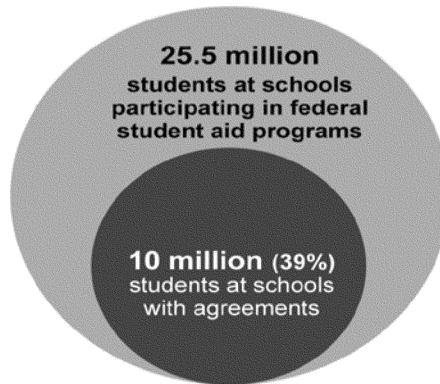
Changes in the student financial aid marketplace make the final regulations necessary. As discussed in the NPRM, the number of institutions entering into these agreements continues to increase as these agreements help institutions save money on administrative costs that they would otherwise incur in disbursing title IV credit balances to students. These agreements have raised concerns over the practices employed by financial institutions and third-party servicers. Some of these troubling practices include an insistence on using college card accounts over preexisting accounts, implying that the only way to receive Federal student aid is through college card accounts, allowing private student information to be made available to card providers without student consent, and encouraging a proliferation of uncommon and confusing fees that are charged to aid recipients for accessing their funds. These practices, along with others discussed in the NPRM, reduce the amount of title IV aid available for educational expenses.

As detailed in the NPRM, these practices are concerning because of the number of students impacted. While data on credit card agreements and credit balances are scarce, a GAO report from July 2013 identified 852 postsecondary institutions (11 percent of all schools that participate in the title IV programs) that had college card agreements in place. While 11 percent is a small percentage of total title IV participating schools, these schools had large enrollments, making up about 39 percent of all students at schools participating in title IV programs.[63]

Chart 1: College Card Agreements by Number of Schools and Number of Students that Participate in Federal Student Aid Programs.

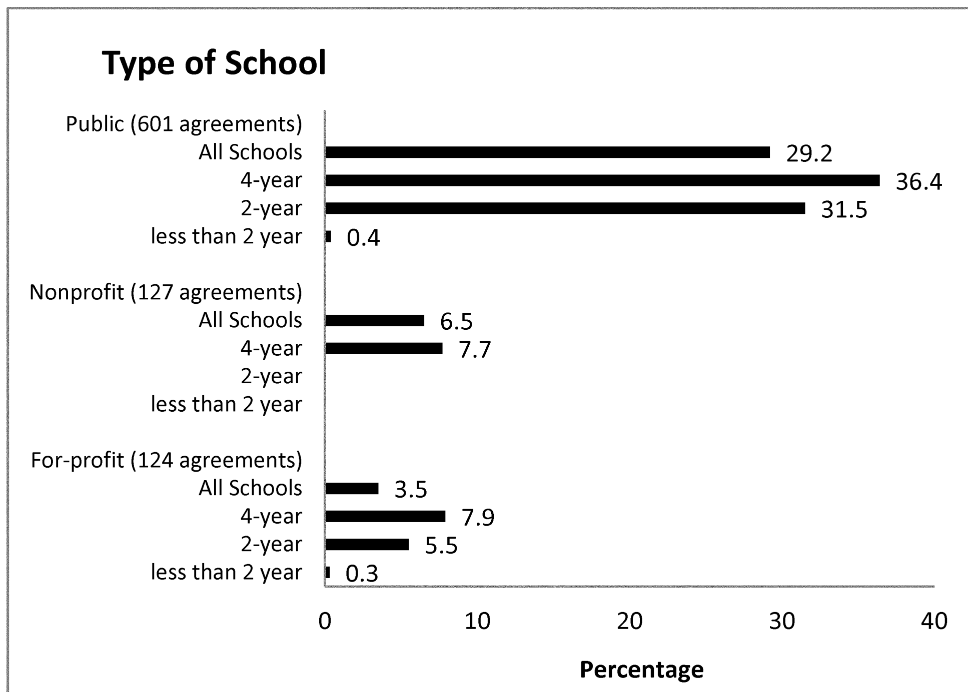
[63] GAO at 9.





The GAO report also found that college card agreements were most common at public postsecondary institutions, where 29 percent of public schools had card agreements, compared with 6.5 percent at not-for-profit schools and 3.5 percent at for-profit schools (see table [1]). Comprehensive data do not currently exist for the number of students who use accounts falling under these college card agreements. However, the GAO report found that public two-year institutions represented almost half of all schools that used college cards to make financial aid payments.[64] Students at public two-year institutions are most likely to receive a financial aid payment (credit balance) due to the low tuition and fees deducted from total aid received.

Table 1: Percentage of Schools with College Card Agreements by Sector and Program Length, as of July 2013.



Based on the data available on the number of students affected by these college card agreements, the questionable practices of the providers, and the amount of Federal funds at stake, we believe that amending the regulations governing title IV student aid disbursement is warranted.

Summary of Changes and Final Regulations

The final regulations are intended to ensure students have convenient access to their title IV, HEA program funds without charge, and are not led to believe they must open a particular financial account to receive their Federal student aid. As discussed in the *Analysis of Comments and Changes* section of this document, the Department considered over 200 comments on a variety of topics related to the proposed regulations. Significant changes made in response to the comments include:

(1) Replacing the 30-day fee restriction with a provision requiring that students are provided at least one free mechanism to conveniently access their title IV, HEA program funds in full

[64] GAO at 9.

or in part once the funds have been deposited or transferred to the financial account, up to the account balance;

(2) Establishing a threshold for the 3 most recently completed award years, that students with a title IV credit balance represent an average of five percent or more of the students enrolled at the institution; or an average of 500 students enrolled at the institution have title IV, credit balances at an institution for several of the requirements relating to T2 arrangements to apply;

(3) Exempting foreign locations from the requirement from the requirement of convenient ATM access; and

(4) Eliminating the requirement that checks be listed on the student choice menu while still allowing students to affirmatively request a refund by check and allowing institutions to list a check as an option.

We also clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

The table below briefly summarizes the major provisions of the regulations.

TABLE 2—SUMMARY OF THE MAJOR PROVISIONS OF THE REGULATIONS

Provision	Reg section	Description of provision	
		T1	T2
Defines T1 and T2 arrangements between institutions and financial account providers.	§ 668.164	Arrangement between an institution and a third-party servicer that performs the functions of processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students.	Arrangement between an institution and a financial institution under which financial accounts are offered and marketed directly to students. Provisions related to disclosure of contract data, ATM requirements, and the best interest provisions apply only to those institutions with at least 5 percent of the average enrollment for the 3 most recently completed award years or an average of 500 students with a credit balance for the 3 most recently completed award years. For the calculation of the 5 percent threshold, enrollment means students enrolled at the institution at any time during the three most recently completed award years.
Fee mitigation	§ 668.164	• Prohibits point-of-sale and overdraft fees. • Requires at least 1 convenient mechanism for students to access title IV, HEA funds in full and in part without charge.	Not Applicable.
		Applicable to Entities with T1 and T2 Arrangements	
Reasonable access to funds	§ 668.164	Requires reasonable access to fee-free ATMs or a surcharge-free ATM network. Applies only to institutions located in a State. For T2 arrangements, the threshold of 5 percent of the average enrollment over the most recent 3 award years or an average of 500 credit balance recipients for the 3 most recent award years applies.	
Student choice process	§ 668.164	Requires institutions to establish a student choice process that: • Prohibits institutions from requiring students to open a specific financial account to receive credit balances • Provides students a list of options for receiving credit balance funds with each option presented in a neutral manner • Lists pre-existing accounts as the first, and most prominent, option, with no option preselected • Establishes that aid recipients have the right to receive funds to existing accounts • Ensures that electronic payments made to pre-existing accounts are initiated as timely as and are no more onerous than payments made to an account on the list of options	
Consent to open account	§ 668.164	Student choice of the account or consent required to open account before: • Providing information about student to financial account provider • Sending access device to student • Associating student ID with a financial account	
Contract disclosure	§ 668.164	Public disclosure of contracts governing arrangements and related cost information	
Contract evaluation	§ 668.164	Requires institutions to establish and evaluate T1 and T2 arrangements in light of the best interests of students	
		Additional Provisions	
Secretary's reservation of right	§ 668.164	Confirms that the Secretary reserves the right to establish a method for directly paying credit balances to student aid recipients.	
Retention of interest on accounts holding title IV funds.	§ 668.163	Increases the amount of interest accrued in accounts holding title IV funds that non-Federal entities are allowed to retain from $250 to $500 annually.	
Retaking coursework	§ 668.2	Eliminates, for all program levels, the prohibition on counting towards enrollment repeated courses taken in the same term in which the student repeats a failed course. The current prohibition against counting more than one repetition of a previously passed course would remain.	

TABLE 2—SUMMARY OF THE MAJOR PROVISIONS OF THE REGULATIONS—Continued

Provision	Reg section	Description of provision	
		T1	T2
Clock-to-credit hour conversion	§ 668.8(k) and (l).	Eliminate § 668.8(k)(2) and (3), and make a conforming change in § 668.8(l), to streamline the requirements governing clock-to-credit-hour conversions, mitigate confusion about whether a program is a clock- or credit-hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.	

Discussion of Costs, Benefits, and Transfers

As discussed in the NPRM, the expected effects of the final regulations include improved information and transparency to facilitate consumer choice of financial accounts for receiving title IV credit balance funds; reasonable access to title IV funds without fees; a redistribution of some costs among students, institutions, and financial institutions; updated cash management rules to reflect current practices; streamlined rules for clock-to-credit-hour conversion; and the ability of students to receive title IV funds for repeat coursework in certain term programs. The parties that will experience the largest impacts are students, institutions, and the third-party servicers and financial institutions that have contractual relationships described as T1 and T2 arrangements in the final regulations.

Data and Methodology

In an attempt to quantify some of the costs and to reduce the burden associated with the regulations, the Department analyzed its own data to estimate the prevalence of credit balances. While there may be instances where financial institutions have an agreement with a postsecondary institution to offer college card accounts to students who do not receive credit balances, the regulations focus on accounts offered under T1 or T2 arrangements where students have a credit balance.

While comprehensive data on the number of students who receive credit balances on a college card does not currently exist, we attempted to calculate the incidence and distribution of credit balance recipients. We analyzed the data maintained by the Department to estimate the number of students who would potentially be affected by the regulations and to evaluate whether we could establish a de minimis threshold below which an institution would not be subject to the T2 requirements by analyzing the percentage of students with a credit balance at various institutions.

The numbers of students who received title IV aid in the 2013–2014 school year (from the Department's office of Federal Student Aid's National Student Loan Data System (NSLDS)) were matched by institution to data from the Integrated Postsecondary Education Data System (IPEDS) for tuition, fees, and room and board. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-State, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). For each institution, the students in the aid ranges above the estimated institutional cost were considered to have a credit balance. We used those students to obtain a percentage of students who received a credit balance at each institution. For example, if the institutional cost was determined to be $12,456 and 50 of 150 title IV aid recipients were in the buckets from $12,500 and above, approximately 33 percent of aid recipients at that institution were considered to have a credit balance.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions had both tuition estimates and aid recipient information. Unsurprisingly, there is an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. Our findings were consistent with findings from GAO and USPIRG. The data estimated a total 2,816,104 students at these 3,400 institutions were receiving a credit balance. The Department's data showed 70 percent of total students receiving a credit balance were at public two-year institutions (1,972,035 students). While all of the four-year institutions had significant estimated numbers of students who received a credit balance, the students at four-year institutions combined (819,062) still did not equal half the total number of students who received a credit balance at public two-year institutions (Table [3]). The numbers of institutions and students who received a credit balance were lowest at the less-than-two-year institutions, which represented approximately 1.8 percent of institutions and under one percent of students who received a credit balance from the 3,400 institutions with both tuition and fee and financial aid data.

Table 3: Number of Institutions and Students who Received a Credit Balance.

NUMBER OF INSTITUTIONS AND STUDENTS WHO RECEIVED A CREDIT BALANCE

Sector	Number of institutions	Students with a credit balance
Public, 2-year	912	1,972,035
Public, 4-year or above	625	540,461
Private for-profit, 4-year or above	195	181,530
Private not-for-profit, 4-year or above	1,297	97,071
Private for-profit, 2-year	212	19,436
Private not-for-profit, 2-year	97	3,699
Public, less-than 2-year	20	877
Private for-profit, less-than 2-year	32	863

NUMBER OF INSTITUTIONS AND STUDENTS WHO RECEIVED A CREDIT BALANCE—Continued

Sector	Number of institutions	Students with a credit balance
Private not-for-profit, less-than 2-year	10	132
Total	3,400	2,816,104

As several provisions of the regulations apply to institutions with T1 or T2 arrangements, we obtained from the CFPB a listing of 914 institutions that were known to have card agreements with financial institutions and applied the same methodology described above to this subset of institutions. Of these 914 institutions with card agreements, 672 institutions had both tuition and fees and aid recipient data in the Department's dataset. A total of 1,322,615 students at the 672 institutions from this dataset were estimated to have a credit balance. The results from this subset were similar to the larger dataset. The public two-year institutions had the largest numbers of students with a credit balance with the four-year institutions also having significant numbers (See Table [4]). The less-than-two-year institutions had inconclusive data. Again, this subset provided no additional information on a clear de minimis amount.

Table 4: Students with a Credit Balance at Known Institutions that Have Card Agreements.

STUDENTS WITH A CREDIT BALANCE AT KNOWN INSTITUTIONS THAT HAVE CARD AGREEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	304	996,107
Public, 4-year or above	200	280,467
Private for-profit, 4-year or above	38	29,593
Private not-for-profit, 4-year or above	113	10,001
Private for-profit, 2-year	17	6,447
Private not-for-profit, 2-year	N/A	N/A
Public, less-than 2-year	N/A	N/A
Private for-profit, less-than 2-year	N/A	N/A
Private not-for-profit, less-than 2-year	N/A	N/A
Total	672	1,322,615

In a final analysis of the data, we took the subset and identified only those institutions that had what would be considered a T2 arrangement under the final regulations. This narrowed down the data to 191,242 students at 160 institutions. The identified institutional data was further analyzed by sector with data available for public two-year, public four-year or above, and private not-for-profit, four-year or above institutions. The data was similar to the larger datasets (see Table [5]) and produced inconclusive results.

Table 5: Students with a Credit Balance at Known Institutions that Have T2 Arrangements.

STUDENTS WITH A CREDIT BALANCE AT KNOWN INSTITUTIONS THAT HAVE T2 ARRANGEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	36	135,108
Public, 4-year or above	70	56,066
Private not-for-profit, 4-year or above	54	68
Total	160	191,242

Costs

As discussed in the Costs, Benefits, and Transfers section of the NPRM, the provisions related to T1 arrangements would require a servicer in a T1 arrangement to provide student accountholders with convenient access to a surcharge-free regional or national ATM network. This requirement has potential cost implications for third-party servicers who currently do not meet this requirement. A few commenters contended that we had failed to quantify such costs and stated that this could have a substantial financial burden on some banks.

Some commenters suggested that the cost of installing and operating an ATM for one year could range from $20,000 to $40,000, and our market research found wide variations in cost based on the type, capacity, and condition of the ATMs. Used ATMs can be bought from wholesalers or on discount Web sites for less than $600 while many of the newer technologies cost between $4,000 and $10,000 per unit, not including the cost of installation. Furthermore, ATMs often cost upwards of $1000 a month to maintain. As some commenters noted, there are also additional costs to operating ATMs, such as providing electricity to power the machines, as well as ensuring that the machines are in secure locations.

If we assume a $25,000 cost to install and operate an ATM and apply that to the estimated 914 institutions with T1

or T2 arrangements, the estimated cost for one year of operation would be $22.9 million, with costs in subsequent years reduced to operating and maintenance costs of $12,000 annually for a total of approximately $11.0 million. However, this cost is a rough approximation as some institutions may have more than one location and several factors will mitigate those costs.

First, as several commenters have noted, many financial institutions already have ATMs in place on campus and will not have to make any changes to comply with the reasonable access provision.

Additionally, under the final regulations, institutions will be in compliance with the reasonable access provision applies if they provide sufficient access to an ATM given the student population at a given location. In the course of developing the final regulations, we examined the available data to see if a de minimis threshold could be determined and asked for feedback about such a threshold. Many commenters agreed that a threshold should be established, but there were no suggestions on a specific number. Based on this feedback, the Department established the sufficient access standard described above. We believe this approach strikes a reasonable balance between concerns regarding the cost of providing ATM access and the interests of students who need to access their funds through this mechanism. As this approach does not specify a threshold that applies across all institutional circumstances, the Department cannot specify the exact burden the reasonable access provision will place on institutions. For example, if institutions decided a threshold of 30 students with a credit balance merited the provision of an ATM at a location, the Department estimates that, for institutions in T1 or T2 arrangements, over 70 percent of locations representing over 95 percent of students with credit balances would be over that number when using an eight-digit NSLDS school code as a proxy for location and the estimates of students with credit balances as described in the Data and Methodology section of this RIA. The revised provision relies on institutional knowledge of enrollment and location in determining the number of additional ATMS needed to satisfy the standard of convenient access, and, along with the preexisting access, will likely reduce the $22.9 million in initial costs and $11.0 million in annual costs estimated above.

T2 Arrangements

The direct marketing methods employed by financial institutions, third-party servicers, and postsecondary institutions have proven to be fairly effective. As mentioned earlier in the Need for Regulatory Action of this RIA, 10 million students (Chart 1) are at title IV-participating schools where card agreements are prevalent. As described in the NPRM, data limitations and uncertainty about the student reaction to the information and options that will be part of the student choice menu under the final regulations present challenges in estimating the costs of the T2 arrangements. If students move away from products offered under T2 arrangements, providers may incur additional marketing expense or other costs to administer the accounts.

Based on this feedback, the Department decided that institutions must meet a certain threshold to be subject to certain requirements relating to T2 arrangements including disclosure of the contract data, the ATM requirements, and the best interests sections. Institutions are subject to those requirements if five percent or more of the total number of students enrolled at the institution received at title IV credit balance, or the average number of credit balance recipients for the three most recently completed award years is 500 or more. For institutions that do not have significant percentage or numbers of students with a credit balance, the threshold for classification as a T2 arrangement will potentially provide some mitigation of the costs associated with T2 arrangements.

Additional discussion of the costs of implementing and complying with these final regulations can be found in the *Paperwork Reduction Act* section of this document.

Transfers: Fee-Related Provisions Applicable to Institutions With T1 Arrangements

Institutions with T1 arrangements are required to mitigate fees that could be incurred by student aid recipients by prohibiting point-of-sale fees and overdraft fees charged to students. Additionally, these institutions must ensure that students have convenient access through surcharge-free ATMs that are part of a national or regional ATM network. Little information is currently available on the total amount of college card fees paid by students. Most financial account providers are unwilling or unable to provide information on fees to the Department. The GAO report reviewed fee schedules from eight financial institutions and found that while college cards do not have monthly maintenance fees, fees for out-of-network ATM use, wire transfers, and overdraft fees were similar to the financial products marketed to non-students. Credit unions' fees were typically lower than those charged by college cards (see Table [6]). However, college card fees were lower than alternative financial products, such as check-cashing services.[65]

Table 6: Account Fees by Provider Type

ACCOUNT FEES BY PROVIDER TYPE

Fee	College cards	Large banks, general checking accounts	Credit unions
Monthly Maintenance	$0	standard account: $6–$12 student account: $0–$5.	$0
Out-of-network ATM Transaction	$2–$3	$2–$2.50	$1
PIN	$0–$0.50	$0	$0
Overdraft	$29–$36	$34–$36	$25
Outgoing Wire Transfer	$25-–$30	$24–$30	$15

While we do not know the total amount of college card fees paid by students annually, we do know the amounts are substantial. A review of the annual SEC filings by one market participant, Higher One, indicates that account revenue from a variety of fees totaled $135.8 million in FY 2013, which represented 64.3 percent of total

[65] GAO at 18.

revenues for FY 2013.[66] Not all of those fees are subject to the provisions of the final regulations, but the amount of student account revenue affected by the changes across the industry will be significant.

Along with being unable to determine the total amount of college card fees paid by students, student behavior is also unpredictable, and student response to the information about account options and costs will significantly contribute to the effect of the regulations. While it is assumed that consumers with appropriate information would make rational decisions, such as avoiding withdrawals from out-of-network ATMs or choosing debit transactions that require signatures rather than a PIN, some students may not make the optimal choices in managing their accounts. The Department does not have the distribution of students in accounts with specific fee arrangements, data on student usage patterns, or data on the responsiveness of students to the information that will be provided under the regulations, and therefore it is difficult for us to estimate the exact transfers that will occur when certain fees on student accounts are prohibited. Some analysis has been done on account usage that can be used to establish a range of possible effects of the regulations. In its August 2014 report, Consumers Union developed minimal, moderate, and heavy usage profiles and determined that the accounts it analyzed would cost minimal users from $0 to $59.40, moderate users from $10.20 to $95.00, and heavy users from $59.40 to $520.00 on an annual basis.[67] This range of outcomes indicates how the distribution of students in accounts and the student response to account information disclosed under the regulations will help determine the fee revenue affected by the regulations.

An additional analysis by U.S. PIRG included data on overdraft behavior by age range, with adults in the 18 to 25 age range having the highest incidence of paying overdraft fees—53.6 percent paying zero, 21.5 percent paying $1 to $4, 10.3 percent paying $5 to $9, 7.9 percent paying $10 to $19, and 6.8 percent paying $20 or more for each overdrafts.[68] While not all students will fall within this age range, given the high percentage that pays at least one overdraft fee and the amount of overdraft fees ranging from $25 to $38 when applied, the amount of money affected by the overdraft fee prohibition is significant. Further analysis recently released by the Center for Responsible Lending analyzed similar data on overdrafts for adults in three categories and found average annual costs in overdraft fees of $67 for the 15 percent of young adults with two overdrafts per year, $264 for the 13 percent of adults with seven overdrafts per year, and $710 for the 11 percent of adults that overdraw about 19 times per year.[69]

Another element that complicates the analysis of the effects of the regulations is the response of financial institutions and institutions. The fee provisions imposed on accounts offered pursuant to T1 arrangements will have cost implications for affected servicers. One intent of the regulations is to allow students to access financial aid funds without burden from fees or other costs; however, the Department acknowledges that many of these servicers could restructure their accounts to earn some of those funds through fees not affected by the regulations. Over time, as contracts are renewed or entered into, financial institutions could also increase the revenue they receive from institutions, but the split between the revenue that can be recaptured and that which might be lost to financial institutions is not estimated in this analysis.

Benefits: Disclosure Provisions, Student Choice, and Access to Funds

As noted in the Summary of Changes and Final Regulations, institutions with T1 and T2 arrangements are subject to several provisions focused on increasing disclosure of information related to student accounts and emphasizing the availability of options for students to receive credit balances. Students have a variety of choices on how to receive their aid. Based on data from the National Postsecondary Student Aid Study (NPSAS) conducted by the National Center for Education Statistics (NCES), we know that a majority of students receive a refund by depositing a refund directly to a bank account (37.2 percent) or by cashing or depositing a refund at a bank themselves (38.5 percent). The remaining 24.3 percent of students receive refunds by cashing refunds somewhere other than a bank, receive refunds on a prepaid debit card, receive a refund through student ID cards, or do something else not listed.[70]

One of the largest benefits for students from the regulations is that students will have access to account disclosures and critical information to allow them to make informed decisions regarding the handling and distribution of their title IV funds. The fee and contract disclosures will help students and regulators determine whether the financial products marketed by financial institutions with relationships to their school are the best option for them. These disclosures will also help prevent students from being misled into believing that they must use those financial products.

With respect to including the costs of books and supplies in tuition and fees, the Department has changed the ''best financial interest'' standard in the NPRM to allowing the inclusion under three circumstances. As described in the *Analysis of Comments and Changes,* those three circumstances are: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at or below competitive market rates (with an opt out provision for the student); (2) the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or (3) the institution demonstrates there is a compelling health or safety reason. These final regulations allow, but do not require, institutions to disclose the prices of books and other materials that they include as part of tuition and fees. We believe this revised treatment benefits students through the buying power of the school in cases where the school can source the materials for lower than market costs and the ability of the institution to provide digital and other materials that cannot be sourced elsewhere. If these three circumstances are not met, institutions would need authorization from the student to use title IV, HEA funds on books and supplies, and the student would have the ability to look at alternate providers for better value before providing such authorization.

The regulations also help protect students from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution. When students are not presented with clear choices or

[66] Higher One Holdings, Inc. ''SEC Form 10–K,'' pages 41–42 (2014), available at *www.sec.gov/Archives/edgar/data/1486800/000148680014000018/one10k.htm.*

[67] Consumers Union at 16.

[68] USPIRG at 32.

[69] Center for Responsible Lending, ''Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees,'' March 30, 2015.

[70] U.S. Department of Education, National Center for Education Statistics, 2011–12 National Postsecondary Student Aid Study (NPSAS:12).

information, they may be pushed into using financial accounts with higher fees and/or less access than other available options. The student choice provisions aid in the decision making process by allowing students who may have otherwise chosen a higher fee option to identify and choose accounts with lower fees. These students will save money and be able to use all or more of their title IV aid for expenses critical to their educational needs.

Other Benefits

As discussed in the NPRM, the regulations provide other benefits for students and institutions. Institutions will benefit from being able to keep the first $500 in interest accrued on accounts holding title IV funds. Institutions and students will benefit from the retaking coursework regulations as students will be able to continue paying for educational costs with title IV aid. The clock-to-credit-hour conversion regulations also will benefit institutions through simplification of regulations affecting institutional determinations relating to title IV eligibility.

Net Budget Impacts

The final regulations are not estimated to have a significant net budget impact. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The regulations require disclosures of institutional agreements with financial services providers through which students may opt to receive title IV credit balances, and restrict the fees students can be charged for accounts offered pursuant to T1 arrangements. Additionally, the proposed regulations make technical changes to subpart K cash management rules to reflect technological advances and improved disbursement practices. The regulations also simplify the clock-to-credit-hour conversion for title IV purposes by eliminating the reference to any State requirement or role in approving or licensing a program. Finally, the regulations eliminate the provision that prevents institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework.

The regulations affect the arrangements among institutions, students, and financial service providers, but are not expected to affect the volume of title IV aid disbursed or the repayment patterns of students, and therefore, we estimate no significant budget impact on title IV programs.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table [7], we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations.

TABLE 7—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

	7%	3%
Category	**Benefits**	
Greater disclosure of arrangements between institutions and financial service providers and clearer disclosure of fees and conditions of student accounts	Not Quantified.	
Category	**Costs**	
Costs of compliance with paperwork requirements.		
Category	**Transfers**	
	$21.0	$21.2

Final Regulatory Flexibility Act Analysis

The final regulations will affect institutions that participate in the title IV, HEA programs, financial institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define not-for-profit institutions as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector that would be affected by the regulations, and the concentration of ownership of institutions by private owners or public systems, means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the not-for-profit entities fit within the definition of a ''small organization'' regardless of revenue. Given the definitions above, several of the entities subject to the regulations are small, leading to the preparation of the following Final Regulatory Flexibility Act Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

Over the past several years, a number of changes have occurred in the student financial products marketplace and in budgets of postsecondary institutions that have led to a proliferation of agreements between postsecondary institutions and ''college card'' providers. These cards, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed to students as a way to receive their title IV credit balances via more convenient electronic means. However, a number of government and consumer group reports have also documented troubling practices employed by some of the providers of these college cards. Legal actions against the sector's largest provider further substantiate these reports' findings.

The Secretary is amending the cash management regulations under subpart K issued under the HEA to address a number of disturbing practices

identified by multiple government and consumer group reports. These reports indicate that students are not able to conveniently access their title IV, HEA program funds without onerous paper submissions and unnecessary waiting periods, unreasonable and uncommon financial account fees, or receiving misleading information suggesting that a particular financial account is required to receive student aid. The regulations also make changes to update subpart K consistent with contemporary disbursement practices. Finally, the final regulations update two additional, unrelated provisions of interest to students and institutions: revising the way previously passed coursework is treated for title IV eligibility purposes so that students remain in programs and do not have to find alternatives to title IV funding, and streamlining the requirements for converting clock hours to credit hours.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the concerning practices and expanding breadth of the college card market, we believe regulatory action governing the manner in which title IV, student aid is disbursed is warranted.

In addition, it has been 20 years since subpart K was comprehensively updated, and in that time a number of technological improvements and changes in authorized title IV programs have occurred. We have therefore made a number of more minor changes throughout subpart K in the final regulations.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

These final regulations would affect institutions, financial services providers that enter into certain arrangements with institutions, and students. Students are not considered ''small entities'' for the purpose of this analysis and the Department does not expect the financial institutions to meet the applicable definition of a ''small entity.'' However, a significant number of institutions of higher education are considered to meet the applicable definition of a ''small entity,'' and therefore, this analysis focuses on those institutions. As discussed above, private not-for-profit institutions that do not dominate in their field are defined as ''small entities'' and some other institutions that participate in title IV, HEA programs do not have revenues above $7 million and are also categorized as ''small entities.'' Table [8] summarizes the distribution of small entities affected by the regulations by sector.

TABLE 8—DISTRIBUTION OF SMALL ENTITIES BY SECTOR

	Small entity	Total	%
Public 4-year	0	749	0
Private NFP 4-year	1,648	1,648	100
Private For-Profit 4-year	278	827	34
Public 2-year	0	1,074	0
Private NFP 2-year	162	162	100
Private For-Profit 2-year	667	1,035	64
Public less than 2-year	0	262	0
Private NFP less than 2-year	87	87	100
Private For-Profit less than 2-year	1,411	1,695	83
Total	4,253	7,539	56

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the regulations require disclosures by institutions as discussed in the *Paperwork Reduction Act* section of this preamble. Table [9] summarizes the estimated burden on small entities from the paperwork requirements associated with the final regulations.

TABLE 9—SUMMARY OF PAPERWORK REQUIREMENTS FOR SMALL ENTITIES

Provision	Reg Section	OMB control No.	Hours	Costs
Require institutions to establish an account selection process	668.164(d)(4)	OMB 1845–0106	3,920	143,276
Compliance with T1 requirements: provide the terms and conditions of the financial accounts; provide convenient access to ATMs; ensure accounts cannot be converted to a credit instrument; and disclose the contract, the mean and median costs incurred over the prior year, and the number of students with these financial accounts	668.164e	OMB 1845–0106	6,710	245,251
Compliance with T2 requirements: obtain consent to open an account; provide terms and conditions; and disclose the contract, the number of students participating, and the mean and median actual costs for the prior year	668.164(f)	OMB 1845–0106	3,285	120,067

TABLE 9—SUMMARY OF PAPERWORK REQUIREMENTS FOR SMALL ENTITIES—Continued

Provision	Reg Section	OMB control No.	Hours	Costs
Total			13,915	508,593

Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict With the Regulations

The final regulations are unlikely to conflict with or duplicate existing Federal regulations. We consulted Federal banking regulators at FDIC, OCC and the Bureau of the Fiscal Service at the Treasury Department, and the CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework. We have crafted these regulations in a way that will complement, rather than conflict with, existing banking regulations. The most significant risk of potential conflict is with respect to account disclosure requirements, described in more detail in the ''*Disclosure of account information''* section of this preamble.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities, although the threshold of 500 students with a credit balance for classification as a T2 arrangement and the sufficient access standard for ATMs at campus locations may have a greater effect on small entities.

Collection of Information

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review and further consideration of the regulations, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)) does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to this collection of information in the final regulations at the end of the affected sections of the regulations.

Section 668.164 contains information collection requirements. Under the PRA, the Department has submitted a copy of this section, related forms, and the Information Collections Request (ICR) to the Office of Management and Budget (OMB) for its review.

The OMB Control number associated with the final regulation is 1845–0106.

Section 668.164 Disbursing Funds

Requirements: Student choice.

Under § 668.164(d)(4)(i), an institution in a State that makes direct payments to a student by EFT and that chooses to enter into an arrangement described in § 668.164(e) or (f), including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those payments. The institution must inform the student in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution. The institution must ensure that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner, and with no option preselected, except that the institution must prominently present as the first option, the financial account or access device associated with an existing account belonging to the student.

The institution must ensure that initiating the EFT to a financial account or access device associated with an existing student financial account is as timely and no more onerous to the student as initiating the electronic transfer process to an account offered under a T1 or T2 arrangement. The institution must allow the student to change his or her choice as to how direct payments are made, as long as the student provides the institution with written notice of the change within a reasonable amount of time. The institution must ensure that a student who does not make an affirmative selection of how direct payments are to be made is paid the full amount of the credit balance due consistent with the regulations. In describing the options, the institution must list and identify the major features and commonly assessed fees associated with all accounts offered under a T1 or T2 arrangement, as well as a URL for the terms and conditions of those accounts. For each account, if an institution by July 1, 2017 follows the format and content requirements specified by the Secretary in a notice published in the **Federal Register**, it will be in compliance with these requirements.

Alternatively, an institution that does not offer accounts under a T1 or T2 arrangement is not required to establish a student choice process and, instead, may make direct payments to an existing account designated by the student, issue a check, or disburse cash to the student.

Burden Calculation: The Department calculated the incidence and distribution of credit balance recipients. The numbers of students who received title IV aid in the 2013–2014 cohort (according to FSA data) were matched by institution to the IPEDS tuition, fees, and room and board data. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). To determine the number of students at each institution who received a credit balance, we looked at the number of students who fell within the aid ranges above the estimated institutional cost.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions (out of the total 7,539 participating in title IV, HEA programs) had both tuition estimates and aid recipient information. Unsurprisingly, there was an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. The Department's findings were consistent with findings from GAO and USPIRG. In an effort to thoroughly analyze all of the available data, we also applied the same methodology described above to a

subset of institutions. Utilizing publically available sources and working with the CFPB, we identified 914 institutions that were known to have card agreements with financial institutions. The Department also had available through NSLDS and IPEDS tuition and fees and aid recipient data for 672 of these institutions. From the data for these 672 institutions, we projected the number of students with a title IV credit balance at the 914 institutions proportionately. As a result, there were a total of 1,798,756 students at the 914 institutions from this dataset who received a credit balance.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 685 institutions are public institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 13,700 hours (685 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 154 institutions are private not-for-profit institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 3,080 hours (154 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 75 are private for-profit institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 1,500 hours (75 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to institutions will increase by 18,280 hours (the sum of 13,700 hours, 3,080 hours, and 1,500 hours).

The NSLDS–IPEDS–CFPB data indicate that 1,798,756 title IV recipients with credit balances for the 2013–14 award year will be impacted by this regulation. We estimate that each of the affected title IV recipients will take, on average, 20 minutes (.33 hours) to review the options presented by the institution or their third-party servicer and to make their selection.

Of the total number of title IV recipients with a credit balance, the data show that 1,736,141 recipients were enrolled in public institutions. On average, each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 572,927 hours (1,736,141 times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 13,601 recipients were enrolled in private not-for-profit institutions. On average each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 4,488 hours (13,601 recipients times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 49,014 recipients were enrolled in private for-profit institutions. On average each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 16,175 hours (49,014 recipients times .33 hours) under OMB Control Number 1845–0106.

Overall, burden to title IV recipients will increase by 593,590 hours (the sum of 572,927 hours, 4,488 hours, and 16,175 hours).

Requirements: T1 arrangements

Under § 668.164(e), a T1 arrangement exists when an institution in a State enters into a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution, and the institution or third party servicer makes payments to one or more financial accounts that are offered to students under the contract, or to a financial account where information about the account is communicated directly to students by the third-party servicer or by the institution on behalf of or in conjunction with the third party servicer.

An institution with a T1 arrangement must comply with the following requirements:

1. The institution must ensure that the student's consent to open the financial account has been obtained before an access device, or any representation of an access device is sent to the student, or an access device that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account. Before a student makes a selection of the financial account, the institution must not share with the third-party servicer under a T1 arrangement any information about the student, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, beyond a unique student identifier generated by the institution that does not include a Social Security number, in whole or in part; the disbursement amount; a password, PIN code, or other shared secret provided by the institution that is used to identify the student; or any additional items specified by the Secretary in a notice published in the **Federal Register**. Such information may be used solely for activities that support making direct payments of title IV, HEA program funds and not for any other purpose and cannot be shared with any other affiliate or entity for any other purpose.

2. The institution must inform the student of the terms and conditions of the financial account, in a manner consistent with disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened.

3. The institution must ensure that the student has convenient access to the financial account through a surcharge-free national or regional ATM network. Those ATMs must be sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into them. The institution must also ensure that students do not incur any cost: for opening the financial account or initially receiving an access device; assessed by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer, when the student conducts point-of-sale transactions in a State; or for conducting any transaction on an ATM that belongs to the surcharge-free regional or national network.

4. The institution must ensure that: The financial account or access device is not marketed or portrayed as, or converted into a credit card; no credit may be extended or associated with the financial account; and no fee is charged to the student for any transaction or withdrawal exceeding the balance on the card, except that a transaction that exceeds the balance on the card may be permitted only for inadvertently approved overdrafts as long as no fee is charged to the student for such overdraft.

5. The institution, third-party servicer, or third-party servicer's associated financial institution must provide domestic withdrawals for a student accountholder to conveniently access title IV, HEA program funds in

part and in full, without charge, up to the account balance, following the date that such title IV, HEA program funds are deposited or transferred to the financial account.

6. No later than September 1, 2016, the institution must disclose conspicuously on its Web site, and thereafter timely update, the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities. No later than September 1, 2017, and then 60 days following the most recently completed award year thereafter, disclose conspicuously on its Web site in a format to be published by the Department: The total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; the number of students who had active financial accounts under the contract at any time during the most recently completed award year; and the mean and median of the actual costs incurred by those active account holders. The institution must also annually provide to the Secretary a URL link to the agreement and the foregoing contract data for publication in a centralized database accessible to the public.

7. The institution must ensure that the terms of the accounts offered under a T1 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if the institution documents that it conducts reasonable due diligence reviews at least every two years, to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, consistent with or lower than prevailing market rates; and all contracts for the marketing or offering of accounts under a T1 arrangement to the institution's students provide for termination of the arrangement at the discretion of the institution based on complaints received from students or a determination by the institution that the fees assessed under the account are not consistent with or are above prevailing market rates.

8. The institution must take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that these requirements are met with respect to all accounts offered pursuant to T1 arrangements.

9. The requirements of paragraph (e)(2) do not apply to a student no longer enrolled if there are no pending title IV disbursements pending for that students, except that the institution remains responsible for including in the disclosures required of it any data regarding a T1 account maintained by a student during the preceding award year and the fees the student incurred, regardless of whether the student is no longer enrolled at the time institution discloses the data.

Burden Calculation: We expect that institutions with T1 or T2 arrangements will have to modify their systems or procedures to ensure compliance with these regulations including to establish a consent process; provide account terms and conditions disclosures; and provide the disclosures, contract disclosures, and use and cost data after the end of the award year. In addition, it is likely that institutions will make other changes in order to conduct their periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees are not consistent with or lower than prevailing market rates.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 541 public institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 29,755 hours (541 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 80 private not-for-profit institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 4,400 hours (80 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 75 private for-profit institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 4,125 hours (75 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to title IV institutions will increase by 38,280 hours (the sum of 29,755 hours, 4,400 hours, and 4,125 hours).

The NSLDS–IPEDS–CFPB data showed that there were 1,538,667 title IV recipients with credit balances at institutions with a T1 arrangement in the 2013–14 award year. Of that number of recipients, the data showed that 1,476,144 were enrolled at public institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 369,036 hours (1,476,144 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 13,509 title IV recipients with credit balances were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 3,377 hours (13,509 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 49,014 title IV recipients with credit balances were enrolled at private for-profit institutions. We estimate that, on average, each recipient will take 15

minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 12,254 hours under OMB Control Number 1845–0106.

Overall, burden to recipients will increase by 384,667 hours (the sum of 369,036 hours, 3,377 hours, and 12,254 hours).

Requirements: T2 arrangements.

Under § 668.164(f), a T2 arrangement exists when an institution enters into a contract with a financial institution, or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students. However, the institution does not have to comply with paragraphs(d)(1)(4) or (f)(4) and (5) if it had no credit balance recipients in one or more of the preceding three award years, nor with certain requirements in § 668.164(f)(4) if it documents that, on average over the preceding three years, fewer than 500 students received a credit balance and credit balance recipients comprised less than five percent of enrollment. The Secretary considers that a financial account is marketed directly if the institution communicates information directly to its students about the financial account and how it may be opened; the financial account or access device is cobranded with the institution's name, logo, mascot, or other affiliation and marketed principally to students; or an access device that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account.

Under a T2 arrangement, the institution must comply with the following requirements:

1. The institution must ensure that the student's consent to open the financial account is obtained before: The institution provides, or permits a third-party servicer to provide, any personally identifiable about the student to the financial institution or its agents other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37; or an access device, or any representation of an access device, is sent to the student (except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account).

2. The institution must inform the student of the terms and conditions of the financial account, in a manner consistent with the disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened.

3. No later than September 1, 2016, the institution must disclose conspicuously on the institution's Web site, the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, will compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities, and must also provide to the Secretary the URL for the contract for publication in a centralized database accessible to the public, and must thereafter update the contract posted with any changes. No later than September 1, 2017, and thereafter no later than 60 days following the most recently completed award year thereafter, the institution must disclose conspicuously on its Web site in a format to be published by the Department the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; and, for any year in which the institution's enrolled students had open 30 or more financial accounts marketed under the T2 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year; and the mean and median of the actual costs incurred by those active account holders. The institution must ensure that the foregoing data is included on the URL provided to the Secretary disclosing the contract.

4. If the institution is located in a State, it must ensure that the student accountholder can execute balance inquiries and access funds deposited in the financial accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into them.

5. The institution must ensure that the financial accounts are not marketed or portrayed as, or converted into, credit cards.

6. The institution must ensure that the terms of the accounts offered under a T2 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if the institution documents that it conducts reasonable due diligence reviews at least every two years, to ascertain whether the fees imposed under the accounts are, considered as a whole, consistent with or lower than prevailing market rates; and all contracts for the marketing or offering of the accounts to the institution's students provide for termination of the arrangement at the discretion of the institution based on complaints received from students or a determination by the institution that the fees assessed under the account are not consistent with or are above prevailing market rates.

7. The institution must take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that these requirements are met with respect to all accounts offered under a T2 arrangement.

8. The institution must ensure that students incur no cost for opening the account or initially receiving or validating an access device.

9. If the institution enters into an agreement for the cobranding of a financial account but maintains that the account is not marketed principally to its enrolled students and is not otherwise marketed directly, the institution must retain the cobranding contract and other documentation it believes establishes this.

10. The requirements of paragraph (f)(4) do not apply to a student no longer enrolled if there are no pending title IV disbursements pending for that students, except that the institution remains responsible for including in the disclosures required of it any data regarding a T2 account maintained by a student during the preceding award year and the fees the student incurred, regardless of whether the student is no longer enrolled at the time institution discloses the data.

Burden calculation: Under the regulations, we estimate that an institution with a T2 arrangement will have to modify its systems or procedures to, among other things: establish a consent process; provide account terms and conditions disclosures; provide the required disclosures, contract disclosures, and

use and cost data within 60 days after the end of the award year. In addition, other changes may be required regarding how the institution will conduct its periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become inconsistent with or higher than prevailing market rates.

Based upon our examination of the 2013–14 NSLDS and IPEDS data on title IV recipients there were 7,539 institutions of higher education participating in title IV, HEA programs.

Of these 7,539 institutions, according to NSLDS–IPEDS–CFPB data, 144 are public institutions with T2 arrangements. We estimate that the changes necessitated by the requirements relating to T2 arrangements will add an additional 45 hours of burden per institution, increasing burden by 6,480 hours under OMB Control Number 1845–0106.

Of the 7,539 institutions, according to NSLDS–IPEDS–CFPB data, 74 are private not-for-profit institutions with T2 arrangements. We estimate that the changes necessitated by the requirements relating to T2 arrangements will add an additional 45 hours of burden per institution, increasing burden by 3,330 hours under OMB Control Number 1845–0106.

Of the 7,539 institutions, according to NSLDS–IPEDS–CFPB data, no private for-profit institutions where title IV recipients had credit balances have T2 arrangements.

Overall, burden to institutions will increase by 9,810 hours (the sum of 6,480 hours and 3,330 hours).

From the NSLDS–IPEDS–CFPB data, we projected that there were 260,089 title IV recipients with credit balances at institutions with T2 arrangements. Of those recipients, the data showed that 259,997 were enrolled at public institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read the institution's required disclosures and consent information and decide whether to provide consent or not. Therefore, the additional burden on title IV recipients will increase by 64,999 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions that had a T2 arrangement, we estimated that 92 were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read the institution's required disclosures and consent information and decide whether to provide consent or not. Therefore, the additional burden on title IV recipients will increase by 23 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions with T2 arrangements, the data showed that zero were enrolled at private for-profit institutions.

Overall, burden to title IV recipients will increase by 65,022 hours (the sum of 64,999 hours and 23 hours).

Collectively, the total increase in burden for § 668.164 will be 1,109,649 hours under OMB Control Number 1845–0106.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department has submitted to OMB for approval, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $19,431,272 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
668.164–Disbursing Funds.	The final regulations require institutions to establish an account selection process if the institution sends EFT payments to an account described in § 668.164(e) or (f). Under § 668.164(e), when an institution enters into a T1 arrangement, the institution must, among other things, provide the terms and conditions of the financial accounts, provide convenient access to ATMs if the institution is located in a State, ensure the account cannot be converted to a credit instrument, disclose the details of the contract on the institution's Web site by providing a URL to a link showing the contract, including the mean and median costs incurred over the prior year as well as the number of students with these financial accounts. Under § 668.164(f), when an institution enters into a T2 arrangement, the institution or financial account provider must, among other things, obtain consent to open an financial account or provide an access device that is cobranded with the institution's name, logo, mascot, or other affiliation and principally marketed to students, or a card or tool that is provided to the student for institutional purposes such as a student ID card that is linked to the financial account, and provide the terms and conditions of the account, disclose the contract between the institution and the financial institution.	OMB 1845–0106 .... This will be a revised collection. We estimate that the burden will increase by 1,109,649 hours..	$19,431,272

The total burden hours and change in burden hours associated with each OMB Control number affected by these regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0106	4,282,188	+ 3,599,340
Total	4,282,188	= 3,599,340

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 668

Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 21, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474, unless otherwise noted.

■ 2. Section 668.2 is amended by revising the definition of ''Full-time student'' in paragraph (b) to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program, the student's workload may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters, or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(Authority: 20 U.S.C. 1082 and 1088)

■ 3. Section 668.8 is amended by revising paragraphs (k) and (l) to read as follows:

§ 668.8 Eligible program.

* * * * *

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(i) The institution's degree requires at least two academic years of study; and

(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

■ 4. Subpart K is revised to read as follows:

Subpart K—Cash Management

Sec.
668.161 Scope and institutional responsibility.
668.162 Requesting funds.
668.163 Maintaining and accounting for funds.
668.164 Disbursing funds.
668.165 Notices and authorizations.
668.166 Excess cash.
668.167 Severability.

§ 668.161 Scope and institutional responsibility.

(a) *General.* (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) *Access device* means a card, code, or other means of access to a financial account, or any combination thereof, that may be used by a student to initiate electronic fund transfers;

(ii) *Day* means a calendar day, unless otherwise specified;

(iii) *Depository account* means an account at a depository institution described in 12 U.S.C. 461(b)(1)(A), or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1);

(iv) *EFT (Electronic Funds Transfer)* means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term ''EFT'' includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term ''EFT'' includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions;

(v) *Financial account* means a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution;

(vi) *Financial institution* means a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student, issues to a student an access device associated with a financial account, and agrees with the student to provide EFT services;

(vii) *Parent* means the parent borrower of a Direct PLUS Loan;

(viii) *Student ledger account* means a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution; and

(ix) *Title IV, HEA programs* means the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary.

(b) *Federal interest in title IV, HEA program funds.* Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under 20 CFR part 675, subpart B, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not use or hypothecate (*i.e.,* use as collateral) the funds for any other purpose or otherwise engage in any practice that risks the loss of those funds.

(c) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance payment method, reimbursement payment method, or heightened cash monitoring payment method.

(b) *Advance payment method.* (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents.

(2) If the Secretary accepts that request, the Secretary initiates an EFT of that amount to the depository account designated by the institution.

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Reimbursement payment method.* (1) Under the reimbursement payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution seeks reimbursement from the Secretary for those disbursements.

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution has made to students or parents included in that request.

(3) As part of its reimbursement request, the institution must—

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or an entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under § 668.164(h).

(4) The Secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account designated by the institution, if the Secretary determines with regard to that student or parent, and in the judgment of the Secretary, that the institution has not—

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3) of this section.

(d) *Heightened cash monitoring payment method.* Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraphs (b)(1) and (2) of this section, except that the institution's request may not exceed the amount of the disbursements the institution has made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Institutional depository account.* An institution must maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or NCUA. For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

(2) For each depository account that includes title IV, HEA program funds, an institution located in a State must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each depository account the phrase ''Federal Funds''; or

(ii)(A) Notifying the depository institution that the depository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the depository account contains Federal funds and maintaining a copy of that statement.

(b) *Separate depository account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate depository account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing depository account.* (1) An institution located in a State is required to maintain its title IV, HEA program funds in an interest-bearing depository account, except as provided in 2 CFR 200.305(b)(8).

(2) Any interest earned on Federal Perkins Loan program funds is retained by the institution as provided under 34 CFR 674.8(a).

(3) An institution may keep the initial $500 in interest it earns during the award year on other title IV, HEA program funds it maintains in accordance with paragraph (c)(1) of this section. No later than 30 days after the end of that award year, the institution must remit to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852, any interest over $500.

(d) *Accounting and fiscal records.* An institution must—

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions in § 668.24.

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2)(i) For a Direct Loan for which the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(5), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) *Disbursements by payment period.* (1) Except for paying a student under the FWS program or unless 34 CFR 685.303(d)(4)(i) applies, an institution must disburse during the current payment period the amount of title IV, HEA program funds that a student enrolled at the institution, or the student's parent, is eligible to receive for that payment period.

(2) An institution may make a prior year, late, or retroactive disbursement, as provided under paragraph (c)(3), (j), or (k) of this section, respectively, during the current payment period as long as the student was enrolled and eligible during the payment period covered by that prior year, late, or retroactive disbursement.

(3) At the time a disbursement is made to a student for a payment period, an institution must confirm that the student is eligible for the type and amount of title IV, HEA program funds identified by that disbursement. A third-party servicer is also responsible for confirming the student's eligibility if the institution engages the servicer to perform activities or transactions that lead to or support that disbursement. Those activities and transactions include but are not limited to—

(i) Determining the type and amount of title IV, HEA program funds that a student is eligible to receive;

(ii) Requesting funds under a payment method described in § 668.162; or

(iii) Accounting for funds that are originated, requested, or disbursed, in reports or data submissions to the Secretary.

(c) *Crediting a student's ledger account.* (1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are—

(i) The amount of tuition, fees, and institutionally provided room and board

assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and

(ii) The amount incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under § 668.165(b).

(2) An institution may include the costs of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section if —

(i) The institution—

(A) Has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below competitive market rates;

(B) Provides a way for a student to obtain those books and supplies by the seventh day of a payment period; and

(C) Has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under this paragraph (c)(2). A student who opts out under this paragraph (c)(2) is considered to also opt out under paragraph (m)(3) of this section;

(ii) The institution documents on a current basis that the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or

(iii) The institution demonstrates there is a compelling health or safety reason.

(3)(i) An institution may include in one or more payment periods for the current year, prior year charges of not more than $200 for—

(A) Tuition, fees, and institutionally provided room and board, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section, if the institution obtains the student's or parent's authorization under § 668.165(b).

(ii) For purposes of this section—

(A) The current year is—

(*1*) The current loan period for a student or parent who receives only a Direct Loan;

(*2*) The current award year for a student who does not receive a Direct Loan but receives funds under any other title IV, HEA program; or

(*3*) At the discretion of the institution, either the current loan period or the current award year if a student receives a Direct Loan and funds from any other title IV, HEA program.

(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.

(4) An institution may include in the current payment period unpaid allowable charges from any previous payment period in the current award year or current loan period for which the student was eligible for title IV, HEA program funds.

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by—

(i) For a program with substantially equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours in the current payment period by the total number of credit or clock hours in the program, and multiplying that result by the total institutional charges for the program.

(d) *Direct payments.* (1) Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to, and requiring the endorsement of, the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student;

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to and requiring the endorsement of the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) *Issuing a check.* An institution issues a check on the date that it—

(i) Mails the check to the student or parent; or

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) *Payments by the Secretary.* The Secretary may pay title IV, HEA credit balances under paragraphs (h) and (m) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the **Federal Register**.

(4) *Student choice.* (i) An institution located in a State that makes direct payments to a student by EFT and that enters into an arrangement described in paragraph (e) or (f) of this section, including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those payments.

(A) In implementing its selection process, the institution must—

(*1*) Inform the student in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution;

(*2*) Ensure that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner;

(*3*) Ensure that initiating direct payments by EFT to a student's existing financial account is as timely and no more onerous to the student as initiating an EFT to an account provided under an arrangement described in paragraph (e) or (f) of this section;

(*4*) Allow the student to change, at any time, his or her previously selected payment option, as long as the student provides the institution with written notice of the change within a reasonable time;

(*5*) Ensure that no account option is preselected; and

(*6*) Ensure that a student who does not make an affirmative selection is paid the full amount of the credit balance within the appropriate time-period specified in paragraph (h)(2) of this section, using a method specified in paragraph (d)(1) of this section.

(B) In describing the options under its selection process, the institution—

(*1*) Must present prominently as the first option, the financial account belonging to the student;

(*2*) Must list and identify the major features and commonly assessed fees

associated with each financial account offered under the arrangements described in paragraphs (e) and (f) of this section, as well as a URL for the terms and conditions of each account. For each account, if an institution by July 1, 2017 follows the format, content, and update requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the Bureau of Consumer Financial Protection, it will be in compliance with the requirements of this paragraph with respect to the major features and assessed fees associated with the account; and

(*3*) May provide, for the benefit of the student, information about available financial accounts other than those described in paragraphs (e) and (f) of this section that have deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745.

(ii) An institution that does not offer or use any financial accounts offered under paragraph (e) or (f) of this section may make direct payments to a student's or parent's existing financial account, or issue a check or disburse cash to the student or parent without establishing the selection process described in paragraph (d)(4)(i) of this section.

(e) *Tier one arrangement.* (1) In a Tier one (T1) arrangement—

(i) An institution located in a State has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution; and

(ii) The institution or third-party servicer makes payments to—

(A) One or more financial accounts that are offered to students under the contract;

(B) A financial account where information about the account is communicated directly to students by the third-party servicer, or the institution on behalf of or in conjunction with the third-party servicer; or

(C) A financial account where information about the account is communicated directly to students by an entity contracting with or affiliated with the third-party servicer.

(2) Under a T1 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account is obtained before an access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Ensure that any personally identifiable information about a student that is shared with the third-party servicer before the student makes a selection under paragraph (d)(4)(i) of this section—

(A) Does not include information about the student, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, beyond—

(*1*) A unique student identifier generated by the institution that does not include a Social Security number, in whole or in part;

(*2*) The disbursement amount;

(*3*) A password, PIN code, or other shared secret provided by the institution that is used to identify the student; or

(*4*) Any additional items specified by the Secretary in a notice published in the **Federal Register**;

(B) Is used solely for activities that support making direct payments of title IV, HEA program funds and not for any other purpose; and

(C) Is not shared with any other affiliate or entity except for the purpose described in paragraph (e)(2)(ii)(B) of this section;

(iii) Inform the student of the terms and conditions of the financial account, as required under paragraph (d)(4)(i)(B)(*2*) of this section, before the financial account is opened;

(iv) Ensure that the student—

(A) Has convenient access to the funds in the financial account through a surcharge-free national or regional Automated Teller Machine (ATM) network that has ATMs sufficient in number and housed and serviced such that title IV funds are reasonably available to students, including at the times the institution or its third-party servicer makes direct payments into the financial accounts of those students;

(B) Does not incur any cost—

(*1*) For opening the financial account or initially receiving an access device;

(*2*) Assessed by the institution, third-party servicer, or a financial institution associated with the third-party servicer, when the student conducts point-of-sale transactions in a State; and

(*3*) For conducting a balance inquiry or withdrawal of funds at an ATM in a State that belongs to the surcharge-free regional or national network;

(v) Ensure that—

(A) The financial account or access device is not marketed or portrayed as, or converted into, a credit card;

(B) No credit is extended or associated with the financial account, and no fee is charged to the student for any transaction or withdrawal that exceeds the balance in the financial account or on the access device, except that a transaction or withdrawal that exceeds the balance may be permitted only for an inadvertently authorized overdraft, so long as no fee is charged to the student for such inadvertently authorized overdraft; and

(C) The institution, third-party servicer, or third-party servicer's associated financial institution provides a student accountholder convenient access to title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers without charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

(vi) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site the contract(s) establishing the T1 arrangement between the institution and third-party servicer or financial institution acting on behalf of the third-party servicer, as applicable, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(vii) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts under the T1 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(viii) Provide to the Secretary an up-to-date URL for the contract for publication in a centralized database accessible to the public;

(ix) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary

considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, consistent with or below prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under paragraph (e)(2)(ix)(A) of this section that the fees assessed under the T1 arrangement are not consistent with or are higher than prevailing market rates; and

(x) Take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T1 arrangements.

(3) Except for paragraphs (e)(2)(ii)(B) and (C) of this section, the requirements of paragraph (e)(2) of this section no longer apply to a student who has an account described under paragraph (e)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements for that student, except that nothing in this paragraph (e)(3) should be construed to limit the institution's responsibility to comply with paragraph (e)(2)(vii) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution may share information related to title IV recipients' enrollment status with the servicer or entity that is party to the arrangement.

(f) *Tier two arrangement.* (1) In a Tier two (T2) arrangement, an institution located in a State has a contract with a financial institution, or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students enrolled at the institution.

(2) Under a T2 arrangement, an institution must—

(i) Comply with the requirements described in paragraphs (d)(4)(i), (f)(4)(i) through (iii), (vii), and (ix) through (xi), and (f)(5) of this section if it has at least one student with a title IV credit balance in each of the three most recently completed award years, but has less than the number and percentage of students with credit balances as described in paragraphs (f)(2)(ii)(A) and (B) of this section; and

(ii) Comply with the requirements specified in paragraphs (d)(4)(i), (f)(4), and (f)(5) of this section if, for the three most recently completed award years—

(A) An average of 500 or more of its students had a title IV credit balance; or

(B) An average of five percent or more of the students enrolled at the institution had a title IV credit balance. The institution calculates this percentage as follows:

The average number of students with credit balances for the three most recently completed award years

The average number of students enrolled at the institution at any time during the three most recently completed award years.

(3) The Secretary considers that a financial account is marketed directly if—

(i) The institution communicates information directly to its students about the financial account and how it may be opened;

(ii) The financial account or access device is cobranded with the institution's name, logo, mascot, or other affiliation and is marketed principally to students at the institution; or

(iii) A card or tool that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account.

(4) Under a T2 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account has been obtained before—

(A) The institution provides, or permits a third-party servicer to provide, any personally identifiable about the student to the financial institution or its agents, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37;

(B) An access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Inform the student of the terms and conditions of the financial account as required under paragraph (d)(4)(i)(B)(*2*) of this section, before the financial account is opened;

(iii) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter—

(A) Disclose conspicuously on the institution's Web site the contract(s) establishing the T2 arrangement between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; and

(B) Provide to the Secretary an up-to-date URL for the contract for publication in a centralized database accessible to the public;

(iv) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts marketed under the T2 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(v) Ensure that the items under paragraph (f)(4)(iv) of this section are posted at the URL that is sent to the Secretary under paragraph (f)(4)(iii)(B) of this section for publication in a centralized database accessible to the public;

(vi) If the institution is located in a State, ensure that the student accountholder can execute balance inquiries and access funds deposited in the financial accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into them;

(vii) Ensure that the financial accounts are not marketed or portrayed as, or converted into, credit cards;

(viii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T2 arrangement are,

considered as a whole, consistent with or below prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under paragraph (f)(4)(viii)(A) of this section that the fees assessed under the T2 arrangement are not consistent with or are above prevailing market rates;

(ix) Take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T2 arrangements; and

(x) Ensure students incur no cost for opening the account or initially receiving or validating an access device.

(xi) If the institution enters into an agreement for the cobranding of a financial account with the institution's name, logo, mascot, or other affiliation but maintains that the account is not marketed principally to its enrolled students and is not otherwise marketed directly within the meaning of paragraph (f)(3) of this section, the institution must retain the cobranding contract and other documentation it believes establishes that the account is not marketed directly to its enrolled students, including documentation that the cobranded financial account or access device is offered generally to the public.

(xii) Institutions falling below the thresholds described in paragraph (f)(2) of this section are encouraged to comply voluntarily with the provisions of paragraphs (d)(4)(i), (f)(4), and (f)(5) of this section.

(5) The requirements of paragraph (f)(4) of this section no longer apply with respect to a student who has an account described under paragraph (f)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements, except that nothing in this paragraph should be construed to limit the institution's responsibility to comply with paragraph (f)(4)(iv) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution may share information related to title IV recipients' enrollment status with the financial institution or entity that is party to the arrangement.

(g) *Ownership of financial accounts opened through outreach to an institution's students.* Any financial account offered or marketed pursuant to an arrangement described in paragraph (e) or (f) of this section must meet the requirements of 31 CFR 210.5(a) or (b)(5), as applicable.

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period; or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(j) *Late disbursements*—(1) *Ineligible student.* For purposes of this paragraph (j), an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (j)(4) of this section, a student who becomes ineligible, as described in paragraph (j)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan program or for an award made under the TEACH Grant program, the institution originated the loan or award; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (j)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(4) in accordance with the provisions of § 668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as provided in paragraph (c) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) *Limitations.* (i) An institution may not make a late disbursement later than

180 days after the date the institution determines that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (j)(1) of this section.

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(5) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

(k) *Retroactive payments.* If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because the student's ISIR was not available until a subsequent payment period), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible. For Pell Grant payments under this paragraph (k), the student's enrollment status must be determined according to work already completed, as required by 34 CFR 690.76(b).

(l) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned to the institution but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(m) *Provisions for books and supplies.* (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph (m). A student who opts out under this paragraph is considered to also opt out under paragraph (c)(2)(i)(C) of this section;

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c)(1)(ii) of this section and § 668.165(b) for this purpose.

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan program funds, the notice must indicate which funds are from subsidized loans, which are from unsubsidized loans, and which are from PLUS loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's or parent's right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds or TEACH Grant proceeds returned to the Secretary; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—

(A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required by this section to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(c)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c) or (d), respectively, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent as a credit balance under § 668.164(h).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds on behalf of the student or the parent; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) *Excess cash tolerance.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in § 668.162(c) and (d), respectively.

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

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Part VI

Department of Education

34 CFR Parts 668, 682, and 685

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

[Docket ID ED–2014–OPE–0161]

RIN 1840–AD18

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to create a new income-contingent repayment plan in accordance with the President's initiative to allow more Direct Loan borrowers to cap their loan payments at 10 percent of their monthly incomes. The Secretary is also implementing changes to the Federal Family Education Loan (FFEL) Program and Direct Loan Program regulations to streamline and enhance existing processes and provide additional support to struggling borrowers. These regulations will also amend the Student Assistance General Provisions regulations by expanding the circumstances under which an institution may challenge or appeal a draft or final cohort default rate based on the institution's participation rate index.

DATES: The regulations are effective July 1, 2016.

Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* section of this document.

FOR FURTHER INFORMATION CONTACT: For further information related to the Servicemembers Civil Relief Act (SCRA), the treatment of lump sum payments made under Department of Defense (DOD) student loan repayment programs for the purposes of public service loan forgiveness, and expanding the use of the participation rate index (PRI) challenge and appeal, Barbara Hoblitzell at (202) 502–7649 or by email at: *Barbara.Hoblitzell@ed.gov.* For information related to loan rehabilitation, Ian Foss at (202) 377–3681 or by email at: *Ian.Foss@ed.gov.* For information related to the Revised Pay As You Earn repayment plan, Brian Smith or Jon Utz at (202) 502–7551 or (202) 377–4040 or by email at: *Brian.Smith@ed.gov* or *Jon.Utz@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: These final regulations will amend the Student Assistance General Provisions regulations governing Direct Loan cohort default rates (CDRs) to expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI. In addition, we are implementing changes to the FFEL Program regulations to streamline and enhance existing processes and provide support to borrowers by establishing new procedures for FFEL Program loan holders to identify servicemembers who may be eligible for benefits under the SCRA. The final regulations will also require guaranty agencies to provide FFEL Program borrowers who are in the process of rehabilitating a defaulted loan with information on repayment plans available to them after the loan has been rehabilitated, as well as additional financial and economic education materials. We have also made several technical changes to the loan rehabilitation provisions contained in § 682.405. In addition, the final regulations will add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209. The REPAYE plan is modeled on the existing Pay As You Earn repayment plan, and will be available to all Direct Loan student borrowers regardless of when the borrower took out the loans. Finally, the regulations will allow lump sum payments made through student loan repayment programs administered by the DOD to count as qualifying payments for purposes of the Public Service Loan Forgiveness Program.

Summary of the Major Provisions of This Regulatory Action:

To expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or official CDR based on the institution's PRI, the final regulations—

- Permit an institution to bring a timely PRI challenge or appeal in any year in which the institution's CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years.
- Provide that an institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal to 30 percent, and will not be placed on provisional certification based on two such rates, if it brings a timely appeal or challenge with respect to any of the relevant rates and demonstrates a PRI less than or equal to 0.0625, provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.
- Provide that a successful PRI challenge with respect to a draft CDR is effective not only in preventing imposition of sanctions upon issuance of the official CDR for that year, but in preventing the institution from being placed on provisional certification or losing eligibility in subsequent years based on the official CDR for that year if the official rate is less than or equal to the draft rate.

To reduce the burden on military servicemembers who may be entitled to an interest rate reduction under the SCRA, the final regulations—

- Require FFEL Program loan holders to proactively use the authoritative database maintained by the DOD to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent.
- Permit a borrower to use a form developed by the Secretary to provide the loan holder with alternative evidence of military service to demonstrate eligibility when the borrower believes that the information contained in the DOD database may be inaccurate or incomplete.

In regard to loan rehabilitation, the final regulations—

- Assist with the transition to loan repayment for a borrower who rehabilitates a defaulted loan, by requiring a guaranty agency to: Provide each borrower with whom it has entered into a loan rehabilitation agreement with information on repayment plans available to the borrower after rehabilitating the defaulted loan; explain to the borrower how to select a repayment plan; and provide financial and economic education materials to borrowers who successfully complete loan rehabilitation.
- Amend § 682.405 with respect to the cap on collection costs that may be added to a rehabilitated loan when it is sold to a new holder and the treatment of rehabilitated loans for which the guaranty agency cannot secure a buyer, to conform with the Higher Education Act of 1965, as amended (HEA).

To establish a new, widely available income-contingent repayment plan targeted to the neediest borrowers, the REPAYE regulations—

• Provide that, for each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower. If a process becomes available in the future that allows borrowers to give consent for the Department of Education (the Department) to access their income and family size information from the Internal Revenue Service (IRS) or another Federal source, the regulations will allow use of such a process for recalculating a borrower's monthly payment amount.

• In the case of a married borrower filing a separate Federal income tax return, use the adjusted gross income (AGI) of both the borrower and the borrower's spouse to calculate the monthly payment amount. A married borrower filing separately who is separated from his or her spouse or who is unable to reasonably access his or her spouse's income is not required to provide his or her spouse's AGI.

• Limit the amount of interest charged to the borrower of a subsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization). This limitation applies after the consecutive three-year period during which the Secretary does not charge the interest that accrues on subsidized loans during periods of negative amortization.

• Limit the amount of interest charged to the borrower of an unsubsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization).

• For a borrower who only has loans received to pay for undergraduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 20 years of qualifying payments.

• For a borrower who has at least one loan received to pay for graduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 25 years of qualifying payments.

• Provide that, if the borrower does not provide the income information needed to recalculate the monthly repayment amount, the borrower is removed from the REPAYE plan and placed in an alternative repayment plan. The monthly payment amount under the alternative repayment plan will equal the amount required to pay off the loan within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end date of the 20- or 25-year REPAYE plan repayment period, whichever is earlier.

• Allow the borrower to return to the REPAYE plan if the borrower provides the Secretary with the income information for the period of time that the borrower was on the alternative repayment plan or another repayment plan. If the payments the borrower was required to make under the alternative repayment plan or the other repayment plan are less than the payments the borrower would have been required to make under the REPAYE plan, the borrower's monthly REPAYE payment amount will be adjusted to ensure that the excess amount owed by the borrower is paid in full by the end of the REPAYE plan repayment period.

• Provide that payments made under the alternative repayment plan will not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program, but may count in determining eligibility for loan forgiveness under the REPAYE plan, the income-contingent repayment plan, the income-based repayment plan, or the Pay As You Earn repayment plan (each of these plans may be referred to as an ''income-driven repayment plan'' or ''IDR plan'') if the borrower returns to the REPAYE plan or changes to another income-driven repayment plan.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the benefits of these regulations, which will require guaranty agencies to provide additional information to borrowers in the process of rehabilitating a defaulted loan, include a reduction of the risk that a borrower will re-default on a loan after having successfully completed loan rehabilitation. Student borrowers will benefit from the availability of the REPAYE plan that makes an IDR plan with payments based on 10 percent of income available to borrowers regardless of when they borrowed. The changes to the SCRA provisions should reduce the burden on servicemembers and ensure the correct application of the six percent interest rate limit. Additionally, the changes to the PRI challenges and appeals process may encourage more institutions to participate in the loan program, giving their students additional options to finance their education at those institutions.

There will be costs incurred by guaranty agencies under these regulations. In particular, guaranty agencies will be required to make information about repayment plans available to borrowers during the rehabilitation process.

On July 9, 2015, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register** (80 FR 39607).[1] The final regulations contain changes from the proposed regulations, which are fully explained in the *Analysis of Comments and Changes* section of this final rule.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

Consistent with the Department's objective to ensure all borrowers with Federal student loans can use a loan repayment plan that caps their monthly payments at an affordable amount, the Secretary is exercising his authority under section 482(c) to implement the new and amended regulations specific to the REPAYE repayment plan included in this document in December 2015.

The implementation of the regulations that expand availability of PRI challenges and appeals from the potential consequences of an institution's CDR is predicated on the automated support that will be provided through the implementation of the Data Challenges and Appeals Solutions (DCAS) system within the Department's Federal Student Aid office. The DCAS system is slated for implementation in 2017. We will publish a separate **Federal Register** document to announce when we are ready to implement these regulations.

The Secretary has not designated any of the remaining provisions in these final regulations for early implementation. Therefore, the remaining final regulations included in this document are effective July 1, 2016.

Public Comment: In response to our invitation in the NPRM, 2,919 parties submitted comments on the regulations. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the final regulations to which they pertain. Generally, we do not address technical or other minor changes.

[1] The NPRM is available at *www.gpo.gov/fdsys/pkg/FR-2015-07-09/html/2015-16623.htm.*

We received many recommendations from commenters to make other changes to the Federal student loan programs. Generally, we do not address recommendations that are out of the scope of this regulatory action, or that would require statutory changes, in this preamble.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General

Comment: The majority of commenters expressed strong support for the proposed regulations. They stated that these regulations would: Protect colleges with low borrowing rates from sanctions triggered by high CDRs; increase the efficacy of PRI challenges and appeals to encourage colleges to continue offering Federal student loans; help ensure that military servicemembers benefit from the interest rate cap provided under the SCRA; help ensure that borrowers who are rehabilitating their loans make an informed decision about which repayment plan to select after successfully rehabilitating their loans; help borrowers by creating a repayment plan that allows all Direct Loan student borrowers to cap their monthly payments at 10 percent of their discretionary income, and prevents ballooning loan balances by limiting interest accrual for borrowers with low income relative to their debt; and provide that lump sum payments made on borrowers' behalf directly to the Department through student loan repayment programs administered by the DOD are counted as qualifying payments for public service loan forgiveness.

Discussion: We appreciate the support from the overwhelming majority of commenters.

Changes: None.

Implementation

Comment: Several commenters urged the Department to implement the change to the PRI challenge and appeal processes in 2015, rather than in February 2017. Some commenters suggested that delaying the implementation of the regulations to coincide with the launch of the DCAS system would decrease the effectiveness of the change and result in missed opportunities to assure institutions continue to participate in the Direct Loan program. Several commenters opined that the number of schools with borrowing rates low enough to qualify for a PRI challenge or appeal due to CDRs that would trigger sanctions was so low as to suggest that the Department would not experience any increased burden in processing these challenges and appeals without the support of the DCAS system.

Discussion: We agree that only a relatively small number of institutions are likely to qualify to submit a PRI challenge or appeal due to CDRs that would trigger sanctions. At the current time, however, PRI challenges and appeals, as well as certain other types of challenges and appeals, must be handled through time-consuming manual processes. Due to the number of challenges and appeals that must be processed manually and the need to devote limited resources to processing a high volume of loan servicing appeals, it is not feasible for the Department to implement the regulatory changes to the PRI challenge and appeal process earlier than February 2017, when the DCAS system is scheduled to be implemented. The implementation of the DCAS system will allow the Department to handle PRI challenges and appeals in a timely manner through an automated process. While we appreciate the commenters' interest in accelerating the implementation of this change, we do not agree that the current implementation schedule decreases the effectiveness of the rule change or results in missed opportunities to protect students from having to take out private loans or having to drop out of school. Institutions are currently able to appeal a CDR based on PRI, which enables those institutions that do so successfully to continue to participate in the title IV student aid programs and ensure their students have access to Federal funds.

Changes: None.

Draft Cohort Default Rates and Your Ability to Challenge Before Official Cohort Default Rates Are Issued (§ 668.204(c)(1)(ii))

Comment: One commenter expressed concern that the regulations did not sufficiently ensure that protections for students are maintained when an institution's default rate has risen to 30 or 40 percent (*i.e.,* the point at which suspension or sanctions are imposed). While the commenter recognized the benefit this rule would provide to community colleges with low Federal student loan participation rates, the commenter was concerned that it may also allow unscrupulous schools with poor training outcomes the opportunity to delay their suspension or sanction under the title IV programs. The commenter recommended a limited pilot implementation of the PRI challenge and appeals processes with only community colleges to assess the impact before considering expanding the scope of the rule to other institutional sectors.

Discussion: Section 435(a)(8) of the HEA requires PRI appeals and challenges, outlines how the PRI is to be computed, and establishes the PRI ceiling applicable to appeals or challenges from statutory sanctions based on three years of CDRs equal to or greater than 30 percent. The statute does not distinguish between institutional sectors with respect to appeals and challenges. The new regulations do not relax the standards for a successful challenge or appeal or change how the PRI is computed. Instead, they provide opportunities for schools to bring their challenges and appeals earlier than in the past, including before the point at which it becomes clear that sanctions would apply absent a successful challenge or appeal. The regulations do not purport to affect the timing of statutory sanctions in the event of an unsuccessful appeal or challenge; that timeline is also set by statute (section 435(a)(2)(A) of the HEA). Indeed, altering the PRI challenge or appeal required by statute to impose a higher hurdle for avoiding sanctions, or to impose sanctions sooner, whether for all institutions or for only some, in the manner suggested by the commenter, would require a statutory change. In addition, the Department would regard regulations providing differential treatment of institutions by sector, even as a pilot, as inappropriate given the absence of such a distinction in the statutory provisions regarding CDRs.

Changes: None.

Due Diligence in Servicing a Loan (§ 682.208(j))

Comment: One commenter noted that, in other areas of lending covered by the SCRA, creditors often extend voluntary ''grace'' periods to servicemembers. The commenter suggested that we consider extending application of the SCRA's six percent interest rate to servicemembers for a transitional period after the end of the servicemembers' military service.

Discussion: We appreciate the commenter's concern for servicemembers who are transitioning from the SCRA interest rate limit to the regular interest rate that applies to their Federal student loans. Section 427A(m) of the HEA provides that a FFEL lender may charge a borrower interest at a rate less than the rate that is applicable under statute. Accordingly, a FFEL lender may choose to continue to charge the SCRA interest rate for a period after the end of the servicemember's military

service. Under the HEA, the Department is required to charge the statutory interest rate on Direct Loans.

Changes: None.

Comment: One commenter suggested that if a borrower has multiple loans and the application of the SCRA's six percent interest rate limit to one of the loans results in an overpayment of the final remaining balance on the loan, the excess amount should be returned to the borrower rather than applied to his or her other outstanding loans.

Discussion: The commenter's suggested treatment of overpayments would be inconsistent with the way the Federal student loan programs are administered. If a borrower has multiple loans with the same servicer and a payment is made that exceeds the amount required to fully pay off one of the loans, the excess amount is not refunded to the borrower. Rather, it is applied to reduce the outstanding balance on the borrower's other loans. We believe this approach is more beneficial to the borrower, as it reduces the borrower's remaining loan debt.

Changes: None.

Comment: A few commenters suggested that we not use the term ''active duty military service'' when referring to borrowers who may be eligible for the SCRA six percent interest rate limit. The commenters recommended the regulation use the definition of ''military service'' in the SCRA at 50 U.S.C. App. 511(2).

Discussion: We appreciate the commenters' suggestion and agree that it is more appropriate to use the terminology used in the SCRA. We also agree that the regulations should clearly describe how the SCRA provisions in these regulations apply to National Guard members.

Changes: We have replaced the term ''active duty'' throughout §§ 682.202(a)(8), 682.208(j), and 685.202(a)(11) with the term ''military service'' and added the definition of the term ''military service'' in §§ 682.208(j)(10) and 685.202(a)(11). These changes will provide consistency with the language in the SCRA and clarify how the SCRA applies to National Guard members.

Comment: One commenter requested that consolidation loans made after a borrower has started a period of military service be made eligible for the SCRA interest rate limit of six percent if the underlying loans were originated prior to the start of the period of military service.

Discussion: We appreciate the commenter's concern. However, under the law, a consolidation loan is a new loan and new loans made after a period of military service are not covered by the SCRA for that period of military service. We note that servicemembers who are eligible for the SCRA six percent interest rate limit are not disadvantaged by this treatment. If a borrower obtains a consolidation loan during a period of military service when the interest rate on the loans the borrower is consolidating is reduced to six percent under the SCRA, the interest rate used in determining the weighted average interest rate for the Direct Consolidation Loan will be the six percent SCRA rate rather than the higher statutory rate that would otherwise apply to the loans. Since the interest rate on a Direct Consolidation Loan is a fixed rate, this means that the borrower would effectively lock in the benefit of the lower SCRA interest rate for the life of the consolidation loan. If a borrower consolidates his or her loans prior to beginning a period of military service, the new consolidation loan is subject to the six percent SCRA interest rate limit during any future period of military service.

Changes: None.

Comment: One commenter suggested that a consolidation loan should not be treated as a new loan unless the loan holder has notified the servicemember of the impact of consolidation on his or her eligibility for the SCRA six percent interest rate limit.

Discussion: Under the HEA, borrowers who take out a consolidation loan may lose some benefits available on their prior loans while receiving other benefits offered by the consolidation loan. The current loan consolidation materials that we provide to borrowers include notification of this possibility. We are scheduled to update the Federal Direct Loan Consolidation promissory note during the first quarter of 2016. At that time, we will revise the disclosure regarding the potential loss of benefits to include a specific reference to the SCRA interest rate limit of six percent. However, it is unlikely that a borrower would lose SCRA benefits as a result of consolidation, as discussed in response to the previous comment.

Changes: None.

Comment: One commenter requested that the Department accept letters from commanders and other military documents as alternative evidence of military service so that servicemembers seeking to demonstrate an error in the information in the Defense Manpower Data Center (DMDC) database are not required to complete a special form.

Discussion: We consulted with the DOD and determined that DOD considers the information contained within the Defense Enrollment Eligibility Reporting System (DEERS), which is accessed through the DMDC, to be the definitive record of servicemembers' military service. We also note that the letters or other documents suggested by the commenter could be vulnerable to fraud. Therefore, it is most appropriate that the servicemember work with the DOD to correct his or her DEERS data and, in the meantime, submit the online form to enable application of the SCRA interest rate limit of six percent.

Changes: None.

Comment: Two commenters requested that the regulation specifically state that loan holders, upon finding evidence of SCRA eligibility, must provide a refund for the benefit retroactive to at least August 14, 2008, or the first date of SCRA eligibility.

Discussion: The regulation requires loan holders to apply the SCRA interest rate limit of six percent for the longest period supported by the official electronic database, or by alternative evidence of military duty status provided by the borrower, using the combination of evidence that provides the borrower with the earliest military duty start date on or after August 14, 2008, and the latest military duty end date. In response to a search request, the DMDC provides data for the last 367 days. If the loan holder finds evidence in the database that a borrower had a period of military service within that 367-day period that began earlier, the loan holder would apply the SCRA six percent interest rate limit beginning on the day the period of military service began, but not earlier than August 14, 2008. The SCRA interest rate limit was established by the Higher Education Opportunity Act, which made the SCRA interest rate limit applicable as of the date of its enactment, August 14, 2008. As discussed previously, overpayments resulting from the application of the SCRA six percent interest rate limit will be applied to future loan payments (and these payments will be qualifying payments under the Public Service Loan Forgiveness Program). In the event the application of the SCRA six percent interest rate limit results in payment of all of the borrower's loans in full, any overpayment greater than the de minimus amount of $25 for Federal student loan overpayments would be refunded to the borrower.

Changes: None.

Comment: One commenter requested clarification that a loan's disbursement date is only relevant to the military service period for which the loan holder is evaluating eligibility for the SCRA interest rate limit of six percent.

Discussion: The DOD database provides information regarding periods of military service within a 367-day window prior to the date on which the loan holder queries the database. As long as the loan disbursement date is before the beginning of the military service period reflected in the database, the loans are eligible for the SCRA six percent interest rate. However, if the loan holder has other information showing an earlier service period, the loan holder must apply the SCRA interest rate limit as of the earliest date, on or after August 14, 2008, supported by that evidence. The loan holder is not required to conduct multiple queries of prior periods to determine if the servicemember may have had a previous period of military duty service that coincides with the date(s) the loans were disbursed.

Changes: None.

Loan Rehabilitation Agreement (§ § 682.405(b)(1)(vi)(B))

Comment: One commenter asked the Department to provide guidance to guaranty agencies that are seeking to assign to the Department otherwise rehabilitated loans for which the guaranty agencies have been unable to secure a buyer.

Discussion: Guaranty agencies may continue to contact the Department with specific questions concerning this issue.

Changes: None.

Revised Pay As You Earn Repayment Plan (REPAYE Plan) Repayment Plans (§ 685.208(a)(2)(iii) and (iv))

Comment: Section 685.208(a)(1)(i)(D) of the regulations provides that Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation Loans, and Direct Unsubsidized Consolidation Loans may be repaid under the REPAYE plan. However, under § 685.208(a)(2)(iv)(D), a Direct PLUS Loan made to a parent borrower, or a Direct Consolidation Loan that repaid a parent PLUS loan, may not be repaid under the REPAYE plan. One commenter noted that, currently, the only way for parent PLUS borrowers to access an income-driven repayment plan is by consolidating their loan(s) into a Direct Consolidation Loan, and repaying that loan under the income-contingent repayment plan described in § 685.209(b). The commenter asserted that this option is often insufficient to meet the needs of many parent PLUS borrowers. The commenter disagreed with the Department's position that we are prohibited from making the REPAYE plan available to parent PLUS borrowers. The commenter argued that there is no basis in the HEA for excluding consolidation loans that include parent PLUS loans from eligibility for the REPAYE plan. The commenter recommended that we modify the REPAYE plan regulations to allow consolidation loans that include parent PLUS loans to be repaid under the REPAYE plan. Several commenters echoed that recommendation.

As an alternative, one commenter recommended that we create a process under which a borrower who repaid a parent PLUS loan through a consolidation loan could somehow recreate the parent PLUS loan by removing it from the consolidation loan, so the consolidation loan can be repaid under the REPAYE plan, or be grandfathered into another more affordable repayment plan. The commenter argued that this would help borrowers who consolidated their student loans with parent PLUS loans without understanding the financial consequences.

Discussion: Section 455(d)(1)(D) of the HEA, which authorizes the income-contingent repayment (ICR) plans, specifically provides that the ICR plans are not available to parent PLUS borrowers. Although Direct Consolidation Loans that have repaid parent PLUS loans may be repaid through the original ICR plan, they may not be repaid through the income-based repayment (IBR) or Pay As You Earn repayment plans. To maintain consistency with those plans, we have retained that restriction in the REPAYE plan.

Contrary to the commenter's suggestion, there is no basis for the Department to ''recreate'' a PLUS loan that was intentionally repaid by the borrower through consolidation. A loan can be ''backed out'' of a consolidation loan and reconstituted only if the loan was included in the consolidation loan by error after the borrower requested that the loan not be included. Therefore, the situation described by the commenter would not qualify for this treatment.

Changes: None.

Comment: Commenters had a variety of suggestions for expanding REPAYE plan eligibility. These commenters recommended making the REPAYE plan available to:

- All borrowers, regardless of when they obtained student loans.
- Borrowers with government loans disbursed prior to October 2007.
- Borrowers with FFEL Program loans who are repaying the loans through the IBR repayment plan
- FFEL Stafford Loan borrowers.

Discussion: Under the regulations, Direct Loan student borrowers will be able to select the REPAYE plan regardless of when they obtained their Direct Loans. The REPAYE plan does not include the requirement in the Pay As You Earn repayment plan limiting eligibility to loans disbursed after October 1, 2007.

While borrowers with FFEL loans may repay those loans under the IBR plan, REPAYE is an ICR plan and is only available to Direct Loan borrowers. Borrowers with FFEL loans may pay their loans under the REPAYE plan if they consolidate their loan(s) into a Direct Consolidation Loan, and then pay the consolidation loan under the REPAYE plan.

Changes: None.

REPAYE Plan (§ 685.209(c))

Comment: Thousands of student loan borrowers expressed strong support for the REPAYE plan, praising the Department for its efforts to let all Direct Loan borrowers cap their monthly payments at 10 percent of their income, and to prevent ballooning loan balances by limiting interest accrual for borrowers with low incomes relative to their debt.

One commenter stated that the REPAYE plan rightly reflects the Department's interest in expanding income-driven repayment to all borrowers, while ensuring that the benefits of an IDR plan remain targeted toward the most at-risk individuals. The commenter also noted that the regulations take important steps to keep the costs of income-based repayment reasonable. The commenter supported the decisions, discussed in more detail in the following sections, to: Not establish a cap on monthly payment amounts to ensure that high-income borrowers pay their fair share; require that payments for married borrowers be based on their combined income; and include provisions to discourage borrowers from intentionally failing to report their income accurately when they experience a significant increase in earnings.

Commenters also supported the decision not to require borrowers to have a partial financial hardship (PFH) to select the REPAYE plan. As one commenter noted, this decision allows borrowers to select the REPAYE plan regardless of their debt-to-income ratio, and provides all Direct Loan student borrowers with a repayment plan that allows their payments to reflect their income. Those who earn less will pay less, and those who earn more will pay more.

Not all commenters supported the REPAYE plan. One commenter believed that the REPAYE plan would have a

minimal beneficial impact on law school graduates. Another commenter questioned the need for establishing a complicated repayment plan, and recommended that the Department make case-by-case loan forgiveness determinations with regard to borrowers who cannot make payments on their loans.

Several commenters opposed to the REPAYE plan viewed the plan as a loan forgiveness plan, and argued that it would provide an incentive to institutions to continue the constant escalation of education costs. These commenters felt strongly that individuals should take responsibility for how they choose to pursue and fund their educations, and it should not be the taxpayers' responsibility to pay for those who choose to spend irresponsibly.

Discussion: We thank the commenters who expressed support for the REPAYE plan.

We acknowledge that the REPAYE plan might not be the best option for all borrowers and encourage law school graduates and all borrowers to learn about their options and select the repayment plan that they believe will work best for them.

We understand the desire for a more simplified approach to borrower repayment. But, with millions of student loan borrowers in repayment, it is not practical for the Department to make case-by-case loan forgiveness determinations.

We appreciate the concerns raised by several commenters who do not support REPAYE. We agree that borrowers are responsible for repaying their student loans, and we believe that most borrowers repaying their loans under the REPAYE plan will be successful in repaying their loans, in many cases before the end of the 20- or 25-year repayment period. However, we also believe the REPAYE plan will provide relief to struggling borrowers who experience financial difficulties that prevent them from repaying their loans. We note that the REPAYE plan requires 20 or 25 years of qualifying payments before a loan is forgiven. We also note that under the REPAYE plan, while lower-income borrowers will make reduced payments, higher-income borrowers will make increased payments. Given these characteristics of the REPAYE plan, we do not believe the plan will encourage irresponsible over-borrowing by students.

Changes: None.

Comment: Several commenters expressed significant concerns about the Department's proposal to create a new IDR plan instead of expanding the current Pay As You Earn repayment plan. These commenters believed that adding a new IDR plan to the existing array of repayment plans adds unnecessary complication. The commenters noted that the Department already offers four separate income-driven student loan repayment plans with varying eligibility requirements, costs, and benefits. These commenters noted that the Direct Loan Program continues to generate significant revenue for the Federal government, estimated to total $89 billion over the next ten years. In the commenters' view, regardless of the changes the Department makes to income-driven repayment options, the Federal government will undoubtedly continue to generate revenue from borrowers repaying their student loans. The commenters believed that the Department can and should channel a substantial portion of these revenues into expanding and improving the existing Pay As You Earn repayment plan. They asserted that the Department's goal should be to help as many borrowers as possible, not to maximize government revenue.

One commenter noted that, in 2014, President Obama announced his intention to make student loans more affordable by extending the current Pay As You Earn repayment option to an additional five million borrowers with loans too old to qualify under the Pay As You Earn rules. According to this commenter, many financial aid administrators thought that modifications would be made to the current Pay As You Earn repayment plan as a result of the President's announcement. Many commenters preferred this approach, urging the Department to support the extension of the existing Pay As You Earn repayment plan to cover additional borrowers, rather than create the REPAYE plan.

Several commenters expressed support for streamlining the multiple IDR plans into one improved IDR plan that would cap monthly payments at 10 percent of income, provide loan forgiveness after 20 years of payments, and target benefits to borrowers who need help the most. These commenters recognized that this would require statutory changes. The commenters believed that the REPAYE plan, with certain modifications, would become an excellent model for Congress to consider when developing a single, streamlined IDR plan. Similarly, another commenter recommended that, instead of creating new processes and options, the Department work towards a unified, simplified standard for borrowers going forward that is less complex and burdensome.

Some commenters recommended reducing the number of repayment plans to two: A standard repayment plan and the REPAYE plan as the only income-driven repayment plan. They noted that this would simplify student loan repayment options.

One commenter noted that, with the addition of REPAYE, there will be eight different repayment plans with different terms and eligibility requirements. Borrowers will have to navigate many options that look similar but have complex differences that may not be immediately obvious. The commenter contended that an abundance of options with varying terms and benefits can confuse borrowers and make choosing a repayment plan difficult. This commenter believed that providing better information and assistance with making the best choice could help increase the benefits of the REPAYE plan and other income-driven plans. Commenters encouraged the Department to explore streamlining and improving the loan repayment and forgiveness programs that are already in place to ensure borrowers receive clear and thorough information regarding their repayment options.

Discussion: We appreciate the commenters' concerns but believe that the best approach is to establish the REPAYE plan as a new ICR repayment plan. If we only modified the existing Pay As You Earn repayment plan to reflect the provisions included in the REPAYE plan, the current Pay As You Earn repayment plan terms and conditions would continue to apply to borrowers who were in the plan before the REPAYE plan provisions became effective. We believe that having two versions of the Pay As You Earn repayment plan with different terms and conditions would be more confusing for borrowers and servicers than having two separate and distinct plans.

Contrary to the suggestion by some commenters, the Department's motivation in developing the REPAYE plan is not to maximize government revenue. If that were our goal, the simplest way to achieve it would be to not offer any income-driven repayment plans that provide for loan forgiveness. Instead, our goal with the REPAYE plan is two-fold: to create an income-driven repayment plan that requires a reasonable monthly payment amount from those borrowers who can afford it; and to provide relief to struggling borrowers who may still have large outstanding balances after years of making payments on their student loans.

We thank the commenters for their recommendation that the REPAYE plan be the model for a single income-driven repayment plan. However, as the commenters noted, such a change would require congressional action.

We reiterate our intention to provide clear, understandable information regarding the various Federal student loan repayment plans, to enable borrowers to make informed choices when selecting repayment plans.

Changes: None.

Definition of ''Adjusted Gross Income'' (§ 685.209(c)(1)(i)(A) and (B))

AGI of Married Borrowers Filing Separately

Comment: Under the proposed definition of ''adjusted gross income (AGI)'' in § 685.209(c)(1)(i), for a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount under the REPAYE plan. Several commenters supported this provision of the REPAYE regulations. The commenters noted that, under the REPAYE plan, married borrowers are treated consistently, regardless of how they file their Federal income taxes. In the Pay As You Earn, IBR, and ICR plans, married borrowers who file their Federal income taxes jointly have their eligibility and payment amounts based on their combined income and combined Federal debt. However, those who file separately exclude their spouse's income from payment calculations, but still include their spouse in their family size, which could result in an artificially low monthly payment. In addition, a married borrower who earns a low income and files taxes separately could have very low or even $0 monthly payments, even if the borrower's spouse is a high income earner.

As noted by one commenter, the costs of the REPAYE plan to taxpayers will be kept reasonable by ensuring that married borrowers' incomes are properly captured for purposes of determining the appropriate payment amount. The definition of AGI in the REPAYE regulations ensures that borrowers cannot manipulate the system to qualify for lower payments than other similarly-situated borrowers.

One commenter expressed concern that counting the AGI of the spouse for married borrowers who file separately could have unintended consequences. Because the treatment of married borrowers' income under REPAYE would be inconsistent with the treatment in the other income-driven repayment plans, the commenter expressed concern that this may lead to confusion, particularly among struggling borrowers who may already have difficulty navigating the characteristics of the different income-driven repayment plans. The commenter noted that the approach used in the REPAYE plan may lead to higher payments for some married borrowers who file taxes separately for a myriad of practical reasons, and who already accept significant financial consequences as a result of filing separate tax returns. The commenter supported the Department's goal of ensuring that borrowers do not ''game'' the system. However, the commenter expressed concern that many borrowers whose tax filing decisions are not determined by their title IV loan repayment options will be hurt under the REPAYE plan. The commenter asked whether the Department could adopt for the REPAYE plan the methodology used in the other income-driven repayment plans, with some additional protections, if needed, to prevent abuse. Along these lines, the commenter proposed including an income threshold under which married borrowers filing separately may repay their loans under the REPAYE plan based on their individual incomes. This would ease the difficulty for struggling borrowers while closing a loophole for married borrowers who may be more financially secure than single borrowers.

Several commenters were opposed to the proposed definition of AGI. These commenters believed that combining the AGIs of spouses who file separately would encourage borrowers to divorce and continue to cohabitate with the former spouse in order to prevent their student loan payments from increasing. One commenter argued that the provision will lead to the degradation of the concept of marriage by encouraging people to live together unmarried and have children out of wedlock.

Another commenter believed that the proposed AGI definition would shift the burden of student loan payments to married couples from single borrowers, increasing married couples' payment requirements under the REPAYE plan.

One commenter believed that the proposed AGI definition would, in effect, take the decision to file income taxes separately out of the married couple's hands.

Several commenters noted that they acquired their student loan debt before they met their spouse, and did not believe the spouse should be held accountable for their debt. Several commenters noted that a married couple could easily have a financial arrangement in which one spouse does not receive any financial benefit from the other, even if the other has taxable income. One commenter noted that student loan payments based on the combined AGI of borrowers who file separately may not be something that a married couple has budgeted or can afford.

Commenters noted that married borrowers who file a separate tax return already lose substantial tax benefits by filing separately with the elimination of various tax deductions and/or credits.

Another commenter recommended a uniform AGI calculation for both single and married borrowers, arguing that the tax penalty of filing taxes separately makes the REPAYE plan not helpful for married borrowers in most cases.

Some commenters offered counter-proposals to the proposed definition of AGI. One commenter proposed allowing a married borrower the same AGI calculation as a single borrower, provided that the married borrower would not qualify for any student loan forgiveness. Another commenter recommended allowing borrowers in public sector jobs to use their individual AGI for REPAYE calculations regardless of marital status.

One commenter proposed combining the AGI of two spouses and dividing that number by two instead of counting all of the spouse's AGI. As an alternative to this proposal the commenter recommended adding one-half of the spouse's AGI to the borrower's AGI. The commenter believed that this approach would recognize that almost all spouses will have expenses of their own, so not all of their income is actually available for repayment of the borrower's student loans. But it would also reflect the fact that, typically, some of a spouse's income is available for this purpose.

Commenters also asserted that the spouse's income should not be considered unless the married couple's loans can be added together even if they are from different loan providers, or unless both spouses cosigned the loans.

One commenter stated that borrowers who qualify for the REPAYE plan will also qualify for IBR. A borrower who is married to a spouse with, for example, the same amount of AGI as the borrower, and who wanted to avoid the higher repayment under the Department's formula could simply elect IBR instead of the REPAYE plan. The person would pay 15 percent rather than 10 percent of discretionary income, but would still save money compared to using the REPAYE plan. Many married borrowers would thereby be discouraged from using the REPAYE plan.

Some commenters suggested that the definition of AGI was not consistent with the law. These commenters asserted that computing the AGI of all married borrowers by adding the incomes of the spouses is inconsistent with 20 U.S.C. 1087e(e)(2), and beyond the statutory authority of the Department. According to the commenters, the Department is only authorized to base the repayment schedule on the AGI of the borrower, unless the borrower files a joint return.

Two commenters raised constitutional concerns, asserting that the approach under the REPAYE plan stigmatizes and disincentives marriage and is contrary to both the recent Supreme Court decision that finds a dignity right to marriage and to the classical equal protections afforded by the 14th Amendment.

Discussion: We agree with the commenters who supported using the AGI of both spouses when a married couple files separate Federal income tax returns. As noted by the commenters, this provides for more equitable treatment of married borrowers—most of whom file joint income tax returns.

As the commenters noted, married borrowers who file separately already lose some tax benefits by filing separately, as they are not able to take advantage of various tax deductions and/or tax credits. The treatment of a spouse's AGI for the purpose of determining the payment amount under the REPAYE plan would simply be another factor that a married couple considers when determining how to file their income tax return. Depending on the couple's circumstances, filing separately may or may not continue to be advantageous for the couple. Either way, a married couple always has the option to either file separately or file jointly.

While we acknowledge the commenters' concerns that the proposed treatment of married borrowers may incentivize divorce and cohabitation, it seems highly unlikely that a couple that wishes to marry (or remain married) would give that up for the 20- or 25-year REPAYE repayment period to lower their student loan payments. With regard to borrowers who are currently repaying their loans through IBR or the Pay As You Earn repayment plan, and have budgeted their student loan payments based on only counting the AGI of the borrower, the definition of AGI for purposes of those repayment plans is not changing. The only borrowers affected by the definition of AGI in the REPAYE regulations will be those borrowers who select the REPAYE plan.

With regard to some of the other comments that we received on the AGI definition:

- We agree that unless the borrowers have a joint consolidation loan, a borrower's spouse is not responsible for paying the borrower's student loan debt. The definition of AGI does not affect that.
- The definition of AGI does not shift the burden of student loan payments from single borrowers to married borrowers. The payments made by married borrowers have no impact on the payments made by single borrowers, and vice versa.
- There are many differences between the REPAYE plan and the other IDR plans. We believe that the difference with regard to the definition of AGI is fairly easily explained to borrowers, and will not be particularly confusing to struggling borrowers in their choice of an IDR plans.
- The definition of AGI recognizes the reality that, to one degree or another, most married borrowers operate as a single economic unit.
- We agree that the difference in the treatment of AGI for married borrowers may encourage some borrowers to select or stay in IBR or the Pay As You Earn repayment plan. Our intent in providing a choice of IDR plans is to provide borrowers with the option to choose among repayment plans. We encourage borrowers to select the repayment plan that the borrowers believe works best for them.
- We disagree that the treatment of a married couple's income because of a tax filing status chosen by the borrower for purposes of determining student loan payments under a repayment plan voluntarily chosen by the borrower has any impact on the borrower's rights.

We appreciate the comments we received suggesting alternative approaches to the treatment of married borrowers who file income taxes separately. The commenter who recommended establishing an income threshold above which married borrowers' payments would be based on their combined AGIs and below which payments would be based on individual AGIs didn't suggest a threshold amount. Any amount that we chose for this purpose could be deemed arbitrary. In addition, such an approach would potentially create a cliff effect, in which a borrower slightly above the threshold would have much higher payments than a borrower slightly below the threshold.

The commenter who recommended that we consider only one-half of the spouse's AGI provided no basis for the assumption that that half of a spouse's income would commonly be for the spouse's own expenses. Neither did the commenter provide support for the claim that married couples tend to separate expenses such as food or health care between each spouse, rather than treat them as joint expenses for the married couple. With regard to the commenter's alternative suggestion that we add the AGI of both borrowers and divide by two, we note that, this would significantly reduce the calculated AGI for a high-income borrower with a low-income spouse.

We do not agree with the legal arguments made by some commenters. Section 455(e)(2) of the HEA provides that a repayment amount for a Direct Loan repaid under an ICR plan by a borrower who is married and files a joint Federal income tax return with his or her spouse is based on the AGI of both the borrower and the spouse. The statute does not address the situation in which the borrower and his or her spouse file separate Federal income tax returns. Moreover, section 455(e)(1) of the HEA provides that the Secretary may obtain information that is reasonably necessary regarding the income of a borrower and the borrower's spouse if applicable for the purpose of determining the annual repayment obligation of the borrower. Thus, the statute leaves it up to the Secretary to determine what AGI to consider in the case of a married borrower who files a separate income tax return. In fact, between July 1, 1996 and 2012, the payment amount under ICR for married borrowers who filed separate Federal income tax returns was based on the joint AGI. See 34 CFR 685.209(b)(1) (2009).

Changes: None.

AGI of Married Borrowers Who Are Separated, or Are Unable To Access the Income Information of Their Spouse (§ 685.209(c)(1)(i)(A) and (B))

Comment: Under proposed § 685.209(c)(1)(i)(A) and (B) of the REPAYE regulations, the monthly payment for married borrowers is calculated based on the combined income of the borrower and spouse regardless of how they file Federal tax returns, except for a borrower who is separated from his or her spouse or cannot reasonably access his or her spouse's income information.

As one commenter noted, the vast majority of married borrowers file joint tax returns due to the monetary advantage it provides. In this commenter's view, married borrowers who file separately are likely to be estranged from their spouses or otherwise unable to access their spouse's income. In some cases, these

tax filers may be survivors of domestic violence. This commenter believed that the Department struck the right balance by allowing these borrowers to self-certify that they are separated from their spouse or are otherwise unable to reasonably access the income information of their spouse, and therefore should have their monthly payments calculated based solely on their own income—but without including the spouse in their household size calculation.

Another commenter supported the Department's decision to allow vulnerable married borrowers who file their taxes separately to calculate their REPAYE payment based upon the borrower's adjusted gross income without a cumbersome appeal process.

One commenter expressed concern that, by requiring a borrower to certify that he or she is unable to reasonably access the spouse's income information, the requirements to qualify for this exception will place too heavy a burden on the borrowers it is meant to help. The commenter asked the Department to clarify this certification process and confirm that no additional documents or verification will be required for this exemption, to ensure that struggling borrowers are not faced with further hardship.

Another commenter expressed concern about the proposed exception, arguing that it would encourage two methods for evading the requirement to add spousal AGI. The commenter suggested that some sophisticated married couples will simply arrange to have separate and secret bank accounts, decline to share pay stubs, and file separate tax returns in order to reduce a borrower's student loan repayments without having to divorce. The commenter suggested that blogs will quickly spread suggestions for how to do this.

The commenter also suggested that borrowers who want to evade the requirement will not bother to have their spouse keep separate income information, but will falsely claim that they have no access to such information instead. According to the commenter, if the Department simply accepts such claims, some borrowers will unfairly benefit, and if the Department contests borrower claims that their spouse's income information cannot be accessed, it will lead to controversies and lawsuits at great expense to taxpayers.

Discussion: We thank the commenters for their support for the exceptions provided for borrowers who are separated from their spouse, or who are unable to obtain income information from their spouse. As we noted in the NPRM, the certification form will be modeled on a similar certification for individuals completing the Free Application for Federal Student Aid (FAFSA), and we intend to make the process of certifying separation or inability to obtain income information simple and straightforward. The certification will be done through the standard process of applying for the REPAYE plan. It will not require the borrower to appeal an earlier decision, and will not add undue burden or complexity to that process.

We note that the strategies suggested by the commenter who raised concerns that some borrowers might try to evade higher payments by hiding income or falsifying the certification form would be fraudulent. We expect that most borrowers would be deterred from falsifying information on a Federal application form by the significant penalties that can be applied. We believe the benefits of providing these exceptions outweigh the costs that could result if some borrowers falsify information in violation of Federal law.

Changes: None.

Treatment of Recently Separated Borrowers Who Filed Jointly

Comment: One commenter asserted that the proposed REPAYE regulations may still cause a hardship for some recently separated borrowers. Under the proposed regulations, a married borrower who has filed a joint tax return but who subsequently separates from his or her spouse is not allowed to self-certify that they are separated at the time of applying for the REPAYE plan. That option is only available to a borrower who is married but files a separate tax return. The commenter argued that a married borrower who filed a joint Federal tax return, but who is separated from his or her spouse at the time of application for the REPAYE plan, should have the option to exclude the spouse's income from the monthly payment amount calculation.

The commenter acknowledged that the issue is not the borrower's inability to access income information of the spouse, since the spouses would have already filed a joint tax return. But, the commenter argued, if the borrower is separated from his or her spouse, the borrower would not have the joint resources with which to make the monthly payment amount that would be required under the REPAYE plan. In this situation, in the view of the commenter, the joint tax filing status would unfairly impact the monthly payment amount of the borrower.

To exclude the spouse's income from the monthly payment calculation in these cases, the commenter recommended revising the definitions of ''adjusted gross income'' and ''partial financial hardship'' in § 685.209(c)(1) and the formula for calculating the monthly payment amount in § 685.209(c)(2)(i). The commenter also recommended that the definition of ''family size'' be modified to exclude a borrower's spouse if the borrower and the spouse are separated, regardless of whether the borrower and the spouse filed jointly or separately.

Discussion: We do not believe it is necessary to provide an exemption for borrowers who have their spouse's income information. It is possible that married borrowers who are separated have not necessarily separated their finances. As one of the non-Federal negotiators during the negotiated rulemaking process noted, sometimes married couples who are legally separated continue to live together.

In cases where couples have separated their finances and the joint AGI reported on the borrower's Federal tax return is no longer applicable to the borrower, the borrower may submit alternative documentation of income, as allowed by § 685.209(c)(4)(i)(B). The borrower would be required to provide alternative documentation to the borrower's loan servicer. If the documentation provided is approved by the Department, it would be used in place of the prior year's AGI. This process would most commonly be used in cases where a borrower has lost a job, but the process also would be used for the situation discussed by the commenter, with no need for changes to the regulation.

We agree with the commenter that a borrower's spouse should be excluded from the determination of the borrower's family size if the borrower is separated, regardless of the tax filing status of the borrower and the spouse.

Changes: We have revised the definition of ''family size'' in § 685.209(c)(1)(iii) to specify that ''family size'' does not include the borrower's spouse if the borrower is separated from his or her spouse.

Terms of the REPAYE Plan (§ 685.209(c)(2)) Calculating Monthly Payment Amounts

Comment: Commenters provided a wide variety of recommendations for modifying the formula for determining a borrower's monthly payment amount. One commenter recommended setting criteria for determining monthly payment amounts that take into consideration the borrowers' income levels, suggesting that we either protect a larger portion of income against which the payment is determined for

borrowers with lower wages, or establish progressive loan payment-to-income ratios for borrowers with higher incomes.

Other proposals included:

• Factoring in private student loan payments.
• Using take-home pay, after withholding of taxes, insurance, retirement payments, and other items.
• Exempting Social Security income from consideration.
• Taking into account judicial actions against the borrower that impact ability to repay (such as alimony or child support orders or Chapter 13 mandated payments).
• Factoring in child care costs.
• Taking into consideration the debt/loan ratio based on regional markets, such as city/state, instead of using the Federal poverty guidelines.
• Considering the cost of living, specifically in high-rent areas where yearly income may not be an adequate reflection of disposable income.
• Including house mortgages in the calculation of overall debt burden.
• Considering total debt-to-income ratio.

One commenter recommended that the REPAYE plan provide an option to reduce the payment amount to 5 percent of AGI, with a 40-year repayment period. Another commenter recommended that the Department lower the payment amount cap to five percent, and take other bills into account.

Several commenters recommended that, in establishing a formula for calculating the monthly payment amount, we consider the implications of loan repayment on those who retire at a normal retirement age. One of these commenters recommended restructuring repayment conditions for those who are of normal retirement age or older, to provide for a higher allowance of income not counted toward setting the loan repayment amount, for set-asides such as medical expenses.

One commenter noted that income may change from month to month, and suggested that borrowers should not have to file for a loan amount redetermination every month.

One commenter recommended excluding a spouse's eligible loans from the determination of the borrower's payment amount when a married borrower files a separate tax return because he or she is separated from his or her spouse or is unable to obtain his or her spouse's income at the time of application for the REPAYE plan.

Discussion: The REPAYE plan does take borrower income levels into account, basing payments on a formula using the borrower's AGI and family size, and the poverty guidelines for the State in which the borrower lives.

We appreciate the many recommendations for modifications to the formula for determining monthly payment amounts. However, we believe each of the proposed revisions to the formula would be difficult to implement, and would create inconsistencies with the existing income-driven repayment plans that would be confusing for borrowers.

The recommendation for an option for a longer repayment period of 40 years would not be consistent with the HEA, which sets a maximum length for the repayment period in an ICR plan at 25 years.

Lowering the cap to five percent of disposable income without extending the repayment period, as one commenter suggested, would significantly increase the costs of the REPAYE plan. It would cut in half the monthly payment amounts the Department receives and would increase the amount of the outstanding loan balance that is forgiven at the end of the 20- to 25-year repayment period.

The recommendation to ''take other bills into account'' is too vague for us to address with specificity because the commenter does not identify which types of bills the Department should consider. But any process to reduce the monthly payment amount by subtracting all or some of the borrower's bills from the calculation would be complicated for the Department to administer, and would require borrowers to meet additional documentation requirements both in the initial application process and the recertification process.

We do not believe it is necessary to adjust the monthly payment amount formula for borrowers who retire at the standard retirement age. The determination of the monthly repayment amount uses AGI as a measure of income. After a borrower retires, the monthly payment amount calculated based on the borrower's income when the borrower was employed may no longer be applicable. However, the reduction in income will be reflected in the borrower's AGI and will result in a corresponding reduction in the monthly payment amount. Since the payment amount is already limited to 10 percent of the amount by which the AGI exceeds the applicable poverty guideline amount, we do not believe that reducing the payment amount further, by taking into consideration certain expenses for retirees that we do not take into consideration otherwise, is necessary.

The comment about incomes changing from month to month may be true in many cases. But some measure of income must be used to determine payments under an income-based repayment plan. We believe AGI is the simplest way to do that, and easiest for borrowers to report. It also accounts for borrowers who may have fluctuating month-to-month incomes, by relying on income for the complete calendar year.

We disagree with the comment that recommended excluding a spouse's eligible loans from the determination of the borrower's payment amount when a married borrower files a separate tax return because he or she is separated from his or her spouse or is unable to obtain his or her spouse's income at the time of application for REPAYE. While the spouse's income information may be unavailable to the borrower, the Department will be able to identify the eligible loans owed by the spouse, and take those loans into consideration when making its determinations. Although spouses are not responsible for repaying each other's loans unless the loans have been consolidated, under *§ 685.209(c)(2)(B), the Department adjusts the monthly payment amount for each borrower based on each borrower's percentage of the couple's total eligible debt.*

Changes: None.

Payment Cap

Comment: Several commenters noted that, while the Pay As You Earn repayment plan caps a borrower's monthly payment at the amount the borrower would have paid under the 10-year standard repayment plan, the REPAYE plan does not have a cap on the monthly payment amount. A borrower in the REPAYE plan will pay 10 percent of his or her discretionary income, even if that leads to a higher payment than under a standard repayment plan. While noting that this provision is directed towards ensuring that borrowers pay equitably, commenters expressed concerns that the new regulation could have a negative effect on certain borrowers. One commenter recommended adding a provision requiring the Department to provide a specific and clear notice to borrowers in this situation. The notice would inform borrowers that they are paying more than they might under other payment plans and present them with their other options for repayment.

Several commenters supported not including a cap on the payment amount, believing that this change increases program fairness by requiring higher-income borrowers to pay the same share of their income as lower-income

borrowers, and by preventing high-debt, high-income borrowers from receiving substantial loan forgiveness when they could afford to pay more.

A commenter noted that one concern about the other income-driven payment plans is that individuals whose incomes rise dramatically over time may still receive loan forgiveness because they are never required to pay more than what they would owe under the 10-year standard plan. This raises the costs for the Federal government and targets benefits away from the most at-risk borrowers. The REPAYE plan addresses this issue by removing that payment cap so that high earners will still pay 10 percent of their discretionary income even if that amount is above what they would owe on the standard 10-year plan. The commenter further noted that borrowers in the REPAYE plan will have the option to switch to the standard 10-year plan if they desired, but payments under the standard plan will not count toward forgiveness. The commenter suggested that the REPAYE plan might also be a favorable option for higher-income earners wishing to pay off their loan balance faster than 10 years.

One commenter contended that the ability to switch to another repayment plan without penalty defeats the purpose of not having a payment amount cap. A borrower who has a dramatic rise in income could easily switch to another repayment plan to avoid the higher monthly payment. This commenter also noted that high-income borrowers can easily select a different plan at the outset of repayment.

One commenter suggested that it might not be beneficial to the Federal government for a high-income borrower to remain in the REPAYE plan. With no monthly payment amount cap, payments by high-income borrowers who remain in REPAYE will accelerate, and the borrower will pay off the loan faster. While this would benefit the borrower, it would correspondingly deprive the Department of additional revenue. The commenter argued that, given the government's low borrowing rates, it would be in the interest of the Department (and taxpayers) to keep these loans outstanding for as long as possible, particularly for borrowers in a negative amortization situation, who are paying the full interest charge.

Other commenters opposed the absence of a payment amount cap in the REPAYE plan. One commenter stated that the purpose of the REPAYE plan should be to help relieve the stress borrowers and their families experience from student loan debt. Without a cap on the monthly payment amount, as in other income-driven repayment plans, a borrower will have to pay potentially ever-increasing amounts if the borrower receives a pay raise each year. The commenter contended that this reduces incentives for borrowers to seek higher incomes, especially when Federal and State tax brackets take higher percentages out at higher-income levels. The commenter further argued that a cap on monthly payments would give borrowers and families a better chance at buying other things, such as a house, which would in turn bring more money into local economies.

Another commenter proposed making a payment cap available to borrowers working in public service who will be eligible for forgiveness after 10 years.

Discussion: We agree with the commenters who supported not having a cap on the monthly payment amount. This feature of the REPAYE plan will help to ensure that the benefits of the plan are targeted to struggling borrowers and ensure that higher-income borrowers repay their loans.

We disagree with the comment that high-income earners will switch out of the REPAYE plan, or select a different repayment plan at the outset, rather than pay under the REPAYE plan. Both the IBR plan and the Pay As You Earn repayment plan require a borrower to have a PFH to qualify for the plan. It is unlikely that a high-income borrower would meet this requirement. The standard repayment plan does not have an eligibility criterion based on income but also does not provide for loan forgiveness.

Moreover, the Department is not trying to steer borrowers into one repayment plan over another. We believe borrowers should make informed decisions about the repayment plans that they choose, and we encourage borrowers to select the repayment plan that they believe will work best for them.

We disagree with the commenter who suggested that it would be more beneficial to the Federal government to keep borrowers in repayment as long as possible. It is not the Department's goal to use income-driven repayment plans to maximize revenues. Our goal for these plans is to provide options to borrowers that make it easier for them to repay their loans.

We also disagree with the comment that the absence of a payment cap will reduce incentives for borrowers to seek higher incomes. While a pay raise that results in increased AGI would increase a borrower's monthly payments under the REPAYE plan, few borrowers will forgo a pay raise for that reason. Pay raises frequently result in additional expenses and tax withholding. The commenter did not provide any evidence demonstrating that individuals regularly make a conscious choice not to seek a higher-paying job to avoid the additional expenses that come with a higher income.

With regard to borrowers who are making qualifying payments under the Public Service Loan Forgiveness Program, we believe that such borrowers should make payments on their student loans commensurate with their income. High-income borrowers qualifying for public service loan forgiveness could conceivably receive extensive loan forgiveness at the end of their 10 years of qualifying payments. We do not believe such borrowers should have both the benefit of an income-driven repayment plan when their incomes are low, and then have their increased incomes shielded from the monthly payment calculation when their incomes increase.

We believe that a notice specifically informing borrowers of the option to switch to another repayment plan could be confusing for borrowers. It could result in borrowers switching to repayment plans that are less beneficial to them, or create misunderstandings and confusion among borrowers. Therefore, we disagree with the recommendation to provide such notices.

Changes: None.

Negative Amortization

Comment: Several commenters supported the proposal to limit the amount of interest charged to borrowers whose monthly payments do not cover accrued interest (''negative amortization''). As in the Pay As You Earn and IBR plans, for borrowers in a negative amortization situation, no unpaid interest accrues on subsidized loans during the first three years a borrower is in the REPAYE plan. In addition, under the REPAYE regulations, if the borrower is in negative amortization, only 50 percent of any unpaid interest will accrue on subsidized loans after the first three years, and only 50 percent of any unpaid interest on unsubsidized loans will accrue at any time.

The commenters noted that capping the accrual of unpaid interest for borrowers who are in negative amortization is a targeted benefit that helps minimize the growth of loan balances for borrowers with low incomes relative to their debt.

Other commenters believed that adding on 50 percent of the remaining interest cost would still be a hardship to people with incomes at the level of 150

percent to 200 percent of the poverty level.

One commenter stated that the assumption that amortization is taking place in the course of loan repayment, so that after several years the amount of interest is low, and that 50 percent of the interest would not be a large amount, is a false assumption. For some borrowers, the accumulation of interest means that after many years of making payments, the current balance is larger than the original amount borrowed. The commenter believed that, for borrowers in this situation, the new rules will result in a slight, but not very significant, discount.

As noted by one commenter, even with the amount of unpaid interest each month not covered by the minimum monthly payment being reduced by 50 percent, a borrower might still pay a lot more than the original principal of the loan. According to this commenter, this increase might more than offset the reduced monthly payment on the REPAYE plan (10 percent) versus IBR (15 percent).

One commenter believed that, as used in the regulations, the terms ''charge,'' ''accrue,'' and ''capitalize'' are unclear. The commenter expressed concerns that these rules could pose problems for loan servicers, or for borrowers dealing with issues around consolidation, economic hardship, and bankruptcy. Furthermore, the commenter believed that any confusion caused by the use of these terms may make it especially difficult for borrowers to make informed decisions when selecting repayment plans. The commenter proposed defining the terms ''charge,'' ''accrue,'' and ''capitalize.''

Another commenter raised legal objections to proposed § 685.209(c)(2)(iii)(A), which would charge borrowers only half of the interest that accrues but is unpaid after the initial three-year period. According to this commenter, the proposed regulation conflicts with section 455(e)(5) of the HEA, which specifies that the balance due ''shall equal the unpaid principal amount of the loan, any accrued interest . . .'' The commenter believed that the Secretary's regulatory authority is limited to specifying details of the capitalization of this interest. The commenter also claimed this proposal is moot, as negatively amortized borrowers will have the accrued but unpaid interest forgiven at the end of the repayment term. The commenter believed that this proposed aspect of the REPAYE plan merely adds complexity to an already complicated repayment plan.

Discussion: We appreciate the commenters' support for the treatment of negatively amortizing loans in the REPAYE plan. We acknowledge that, even with the ''discount'' on interest payments provided for in the REPAYE regulations, some borrowers may have a greater amount of interest accrue over time. However, we believe that the treatment of negatively amortizing loans balances the goal of providing some relief to struggling borrowers, while protecting the interests of the taxpayers.

We believe the use of the terms ''charge,'' ''accrue,'' and ''capitalize'' in the regulations is clear and consistent with existing regulations and current operational processes. We see no need to define these longstanding student financial aid terms at this time.

We do not agree with the legal concerns raised by a commenter. Section 455(e)(5) of the HEA defines how to calculate the balance due on a loan repaid under the ICR plan but does not restrict the Secretary's discretion to define or limit the amounts used in calculating the balance. These regulations reflect the Secretary's regulatory authority to define those terms for purposes of the REPAYE plan.

We disagree with the suggestion that all negatively amortized loans will be forgiven at the end of the repayment period. The comment assumes a borrower in negative amortization will remain in that situation for the entire 20 or 25-year repayment period. However, a borrower's income can change significantly over that period of time. A borrower who recovers from the financial difficulties that put the borrower into negative amortization may resume making payments towards principal, and may repay the loan in its entirety by the end of the repayment period.

Changes: None.

Capitalization of Accrued Interest

Comment: Several commenters recommended elimination of the capitalization of interest within the REPAYE plan. Under the proposed regulations, interest would capitalize when a borrower enrolled in the REPAYE plan no longer has a PFH and when he or she switches from the REPAYE plan to another repayment plan. A borrower no longer has a PFH when 10 percent of his or her discretionary income is greater than or equal to the permanent standard payment amount due to changes in his or her income and/or family size.

These commenters recommended eliminating the capitalization of interest while a borrower remains in the REPAYE plan because they believe that it adds unnecessary complexity and can increase costs for borrowers whose incomes are low for extended periods of time.

In the view of these commenters, given the lack of a standard payment cap and of a PFH requirement for initial eligibility for the REPAYE plan, PFH is no longer a relevant benchmark, but rather is simply a carryover from other IDR plans with different eligibility requirements. Since borrowers' monthly payments in the REPAYE plan are always based on income, there is no need to capitalize interest when their debt-to-income ratio falls below a particular threshold. Under the proposed regulations, the only reason the Department would have to calculate PFH would be to determine whether interest should capitalize at what will be an irrelevant threshold, adding, according to these commenters, unnecessary complexity for the Department and creating confusion for borrowers. The commenters postulated that removing interest capitalization within the REPAYE plan would simplify implementation of the program because the Department would no longer need to treat interest differently under specific scenarios or implement the current 10 percent interest capitalization cap in the REPAYE plan.

The commenters also argued that capitalizing interest when borrowers in the REPAYE plan lose their PFH status may increase costs for borrowers whose incomes are low for extended periods of time. The commenters said that borrowers with low incomes relative to their debt are more likely to have monthly payment amounts that do not cover accrued interest.

One commenter noted that capitalization is not required by Federal law. The commenter suggested that it is not necessary to charge borrowers additional interest and urged the Department to consider elimination of capitalization in the REPAYE plan, and in all Federal student loan programs.

One commenter noted that switching from one plan (such as IBR) to another (such as the REPAYE plan) would result in accrued interest capitalizing, and, as a result a borrower's monthly interest payments could increase significantly.

A commenter currently enrolled in IBR with interest that has accrued (but not been capitalized) due to negative amortization asked for clarification regarding what happens to this type of interest if one switches from IBR to REPAYE. The commenter asked if it would be capitalized before the REPAYE monthly payment amount is calculated or if the interest would remain uncapitalized.

Another commenter recommended that we not capitalize interest on borrowers switching into the REPAYE plan from a similar income-driven repayment plan. The commenter argued that if it makes sense for someone to switch to the REPAYE plan, any unpaid interest that has accumulated under those programs should not capitalize, since the borrower is simply switching from one income-driven repayment plan to another.

As noted by one commenter, under the IBR repayment plan, interest that is accrued but unpaid (due to the payment amount being lower than the total interest due) is capitalized into the loan balance only upon a borrower leaving the IBR plan or ceasing to have a PFH. Thus, as long as a borrower continues to have a PFH and is in the IBR plan, the accrued interest will not be capitalized. However, under the current wording of § 685.221(b)(4), if an existing borrower who has been repaying under the IBR plan elects to take advantage of the new REPAYE plan, he or she would suffer the negative consequence of triggering full capitalization of all interest accrued up to such time. The commenter contended that this could be a significant deterrent to many borrowers in taking advantage of the new REPAYE plan and a potential ''trap for the unwary.'' One commenter requested that we specify that interest that accrued under the IBR plan would not be capitalized for a borrower who switches from the IBR plan to the REPAYE plan. The commenter asserted that failing to allow borrowers to switch to the REPAYE plan without capitalizing accrued interest will create a significant hardship for many of the borrowers that the REPAYE plan is designed to help.

One commenter recommended allowing a one-time switch into the REPAYE plan without capitalizing interest for those that are eligible for the new REPAYE plan. They suggested that a deadline could be added to this one-time switch opportunity. The commenter felt that it is unfair to offer a new repayment plan to people who have already begun repayment, but then penalize them for using it.

One commenter requested that we not allow interest to capitalize retroactively when a PFH is no longer demonstrated. The commenter believed that this point is vague in the proposed regulation, but that interest should never capitalize retroactively. The commenter suggested that anyone could no longer have a PFH at any point (*e.g.,* if they received an inheritance one year), and given that many people have negatively amortizing loans, this could have disastrous consequences.

One commenter suggested that student borrowers under the REPAYE plan receive a notice regarding accrued interest in certain circumstances. Specifically, the commenter recommended that the regulations require the Department to clearly describe the role of PFH in the REPAYE plan, notify a borrower when the Department determines that he or she no longer has a PFH, and explain to the borrower whether and how accrued interest will be capitalized in such circumstances.

Several commenters recommended ending capitalized interest entirely. In addition, commenters recommended changing the regulations, variously, to eliminate the accrual of interest, lower the accruing interest, freeze the accrual of interest, not accrue interest above minimal payments, waive accrued interest, or not accrue interest while the borrower is in school.

Discussion: We agree with the commenters who recommended eliminating capitalization of interest when a borrower paying under the REPAYE plan no longer has a PFH.

However, we have retained the requirement to capitalize interest at the time a borrower leaves the REPAYE plan. This is consistent with the treatment of accrued interest when a borrower leaves the IBR plan or the Pay As You Earn repayment plan. We also note that the removal of the provision for capitalizing interest when a borrower is determined to no longer have a PFH does not totally eliminate the possibility of interest capitalization while a borrower is in repayment under the REPAYE plan. As provided in § 685.202(b)(3), unpaid interest will be capitalized upon the expiration of a deferment or forbearance period.

As many commenters noted, if a borrower who is currently in the IBR plan or the Pay As You Earn repayment plan had accrued interest on his or her loan and chose to switch from the IBR plan or the Pay As You Earn repayment plan to the REPAYE plan, the interest would be capitalized at the time the borrower leaves the IBR plan or the Pay As You Earn repayment plan. Some commenters stated that this would be a deterrent to such borrowers entering the REPAYE plan. While this may be the case, we note that the primary goal of the REPAYE plan is to allow borrowers who do not qualify for the 10 percent IBR plan or the Pay As You Earn repayment plan to have access to an affordable income-driven repayment plan. In fact, we estimate that most borrowers in those repayment plans will stay in those repayment plans after the REPAYE plan becomes available. (See ''Net Budget Impacts.'') Borrowers who are currently in the IBR plan or the Pay As You Earn repayment plan may determine that it is not in their financial interest to switch to the REPAYE plan. Since these borrowers are already on track to have their loans forgiven, we do not believe that it significantly disadvantages these borrowers to retain the requirement that accrued interest be capitalized for borrowers switching from one of those plans to the REPAYE plan. For the same reasons, we do not believe that allowing a one-time switch without capitalizing interest is warranted.

With regard to some of the other comments we received relating to capitalization of accrued interest:

- When accrued interest is capitalized, it is always done retroactively. Some event, such as leaving a particular repayment plan, triggers capitalization of all interest that has accrued up to that point.
- With the elimination of the requirement to capitalize unpaid interest when a borrower ceases to have a PFH, there will be no necessity for the Department to make an annual determination of PFH status, or provide the borrower a notification if the borrower does not have a PFH.
- Modifications to how interest accrues on Direct Loans, or the elimination of capitalization of interest altogether, are outside the scope of this regulatory action.

Changes: We have removed the provision in proposed § 685.209(c)(2)(iv)(A)(*1*) that would have required capitalization of unpaid accrued interest when the Secretary determines that a borrower does not have a PFH. We have also removed proposed § 685.209(c)(2)(iv)(B), which would have limited the amount of unpaid interest that is capitalized when a borrower loses PFH status, and the reference to subsequent year PFH determinations in § 685.209(c)(4)(i)(A). In addition, we have removed proposed § 685.209(c)(4)(iv), which provided that the Secretary would send the borrower a written notification that unpaid interest would be capitalized each time the Secretary made a determination that a borrower did not have a PFH, and have redesignated paragraphs (c)(4)(v) through (ix) as paragraphs (c)(4)(iv) through (viii), respectively. Finally, we have made a conforming change to § 685.209(c)(1) by removing the definition of ''partial financial hardship.''

Comment: Some commenters raised a concern that it would be inappropriate to allow the ''importation'' of existing accrued but uncapitalized interest into

the REPAYE plan, for borrowers who switch from another repayment plan to the REPAYE plan. The commenters noted that under proposed § 685.209(c)(2)(iv), the 10 percent limit on capitalization within the REPAYE plan provides more favorable treatment of unpaid accrued interest than other repayment plans. These commenters believed that requiring capitalization of interest for borrowers who switch to the REPAYE plan would be an appropriate safeguard to prevent ''importation'' of accrued interest when a borrower switches to the REPAYE plan. In the view of these commenters, the proposed rules provide adequate protection to ensure that a borrower with interest accrued under the IBR plan would not benefit from the more generous capitalization provisions of the REPAYE plan. *Discussion:* We agree with the commenters that the REPAYE regulations provide appropriate safeguards against accrued interest from other repayment plans being ''imported'' into the REPAYE plan, with the borrower being given more generous treatment as a result. However, we note that, with the elimination of the capitalization requirement for borrowers who no longer have a PFH, we have also eliminated the 10 percent cap on accrued interest that may be capitalized for such borrowers.

Changes: None.

Application of Payments (34 CFR 685.209(c)(3))

Comment: One commenter recommended that we mandate that any payments made by borrowers in excess of the monthly amount due be applied to the loan principal.

Another commenter recommended that the Department provide borrowers with accounts in good standing incentives for keeping loan payments current.

Discussion: The application of payments in the Direct Loan Program is specified in § 685.211. Under § 685.211(a)(3)(i), a prepayment is applied first to any accrued charges and collection costs, then to outstanding interest, and then to outstanding principal. We do not believe that establishing a different application of payments rule for Direct Loans paid under the REPAYE plan is warranted.

Under section 455(b)(8)(C) of the HEA, the Department has limited authority to provide payment incentives to certain categories of Direct Loan borrowers. The Department cannot expand on this statutory authority through our regulations.

Changes: None.

Eligibility Documentation, Verification, and Notifications (§ 685.209(c)(4))

Comment: An overwhelming majority of commenters urged the Department to implement a system whereby a borrower repaying under the REPAYE plan or another income-driven repayment plan could provide advance consent for the Department to automatically obtain the borrower's AGI from the IRS for multiple tax years, so that it would not be necessary for the borrower to submit income documentation each year, as is currently required. Some commenters stated that borrowers should be able to revoke the consent at any time. The commenters believed that a multi-year consent approach would greatly simplify the annual income documentation requirement for borrowers, reduce burden for both borrowers and the Department, and significantly reduce the number of borrowers who fail to provide the required documentation on time and as a result lose eligibility to make payments based on income. Many commenters noted that in the past it was possible for borrowers to provide the Department with a multi-year consent to obtain income information directly from the IRS and believed that this process should be reinstated.

Discussion: For all of the reasons cited by the commenters, we strongly agree that allowing borrowers to provide advance consent for the Department to obtain their AGI directly from the IRS for multiple tax years would be preferable to the current process that requires borrowers to submit income documentation each year. As we noted in the NPRM, in an Executive Memorandum dated March 10, 2015, the President instructed the Department to work with the IRS and the U.S. Department of the Treasury to develop and create a multi-year consent process. The Department continues to work closely with these agencies to resolve the issues that currently preclude the use of a multi-year consent process and we intend to implement such a process in the future. We note that the regulations governing the REPAYE plan and the other income-driven repayment plans require a borrower to provide documentation ''acceptable to the Secretary'' of the borrower's AGI. This language is sufficiently broad to allow for income information to be obtained through a multi-year consent process in the future without regulatory changes.

In response to the commenters who noted that borrowers were previously able to provide the Department with multi-year consent to obtain their income information from the IRS, we note that when the process described by the commenters was in place, there was only one income-driven repayment plan (the original ICR Plan) and only one servicer for Direct Loans. After new income-driven repayment plans were established and the Department contracted with additional servicers for Direct Loans, the multi-year consent process was no longer feasible, due to the significant increased complexity.

As explained earlier in this discussion, we are working with the IRS and the Department of Treasury to address the issues that forced us to discontinue the prior multi-year consent process, so that a multi-year consent process will be possible for the REPAYE plan. As we do so, we will consider the issues raised by the commenters, including procedures for revocation of consent.

Changes: None.

Comment: A few commenters asked the Department to revise proposed § 685.209(c)(4)(iii)(B) to allow borrowers more than 10 days following the specified annual deadline to provide their required annual documentation of income and avoid the consequence of being removed from the REPAYE plan and being placed on the alternative repayment plan. One commenter believed that an extension of the deadline would allow for unforeseen delays that a borrower might face or possible deficiencies in notification procedures. Another commenter suggested that giving borrowers 30 days after the annual deadline to provide income documentation would be appropriate.

A few commenters expressed support for the Department's plan, announced in the preamble to the NPRM, to conduct a pilot to test enhanced messaging techniques that would help the Department determine whether the current process for notifying borrowers of the annual deadline for providing income documentation should be modified to prevent more borrowers from missing the deadline. One commenter urged the Department to inform the public of the results of the pilot, and to move forward as soon as possible to implement changes based on those results.

Discussion: During the negotiated rulemaking sessions, some of the non-Federal negotiators recommended that the Department extend the time after the annual deadline during which a borrower may submit income documentation. As we explained in the NPRM, the Department declined to consider this recommendation, noting that the proposed regulations related to the annual deadline for submitting

income documentation were the same as the corresponding regulations for the Pay As You Earn repayment plan that were developed through negotiated rulemaking after extensive discussion.

We further noted that, because those regulations have been in effect for less than two years, we did not believe there was sufficient evidence to conclude that the existing timeframes for borrowers to submit income documentation should be modified. This continues to be our view. However, as we also noted in the preamble to the NPRM, we have initiated a pilot project to determine if there may be more effective means of communicating information about the annual deadline to borrowers. The pilot project is still ongoing and will not be completed until after these final regulations are published. Once the project has been completed and the results have been analyzed, the Department will issue an announcement with more information.

Changes: None.

Comment: One commenter recommended that the annual notification to the borrower described in proposed § 685.209(c)(4)(iii) should explain that a failure to provide income documentation by the annual deadline will result in capitalization of any unpaid accrued interest. The commenter noted that the comparable notification to borrowers in the Pay As You Earn repayment plan under § 685.209(a)(5)(iii)(B) includes this information.

Discussion: We agree with the commenter.

Changes: We have revised § 685.209(c)(4)(iii)(B) to specify that the notice's description of the consequences if the Secretary does not receive the required income information by the annual deadline will include capitalization of any unpaid accrued interest in accordance with § 685.209(c)(2)(iv).

Comment: One commenter asked the Department to confirm that a borrower who is repeatedly late in providing his or her required annual income documentation could be placed on the alternative repayment plan in accordance with proposed § 685.209(c)(4)(vi) more than once, and each time this occurs the borrower's required monthly payment amount under the alternative repayment plan would be recalculated.

Discussion: The commenter's understanding is correct.

Changes: None.

Comment: One commenter strongly recommended that, for greater clarity, the Department restructure proposed § 685.209(c)(4)(vii), which describes the notice that is sent to a borrower who has been placed on an alternative repayment plan due to failure to provide required income documentation by the annual deadline. Specifically, the commenter suggested that we present the provisions in proposed § 685.209(c)(4)(vii)(D) through (G), which describe the requirements that apply to a borrower who wishes to return to the REPAYE plan after being removed from the plan or voluntarily leaving the plan, in a separate section of the regulations. In the commenter's view, the current structure of proposed § 685.209(c)(4)(vii) results in confusing cross-references elsewhere in the REPAYE plan regulations. The commenter noted that, as a result of these changes, we would need to renumber other paragraphs and update cross-references, as appropriate.

The same commenter also believed that proposed § 685.209(c)(4)(vii)(D) may be confusing in the context of the lead-in language in proposed § 685.209(c)(4)(vii), which explains the requirements that apply to a borrower who wishes to return to the REPAYE plan after having been removed from that plan due to a failure to provide income information or after voluntarily leaving the plan. The commenter noted that the lead-in language in proposed § 685.209(c)(4)(vii) refers only to borrowers who have been removed from the REPAYE plan and placed on an alternative repayment plan due to a failure to provide income information by the specified annual deadline, yet proposed § 685.209(c)(4)(vii)(D) also covers borrowers who voluntarily chose to leave the plan.

Discussion: Although we do not believe it is necessary to restructure proposed § 685.209(c)(4)(vii) as suggested by the commenter, we agree with the commenter that proposed § 685.209(c)(4)(vii)(D) may be confusing in the context of the lead-in language in proposed § 685.209(c)(4)(vii). We have made changes to address this concern.

Changes: We have revised redesignated § 685.209(c)(4)(vi)(D) by removing the references to borrowers who have voluntarily changed to a different repayment plan (including borrowers who changed to a different plan after being placed on the alternative repayment plan), and have added language to § 685.209(c)(2)(vi) explaining that borrowers who leave the REPAYE plan because they no longer wish to repay under that plan or borrowers who change to a different repayment plan after being placed on an alternative repayment plan may return to the REPAYE plan under the conditions described in redesignated §§ 685.209(c)(4)(vi)(D) and (E).

Comment: One commenter noted that proposed § 685.209(c)(4)(vii)(B) implies, but does not explicitly state, that the notice sent to a borrower who has been placed on an alternative repayment plan will include the alternative repayment plan monthly payment amount. The commenter recommended that the Department revise § 685.209(c)(4)(vii) to clearly state that the notice will include the borrower's new monthly payment amount.

Discussion: We agree with the commenter's recommendation.

Changes: We have revised redesignated § 685.209(c)(4)(vi) to clarify that the notice sent to a borrower who has been placed on an alternative repayment plan will include the borrower's new monthly payment amount.

Comment: One commenter contended that the proposed treatment of borrowers who miss the annual deadline for providing updated income information, as described in proposed § 685.209(c)(4)(vi), is unnecessarily complex and will be difficult for borrowers to understand. The commenter stated that under the Department's proposed approach, a borrower who wishes to return to the REPAYE plan after having been removed due to their failure to provide income documentation would be required to provide what could be years of income documentation and to clear any delinquencies resulting from alternative repayment plan payments.

The commenter proposed an alternative approach under which borrowers who miss the annual income documentation deadline would not be removed from the REPAYE plan but instead would remain on the REPAYE plan with a recalculated monthly payment equal to the higher of the 10-year standard repayment plan payment amount based on the borrower's outstanding loan balance at the time he or she entered the REPAYE plan, or the borrower's previous income-driven payment amount under the REPAYE plan based on the most recent income documentation provided. In addition, the commenter proposed that any payments made in the absence of updated income information would not count toward loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program. The commenter noted that excluding such payments from counting toward loan forgiveness would encourage borrowers to submit income documentation on time, and would help prevent borrowers who miss the deadline for providing the

income documentation from receiving loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program sooner than they should. Borrowers who never recertify their income under the REPAYE plan would end up paying their loans in full and receiving no loan forgiveness.

The same commenter recommended that if the Department maintains the approach described in proposed § 685.209(c)(4)(vi), the calculation of the borrower's required monthly payment under the alternative repayment plan should be revised. Under proposed § 685.209(c)(4)(vi), the monthly payment amount under the alternative repayment plan would be the amount necessary to repay the borrower's loan in full within *the earlier of* 10 years from the date the borrower begins repayment under the alternative repayment plan, or the ending date of the borrower's 20- or 25-year repayment period as described in § 685.209(c)(5)(i) or (ii). The commenter believed that the alternative plan payment amount should instead be the amount needed to repay the borrower's loan in full by the *later of* 10 years from the date the borrower begins repayment under the alternative plan, or the ending date of the borrower's 20- or 25-year repayment period. The commenter stated that the Department's proposed approach could require borrowers to make monthly payments under the alternative repayment plan that are much higher than their previous income-based payments, particularly if they have a low income or are near the end of their 20- or 25-year repayment period. The commenter argued that their alternative approach, by providing for a longer repayment period under the alternative repayment plan, would give borrowers a lower alternative plan monthly payment amount than the Department's proposed approach and thus would help borrowers who fail to recertify their income from falling into delinquency due to their inability to afford the alternative plan payment amount.

Discussion: We believe it is important to provide a strong incentive for borrowers who wish to continue receiving the benefits offered by the REPAYE plan to provide their annual income information by the specified annual deadline, and to discourage borrowers from purposely withholding income information to avoid the consequences of a higher monthly payment amount resulting from an increase in income. The Department's proposed approach serves this purpose by removing borrowers from the REPAYE plan if they miss the deadline for providing income information, placing them on an alternative repayment plan that requires them to pay the potentially higher amount that will repay their loans in full within the *earlier of* 10 years from the date the borrower begins repayment under the alternative plan or the ending date of the 20- or 25-year repayment period, and not allowing payments made under the alternative repayment plan to count toward public service loan forgiveness.

One alternative suggested by the commenter was to allow borrowers who fail to recertify income to remain on the REPAYE plan with a recalculated monthly payment equal to the higher of the 10-year standard plan payment or the borrower's last income-driven payment amount, and to not count payments made without income documentation toward loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program. However, under this approach, there would be no basis under the law for not counting payments made without income documentation toward REPAYE or public service loan forgiveness. Payments made under an ICR plan are qualifying payments for loan forgiveness purposes under an ICR plan and under the Public Service Loan Forgiveness Program in accordance with section 455(e)(7)(B)(v) and (m)(1)(A)(iv) of the HEA. Under the commenter's proposed alternative approach, payments made without income documentation would still be payments made under the REPAYE plan (an income-contingent repayment plan) and therefore would have to be counted as qualifying payments for loan forgiveness under both the REPAYE plan and the Public Service Loan Forgiveness Program. This would be contrary to the Department's intent of providing a strong incentive for borrowers to provide updated income information by the specified annual deadline. We also note that the Department's approach is more favorable to borrowers than the commenter's alternative in that payments made under an alternative repayment plan will still count as qualifying payments toward income-driven loan forgiveness, if the borrower later returns to the REPAYE plan or another income-driven repayment plan.

Changes: None.

Comment: One commenter believed that the REPAYE plan regulations will unduly penalize borrowers in public service jobs who miss the annual deadline for submitting income documentation and are placed on an alternative repayment plan, because any payments made by borrowers under the alternative repayment plan are not counted as qualifying payments toward public service loan forgiveness. The commenter stated that the Department did not explain the reason for excluding these payments, and the commenter did not see any reason to exclude them, noting that payments made by borrowers under the Pay As You Earn repayment plan after they have missed the annual income documentation deadline continue to count toward public service loan forgiveness. The commenter added that there is no requirement in the Public Service Loan Forgiveness Program for all 120 qualifying monthly payments to be made under an income-driven repayment plan. The commenter recommended that the Department allow payments made by a borrower under the alternative plan after being removed from the REPAYE plan to count toward public service loan forgiveness.

Discussion: In the preamble to the NPRM, we explained our view that, in the absence of a process that allows borrowers to provide consent to access their income information for multiple years, the regulations should provide an incentive for borrowers to comply with the annual income documentation requirement in a timely manner, and should also provide a disincentive for borrowers who might intentionally withhold updated income information when there is a significant increase in their income. Not allowing alternative plan payments to count toward public service loan forgiveness serves these purposes. Moreover, the statutory provisions governing the Public Service Loan Forgiveness Program in section 455(m) of the HEA do not provide for counting payments made under an alternative repayment plan as qualifying payments.

In response to the commenter's observation that payments made by borrowers under the Pay As You Earn repayment plan after they have missed the annual income documentation deadline continue to count toward public service loan forgiveness, we note that under the Pay As You Earn repayment plan regulations, borrowers who do not submit their required income documentation by the annual deadline are not removed from the Pay As You Earn repayment plan. Rather, they remain on the Pay As You Earn repayment plan with a recalculated payment amount that is no longer based on their income. These recalculated payments are still made under the Pay As You Earn repayment plan and therefore count toward public service loan forgiveness. The commenter is correct in noting that there is no requirement in the Public Service Loan

Forgiveness Program for all 120 qualifying payments to be made under an income-driven repayment plan. Payments made under the standard repayment plan with a 10-year repayment period count toward public service loan forgiveness, as do payments made under other repayment plans, if the payment amount is not less than what would have been paid under the 10-year standard repayment plan. However, as explained earlier, there is no statutory authority for counting payments made under an alternative repayment plan toward public service loan forgiveness.

Changes: None.

Comment: A number of commenters urged the Department to clarify that payments made under the REPAYE plan will count as qualifying payments for purposes of the Public Service Loan Forgiveness Program. One commenter understood the proposed regulatory language to mean that borrowers employed in public service would have to give up their access to the Public Service Loan Forgiveness Program to reduce their monthly loan payments through the REPAYE plan. Another commenter said that the proposed regulations would discourage public service by excluding payments made under the REPAYE plan from counting toward public service loan forgiveness.

A couple of commenters asked the Department to clarify whether payments that a borrower previously made under the IBR plan would continue to count toward public service loan forgiveness if the borrower later changes to the REPAYE plan.

One commenter said that the regulations for the REPAYE plan should allow borrowers who received loans prior to October 1, 2007 to qualify retroactively for public service loan forgiveness.

Discussion: Some commenters may have misunderstood proposed § 685.209(c)(4)(vii)(G), which stated that payments made under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) will not count toward public service loan forgiveness under § 685.219. This limitation applies only to payments made under the alternative repayment plan after a borrower has been removed from the REPAYE plan due to not meeting the annual income documentation deadline. Payments made under the alternative repayment plan are not REPAYE plan payments.

Section 685.219(c)(1)(iv)(B) of the regulations governing the Public Service Loan Forgiveness Program indicates that payments made under an income-contingent repayment plan in § 685.209 are qualifying payments. The REPAYE plan is one of the income-contingent repayment plans in § 685.209, meaning that payments made under that plan, if they otherwise meet the requirements of the Public Service Loan Forgiveness Program, would count as qualifying payments for public service loan forgiveness. We do not believe it is necessary to state in the REPAYE regulations themselves that payments made under that plan count toward public service loan forgiveness, since the appropriate place to describe what constitutes a qualifying payment for public service loan forgiveness is in the regulations that govern the Public Service Loan Forgiveness Program. We note that the regulations governing the Pay As You Earn, ICR, and IBR plans do not specify that payments made under those plans count toward public service loan forgiveness.

If a borrower who made qualifying public service loan forgiveness payments on an eligible Direct Loan Program loan under the IBR plan later begins repaying that loan under the REPAYE plan, the prior payments that were made under the IBR plan will still count toward public service loan forgiveness.

In response to the commenter who believed that the REPAYE plan regulations should allow borrowers who received loans prior to October 1, 2007 to qualify retroactively for public service loan forgiveness, we note that there is nothing in the law or regulations that precludes borrowers who received loans prior to October 1, 2007 from receiving public service loan forgiveness. However, in accordance with section 455(m)(1)(A) of the HEA, only payments made after October 1, 2007 may be counted toward the 120 qualifying payments required to receive public service loan forgiveness.

Changes: None.

Loan Forgiveness Under the REPAYE Plan (§ 685.209(c)(5))

Comment: A large number of commenters strongly opposed the provisions in proposed § 685.209(c)(5)(ii)(A) and (B) under which a borrower would qualify for forgiveness after 20 years if the loans being repaid under the REPAYE plan include only loans the borrower received to pay for undergraduate study, whereas a borrower would qualify for forgiveness after 25 years if the loans being repaid under the REPAYE plan include a loan the borrower received to pay for graduate or professional study.

The commenters who objected to proposed § 685.209(c)(5)(ii)(A) and (B) believed that all borrowers who choose to repay their loans under the REPAYE plan should qualify for loan forgiveness after 20 years of repayment. The reasons cited by these commenters included the following:

- Providing a 20-year repayment period for borrowers with only undergraduate loans and a 25-year repayment period for borrowers with one or more loans obtained for graduate study is inequitable and may serve as a disincentive for individuals considering post-graduate education, and could lead some students to take out private loans to pay for graduate school.
- The proposed longer repayment period for borrowers with loans received for graduate study further penalizes graduate and professional students, who contribute significantly to the success of our Nation. Graduate and professional students have already been negatively impacted by recent statutory changes such as the loss of eligibility for subsidized loans and higher interest rates on unsubsidized loans.
- The proposed 25-year repayment period for any borrower who received loans for graduate study is a punitive measure for those who seek to further their academic studies, and is especially harmful for those who are required to obtain a graduate degree to secure employment in their field.
- The proposed regulations establish a ''degree-based'' repayment plan that requires a longer repayment period for individuals who borrowed to pay for graduate studies, without taking into consideration the total amount borrowed or ability to repay.
- The proposed regulations do not differentiate between borrowers who receive loans for graduate study, but do not ultimately complete a graduate program, and those who are able to complete a graduate degree. As a result, a student with undergraduate loan debt who begins a graduate program and takes out additional loans, but who is ultimately unable to finish the graduate program, will not qualify for loan forgiveness until after 25 years of qualifying repayment. In contrast, other borrowers with only undergraduate degrees will qualify for loan forgiveness after 20 years of qualifying repayment.
- Requiring a different repayment period depending on whether a borrower received only loans for undergraduate study or received one or more loans for graduate study further complicates the REPAYE plan and will be difficult to explain to borrowers.
- Many individuals are older when they begin graduate or professional study. Establishing a maximum 20-year repayment period under the REPAYE plan for all borrowers will help individuals focus sooner on other

priorities, such as saving for retirement or paying for their children's education.

Some commenters believed that a borrower's age should be taken into account when establishing the maximum repayment period under the REPAYE plan. A few commenters suggested that loan forgiveness should be provided to all borrowers after a repayment period of less than 20 years.

One commenter noted that in the preamble to the NPRM the Department emphasized its goal of targeting the REPAYE plan to the neediest borrowers and contended that extending the repayment period under the REPAYE plan to 25 years for anyone who received a loan for graduate or professional study may harm the neediest borrowers. The commenter specifically noted that high-income borrowers with graduate loan debt will be able to repay their loans in less than 20 years, while those with graduate loan debt and low earnings will be required to make five additional years of payments. The commenter suggested that a better way of targeting the benefits of the REPAYE plan to the neediest borrowers would be to provide a maximum 20-year repayment period for all borrowers and continue to cap the monthly payment amount at 10 percent of income, but make certain changes to the way the monthly payment amount is calculated so that higher-income borrowers would be more likely to repay their debt in full within 20 years.

A couple of commenters believed that, if the Department requires a longer repayment period for certain borrowers under the REPAYE plan, it would be preferable to have a 25-year repayment period only for a borrower's loans that were received for graduate or professional study, while any loans received for undergraduate study would have a 20-year repayment period. One commenter believed that this approach would mitigate the ''cliff effect'' of the proposed regulations that establishes a 25-year repayment period for all of a borrower's loans if even one loan was received for graduate study, and would be less likely to encourage borrowers to rely on private education loans or discourage students from pursuing graduate study.

One commenter suggested that the Department may have made an assumption that borrowers who obtained loans for graduate or professional study will have higher loan balances and therefore should repay their loans over a longer period of time, but noted that this is not always the case. As an example, the commenter cited the case of a borrower who received significant scholarship aid for both graduate and undergraduate study who might have a lower total loan balance than a student who only has loans that were obtained for an expensive undergraduate program. However, the borrower with both graduate and undergraduate loans would be required to repay for five more years than the undergraduate borrower.

Some commenters believed that the Department did not provide sufficient justification for requiring a longer repayment period for borrowers who received loans for graduate or professional study. One commenter contended that the preamble to the NPRM suggested that the Department and non-Federal negotiators believed that the availability of the Public Service Loan Forgiveness Program would provide a recourse to graduate and professional student borrowers, and asserted that, because the Public Service Loan Forgiveness Program is open to all Direct Loan borrowers, it is not an appropriate reason to require a longer repayment period for individuals who obtained loans for graduate or professional study.

One commenter expressed support for the Department's proposal to provide a maximum 20-year repayment period for borrowers with only undergraduate loans, but also believed that all borrowers, including those who take out loans for graduate study, should have access to income-driven repayment plans that provide for cancellation of any remaining loan balance after 20 years. The commenter noted that many critical professions, such as teaching, law, and medicine, require graduate degrees, and believed that imposing a maximum 25-year repayment period on borrowers who received loans for graduate study could have a substantial impact on their financial health.

Discussion: We appreciate the concerns expressed by the commenters and the suggested alternative approaches. However, we continue to believe, as we stated in the preamble to the NPRM, that it is important to have borrowers with higher loan balances make payments over a longer period of time before receiving loan forgiveness. Providing loan forgiveness after 20 years of repayment for all borrowers, regardless of loan debt, would be inconsistent with this goal and, equally importantly, would result in significant additional costs to taxpayers. In general, borrowers who receive loans for graduate or professional study will leave school with a higher total outstanding loan balance than borrowers who received loans only for undergraduate study. Therefore, we believe it is appropriate to provide loan forgiveness only after 25 years of qualifying repayment if a borrower received any loans for graduate or professional study.

We disagree with the commenters who believed that the 25-year repayment period is a punitive measure for those who take out loans for graduate or professional study, and could have a substantial impact on their financial health. We believe that the many benefits of the REPAYE plan, including the possibility of loan forgiveness, mitigate the longer repayment period for these borrowers.

We note that the approach described in the proposed regulations was suggested by non-Federal negotiators during the negotiated rulemaking sessions as an alternative to the Department's original proposal, which would have set the repayment period at 25 years for any borrower with more than $57,500 in outstanding loan debt. Although some non-Federal negotiators expressed concerns about the impact on graduate and professional students of the approach presented in the proposed regulations, all of the non-Federal negotiators ultimately supported this approach, noting that it was simpler than what the Department had originally proposed and avoided the consequence of an additional five years of repayment for any borrower with even one dollar in loan debt over the specified threshold.

With regard to the suggestions that the maximum repayment period under the REPAYE plan should in some way be based on the borrower's age or other life circumstances at the time they attend graduate school, or should be for a period of less than 20 years, we note that such approaches would be very costly to taxpayers. Similarly, the Department previously declined to consider the recommendation that the repayment period should be 20 years for all of a borrower's loans that were obtained for undergraduate study, and 25 years for any loans obtained for graduate study, noting that we had determined the costs to taxpayers associated with such an approach would be unacceptably high.

In response to the commenter who suggested that the Department's proposed approach may harm the neediest borrowers by requiring individuals with graduate loan debt and low earnings to repay for 25 years, while high-income borrowers with graduate loan debt will be able to repay their loans in less than 20 years, we note that a lower-income borrower would receive forgiveness of any remaining loan balance after 25 years of repayment, while a high-income borrower may end up repaying his her loans in full without

having any amount forgiven. We believe this is consistent with our goal of targeting the REPAYE plan at the neediest borrowers.

In response to the commenter who questioned the Department's assumption that borrowers who received loans for graduate study will have higher loan balances and therefore should repay their loans over a longer period, we agree that in some cases a borrower who received loans for graduate study may owe less than a borrower who received loans only for an undergraduate program. The commenter is correct in noting that in such cases the regulations would provide for a 25-year repayment period, despite the fact that the borrower may have smaller loan balances than other borrowers who received loans only for undergraduate study. However, a graduate student borrower with only a very modest amount of loan debt but a relatively high income would likely not be in repayment under the REPAYE plan for 25 years, but instead would repay his or her loans in full in less than 20 years.

With regard to the comment that the regulations do not distinguish between borrowers who receive loans for graduate study but are unable to complete their graduate studies, and those graduate student loan borrowers who complete their studies and receive graduate degrees, we note that the regulations make no such distinction for undergraduate borrowers, either. The 20- and 25-year REPAYE plan repayment periods are based on the type of study for which the borrower received the loan, not on whether the borrower obtained a degree. We believe that the 20-year repayment period is appropriate for undergraduate borrowers, who may not have a postsecondary education degree at all, and that the 25-year repayment period is appropriate for graduate-level borrowers who, at the very least, will have obtained an undergraduate degree.

We do not agree with the suggestion that the 25-year repayment period for graduate-level borrowers will lead those students to take out private loans rather than Direct Loans. The Direct Loan Program provides significant benefits to borrowers (including deferments, forbearances, and the possibility of forgiveness) that most private loan programs do not offer. For most borrowers, those benefits will far outweigh the costs associated with a 25-year repayment period as opposed to a 20-year repayment period.

Finally, neither the Department nor the non-Federal negotiators cited the availability of the Public Service Loan Forgiveness Program as justification for establishing a 25-year repayment period for borrowers who received any loans for graduate or professional study. As we explained in the preamble to the NPRM, some of the non-Federal negotiators said that the fact that graduate and professional students would have the option of pursuing loan forgiveness under the Public Service Loan Forgiveness Program after making 10 years of qualifying payments persuaded them to support the Department's proposed approach.

Changes: None.

Comment: Many commenters noted that, under current tax law, any loan amount forgiven under the terms of the REPAYE plan or any other IDR plan is treated as taxable income, and urged that this be changed so that loan amounts forgiven under the IDR plans are not counted as income for tax purposes. Commenters noted that the consequences of the current tax policy could be significant for many borrowers, who may be unable to afford the tax burden on the forgiven loan amount.

Discussion: The Department shares the commenters' concerns and is supportive of a change in tax law so that loan amounts forgiven under the income-driven repayment plans would no longer be treated as income. However, such a change would require action by Congress.

Changes: None.

Comment: One commenter asked the Department to clarify whether the repayment period for a borrower repaying only Direct Loans received for undergraduate study under the REPAYE plan would be 20 years or 25 years if the borrower also had FFEL Program loans that he or she had received for graduate or professional study. The commenter also asked what the repayment period would be if the same borrower were to consolidate the FFEL Program loans obtained for graduate study into a Direct Consolidation Loan and then choose to repay the consolidation loan under the REPAYE plan.

Discussion: Under the REPAYE plan regulations in § 685.209(c)(5)(ii)(A) and (B), a borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may receive loan forgiveness after 20 years, and a borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years. Accordingly, a borrower who is repaying only Direct Loans received as an undergraduate under the REPAYE plan, but who also has FFEL Program loans received for graduate study, would qualify for loan forgiveness after 20 years, because the determination of the 20- or 25-year period is based only on the loans that are being repaid under the REPAYE plan. FFEL Program loans are not eligible for repayment under the REPAYE plan and have no bearing on the determination of the 20- or 25-year period for a borrower who also has Direct Loans that are being repaid under the REPAYE plan.

However, if the same borrower were to consolidate the FFEL Program loans received for graduate study with the Direct Loans received for undergraduate study and then select the REPAYE plan for the new Direct Consolidation Loan, the borrower would qualify for loan forgiveness after 25 years. This is because the Direct Consolidation Loan would have repaid loans that the borrower received as a graduate or professional student.

Changes: None.

Comment: Several commenters suggested that the Department expand the definition of a qualifying payment for purposes of loan forgiveness under the REPAYE plan and other IDR plans to include payments previously made under any repayment plan. A few other commenters said that payments that were not made on time should count toward IDR plan loan forgiveness, as well as periods when borrowers are unable to make payments due to financial hardship. One commenter recommended that periods when borrowers are unable to make a payment due to hardship should also count toward loan forgiveness under the Public Service Loan Forgiveness Program.

Discussion: The statutory provisions that govern the ICR plans (which include the Pay As You Earn repayment plan, the ICR plan, and the REPAYE plan) and the IBR plan specify the types of payments that may be counted toward loan forgiveness under these plans. Generally, qualifying payments are limited to those made under one of the income-driven repayment plans, the standard repayment plan with a 10-year repayment period, or any other plan, if the payment amount is not less than the payment that would be required under the standard repayment plan with a 10-year repayment period. *See* sections 455(e)(7)(B) and 493C(b)(7) of the HEA. The Department does not have the authority to further expand the definition of a qualifying payment.

In response to the commenters who said that late payments should be counted, we note that otherwise qualifying monthly payments, as described in the preceding paragraph, do not have to be made on time to count toward loan forgiveness under the IDR plans. However, monthly payments do have to be made on time to count toward public service loan forgiveness.

Finally, we remind the commenters that calculated monthly payment amounts of $0 under any of the IDR plans, including the REPAYE plan, count as qualifying payments toward loan forgiveness under those plans, and also count as qualifying payments toward public service loan forgiveness if the borrower is employed full-time by an eligible public service organization during any month when the borrower's required monthly payment is $0. In addition, any month when a borrower is not required to make a payment due to receiving an economic hardship deferment counts as a qualifying payment toward loan forgiveness under all of the IDR plans.

Changes: None.

Comment: One commenter noted that proposed § 685.209(c)(5)(iv)(D) provides that any month during which a borrower was not required to make a payment due to receiving an economic hardship deferment counts as a qualifying monthly payment toward loan forgiveness under the REPAYE plan, without any restriction on the time period during which the borrower received the economic hardship deferment. In contrast, the commenter pointed out that the corresponding provisions for the Pay As You Earn repayment plan and the ICR plan in § 685.209(a)(6)(iii)(B)(*2*) and 685.209(b)(3)(iii)(B)(*8*), respectively, specify that only periods of economic hardship after October 1, 2007 may be counted toward loan forgiveness. The commenter stated that § 685.209(c)(5)(iv)(D) should be revised to reflect the same limitation, if that limitation also applies in the REPAYE plan.

Discussion: The October 1, 2007 limit for periods of economic hardship deferment is applicable to the Pay As You Earn repayment plan because a borrower with loans that were received prior to that date would not be eligible for the Pay As You Earn repayment plan. However, since the REPAYE plan is available to borrowers regardless of the date the loans were received, the October 1, 2007 limitation is not applicable. We have determined that the limitation is also not applicable to the ICR regulations in § 685.209(b).

Changes: In redesignated paragraph § 685.209(b)(3)(iii)(B)(*9*) of the ICR regulations, we have removed reference to the date ''October 1, 2007.''

Comment: Many commenters urged the Department to count otherwise qualifying payments made on loans before the borrower repays those loans through a consolidation loan toward loan forgiveness under the REPAYE plan and the other income-driven repayment plans. The commenters noted that currently, if a borrower consolidates loans on which he or she has made qualifying payments under an IDR plan into a Direct Consolidation Loan, the borrower does not receive any credit toward loan forgiveness for the pre-consolidation payments and would be required to make an additional 20 or 25 years of qualifying payments before receiving loan forgiveness on the new Direct Consolidation Loan. The commenters argued that it was unfair to not give borrowers credit for what could potentially be several years of otherwise qualifying pre-consolidation payments.

One commenter further urged the Department to count qualifying pre-consolidation payments toward loan forgiveness under the Public Service Loan Forgiveness Program, as well as toward IDR plan loan forgiveness.

Two commenters noted that there are precedents for tracking payments made on loans that are repaid by a consolidation loan. As an example, the commenters pointed out that the Department's Federal loan servicers already track pre-consolidation Pay As You Earn and IBR plan payments on subsidized Stafford loans for purposes of determining a borrower's remaining eligibility for the three-year interest subsidy under the Pay As You Earn and IBR plans during periods when a borrower's calculated monthly payment is insufficient to cover all accruing interest on subsidized loans. The commenters also noted that the Department tracks pre-consolidation loans for purposes of determining the portion of a consolidation loan that qualifies for certain types of loan discharges, such as closed school or false certification discharges.

Discussion: We appreciate the commenters' concerns. However, a consolidation loan is a new debt with its own terms and conditions, and terms of the loans that were repaid by the consolidation loan generally do not carry over to the new consolidation loan. For example, if a borrower consolidates his or her loans, the consolidation loan has a new repayment period (regardless of the repayment plan selected by the borrower) that does not include prior periods of repayment on the loans that were consolidated. Similarly, borrowers who consolidate Federal Perkins Loans lose eligibility for certain loan cancellation benefits that are available only in the Perkins Loan Program.

In response to the commenters who stated that there are precedents for tracking pre-consolidation payments, we note that the examples cited by the commenters represent special circumstances and do not involve the same degree of tracking that would be required if we were to track all of a borrower's pre-consolidation qualifying payments for purposes of loan forgiveness under the income-driven repayment plans and the Public Service Loan Forgiveness Program. In the case of the three-year interest subsidy period under the Pay As You Earn and IBR plans, tracking of pre-consolidation periods of repayment under the Pay As You Earn and IBR plans reflects the IBR statutory requirement (which was carried over to the Pay As You Earn repayment plan) that limits the subsidy period to the borrower's first three *consecutive* years of repayment, with only periods of economic hardship deferment being excluded from the three-year period. We have interpreted this to mean that if a borrower consolidates loans that were being repaid under the Pay As You Earn or IBR plans, the consecutive three-year period carries over to the consolidation loan. The loan discharge examples involve circumstances where the borrower either received no benefit from the underlying loan or the underlying loan should not have been made in the first place. Therefore, it is appropriate to discharge the portion of a consolidation loan attributable to underlying loans that otherwise would have qualified for discharge.

We also note that tracking all of a borrower's qualifying pre-consolidation payments toward loan forgiveness under the IDR plans or the Public Service Loan Forgiveness Program would require much more than what is currently being done in connection with the Pay As You Earn and IBR plan interest subsidy period or loan forgiveness. It would not be possible to make the significant changes to consolidation loan processing that would be required to perform this increased level of tracking in time for the scheduled implementation of the REPAYE plan. Further, the Department would not have the capability to retroactively track qualifying pre-consolidation payments on existing Direct Consolidation Loans. Finally, we note that counting pre-consolidation qualifying payments toward IDR plan or public service loan

forgiveness would result in significant additional costs to taxpayers, as in some cases this could significantly shorten the period of time required for a borrower to qualify for loan forgiveness.

We note that certain factors may mitigate the impact of not counting pre-consolidation payments toward IDR plan or public service loan forgiveness. Going forward, more and more borrowers will have only Direct Loans and, if all of a borrower's loans are Direct Loans, loan consolidation currently provides no particular benefit to the borrower. Even without consolidating, Direct Loan borrowers have just one monthly payment for all of their Direct Loans, and by not consolidating borrowers preserve the qualifying payments made on the undergraduate loans.

We acknowledge that consolidation provides a means for borrowers with only FFEL Program loans or with a mix of FFEL and Direct Loan program loans to obtain benefits that are only available in the Direct Loan Program, such as the REPAYE plan and public service loan forgiveness, and that borrowers who consolidate FFEL Program loans will lose credit for any pre-consolidation payments they may have made under the IBR Plan. Such borrowers will need to weigh the potential advantages of consolidating versus keeping their current FFEL Program loans and continuing to make qualifying payments under the IBR Plan. We note that counting pre-consolidation payments for purposes of public service loan forgiveness would offer no benefit to borrowers who consolidate FFEL Program loans, since only qualifying payments made on Direct Loan Program loans are counted under the Public Service Loan Forgiveness Program. Borrowers who have both FFEL Program loans and Direct Loan Program loans on which they have made qualifying payments may wish to consider consolidating only their FFEL Program loans so as to avoid losing credit for qualifying payments made on the Direct Loans.

For the reasons explained above, we decline to accept the recommendation to count qualifying pre-consolidation loan payments toward loan forgiveness under the IDR plans and the Public Service Loan Forgiveness Program. However, during the next revision of the Direct Consolidation Loan Application and Promissory Note and related documents we will make changes to more prominently explain to consolidation loan applicants the consequences of consolidation for borrowers who have made qualifying payments on the loans they plan to consolidate.

Changes: None.

Comment: Several commenters asked the Department to provide loan forgiveness to borrowers under other circumstances. The suggestions included forgiving the remaining loan balance for veterans who are unable to finish college within 10 years of leaving military service; forgiving the remaining loan balance for borrowers who have already repaid an amount equal to what they originally borrowed but still have outstanding loan debt due to accumulated interest; forgiving all interest and only requiring repayment of principal; forgiving the loans of borrowers who have been through bankruptcy several times; and forgiving the remaining loan balance for borrowers who are able to make a lump sum payment equal to a specified percentage of the total amount owed. A number of commenters recommended that loan forgiveness be granted to all borrowers who have reached a certain age, such as age 55 or 60, or who are retired.

Discussion: We appreciate the comments. However, the recommendations for establishing additional conditions for loan forgiveness are outside the scope of these regulations. We also note that the Department does not have the statutory authority to grant loan forgiveness based on some of the suggested forgiveness conditions.

Changes: None.

Public Service Loan Forgiveness Program Borrower Eligibility (§ 685.219(c)(1)(iii))

Comment: Several commenters expressed support for expanding the acceptance of lump sum payments. Several commenters also suggested that we not restrict the treatment of lump sum payments to specific programs or agencies and instead allow lump sum payments from any Federal agency to count as the number of payments they represent. One commenter specifically suggested that we expand the treatment of lump sum payments to include payments made under the Department of State's Student Loan Repayment Assistance program. Another commenter requested inclusion of lump sum payments made on behalf of those employed in health professions.

Multiple commenters also noted the negative consequences of receiving a lump sum payment applied to a borrower's account when counted as one payment. The payment raises a borrower's income (and tax liability) for that year, resulting in higher monthly income-based payments the following year.

Discussion: We appreciate the support from commenters for expanding the acceptance of lump sum payments made on a borrower's behalf and applying them as the number of payments they represent for purposes of the Public Service Loan Forgiveness Program. The regulations provide for the treatment of payments made under student loan repayment programs administered by the DOD in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

One commonality in the programs we address in our regulations is that the lump sum payments are submitted to the Department. In addition, similar to borrowers receiving lump sum payments associated with service in the Peace Corps or AmeriCorps, §§ 682.211(h)(2)(ii)(C) and 685.209(a)(9) provide that borrowers performing the type of service that would qualify them for a lump sum payment under the Student Loan Repayment Programs administered by the DOD are entitled to forbearance in anticipation of that third party payment. The Department will explore accepting additional lump sum payments from other agencies that are made directly to the Department.

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles stated in the Executive order.

This final regulatory action will have an annual effect on the economy of more than $100 million because the availability of the REPAYE plan is estimated to cost approximately $15.4 billion over loan cohorts from 1994 to 2025. Therefore, this action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and determined that the benefits justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

This regulatory impact analysis is divided into six sections. The ''Need for Regulatory Action'' section discusses why amending the current regulations is necessary.

The ''Summary of Changes from the NPRM'' section summarizes the most important revisions the Department made in these final regulations since publication of the NPRM. These changes were informed by the Department's consideration of the comments of 2,919 parties who submitted comments on the proposed regulations. The changes are intended to clarify the regulations and benefit the affected borrowers. In these final regulations, the Department is making 2 major changes in the proposed rules since the NPRM: (1) Using a definition of military service consistent with the SCRA; and (2) eliminating the loss of PFH status as a basis for interest capitalization. Additionally, we clarified that overpayments resulting from the application of the six percent interest rate to borrowers will be applied to future loan payments and refunded when all the borrower's loans are paid in full.

The ''Discussion of Costs and Benefits'' section considers the cost and benefit implications of these regulations for student loan borrowers, the public, and the Federal Government.

Under ''Net Budget Impacts,'' the Department presents its estimate that the regulations will have a significant net budget impact on the Federal Government of approximately $15.4 billion, $8.3 billion of which relates to existing loan cohorts from 1994 to 2015 and $7.1 billion relates to loan cohorts from 2016 to 2025 (loans that will be made in the future).

In ''Alternatives Considered,'' we describe other approaches the Department considered for key provisions of the regulations, including basing the determination of whether a borrower could qualify for loan forgiveness after 20 or 25 years on the amount borrowed, the treatment of married borrowers who file taxes separately, and the appropriate handling of borrowers who do not certify their income as required to remain in the REPAYE plan.

Finally, the ''Regulatory Flexibility Act Certification'' considers the effect of the regulations on small entities.

Need for Regulatory Action

The regulations address several topics related to the administration of the title IV, HEA student aid programs and benefits and options for borrowers. The changes to the PRI appeals process to allow more timely challenges and appeals will provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. This increased certainty could encourage some institutions, especially community colleges with low borrowing rates, to continue participating in the title IV loan programs.

In the regulations the Department seeks to reduce the burden on military servicemembers and help ensure that those eligible for an interest rate reduction receive it.

As mentioned in the NPRM, the Department has developed these regulations in response to a June 9, 2014, Presidential Memorandum for the Secretary of Treasury and the Secretary of Education that instructed the Secretary to develop regulations that will allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income. The Secretary was instructed to target this option towards borrowers who would otherwise struggle to repay their loans.

In 2012, the Department established a new income-contingent repayment plan called the Pay As You Earn repayment plan, which limited loan payments to 10 percent of the borrower's discretionary income and forgave any remaining balance after 20 years of qualifying payments for borrowers who first borrowed on or after October 1, 2007, with a loan disbursement made on or after October 1, 2011.

However, while the Pay As You Earn repayment plan offered relief to qualifying recent borrowers, it did not help millions of existing borrowers with older student loan debt. As the concerns about American student loan debt burdens continue to build, the Department seeks to offer payment relief to a larger group of borrowers than is currently possible under the Pay As You

Earn repayment plan. To achieve that goal, the Department has created the REPAYE plan. This plan will offer borrowers many of the same benefits as the original Pay As You Earn repayment plan, regardless of when they originally borrowed.

As noted in the Consumer Finance Protection Bureau's 2013 report, ''Public Service & Student Debt: Analysis of Existing Benefits and Options for Public Service Organizations,''[2] the current process of applying ''lump sum payments'' made through student loan repayment programs administered by the DOD can be detrimental to the overall value of the eligible borrower's benefits. When such payments are counted as one single payment in lieu of the borrower being given credit for the equivalent number of monthly payments covered by the amount, the additional number of payments that would have been made do not count toward the 120 qualifying payments required for public service loan forgiveness.

Under these regulations, the Department will count lump sum payments made by the DOD under certain loan repayment programs towards public service loan forgiveness.

Summary of Changes From the NPRM

The table below briefly summarizes the major provisions of the proposed regulations, including any significant changes from the proposed regulations in the NPRM.

TABLE 1—SUMMARY OF FINAL REGULATIONS

Provision	Reg Section	Description of provision
Participation rate index challenges and appeals.	§§ 668.16, 668.204, 668.208, and 668.214.	An institution may bring a timely PRI challenge or appeal in any year in which its draft or official CDR is greater than or equal to 30 percent and less than or equal to 40 percent for any of the three most recent fiscal years, not just in the year that the institution faces sanctions. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent. As under existing law, a successful PRI challenge will preclude sanctions from being imposed following publication of the corresponding official rate. However, under the final rule, the successful challenge will also preclude imposition of sanctions in subsequent years based in part on the official rate if the official rate is less than or equal to the draft rate.
SCRA	§§ 682.202, 682.208, 682.410, 685.202.	Loan holders must proactively consult the authoritative DOD DMDC database to apply the SCRA interest rate limit of six percent. Allows borrowers to supply alternative evidence of military service to demonstrate eligibility for the SCRA interest rate limit through a form developed by the Secretary when the borrower believes the database is inaccurate or incomplete. Conforms definition of military service with the SCRA. Refunds overpayments resulting from the application of the 6 percent interest rate to borrowers who have paid their loans in full, over the de minimus amount of $25. For borrowers with loans outstanding, overpayments will be applied to future loan payments.
Loan rehabilitation	§ 682.405, § 682.410(b)(2).	Makes changes to reflect a statutory change to the maximum collection costs that may be added to the balance of a loan upon rehabilitation from 18.5 percent to 16 percent and to reflect the requirement that guaranty agencies assign a loan to the Secretary if it qualifies for rehabilitation and the guaranty agency cannot find a buyer. Requires guaranty agencies to provide information to borrowers about their repayment options during and after loan rehabilitation.
Treatment of Department of Defense lump sum payments for public service loan forgiveness.	§ 685.219	Lump sum payments made under DOD loan repayment programs would be applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.
REPAYE Plan		
Eligibility	§ 685.209	Available to all Direct Loan student borrowers.
Repayment period	§ 685.209	For a borrower who has loans for undergraduate education only, the balance of the loans will be forgiven after 20 years of qualifying payments. For a borrower who has at least one loan for graduate study, the balance of the loans will be forgiven after 25 years of qualifying payments. Payments made under the alternative repayment plan would count towards forgiveness under income-driven plans if the borrower returns to such a plan, but not towards public service loan forgiveness.
Treatment of married borrowers' income for determining payment.	§ 685.209	For married borrowers filing jointly, AGI includes the borrower's and spouse's income.

[2] *http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf.*

TABLE 1—SUMMARY OF FINAL REGULATIONS—Continued

Provision	Reg Section	Description of provision
		For married borrowers filing separately, the spouse's income would be included unless the borrower certifies that the borrower is separated from the spouse or is unable to reasonably access the spouse's income information. In the case of separation or inability to access income information, the family size for the payment calculation would not include the spouse.
Treatment of borrowers who do not provide income documentation annually.	§ 685.209	Borrowers who do not supply income information can choose to leave the REPAYE plan and select another repayment plan for which they are eligible. Borrowers who do not supply income information within 10 days of the deadline are placed on the alternative repayment plan with the monthly payment equaling the amount necessary to repay the loan in full within 10 years or the end of the 20-year or 25-year period applicable to the borrower under the REPAYE plan, whichever is earlier. The borrower may return to the REPAYE plan if income documentation is provided for the time the borrower was on a different repayment plan. Borrowers whose income increased during that period would be required to make an adjusted monthly payment so the difference between what they paid under the other plan and would have paid under the REPAYE plan is paid in full by the end of the 20-year or 25-year period.
Interest accrual in periods of negative amortization.	§ 685.209	For borrowers in negative amortization whose payments are not sufficient to pay the accrued interest in that period, the Department will: • In the first three years of repayment, not charge the remaining interest on Direct Subsidized Loans, with any periods of economic hardship deferment not included in the three year period; and • For Direct Unsubsidized Loans, Direct PLUS loans to graduate or professional students, the unsubsidized portion of Direct Consolidation Loans, Direct Subsidized and subsidized portions of Direct Consolidation Loans after the three-year period, charge the borrower 50 percent of the remaining accrued interest for the period.
Interest Capitalization	....	Eliminates loss of PFH status as a basis for interest capitalization. Capitalization occurs when a borrower leaves the REPAYE plan or when the borrower leaves a forbearance or a deferment on unsubsidized or PLUS loans.

Discussion of Costs, Benefits, and Transfers

These final regulations in large part affect loan repayment options and processes, so they would largely affect student borrowers, the Federal government, and loan servicers. The changes to the PRI appeal process affect institutions and the Federal government. The following discussion describes the costs and benefits of the final regulations by key topic area.

REPAYE Plan

The REPAYE plan will make available to borrowers an IDR plan with payments based on 10 percent of discretionary income and, for borrowers with only undergraduate loans, a 20-year repayment period. In contrast, under the current regulations, only borrowers who received loans during specific time periods are eligible for an IDR plan with these benefits, and borrowers who had loans before FY 2008 cannot take advantage of those plans. Additionally, the REPAYE plan will not include the PFH requirement that is part of the Pay As You Earn repayment plan for the purpose of eligibility, further increasing access to IDR plans. The extension of the plan to a broader pool of borrowers would be a primary benefit of the REPAYE plan and would give student borrowers another tool to manage their loan payments. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, we estimate that two million borrowers will choose to enroll. Borrowers repaying under the REPAYE plan will also benefit from the plan's 50 percent reduction in the accrual of interest for borrowers in negative amortization. This limits the rate at which loan balances increase and the amount ultimately owed. The change from the regulations as proposed in the NPRM to eliminate loss of PFH as a basis for interest capitalization could result in certain borrowers benefitting from a reduced number of payments over the life of their loans. Those who would have experienced a capitalization event related to loss of PFH status and would eventually pay off their loan will have a lower balance to pay off. The other group that will benefit from the change is married borrowers whose spouses have title IV, HEA student loan debts. Payments for these borrowers are based on the percentage of the total debt held by the IDR borrower. This calculation is just based on the principal owed and does not include accrued interest. The elimination of capitalization when the borrower does not have a PFH means that the percentage of debt attributable to a REPAYE borrower whose spouse is in a non-IDR plan will be lower because the interest is never capitalized, and therefore their payments will also be lower.

In offering this increased access to the REPAYE plan, while targeting the plan to the neediest borrowers, some features were changed from Pay As You Earn repayment plan. In particular, there is no cap on the amount of the borrower's payment, so borrowers whose income results in a payment greater than under the standard repayment plan would have to pay the higher amount to maintain eligibility for future loan forgiveness. Borrowers who leave the REPAYE plan because they did not meet the requirement to annually recertify their income may reenter the REPAYE plan at any time, but must provide the income documentation for the relevant period and make additional payments if they would have paid more under the REPAYE plan.

To the extent the REPAYE plan reduces payments collected from borrowers, there is a cost to the Federal government. This is described in greater detail in the *Net Budget Impacts* section of this analysis.

Other Provisions

The regulatory changes to require loan holders to proactively use the DOD's DMDC database and to allow borrowers to supply alternative evidence of military service through a form developed by the Secretary would benefit borrowers who are or have been in military service, reducing the burden on military servicemembers in obtaining application of the SCRA interest rate limit to their Federal student loans. These changes are intended to ensure the six percent interest rate limit is applied for the correct time period and that borrowers receive the benefit to which they are entitled.

Similarly, the treatment of lump sum payments made by the DOD on behalf of borrowers as the equivalent monthly payments for the purpose of public service loan forgiveness would ensure that borrowers who are otherwise entitled to public service loan forgiveness do not fail to qualify based on the way the DOD loan repayment programs are administered. Based on National Student Loan Data System (NSLDS) data, the Department estimates that less than one percent of student loan borrowers are affected by this issue.

The final regulations requiring guaranty agencies to provide information to FFEL Program borrowers transitioning from rehabilitating defaulted loans to loan repayment would benefit borrowers who struggle with repayment and could help to prevent those borrowers from defaulting again. The final regulations require guaranty agencies to inform borrowers about different repayment plan options and how the borrower can choose a plan. This assistance may help borrowers avoid additional negative credit events and allow them to enroll in a repayment plan that supports ongoing repayment of their loans.

Finally, the changes to the PRI challenges and appeals process would permit some institutions to challenge their rate in any year, not just the one that could result in a loss of eligibility. Some non-Federal negotiators and community college advocates suggested these changes would encourage more community colleges to participate in the title IV loan programs, thus giving students additional options to finance their education at those institutions.

The final regulations would have administrative costs for guaranty agencies and loan holders that are detailed in the *Paperwork Reduction Act* section of this preamble. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, the Department does not expect that these regulations would have a significant net budget impact.

Net Budget Impacts

We estimate that these regulations will have a net budget impact of $15.4 billion, of which $8.3 billion is a modification for existing cohorts from 1994 to 2015 and $7.1 billion is related to future cohorts from 2016 to 2025. The change from the $15.3 billion estimated in the NPRM results from the lack of interest capitalization based on loss of PFH status. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

These estimates were developed using the OMB's Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. In developing the following Accounting Statement, the Department also consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: for-profit institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

REPAYE Plan

As described in the NPRM, the budget impact associated with these final regulations comes from the establishment of the REPAYE plan, which extends a plan with payments based on 10 percent of the borrower's discretionary income to borrowers with no restriction on when they borrowed. The REPAYE plan will differ from the existing Pay As You Earn repayment plan in several ways to better target the plan to the neediest borrowers and to reduce the costs in some areas to allow for the extension of the plan to additional borrowers. Of the provisions described in the *Summary of the Regulations,* the lack of a cap on the borrower's payment amount, the requirement for 25 years of payments to have loan forgiveness for any borrower with debt for graduate education, and the treatment of married borrowers who file taxes separately are important provisions to reduce the costs of the REPAYE plan, while the reduced interest accrual for borrowers in negative amortization and opening the plan to all student borrowers are significant drivers of the estimated costs. The availability of the REPAYE plan, with its extension of reduced income percentage and shorter forgiveness period to earlier cohorts of borrowers, no standard repayment cap, limited accrual of interest for borrowers in negative amortization, 20-year forgiveness period for undergraduate debt and 25-year forgiveness period for graduate debt, a process for handling borrowers who do not recertify their income annually, treatment of married borrowers filing separately, and lack of interest capitalization for borrowers without a PFH is estimated to cost $15.4 billion.

To establish the baseline and to evaluate proposals related to IDR plans, the Department uses a micro-simulation model consisting of borrower-level data obtained by merging data on student loan borrowers derived from a sample of the NSLDS with income tax data from the IRS. Interest and principal payments are calculated according to the regulations governing the IDR plans, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation;

death, disability, or bankruptcy discharges; or public service loan forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-driven repayment to generate estimates of Federal costs.

As stated in the NPRM, in evaluating the costs of the REPAYE plan, the Department assumes that, if possible, borrowers will elect the most beneficial plan for which they are eligible. One commenter criticized the Department's estimate of the number of borrowers who will choose the REPAYE plan on the basis that the Department included borrowers switching from the Pay As You Earn repayment plan and or the IBR plan for new borrowers after July 1, 2014 into REPAYE. The commenter pointed out that both of these programs cost borrowers less than REPAYE in almost all scenarios, and borrowers in those plans would have no incentive to switch to REPAYE. For the purpose of our estimates, we assume that all borrowers who are eligible for the Pay As You Earn repayment plan or the IBR plan for new borrowers after July 1, 2014 select those plans. All borrowers estimated to choose the REPAYE plan are borrowers who are ineligible for the Pay As You Earn repayment plan or the IBR plan for new borrowers after July 1, 2014. Based on this, the Department estimates that for cohorts from 1994 to 2025, approximately six million borrowers will be eligible for the REPAYE plan. We maintain our estimate that approximately two million borrowers will choose the REPAYE plan. Borrowers assumed to choose REPAYE in future cohorts are those borrowers who have loans made prior to 2008 and who are thus not eligible for the Pay As You Earn repayment plan or the IBR plan.

The commenter also indicated that the estimate of two million borrowers who would choose REPAYE was overstated based on the number of borrowers in the existing IDR plans (0.60 million in ICR, 2.33 million in the IBR plan, and 0.53 million in the Pay As You Earn repayment plan). As discussed above, we do not assume borrowers in Pay As You Earn or IBR for new borrowers after July 1, 2014 will choose REPAYE. The commenter argues that those in ICR did not switch to IBR when doing so might reduce their monthly payments, so the Department should not assume they will switch into REPAYE. The commenter notes that many borrowers currently in IBR have monthly payments of zero, limiting their incentive to switch. According to the commenter, the prospect of a shorter time to forgiveness would not be an incentive to switch since the ultimate forgiveness that may come earlier in REPAYE is taxable and the borrower would trade loan debt for tax debt. The commenter estimates that no more than one million borrowers would choose REPAYE, half of the Department's estimate. The Department recognizes that predicting student borrower behavior and repayment plan choice is complicated. The Department's estimated number of REPAYE borrowers includes a number of borrowers who are not in repayment yet or who have not consolidated their loans to take advantage of an IDR plan and who therefore would not be in the portfolio the commenter evaluated. Additionally, as indicated in the NPRM, the Department assumes that borrowers choose the best plan for them. No borrowers with zero payments in IBR are assumed to change to REPAYE. While it is possible that some students will not switch into or take their optimal repayment plan, the Department believes that the estimate of two million borrowers is reasonable and that assumption provides a conservative estimate of the costs of the regulations.

Finally, the commenter contended that, while our estimate of the number of affected borrowers was, in their opinion, high, they believe the costs of REPAYE are underestimated by tens of billions of dollars based on the REPAYE payment being two-thirds of the IBR payment and the 20 instead of 25-year forgiveness period for undergraduate borrowers. The commenter concluded that this would result in REPAYE payments being 53 percent of what would have been received by the Department under IBR. However, the commenter's analysis does not account for several factors that reduce the difference between the present value of payments expected to be received under IBR and REPAYE including increased payments under REPAYE as borrowers' payments exceed the standard repayment cap. Additionally, many borrowers are not in the plan for the full term as used in the commenter's comparison, and therefore we are collecting smaller payments for a longer period of time, reducing the difference in net present value. The difference in total payments over the life of the loan is further reduced in any year that borrowers with incomes below 150 percent of the poverty line have zero payments under both plans.

When the assumption for loan forgiveness is increased as a result of a policy, the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a net present value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the REPAYE plan is estimated to cost approximately $15.4 billion, of which $8.3 billion is a modification for existing cohorts from 1994 to 2015 and $7.1 billion is related to future cohorts from 2016 to 2025 as shown in Table 2. The change from the estimate of $15.3 in the NPRM results from the additional $80 million estimated cost of eliminating capitalization related to partial financial hardship status.

TABLE 2—ESTIMATED OUTLAYS FOR COHORTS 2015–2025

Cohorts	MOD (1994–2015)	2016	2017	2018	2019	2020	2021
Outlays		1,105	1,012	902	785	692	614
Total	8,306	1,105	1,012	902	785	692	614

Cohorts	2022	2023	2024	2025	Total
Outlays	546	498	481	420	7,055
Total	546	498	481	420	15,361

Other Provisions

The other provisions of the regulations are not estimated to have a significant net budget impact. The changes to the SCRA servicing requirements so that lenders and loan servicers utilize the authoritative DOD database to ensure the SCRA interest rate limit is applied appropriately and allowing for alternative evidence will make it easier for eligible borrowers to receive the benefit of the SCRA interest rate limit. However, it does not extend eligibility to a new set of borrowers and the costs associated with eligible borrowers will be in the budget baseline for the President's FY 2016 budget. The treatment of lump-sum payments for borrowers who qualify for loan repayment under DOD loan repayment programs may allow some additional borrowers to qualify for public service loan forgiveness. Less than one percent of borrowers are expected to be affected by this change, and the lump sum payment must equal the amount owed by the borrower for however many months for which the borrower receives credit toward forgiveness, so the change in cash flows from those estimated to receive public service loan forgiveness for military careers is not expected to be significant. We believe it is appropriate to allow these borrowers to receive credit towards months of payments for public service loan forgiveness in this instance so active duty military members receive the forgiveness to which they are entitled and already estimated to receive. The PRI challenges and appeals will expand the number of such actions the Department will be involved with and may result in some schools retaining their participation in title IV, HEA programs, but we do not expect this to affect program volumes and costs in a significant way. Finally, the requirement that guaranty agencies provide information to assist borrowers in transitioning from rehabilitation of defaulted loans to loan repayment should benefit borrowers and may result in improved repayment behavior, but we do not expect this to materially affect the amount collected from borrowers.

Assumptions, Limitations and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the NSLDS; operational and financial data from Department of Education and Department of the Treasury systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey and the 2004 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these regulations. Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

	7%	3%
Category	Benefits	
Creation of income-driven repayment plan with payment based on 10 percent of income and a 20/25-year repayment and available to all cohorts of borrowers. Transition assistance for borrowers rehabilitating loans. Easier access for military borrowers to SCRA and public service loan forgiveness benefits.	Not Quantified	
Category	Costs	
Costs of compliance with paperwork requirements	$5.95	$5.99
Category	Transfers	
Reduced payments collected from some borrowers who choose the REPAYE plan	$1,854	$1,670

Alternatives Considered

In the NPRM, we discussed the regulatory alternatives that were considered. Further, as discussed in the *Analysis of Comments and Changes* section of this document, we received comments from 2,919 parties during the comment period following publication of the NPRM. These comments covered a range of issues, including providing forgiveness to all REPAYE borrowers after 20 years of payments, including payments made before consolidation as qualifying payments for IDR plan forgiveness, not using the spouse's AGI for married borrowers filing separately, and eliminating interest capitalization based on the loss of PFH status. Issues raised with respect to the SCRA provisions included using a definition of military service consistent with the SCRA, refunding of overpayments, the treatment of consolidation loans, and additional options for evidence of military service. Other issues that were raised were expanding the application of lump sum payments for PSLF beyond DOD, Peace Corps, and AmeriCorps and accelerating the implementation data for PRI challenges and appeals. We also clarified the discussion of several other issues to address some of the concerns expressed by commenters.

Final Regulatory Flexibility Analysis

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These

regulations concern the relationship between certain Federal student loan borrowers and the Federal government, with some of the provisions modifying the servicing and collection activities of guaranty agencies and other parties. The Department believes that the entities affected by these regulations do not fall within the definition of a small entity. Additionally, the changes to the PRI challenges and appeals process may affect a small number of institutions that will qualify as small entities and potentially allow some to continue participating in title IV programs, but we do not expect the effect to be economically significant for a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these regulations at the end of the affected sections of the regulations.

Sections 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 685.208, and 682.209 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, related forms, and Information Collection Requests to OMB for its review.

Sections 668.16, 668.204, 668.208, and 668.214—Participation Rate Index Challenges and Appeals

Requirements: Timelines for submitting a challenge or appeal to the potential consequences of an institution's CDR on the basis of its PRI.

The regulations will permit an institution to bring a timely PRI challenge or appeal in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal from that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. In addition, if the institution brought a successful PRI challenge with respect to a draft CDR that was less than or equal to the corresponding official CDR, this will preclude provisional certification and loss of eligibility from being imposed based on the official CDR, without the institution needing to bring a PRI appeal in later years.

Burden Calculation: Because the regulations will not fundamentally change an institution's basis for challenging or appealing its CDR, and will only alter the timeline in which an institution may submit its challenge or appeal, we do not believe that these regulations will significantly alter the burden on institutions. However, they will prevent a school from needing to appeal a final CDR on the basis of its PRI if the final CDR is less than or equal to the draft CDR on which a PRI challenge was successful.

We estimate that the change in the need to appeal a final CDR on the basis of PRI when a challenge to a comparable rate on the same basis was successful will prevent 50 appeals per year—15 from public institutions, 10 from not-for-profit institutions, and 25 from proprietary institutions. We have previously estimated that an appeal takes each institution 1.5 hours per response.

Under §§ 668.16, 668.204, 668.208, and 668.214, therefore, for public institutions, we estimate burden will decrease by 23 hours per year (15 public institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For not-for-profit institutions, we estimate burden will decrease by 15 hours per year (10 not-for-profit institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For proprietary institutions, we estimate that burden will decrease by 38 hours per year (25 proprietary institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal).

Collectively, the total decrease in burden under §§ 668.16, 668.204, 668.208, and 668.214 will be 76 hours under OMB Control Number 1845–0022.

Sections 682.202, 682.208, and 682.410—Servicemembers Civil Relief Act in the FFEL Program

Requirements: Matching borrower identifiers in a loan holder's servicing system against the DOD's DMDC database.

Under § 682.208(j)(1), (6), and (7), a FFEL Program loan holder, including a guaranty agency, must match information in its servicing system, including the identifiers of borrowers and endorsers, against the DOD's DMDC database to determine whether borrowers are eligible to receive an interest rate reduction under the SCRA.

Under § 682.208(j)(5), any FFEL Program loan holder, including a guaranty agency, must notify a borrower if an interest rate reduction under the SCRA is applied as a result of the loan holder having received evidence of the borrower's or endorser's qualifying status having begun within 30 days of the date that the loan holder applies the interest rate reduction.

Under § 682.208(j)(8), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction to a loan that was in the process of being paid in full through loan consolidation at the time the interest rate reduction was applied by returning the overpayment to the holder of the consolidation loan.

Under § 682.208(j)(9), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction by returning the overpayment to the borrower.

Burden Calculation: There are approximately 53 public loan holders that hold loans for approximately 557,341 borrowers, 151 not-for-profit loan holders that hold loans for approximately 2,738,171 borrowers, and 3,204 proprietary loan holders that hold loans for approximately 10,524,463 borrowers. We estimate that one percent of borrowers are actually eligible for the SCRA interest rate limit.

Section 682.208(j) will result in a shift in burden from borrowers to loan holders. Under the current regulations, a borrower is required to submit a written request for his or her loan holder to apply the SCRA interest rate limit and a copy of his or her military orders to support the request. Because, under the regulations, a borrower will no longer be required to submit a written request or a copy of his or her military orders, the burden on borrowers will be almost completely eliminated. While borrowers will still be able to submit other evidence that they qualify for the SCRA interest rate limit and loan holders will be required to evaluate that evidence, the Department has no data on the likelihood that erroneous or missing data in the DMDC database will give rise to the need for a borrower to submit alternative evidence of his or her military service. However,

anecdotal accounts suggest that the error rate of the DMDC database is de minimus. Therefore, the regulations will eliminate all but 20 hours of burden on borrowers associated with the current regulation.

However, because the Department plans to create a form for borrowers to use to certify their military service in cases in which the borrower believes that the information in the DMDC database is incorrect, we estimate that 59 FFEL Program borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form will increase burden by 20 hours (59 borrowers multiplied by 0.33 hours per response).

For § 682.208(j)(1), (6), and (7), we estimate that it will take each loan holder approximately three hours per month to extract applicable data from their servicing system, format it to conform to the DMDC database file layout, perform quality assurance, submit the file to the DMDC database, retrieve the result, import it back into their systems, perform quality assurance, and then, to the extent that a borrower or endorser is or was engaged in qualifying military service, apply, extend, or end the SCRA interest rate limitation.

Under § 682.208(j)(1), (6), and (7), therefore, for public loan holders, we estimate that this regulation will increase burden by 1,908 hours per year (53 public loan holders multiplied by 3 hours per month multiplied by 12 months). For not-for-profit loan holders, we estimate that this regulation will increase burden by 5,436 hours per year (151 not-for-profit loan holders multiplied by 3 hours per month multiplied by 12 months). For proprietary loan holders, we estimate that this regulation will increase burden by 115,344 hours per year (3,204 proprietary loan holders multiplied by 3 hours per month multiplied by 12 months).

For § 682.208(j)(8), if the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan. We estimate that it will take each loan holder one hour per borrower to refund overpayments in this circumstance. We estimate that, over the past six months, 69 percent of the borrowers who consolidated loans included a loan with an interest rate in excess of 6 percent. We further estimate that 0.1 percent of those consolidation loans will create an overpayment that will require a loan holder to issue a refund to the holder of the consolidation loan.

Under § 682.208(j)(8), therefore, for public loan holders, we estimate that this regulation will increase burden by 4 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For not-for-profit loan holders, we estimate that this regulation will increase burden by 19 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For proprietary loan holders, we estimate that this regulation will increase burden by 73 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent).

For § 682.208(j)(9), we estimate that it will take each loan holder one hour per borrower to refund overpayments for borrowers for whom the application of the SCRA interest rate limit caused their loan to be overpaid. We estimate that an overpayment will result for 0.05 percent of borrowers who have the SCRA interest rate limit applied.

Under § 682.208(j)(9), therefore, for public loan holders, we estimate that this regulation will increase burden by 3 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For not-for-profit loan holders, we estimate that this regulation will increase burden by 14 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For proprietary loan holders, we estimate that this regulation will increase burden by 53 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent).

Collectively, the total increase in burden under § 682.405 will be 122,873 hours under OMB Control Number 1845–0093. The burden associated with the form (20 hours) will be associated with OMB Control Number 1845–0135.

Section 682.405—Loan Rehabilitation Agreement

Requirements: Providing information to borrowers about repayment options.

Under § 682.405(b)(1)(xi) and (c), guaranty agencies will be required to provide information to borrowers with whom they have entered into a loan rehabilitation agreement to inform them of the repayment options available to them upon successfully completing their loan rehabilitation.

Burden Calculation: There are approximately 2,611,504 borrowers of FFEL Program loans who are in default, of which 799,904 have loans held by public guaranty agencies and 1,811,600 have loans held by not-for-profit guaranty agencies. Approximately 4.79 percent of those borrowers have entered into a loan rehabilitation agreement with a guaranty agency to rehabilitate their defaulted FFEL Program loans. Therefore, public guaranty agencies administer loan rehabilitation agreements with approximately 38,315 borrowers and not-for-profit guaranty agencies administer loan rehabilitation agreements with approximately 86,776 borrowers.

We estimate that it will take a guaranty agency 10 minutes (0.17 hours) per borrower to send the required communication to a borrower and respond to borrower inquiries generated by the communication.

Under § 682.405(c), therefore, for public guaranty agencies, we estimate that this regulation will increase burden by 6,514 hours per year (38,315 borrowers multiplied by 0.17 hours per borrower). For not-for-profit guaranty agencies, we estimate that this regulation will increase burden by 14,752 hours per year (86,776 borrowers multiplied by 0.17 hours per borrower).

Collectively, the total increase in burden under § 682.405 will be 21,266 hours under OMB Control Number 1845–0020.

Section 685.202—Servicemembers Civil Relief Act in the Direct Loan Program

Requirements: Borrowers will no longer be required to submit a written request and a copy of their military orders to receive an interest rate reduction under the SCRA; instead, the Department will, like loan holders in the FFEL Program, query the DMDC database to determine whether a borrower is eligible.

Section 685.202(a)(11) will shift the burden from borrowers to the Secretary. Under the current regulations, borrowers are required to submit a

written request for the Secretary to apply the SCRA interest rate limit and a copy of their military orders to support the request. Because, under the regulations, borrowers will no longer be required to submit a written request or a copy of their military orders, the burden on borrowers will be eliminated. While borrowers will still be permitted to submit other evidence that they qualify for the SCRA interest rate limit, and the Secretary will evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database will give rise to a borrower needing to submit alternative evidence of his or her military service, but anecdotal accounts suggest that the error rate of the DMDC database is de minimis. Therefore, the regulations will eliminate all but five hours of burden on borrowers that are associated with the current regulation.

However, because the Department has created a form for borrowers to provide a certification of the borrower's authorized official in cases where the borrower believes the DMDC database is inaccurate or incomplete, we estimate that 141 Direct Loan borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form will increase burden by 47 hours (141 borrowers multiplied by 0.33 hours per response).

Collectively, the total decrease in burden for § 685.202 will be 681 hours under OMB Control Number 1845–0094. This will eliminate all but 47 hours of burden in OMB Control Number 1845–0094. The burden associated with the form (47 hours) will be associated with OMB Control Number 1845–0135.

Sections 685.208 and 685.209—Revised Pay As You Earn Repayment Plan

Requirements: Application, recertification, documentation of income, and certification of family size.

Under § 685.209(c)(4), a borrower selecting the REPAYE plan will apply for the plan, provide documentation of his or her income and, as applicable, his or her spouse's income, and provide a certification of family size. The borrower must provide this information annually. If a borrower who repays his or her Direct Loans under the REPAYE plan leaves the plan and subsequently wishes to return to the REPAYE plan, the borrower must provide income documentation and family size certifications for each year in which the borrower was not repaying his or her loans under the REPAYE plan after having left the plan before being allowed to re-enter the REPAYE plan.

Burden Calculation: These information collection requirements are calculated as part of the Income-Driven Repayment Plan Request, under OMB Control Number 1845–0102. This collection is associated with this rulemaking because the regulations require that the collection be modified to encompass the REPAYE plan. Currently, we estimate that it takes 20 minutes (0.33 hours) to complete the Income-Driven Repayment Plan Request and that 3,159,132 Direct Loan and FFEL Program borrowers complete the form. Even though this form will be revised to include the REPAYE plan, we do not believe that it will take any additional time for a borrower to complete it. Therefore, we expect the burden hours per response to remain 20 minutes (0.33 hours). However, we are making an adjustment to the number of borrowers who complete the form based on new data and an overall increase in the borrower population. The adjustment to the number of borrowers who complete the form increases that number from 3,159,132 borrowers to 4,840,000 borrowers. However, because the REPAYE plan will be available to all Direct Loan borrowers, regardless of when the borrowers took out their loans, and because there will be no requirement for the borrowers to demonstrate PFH to enroll in the REPAYE plan, we estimate that the number of respondents will increase by 1,250,000 borrowers. This will bring the total number of respondents to 6,090,000 borrowers, of which only 1,250,000 of the increase will be attributable to the REPAYE plan.

Collectively, the total increase in burden for §§ 685.208 and 685.209 will be 967,186 hours (2,930,868 additional borrowers multiplied by 0.33 hours per response), of which 412,500 hours (1,250,000 additional borrowers multiplied by 0.33 hours per response) will be attributable to the REPAYE plan under OMB Control Number 1845–0102. Collectively, the total increase in burden under §§ 685.208 and 685.209 under OMB Control Number 1845–0021 will be 967,186 hours.

Consistent with the discussion above, the following chart describes the sections of the regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using wage data developed using U.S. Bureau of Labor Statistics data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $11,969,649 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions, lenders, and guaranty agencies and $16.30 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
668.16, 668.204, 668.208, 668.214–PRI challenge and appeal.	This regulation will permit an institution to bring a timely PRI challenge in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent. As under existing law, a successful PRI challenge will preclude sanctions from being imposed following publication of the corresponding official rate. However, under the final rule, the successful challenge will also preclude imposition of sanctions in subsequent years based in part on the official rate if the official rate is less than or equal to the draft rate.	OMB 1845–0022 This will be a revised collection. We estimate that burden on institutions will decrease by 76 hours.	$ −2,778
682.202 and 682.208–SCRA in the FFEL Program.	Will revise current regulations to require loan holders to determine a borrower's military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the DOD.	OMB 1845–0093 This will be a revised collection. We estimate that burden on loan holders will increase by 122,873 hours and that all except 20 hours of burden on borrowers will be eliminated. OMB 1845–0135 This will be a new collection. We estimate that burden on borrowers will increase by 20 hours.	$4,480,876
682.405–Loan rehabilitation	This change will require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into an agreement to rehabilitate a defaulted FFEL Program loan.	OMB 1845–0020 This will be a revised collection. We estimate that burden on guaranty agencies will increase by 21,266 hours.	$777,272
685.202	Will modify current regulations to require the Department to determine a borrower's military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the DOD.	OMB 1845–0094 This collection will be revised. We estimate that all but 47 hours of burden on borrowers will be eliminated.. OMB 1845–0135 This will be a new collection. We estimate that burden on borrowers will increase by 47 hours.	−$9,471

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
685.208 and 685.209–REPAYE plan.	Will add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209 of the Direct Loan Regulations. The REPAYE plan is modeled on the Pay as You Earn repayment plan, and will be available to all Direct Loan student borrowers regardless of when the student borrowers received their Direct Loans.	OMB 1845–0021 This collection will not change because all burden associated with the collection requirements is contained in 1845–0102.. OMB 1845–0102 This will be a revised collection. We estimate that burden will increase on borrowers by 967,186 hours, of which 412,500 hours will be attributable to the regulation.	$15,764,838, of which $6,723,750 will be attributable to the regulation.
685.219–Public Service Loan Forgiveness.	Will permit lump sum payments made on a borrower's behalf by the DOD to be treated like certain other payments made on behalf of borrowers who have served in AmeriCorps or the Peace Corps.	OMB 1845–0021 This provision contains no collection requirements.	$0

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations follows:

Control number	Total burden hours	Change in burden hours
1845–0020	8,241,898	+ 21,266
1845–0022	2,216,044	− 76
1845–0093	122,873	+ 122,275
1845–0094	47	− 634
1845–0102	2,009,700	+ 967,186
1845–0135	67	+ 67
Total	12,590,630	= 1,110,086

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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List of Subjects

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 21, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 668, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.16 is amended by:

■ a. Revising paragraph (m)(2)(ii)(B).

■ b. Adding paragraph (m)(2)(ii)(C).
■ c. Revising paragraphs (m)(2)(iv) and (v).

The revisions and addition read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(m) * * *

(2) * * *

(ii) * * *

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(*1*) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(*2*) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

* * * * *

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

* * * * *

■ 3. Section 668.204 is amended by revising paragraphs (c)(1)(ii) and (iii) and (c)(5) to read as follows:

§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

* * * * *

(c) * * *

(1)(i) * * *

(ii) Subject to § 668.208(b), you may challenge a potential loss of eligibility under § 668.206(a)(2), based on any cohort default rate that is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years, if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on any cohort default rate that fails to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

* * * * *

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. Unless that next official cohort default rate is less than or equal to your draft cohort default rate, a successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, or if the next official cohort default rate published is less than or equal to the draft rate you successfully challenged, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2), or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

* * * * *

■ 4. Section 668.208 is amended by revising paragraphs (a)(2)(ii) and (b)(2) and (3) to read as follows:

§ 668.208 General requirements for adjusting official cohort default rates and for challenging or appealing their consequences.

(a) * * *

(2) * * *

(ii) A participation rate index challenge or appeal submitted under this section and § 668.204 or § 668.214;

* * * * *

(b) * * *

(2) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, more than once on that cohort default rate.

(3) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

* * * * *

■ 5. Section 668.214 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You do not lose eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if you bring an appeal in accordance with this section that demonstrates that your participation rate index for that cohort's fiscal year is equal to or less than 0.0832.

(2) Subject to § 668.208(b), you do not lose eligibility under § 668.206(a)(2) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for any of the three most recent cohorts' fiscal years is equal to or less than 0.0625.

(3) Subject to § 668.208(b), you are not placed on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for either of those two cohorts' fiscal years is equal to or less than 0.0625.

* * * * *

(c) * * *

(2) Notice under § 668.205 of a cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 6. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071—1087–4, unless otherwise noted.

■ 7. Section 682.202 is amended by revising paragraph (a)(8) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (4) of this section, a loan holder must use the official electronic database maintained by the Department of Defense to identify all borrowers with an outstanding loan who are members of the military service, as defined in § 682.208(j)(10) and ensure the interest rate on a borrower's qualified loans with an outstanding balance does not exceed the six percent maximum interest rate under 50 U.S.C. 527, App. section

207(a) on FFEL Program loans made prior to the borrower entering military service status. For purposes of this paragraph (a)(8), the interest rate includes any other charges or fees applied to the loan.

* * * * *

■ 8. Section 682.208 is amended by adding paragraph (j) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(j)(1) Effective July 1, 2016, a loan holder is required to use the official electronic database maintained by the Department of Defense, to—

(i) Identify all borrowers who are military servicemembers and who are eligible under § 682.202(a)(8); and

(ii) Confirm the dates of the borrower's military service status and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent.

(2) The loan holder must compare its list of borrowers against the database maintained by the Department of Defense at least monthly to identify servicemembers who are in military service status for the purpose of determining eligibility under § 682.202(a)(8).

(3) A borrower may provide the loan holder with alternative evidence of military service status to demonstrate eligibility if the borrower believes that the information contained in the Department of Defense database is inaccurate or incomplete. Acceptable alternative evidence includes—

(i) A copy of the borrower's military orders; or

(ii) The certification of the borrower's military service from an authorized official using a form approved by the Secretary.

(4)(i) When the loan holder determines that the borrower is eligible under § 682.202(a)(8), the loan holder must ensure the interest rate on the borrower's loan does not exceed the SCRA interest rate limit of six percent.

(ii) The loan holder must apply the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database, or alternative evidence of military service status received under paragraph (j)(3) of this section, using the combination of evidence that provides the borrower with the earliest military service start date and the latest military service end date.

(iii) In the case of a reservist, the loan holder must use the reservist's notification date as the start date of the military service period.

(5) When the loan holder applies the SCRA interest rate limit of six percent to a borrower's loan, it must notify the borrower in writing within 30 days that the interest rate on the loan has been reduced to six percent during the borrower's period of military service.

(6)(i) For PLUS loans with an endorser, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan based on the borrower's or endorser's military service status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan.

(ii) If both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest military service start date of either party and the latest military service end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(7)(i) For joint consolidation loans, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan if either of the borrowers is eligible for the SCRA interest rate limit under § 682.202(a)(8).

(ii) If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest military service start date of either party and the latest military service end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(8) If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan.

(9) For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan, the loan holder must refund the amount of that overpayment to the borrower.

(10) For purposes of this section, the term ''military service'' means—

(i) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(A) Active duty, meaning full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(B) In the case of a member of the National Guard, including service under a call to active service, which means service on active duty or full-time National Guard duty, authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(ii) In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(iii) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

* * * * *

■ 9. Section 682.405 is amended:

■ a. In paragraph (a)(2)(ii), by adding the words ''or assigned to the Secretary'' after the word ''lender''.

■ b. In paragraph (b)(1)(vi), by adding the words ''or assignment to the Secretary'' after the words ''repurchase by an eligible lender'' and removing the word ''other'' after the words ''The agency may not impose any''.

■ c. By revising paragraph (b)(1)(vi)(B).

■ d. In paragraph (b)(1)(xi), by removing the word ''During'', and adding, in its place, the words ''Except as provided in paragraph (c) of this section, during''.

■ e. By redesignating paragraph (b)(2) as paragraph (b)(2)(i).

■ f. By adding paragraph (b)(2)(ii).

■ g. In paragraph (b)(3) introductory text, by adding the words ''or assignment to the Secretary'' after the words ''to an eligible lender''.

■ h. In paragraph (b)(3)(i), by adding the words ''or assignment'' after the words ''of the sale''.

■ i. In paragraph (b)(3)(i)(A), by adding the words ''or assignment'' after the words ''such sale''.

■ j. In paragraph (b)(4), by removing the citation ''§ 682.209(a) or (h)'', and adding, in its place, the citation ''§ 682.209(a) or (e)''.

■ k. By revising paragraph (c).

The addition and revisions reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B) Of the amount of any collection costs to be added to the unpaid principal of the loan when the loan is

sold to an eligible lender or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and

* * * * *

(2) * * *

(ii) If the guaranty agency has been unable to sell the loan, the guaranty agency must assign the loan to the Secretary.

* * * * *

(c) A guaranty agency must make available to the borrower—

(1) During the loan rehabilitation period, information about repayment plans, including the income-based repayment plan, that may be available to the borrower upon rehabilitating the defaulted loan and how the borrower can select a repayment plan after the loan is purchased by an eligible lender or assigned to the Secretary; and

(2) After the successful completion of the loan rehabilitation period, financial and economic education materials, including debt management information.

* * * * *

■ 10. Section 682.410 is amended by revising paragraph (b)(3) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(3) *Interest charged by guaranty agencies.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(A) The rate established by the terms of the borrower's original promissory note; or

(B) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(ii) If the guaranty agency determines that the borrower is eligible for the interest rate limit of six percent under § 682.202(a)(8), the interest rate described in paragraph (b)(3)(i) shall not exceed six percent.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 11. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 12. Section 685.202 is amended by revising paragraph (a)(11) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(11) *Applicability of the Servicemembers Civil Relief Act (SCRA)(50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (10) of this section, upon the Secretary's receipt of evidence of the borrower's military service, the maximum interest rate under 50 U.S.C. 527, App. section 207(a), on Direct Loan Program loans made prior to the borrower entering military service status is six percent while the borrower is in military service. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan. For purposes of this paragraph (a)(11), the term ''military service'' means—

(i) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(A) Active duty, meaning full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(B) In the case of a member of the National Guard, including service under a call to active service, which means service on active duty or full-time National Guard duty, authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(ii) In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(iii) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

* * * * *

■ 13. Section 685.208 is amended:

■ a. By revising paragraph (a)(1)(i)(D).

■ b. In paragraph (a)(4)(i), by removing the word ''the'' before the words ''income-contingent'' and adding, in its place, the word ''an''.

■ c. In paragraph (a)(5), by removing the word ''or'' after the words ''income-contingent'' and adding, in its place, the words ''repayment plans and the''.

■ d. By redesignating paragraphs (k)(3) and (4) as paragraphs (k)(4) and (5), respectively.

■ e. By adding paragraph (k)(3).

The revision and addition read as follows:

§ 685.208 Repayment plans.

(a) * * *

(1) * * *

(i) * * *

(D) The income-contingent repayment plans in accordance with paragraph (k)(2) or (3) of this section; or

* * * * *

(k) * * *

(3) Under the income-contingent repayment plan described in § 685.209(c), a borrower's required monthly payment is limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with § 685.209(c)(4)(vi)(E).

* * * * *

■ 14. Section 685.209 is amended:

■ a. By revising the introductory text of paragraph (a)(1).

■ b. In paragraph (a)(1)(iii)(A), by removing the words ''Direct Loan Program Loan'' and adding, in their place, the words ''Direct Loan Program loan''.

■ c. In the second sentence of paragraph (a)(2)(iii), by adding the words ''or the Revised Pay As You Earn repayment plan'' immediately after the words ''the income-based repayment plan''.

■ d. In paragraph (a)(6)(i)(E), by adding the punctuation and words '', the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,'' immediately after the words ''this section''.

■ e. By redesignating paragraph (a)(6)(i)(F) as paragraph (a)(6)(i)(G).

■ f. By adding paragraph (a)(6)(i)(F).

■ g. In paragraphs (a)(6)(iii)(A) and (B) introductory text, by adding the punctuation and words '', the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,'' immediately after the words ''this section''.

■ h. In paragraph (b)(3)(iii)(B)(*3*), by adding the words ''or the Revised Pay As You Earn repayment plan'' after the words ''repayment plan''.

■ i. By redesignating paragraphs (b)(3)(iii)(B)(*4*) through (*8*) as paragraphs (b)(3)(iii)(B)(*5*) through (*9*), respectively.

■ j. By adding paragraph (b)(3)(iii)(B)(*4*).

■ k. In newly redesignated paragraph (b)(3)(iii)(B)(*9*), by removing the words ''after October 1, 2007''.

■ l. By adding paragraph (c).

The revision and additions read as follows:

§ 685.209 Income-contingent repayment plans.

(a) * * *

(1) *Definitions.* As used in this section, other than as expressly provided for in paragraph (c) of this section—

* * * * *

(6) * * *

(i) * * *

(F) Made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(*4*) Periods in which the borrower made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

* * * * *

(c) *Revised Pay As You Earn repayment plan.* The Revised Pay As You Earn repayment plan (REPAYE plan) is an income-contingent repayment plan under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) *Definitions.* As used in this paragraph (c)—

(i) *Adjusted gross income* (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is—

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.

(ii) *Eligible loan* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. Family size does not include the borrower's spouse if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs; and

(iv) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with paragraph (c)(4)(vi)(E) of this section.

(ii) The Secretary adjusts the calculated monthly payment if—

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower's eligible loans are not solely Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

(*1*) Each borrower's percentage of the couple's total eligible loan debt;

(*2*) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(*1*) of this section; and

(*3*) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (c)(2)(ii)(B)(*2*) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(C) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(D) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with § 685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section—

(*1*) Does not include any period during which the borrower receives an economic hardship deferment;

(*2*) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(*3*) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the

income-based repayment plan or the Pay As You Earn repayment plan.

(iv) Any unpaid accrued interest is capitalized at the time a borrower leaves the REPAYE plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the REPAYE plan or the Secretary determines the borrower does not have a partial financial hardship.

(vi) A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with § 685.210(b). A borrower who changes to a different repayment plan in accordance with this paragraph or paragraph (c)(4)(vi)(C) of this section may return to the REPAYE plan pursuant to the requirements in paragraphs (c)(4)(vi)(D) and (E) of this section.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the REPAYE plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(3)(i) of this section.

(4) *Eligibility documentation, verification, and notifications.* (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower's monthly payment amount for that year. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) Unless otherwise directed by the Secretary, the borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making the determination described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (c)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (c)(4)(i)(C) and (c)(4)(v) and (vi) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (c)(4)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraphs (c)(2)(iv), (c)(4)(v), and (c)(4)(vi) of this section.

(iv) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraph (c)(4)(i)(A) or (B) of this section, the borrower remains on his or her current repayment plan.

(v) Except as provided in paragraph (c)(4)(vii) of this section, if a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) Ten years from the date the borrower begins repayment under the alternative repayment plan; or

(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (ii) of this section.

(vi) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(v) of this section, the Secretary sends the borrower a written notification containing the borrower's new monthly payment amount and informing the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(v) of this section;

(C) The borrower may change to another repayment plan in accordance with § 685.210(b);

(D) The borrower may return to the REPAYE plan if he or she provides the documentation, as described in paragraph (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower's current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;

(E) If the Secretary determines that the total amount of the payments the

borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count toward forgiveness under the REPAYE plan or the other repayment plans under paragraph (a) or (b) of this section or § 685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(v) of this section will not count toward public service loan forgiveness under § 685.219.

(vii) The Secretary does not take the action described in paragraph (c)(4)(v) of this section if the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(*1*) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(3)(i) of this section.

(*2*) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(*3*) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(5) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(5)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(5)(ii) of this section.

(ii)(A) A borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(5)(iv) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(5)(v) of this section.

(iv) For the purpose of paragraph (c)(5)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of $0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, including a monthly payment amount of $0.00;

(C) A monthly payment made under—

(*1*) The Direct Loan standard repayment plan described in § 685.208(b);

(*2*) The alternative repayment plan described in paragraphs (c)(4)(v) of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;

(*3*) Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b); or

(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans.

(v) For a borrower who makes payments under the REPAYE plan, the beginning date for the 20-year or 25-year repayment period is—

(A) If the borrower made payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans; or

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221—

(*1*) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower began repayment under the REPAYE plan;

(*2*) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower began repayment under the REPAYE plan;

(*3*) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(B)(*1*) or (*2*) of this section, the date the borrower

made a payment on the loan under the REPAYE plan;

(*4*) If the borrower consolidates his or her eligible loans, the date the borrower made a qualifying monthly payment on the Direct Consolidation Loan; or

(*5*) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(A) or (B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

(vi) Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year or 25-year forgiveness period.

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(5) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(*1*) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(*2*) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(*3*) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (c)(5) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(*1*) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(*2*) Provides the borrower with the information described in paragraph (c)(5)(vii)(A)(*3*) of this section; and

(*3*) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

■ 15. Section 685.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 685.210 Choice of repayment plan.

* * * * *

(b) * * *

(2) * * *

(ii) If a borrower changes repayment plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income-contingent repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), the income-contingent repayment plan under § 685.209(c), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in § 685.209(a)(6)(iii), § 685.209(b)(3)(iii), § 685.209(c)(5)(v), or § 685.221(f)(3), respectively.

* * * * *

■ 16. Section 685.219 is amended:

■ a. In paragraph (c)(1)(iii), by adding the words and punctuation ''or who qualifies for partial repayment of his or her loans under the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,'' after ''Peace Corps position''.

■ b. In paragraph (c)(1)(iv)(D), by removing the word ''Any'' and adding, in its place, the words ''Except for the alternative repayment plan, any'' and removing the word ''paid'' immediately after the words ''monthly payment amount''.

■ c. In paragraph (c)(2) introductory text, by adding the words and punctuation ''or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,'' after the words ''leaving the Peace Corps''.

■ d. By adding paragraph (c)(3).

The addition reads as follows:

§ 685.219 Public Service Loan Forgiveness Program.

* * * * *

(c) * * *

(3) The Secretary considers lump sum payments made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense, to be qualifying payments in accordance with paragraph (c)(2) of this section for each year that a lump sum payment is made.

* * * * *

■ 17. Section 685.221 is amended:

■ a. In the second sentence of paragraph (b)(3), by adding the words ''or the Revised Pay As You Earn repayment plan'' immediately after the words ''the Pay As You Earn repayment plan''.

■ b. By redesignating paragraph (f)(1)(vi) as paragraph (f)(1)(vii).

■ c. By adding paragraph (f)(1)(vi).

■ d. In paragraph (f)(3)(i), by adding the punctuation and words '', the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment plan,'' immediately after the words ''repayment plan''.

■ e. In paragraph (f)(3)(ii) introductory text, by removing the words ''the income-contingent repayment plan'' and adding, in their place, the words ''one of the repayment plans described in paragraph (f)(3)(i) of this section''.

The addition reads as follows:

§ 685.221 Income-based repayment plan.

* * * * *

(f) * * *

(1) * * *

(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(v) prior to changing to a repayment plan described under § 685.209 or this section;

* * * * *

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Part VII

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 201, 202, 206, et al.

Defense Federal Acquisition Regulation Supplements; Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 208, 212, 213, 214, 215, 233, 239, 244, and 252

[Docket No. DARS 2013–0052]

RIN 0750–AH96

Defense Federal Acquisition Regulation Supplement: Requirements Relating to Supply Chain Risk (DFARS Case 2012–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011, as amended by the NDAA for FY 2013. This final rule allows DoD to consider the impact of supply chain risk in specified types of procurements related to national security systems.

DATES: Effective October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 78 FR 69268 on November 18, 2013, to implement section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383), entitled ''Requirements for Information Relating to Supply Chain Risk,'' as amended by section 806 of the NDAA for FY 2013 (Pub. L. 112–239). This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, Improving Regulation and Regulatory Review. DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

Eight respondents submitted public comments in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Significant Changes From the Interim Rule

1. Language is added to the rule to clarify that section 806 authority is only applicable when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, including clarification of the prescriptions for DFARS provision 252.239–7017, Notice of Supply Chain Risk, and DFARS clause 252.239–7018, Supply Chain Risk.

2. Guidance on the use of an evaluation factor regarding supply chain risk is modified to require the inclusion of the evaluation factor when acquiring information technology, whether as a service or as a supply that is a covered system, is a part of a covered system, or is in support of a covered system. Additional text regarding an evaluation factor has been added at DFARS 212.301, 213.106–1, 214.201–5, and 214.503–1.

3. DFARS clause 252.239–7018, Supply Chain Risk, is changed as follows—

a. Paragraph (b), is modified to state that the contractor shall mitigate supply chain risk in the provision of supplies and services to the Government; and

b. Paragraph (c) is removed as the clause will no longer contain a requirement to flow down the clause to subcontractors.

B. Analysis of Public Comments

1. Interim Rule Should Be Reissued as a Proposed Rule

Comment: Numerous respondents urged DoD to rescind the interim rule and reissue the rule as a proposed rule. One respondent suggested that the new rule authorizes the exclusion of businesses from the defense industrial base and that such authority should not be exercised without first hearing the views of and gathering all relevant information from the parties that will be directly impacted by this rule. One respondent commented that the rule could prevent suppliers from addressing and mitigating supply chain security risks, and that a public comment period would have allowed industry to suggest alternative approaches that could allow for risk mitigation. Another respondent commented that the interim rule denies industry and other critical stakeholders ample time, opportunity to shape, and ultimately collaborate with the DoD to design a complex program that addresses multiple risks and complexities. One respondent added that without a standard notice-and-comment rulemaking process, industry has no opportunity to comment on areas of concern before the rule takes effect whereby industry must incur costs and move towards compliance without guidance through the rulemaking process.

Response: DoD issued an interim rule because of the need to protect national security systems (NSS) and the integrity of its supply chains. The rule implements the specific authorities provided in the statute. The pilot authority provided for by the statute will expire September 30, 2018. It is in DoD's interest to initiate the pilot program and begin gathering feedback for its report to Congress. DoD considered all public comments received during the public comment period in the formation of this final rule.

2. Definitions

a. ''Covered Item''/''Covered System''

Comment: Several respondents objected to the broad definitions of ''covered system'' and ''covered item.'' One respondent questioned why the Council chose to use the term ''covered item'' versus ''covered item of supply,'' which is the term used in section 806.

Response: The definitions in the rule are taken directly from the statute. In the final rule, the term ''covered item'' has been replaced by the term ''covered item of supply,'' thereby conforming to the statute.

b. Information Technology

Comment: The same respondent commented that the definition of ''information technology'' is defined even more expansively than in Federal Acquisition Regulation (FAR) subpart 2.1, covering information systems ranging from systems used for intelligence activities to information systems used for the ''direct fulfillment of military or intelligence missions.''

Response: The definition of ''information technology'' in the rule is the same as in the statute (40 U.S.C. 11101(6)).

c. Supply Chain Risk

Comment: One respondent requested that DoD clarify the definition of ''supply chain risk,'' stating that DoD should clarify the phrase ''maliciously introduce unwanted function'' to clearly explain if this is a hardware or software concern or both, and recognize that threats posed maliciously are just one class of threat.

Response: The definition of ''supply chain risk'' is taken directly from the statute. It addresses both hardware and software concerns and is the only class of threat to which section 806 and the rule apply.

3. Scope and Applicability

a. Prescription

Comment: Three respondents commented that the scope is overly broad, recommending that DoD should include the rule's provisions and clauses in NSS solicitations and contracts only. One of these respondents commented that the rule should be narrowly scoped to reflect the intent of Congress, suggesting that DoD should include the rule's provisions and clauses in solicitations and contracts for information technology NSS rather than all information technology solicitations and contract, *i.e.,* only in ''covered procurements.'' Another respondent commented that DoD should establish an independent, special review council to evaluate issues such as: (1) ''covered'' systems, technologies, items, procurements, and contracts; and (2) circumstances where the clause needs to be included and where information will be withheld under DFARS 239.7305(d), thus providing an independent check to ensure that this authority is being used in a manner consistent with section 806 of the FY 2011 NDAA and the underlying policy. This respondent also suggested that successful offerors be provided information that their contracts are covered by the clause. One respondent suggested that DoD should provide offerors sufficient notice that the goods or services they offer are to be used in a covered procurement.

Response: The final rule limits use of the solicitation provision and contract clause to solicitations and contracts for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as that term is defined at 239.7301.

b. NSS Classifications

Comment: One respondent commented that mundane systems will be over classified by program managers as NSS and that NSS classifications should be reserved to an appropriate level above program manager. This respondent further stated that DoD should take steps to clearly designate systems as ''NSS'' and limit the NSS classification. Another respondent stated that because the interim rule incorporates the definition in 44 U.S.C. 3542(b) for ''National Security System'', the rule's approach to include the clause in all DoD contracts seems contrary to the legislative intent to limit application to ''covered procurements'' as defined in section 806(e)(3) of the FY 2011 NDAA. This respondent further suggested that DoD more narrowly define when contracting officers should include and use this clause (*e.g.,* what types of programs) and create some independent review of contracting activities' decisions to apply the interim rule.

Response: In the final rule, the use of the provision and clause is only required when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at DFARS 252.239–7302. In accordance with DoD Instruction 8510.01, Risk Management Framework (RMF) for DoD Information Technology (IT), the requiring activity/program office will designate systems as NSS when it registers them in the DoD Component registry (*e.g.,* DoD Information Technology Portfolio Repository (DITPR)).

c. Flowdown

Comment: One respondent suggested that because the clause is written to require flowdown to subcontractors regardless of tier, the Government intends to have the right to direct a supplier at any tier to be excluded for a contract. The respondent further stated that this could lead to even greater disruption of a program's supply chain since the loss of a supplier at a remote tier can have ripple effects on all higher-tier contractors and that the potential costs for the delay, disruption, and potential workarounds required to address the situation could be enormous. Failing to address the effects of exclusion of subcontractors almost guarantees that implementation of this rule will result in claims and disputes.

Response: The requirement to include the substance of DFARS clause 252.239–7018 in subcontracts has been removed from this final rule.

d. Other Applications

Comment: One respondent commented that DoD should clarify whether or not the rule applies to embedded processing, whether the rule applies to cloud computing acquisitions, and whether cloud computing acquisitions are covered procurement actions as a class, since these types of acquisitions are not directly addressed in the interim rule.

Response: The rule applies when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system. This includes embedded processing and cloud computing acquisitions if they are NSS.

4. Managing Supply Chain Risk

a. General

Comment: Three respondents commented that the final rule should encourage industry to better manage supply chain risk, require that robust supply chain risk management principles be applied throughout procurement practices, or at the very least require that contracting officers apply supply chain risk management to contracts. One of these respondents further commented that the final rule should include language that reinforces the stated objective in the definition of supply chain risk, stating, ''This rule, by itself, does not require contractors to deploy additional supply chain risk protections, but leaves it up to individual contractors to take the steps necessary. . .to protect their supply chain.'' Another of these respondents suggested that, if the provisions of section 806 are to be implemented as intended, the rule must require robust supply chain analyses. One respondent suggested that the interim rule should provide that in all critical information technology acquisitions, supply chain security must be applied by the relevant Government procurement managers, both at the direct contract and supervisorial levels as a mandatory matter.

Response: This rule has as its sole purpose the implementation of section 806. DoD has provided, and will continue to provide, additional guidance for the management and mitigation of supply chain risk.

b. Evaluation Factor

Comment: Three respondents commented that the interim rule should provide guidance on evaluation factors. One of these respondents commented that the rule creates uncertainty by failing to describe how supply chain risk will be used as an evaluation factor and suggests that the Government must realize that when managing risk, the steps necessary to exhaustively test all software to eliminate all potential unwanted functions is unaffordable. One respondent commented that the new requirement at DFARS 215.304 for departments and agencies to consider ''the need for an evaluation factor regarding supply chain risk'' provides insufficient guidance as to the type of supply chain risk evaluation factors to be utilized, further stating that while they would expect that such risk evaluations would be conducted on a case-by-case basis, guidance should be provided as to which evaluation factors should be used and when. One respondent suggested that the statement

''Consider the need for an evaluation factor. . .'' appears to give the contracting activity the discretion to determine whether an evaluation factor for supply chain risk is needed but does not provide guidance as to when the conditions which necessitate such a factor have been met.

Response: In the final rule, guidance on the use of an evaluation factor regarding supply chain risk is modified to require the inclusion of the evaluation factor when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system. Risk levels, risk tolerance, and appropriate risk management measures must be determined at the local level. Evaluation factors are specified at the individual acquisition level and not in the DFARS. DoD is issuing DFARS Procedures, Guidance, and Information for the contracting workforce on developing and using supply chain risk evaluation factors.

c. Information Sharing

Comment: Three respondents commented on the disclosure of information regarding supply chain risk to offerors and contractors. One of these respondents urged the DoD to use its discretion in sharing information concerning threats sufficient to allow suppliers to alter product designs and change components on devices to overcome known vulnerabilities. Another respondent suggested that a requirement to report identified supply chain risks and issues would assure that immediate remediation could be undertaken if problems arose. One respondent commented that DoD should consider revising the rule to promote disclosure of information regarding supply chain risks to offerors and contractors whenever possible. Whenever such notice may be accomplished ''consistent with the requirements of national security,'' DoD should provide notification to the offeror or contractor of perceived supply chain risks early in the procurement process in accordance with standard Government procurement rules (*e.g.,* during discussions in a negotiated procurement), so that the contractor has the opportunity to mitigate or eliminate the risk. Contractors are less able to mitigate supply chain risk if the Government fails or declines to share with them risk information it has developed internally.

Response: The DoD intends to share information about supply chain risk with its contractors to the extent possible, consistent with the requirements of national security. The provisions of the rule and section 806 that limit disclosure are concerned with risk information that, for national security reasons, cannot be shared despite the transparency that is normally present in procurement activities.

d. Mitigation/Less Intrusive Measures

Comment: Several respondents commented on the need for DoD to focus on mitigation plans and less intrusive measures. One of these respondents commented that DoD should create a mechanism for vendors to file supply chain risk mitigation plans with DoD. DoD could take these plans into consideration when assessing supply chain risk for any particular procurement activity. By viewing filed mitigation plans from multiple vendors, DoD could gain greater insight into commercially viable supply chain mitigation practices. This respondent further stated that DoD should approach supply chain risk with an eye toward encouraging mitigation rather than simply disqualifying vendors, suggesting that DoD can and should implement robust supply chain security practices. One respondent suggested that DoD should clarify what it believes are less intrusive measures under section 239.7304(b)(1)(2), recommending that in order to prevent the interim rule from impeding the use of commercial technology (including commercially available off-the-shelf items) in NSS, which ultimately benefits DoD, the Department should provide wide discretion to the judgment of manufacturers in their use of industry standards and internal processes to meet its supply chain risk goals. This respondent further commented that while DFARS section 239.7304 of the rule provides that an exclusion under DFARS 239.7305 may occur when it is determined that, among other factors, ''less intrusive measures are not reasonably available to reduce such supply chain risk,'' at no point in the rule is clarity provided on what this language is defined as or what an authorized individual should refer to in order to gauge what ''less intrusive measures'' are and whether they are ''not reasonably available.'' Another of these respondents suggested that the opportunity to mitigate or eliminate the noticed risk from the supply chain would avoid significant costs that would be passed along to DoD. One respondent suggested that DoD modify the interim rule to clarify that the exercise of the authorities under DFARS 239.7305 should be a ''last resort,'' invoked only after other methods of mitigating supply chain risk have been considered or attempted.

Response: Section 806(b)(2) requires that ''less intrusive measures are not reasonably available to reduce supply chain risk'' to use its authority. Whenever it is appropriate, DoD will work with its offerors to mitigate supply chain risk using less intrusive measures than exclusion based on section 806 authorities. In the notification to congressional committees when exercising section 806 authority, a summary of the mitigation analysis evaluating reasonably available mitigations will be documented. In most cases, DoD expects these mitigations will sufficiently mitigate the risks so that exclusion will not be necessary.

e. Standards and Controls

Comment: Several respondents commented on the need for the rule to specify relevant supply chain risk management (SCRM) standards, controls, etc. One respondent stated that while it does not suggest DoD explicitly endorse one set of controls over another, industry does need some guidance beyond ''maintain controls.'' There must be consistency in the call out of the relevant SCRM standards and ratings in solicitations so as not to create an unnecessary administrative burden for contractors to select suppliers and subcontractors based on a moving target of standards and ratings. Notwithstanding making a reference to the Regulatory Flexibility Act on page 69269 in the narrative of the **Federal Register** document that the rule ''recognizes the need for information technology contractors to implement appropriate safeguards and countermeasures to minimize supply chain risk,'' one respondent commented that the interim rule does not provide any guidance about what metric will be applied to its products, services, and business models. The respondent further stated that the rule requires contractors to ''maintain controls in the provision of supplies and services to the Government to minimize supply chain risk'' but does not provide any guidance to contractors or Government contracting officers as to the type of controls to be maintained to meet this requirement, recommending that DoD issue additional guidance that uses existing and proposed global, consensus-based standards. One respondent commented that the absence of what standard DoD will use to evaluate supply chain risks is likely to increase the time and cost of pursuing and performing Government contracts.

Response: The final rule removes the language requiring contractors to

''maintain controls'' and now states that the contractor shall mitigate supply chain risk in the provision of supplies and services to the Government. This change was made because the DFARS cannot identify specific standards or controls as this would be up to each requiring activity to identify if any standards or controls are necessary particular to the risks and risk tolerance that would apply to each procurement. DoD continues to work with industry to identify risk management best practices and promulgate best practice documents for consideration.

f. Verification/Inspection

Comment: One respondent commented that suppliers should meet the requirement to provide supply chain security verification by documentation, suggesting that all levels of the supply chain—Government, prime contractors, subcontractors, and parts suppliers—should be in compliance with supply chain integrity requirements and have records and production locations available for inspection if necessary.

Response: The practices, documentation, and information suggested in the comment are important tools in protecting against supply chain risk. However, these suggestions do not comply with the legislative requirements to implement section 806.

5. Process

a. General

Comment: Two respondents commented that the interim rule could deprive potential contractors and subcontractors of due process and that by improving due process, DoD can better secure the supply chain. One of these respondents urged DoD to do more to guarantee due process to its suppliers under this rule, stating that notice, dialogue, and resolution, (*i.e.,* due process) serve to identify root causes of supply chain risk and allow suppliers to clear their names when falsely accused. One respondent commented that implementation of the provision for a particular procurement or contract action may result in non-reviewable decisions that deprive actual or potential contractors and subcontractors of their property rights, including their right to fairly compete for procurements and subcontracts, suggesting that these non-reviewable exclusions may violate the due process clause and could negatively affect the procurement community. This respondent suggested that DoD modify the interim rule to clarify that the exercise of the authorities under DFARS 239.7305 should be a ''last resort,'' invoked only after other methods of mitigating supply chain risk have been considered or attempted.

Response: Risk will be evaluated on a case-by-case basis, and any exclusion will be for a particular source selection and not a blanket exclusion. Contractors are eligible to compete for future solicitations even after application of the section 806 authority has excluded them from a particular source selection.

b. Notice/Appropriate Parties

Comment: Four respondents commented on the need for timely notification to organizations of pre- and post-exclusion status, and/or the need to clarify or define the ''appropriate parties'' in DFARS 239.7305(d)(2)(i). Two of these respondents commented that providing notice to the vendor in advance of any procurement action would permit appropriate response to the risk and allow offerors to rectify instances of unacceptable risk before DoD makes a determination based on incorrect or insufficient information, ensuring fairness to the offeror and benefitting DoD by enhancing fairness in competition for contracts. The opportunity to mitigate or eliminate the noticed risk from the supply chain would avoid significant costs that would be passed along to the DoD.

Three of these respondents commented on the need for notification to excluded offerors of their post-exclusion status. One respondent commented that notification to excluded offerors of their post-exclusion status and the reasons for exclusion will allow them to take steps to remedy those flaws before future opportunities. One respondent suggested that if a determination is made that ''less intrusive measures are not reasonably available [short of exclusion] to reduce such supply chain risk,'' the rule should require that the notion of providing notice to the offeror has been explicitly considered and deemed unreasonable before a decision to exclude has been finalized. Another respondent suggested that DFARS 215.503 and 215.506 should be clarified to ensure that unsuccessful offerors are provided information demonstrating that DOD complied with the requirements of section 806(b) and (c) in making the determination to limit the disclosure of information relating to the basis for carrying out a covered procurement action.

One of these respondents commented that clarification/definition of the term ''appropriate parties'' as encompassing the impacted offeror/bidder/contractor would ensure that the impacted offeror/bidder/contractor is advised, at a minimum, that it has been impacted by a supply chain risk determination under this DFARS section, and that any information that can be shared about the ''basis for carrying out'' the decision ''consistent with the requirements of national security'' will be shared with that entity. Another respondent commented that while the rule requires notice by the authorized individual to ''appropriate parties'' to the extent needed to execute a covered procurement action and to DoD and other Federal agencies, it makes no provision to provide notice to other Federal contractors that might be impacted by the exclusion.

Response: The written determination detailed in DFARS 239.7304 will detail any limitations on disclosure of information related to a section 806 exclusion. ''Appropriate parties'' would be determined on a case-by-case basis.

c. Exclusion Process

Comment: Two respondents commented on the exclusions process itself. One respondent commented that the exclusion process is seriously flawed because it does not connect the acts conducted by those at higher levels in DoD with the actions of the contracting officers in any rational time phased application that would help offerors understand the proposal and business risk involved in any given source selection process. This respondent further commented that it is fundamentally unclear whether an exclusion will be made on a case-by-case basis or be a blanket exclusion of a contractor or subcontractor, and that it is unclear at what point in the acquisition process such exclusions may be authorized or executed. Under the new rule's language, a source could be excluded before, during, and/or after a contract award (whether as prime or subcontractor). One respondent suggests that its concerns that DoD can reject or modify acquisitions based upon concerns about supply chain integrity could be addressed by having any sensitive finding subject to review, and recommendation for approval or disapproval to the Secretary of Defense, by the DoD General Counsel, or a committee appointed by the Secretary of Defense charged with assuring the validity of such concerns and their sensitivity for release to suppliers.

Response: Suppliers are expected to manage supply chain risk in their offerings. Under section 806 and the rule, exclusion of a source may occur during source selection before award (using an evaluation factor) or after award (by withholding consent to a subcontract). Exclusion of a source would be on a case-by-case basis, as the

risk tolerance is not the same for all procurement actions. The authorization and recommendation mechanisms and participants described in the rule are mandated by the statute.

d. Dispute Mechanism

Comment: Two respondents commented on the need for an impartial process for addressing concerns. One respondent urged that the interim rule reinforce the need for a fair opportunity pre- and post-exclusion for concerns to be addressed by the contractor or vendor at issue. One respondent commented that neither section 806 of the NDAA for FY 2011 nor the interim rule provide for any procedures for proposed contractors or subcontractors to challenge a possible exclusion determination where DoD decides to limit the disclosure of information. This respondent further stated that DoD should provide some dispute mechanism for exclusion in protest and claim matters, whereby counsel for offerors, contractors, and proposed subcontractors can represent their clients and obtain access to information under protective order or clearance to assure that the required process was followed and proper grounds for invocation of the exclusion exist.

Response: Exclusions using the authority of section 806 will be based generally on classified intelligence information. A dispute resolution mechanism is not appropriate under those circumstances.

e. Remediation

Comment: Two respondents commented on the need to provide equitable adjustments, a means of remedy, and/or a pathway to reinstatement once a supplier is excluded. One of the respondents commented that while DFARS 239.7305 allows DoD to exclude sources, it does not provide a pathway to reinstatement or for inclusion once a supplier is excluded, proposing that DoD establish a separate rulemaking and coordinate a unified policy with an industry-Government working group to gain insight into how remediation and rejoining the defense industrial base can be accomplished in a responsible manner. This respondent further commented that DoD should provide equitable adjustments and other remedies for prime contractors whose subcontractors are excluded, stating that the new regulations fail to provide relief for prime contractors who must exclude a source through no fault of its own. Another respondent suggested that a periodic review of excluded contractors should be required for ongoing contracts with new task orders, adding that if a vendor has been excluded without notice, the interim rule should require the agency to review that decision on no less than an annual basis for as long as the contract is in place. This respondent also commented that the regulation should specifically afford remedies, including equitable adjustments, whenever the authority at DFARS 239.7305(c) is exercised and a prime must exclude a subcontractor.

Response: Risk will be evaluated on case-by-case basis, and any exclusion will be for a particular source selection and not a blanket exclusion. Offerors are eligible to compete for future solicitations even after section 806 has excluded them from a particular source selection. Consistent with national security, *i.e.,* with proper clearances and in a manner that will not put the warfighter, the system, or intelligence operations at risk, DoD will discuss risks to the trust of critical systems or components with its industrial base as well as potential remedies. This is particularly true in the system integration context where the program office and the prime contractors are more likely to have the time and clearances to develop tailored mitigations. Where appropriate, DoD will partner with its contractors to mitigate supply chain risk in lieu of executing section 806 authorities. In most cases, non-806 mitigations will sufficiently manage the risk; when that is not the case and exclusion of a source is required, DoD does not intend to provide equitable adjustments or other remedies.

6. Impact of Rule

a. Economic/Cost Impact

Comment: Numerous respondents commented that the estimates by DoD of the costs and economic impact of this rule are inadequate. One of these respondents commented that the rule creates costs beyond the supply chain risk management a responsible company would undertake in the course of ordinary business. Further, the scope of application of the interim rule, which requires compliance at all levels of the DoD supply chain, would require significant, costly, additional investments in supplier management and compliance mechanisms by industry. Another respondent suggested that absent a public comment period before implementation of the rule, industry has no opportunity to provide input regarding the costs and benefits of the approach DoD has taken. One respondent commented that the cumulative economic effect of the exclusion of any one company from any one contract would result in reductions in both Government and commercial business, and the loss of employment at the excluded company and the corresponding loss of payroll. Other losses would be incurred as a result of the ripple effect on primes, subcontractors, or suppliers to the excluded company, which will lose that source of supply and must then incur the expense of identifying and vetting new sources. One respondent commented that by not advising what standard DoD will use to evaluate supply chain risks, the interim rule is likely to increase the time and cost of pursuing and performing Government contracts.

Response: DoD does not expect the rule to have a significant economic impact on a substantial number of entities. Companies have an existing interest in having a supply chain that they can rely on to provide it with material and supplies that allow the contractor to ultimately supply its customers with products that are safe and that do not impose threats or risks to Government information systems. The rule does not require contractors to deploy additional supply chain risk protections. Section 806 authority applies to a specific contract, task order, or delivery order only.

b. Small Business

Comment: One respondent commented that the rule will drive up costs for smaller businesses by requiring significant increase in investments in compliance. Another respondent commented that the rule could prompt prime contractors to exclude new or small businesses in order to improve the evaluation of their supply chain risk profile.

Response: The rule does not require contractors to deploy additional supply chain risk protections.

c. Barriers to the Federal Market

Comment: Two respondents commented that the rule creates significant new barriers to the Federal market, further suggesting that the interim regulation poses significant burdens for existing companies in the market and will only further dissuade new and innovative companies from entering the market.

Response: Since section 806 decisions rely on intelligence information, the operation of the rule presents no barrier to participation in the DoD market for either existing participants or new entrants.

d. De Facto Debarment/Suspension

Comment: Several respondents stated that the exercise of the exclusionary authority in the rule could result in a de facto debarment or suspension without any due process for the affected offeror.

Response: Risk will be evaluated on case-by-case basis, and any exclusion will be for a particular source selection and not a blanket exclusion. Offerors are eligible to compete for future solicitations even after section 806 has excluded them from a particular source selection.

e. Security

Comment: One respondent commented that the rule could unintentionally but negatively impact the Federal Government's security because it prevents DoD from informing suppliers about supply chain risks that DoD believes exist and prevents any consultation with offerors.

Response: This will be taken into consideration in any instance that the section 806 authority is utilized.

7. Qualification standard

Comment: Three respondents commented that the interim rule should provide more guidance regarding the qualification standard(s) that may be established to reduce supply chain risk. One respondent urged DoD to develop the systems and data security requirements for covered procurements and issue them to potential offerors during the procurement process as a requirement for bid eligibility. This approach would focus the use of this clause to procurements for covered systems or covered items of supply and would increase competition by limiting unnecessary disqualification of offerors (and contractors and subcontractors/suppliers) that could meet the Government's requirements. Another respondent commented that the rule should be amended to provide more specificity as to the type of ''qualification standards'' that may be established ''for the purposes of reducing supply chain risk in the acquisition of covered systems.''

Response: DoD has no present plans to use section 806 authority to exclude a source based on failure to meet a qualification standard to reduce supply chain risk. To use this authority DoD must first develop qualification standards in accordance with the requirements of 10 U.S.C. 2319, which include providing the qualification requirements to potential offerors.

8. Synchronize/Harmonize With Related Rules/Initiatives

Comment: Five respondents requested that DoD harmonize the requirements of the rule with industry- and Government-led supply chain risk management regimes and initiatives in order to avoid inconsistencies. One respondent encouraged DoD to harmonize the requirements of the rule with the guidance issued by the Secretary of Defense memorandum dated October 10, 2013, entitled ''Safeguarding Unclassified Controlled Technical Information;'' the Office of Management and Budget's circular M–14–13 dated November 18, 2013, entitled ''Enhancing the Security of Federal Information and Information Systems;'' and other Departmental requirements. This respondent further recommends that the final rule include a statement that ''the rule complements rather than conflicts with other related requirements.'' Another respondent further encouraged DoD to avoid the creation of unneeded duplication of certifications of these important assurance efforts, by affirming that the interim rule shall not impact the duties of contractors and vendors in assessing relevant procurements related to NSS.

Response: DoD is involved in a myriad of efforts to address supply chain risks, specifically, as well as cybersecurity broadly. All of these policies and strategic efforts aim to improve the overall risk posture of the Federal Government's information systems and those of its industry partners. A patchwork of policies and regulations is sometimes necessary to address the variabilities of the system ownership and operation, and the risk tolerance of the mission. The rule is specific to DoD and narrowly scoped to NSS, which often have a lower risk tolerance due to the criticality of missions utilizing such systems.

9. Tracking

Comment: One respondent commented that DoD should catalog the number of source exclusions executed under the section 806 authority between 2013 and 2018.

Response: DoD is required to submit a report on January 1, 2017, on the effectiveness of section 806 authorities, to include how frequently DoD exercises the authority.

III. Applicability to Acquisitions Not Greater Than the Simplified Acquisition Threshold (SAT) and Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

Consistent with 41 U.S.C. 1905, 1906, and 1907, the Director Defense Procurement and Acquisition Policy (DPAP), determined that it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT and acquisitions of commercials items, including COTS items, from the applicability of section 806 of the NDAA for FY 2011 as amended by section 806 of the NDAA for FY 2013.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD has made that determination, therefore this rule does apply below the SAT.

Given that the requirements of section 806 of the NDAA for FY 2011 and section 806 of the NDAA for FY 2013 were enacted to protect the supply chain, which in turn protects NSS from malicious actions, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts below the SAT, as defined at FAR 2.101. An exception for contracts for the acquisition below the SAT would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if

the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Given that the requirements of section 806 of the NDAA for FY 2011 and section 806 of the NDAA for FY 2013 were enacted to protect the supply chain, which in turn protects NSS from malicious actions, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items, including COTS items, would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of this final rule is to implement in the Defense Federal Acquisition Regulation Supplement protection against risks to the supply chain affecting National Security Systems (NSS). The legal basis for this final rule is section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) of 2011 (Pub. L. 111.383), as amended by section 806 of the NDAA for FY 2013 (Pub. L. 112–239). Congress has recognized a growing concern for risks to the supply chain for technology contracts supporting the Department of Defense (DoD). Congress has defined supply chain risk as the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 806(e)(4) of Pub. L. 111–383).

This final rule calls for contractors providing information technology to DoD, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, to mitigate supply chain risk to the supplies and services being provided to the Government. It also enables agencies to exclude sources identified as having a supply chain risk from consideration for award of a covered contract, in order to minimize the potential risk for supplies and services purchased by DoD to maliciously degrade the integrity and operation of sensitive information technology systems. Ultimately, DoD anticipates significant savings to taxpayers by reducing the risk of unsafe products entering our supply chain, which pose serious threats or risks to sensitive government information technology systems.

No comments were received in response to the initial regulatory flexibility analysis.

This rule applies to contractors providing the Government with information technology that qualifies as a covered system or covered item of supply. This includes purchases of commercial items, including commercial off-the-shelf items, and contracts not greater than the simplified acquisition threshold. While it is not possible to estimate the number of small businesses impacted, DoD does not expect this final rule to have a significant economic impact on a substantial number of contractors, since (1) the rule applies only when acquiring information technology that is part of a covered system or in support of a covered system and (2) the authority provided by the rule is expected to be invoked very infrequently.

This rule does not require any specific reporting, recordkeeping or compliance requirements.

No significant economic impact on small businesses is anticipated; however, the final rule does have a modified applicability for the provision and clause created by the rule. Instead of being prescribed for all information technology acquisitions the provision and clause will only apply to acquisitions for information technology that is a covered system or covered item of supply. This will significantly reduce the number of acquisitions to which the provision and clause will apply.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202, 208, 212, 213, 214, 215, 233, 239, 244, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Accordingly, DoD adopts as final the interim rule published at 78 FR 69268 on November 18, 2013, with the following changes:

■ 1. The authority citation for 48 CFR parts 202, 208, 212, 213, 214, 215, 239, 244, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, a definition for ''Information technology'' to read as follows:

202.101 Definitions.

* * * * *

Information technology (see 40 U.S.C. 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under

a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term ''information technology'' includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ''information technology'' does not include any equipment acquired by a contractor incidental to a contract.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Revise section 208.405 to read as follows:

208.405 Ordering procedures for Federal Supply Schedules.

Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

■ 4. In section 208.7402, revise paragraph (2) to read as follows:

208.7402 General.

* * * * *

(2) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 212.301 by—

■ a. Adding paragraph (c); and

■ b. Revising paragraphs (f)(xv)(C) and (D).

The addition and revisions read as follows:

212.301 Solicitation provisions and contract clauses for acquisition of commercial items.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

(f) * * *

(xv) * * *

(C) Use the provision at 252.239–7017, Notice of Supply Chain Risk, as prescribed in 239.7306(a), to comply with section 806 of Public Law 111–383.

(D) Use the clause at 252.239–7018, Supply Chain Risk, as prescribed in 239.7306(b), to comply with section 806 of Public Law 111–383.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Add section 213.106–1 to read as follows:

213.106–1 Soliciting competition.

(a)(2) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

PART 214—SEALED BIDDING

■ 7. Add section 214.201–5 to read as follows:

214.201–5 Part IV—Representations and instructions.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

■ 8. Add subpart 214.5 to read as follows:

Subpart 214.5 Two-Step Sealed Bidding

Sec.
214.503 Procedures.
214.503–1 Step one.

Subpart 214.5 Two-Step Sealed Bidding

214.503 Procedures.

214.503–1 Step one.

(a)(4) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

PART 215—CONTRACTING BY NEGOTIATION

■ 9. In section 215.304, revise paragraph (c)(v) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(v) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301. For additional guidance see PGI 215.304(c)(v).

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 10. Add section 239.001 to read as follows:

239.001 Applicability.

Notwithstanding FAR 39.001, this part applies to acquisitions of information technology, including national security systems.

239.7301 and 239.7302 [Redesignated as 239.7302 and 239.7301]

■ 11. Redesignate sections 239.7301 and 239.7302 as sections 239.7302 and 239.7301, respectively.

■ 12. Amend newly redesignated 239.7301 by—

■ a. In the definition of ''*Covered item*'', removing ''*Covered item*'' and adding ''*Covered item of supply*'' in its place;

■ b. Removing the definition of ''*Information technology*''; and

■ c. Adding, in alphabetical order, a definition for ''*Supply chain risk*''.

The addition reads as follows:

239.7301 Definitions.

* * * * *

Supply chain risk means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a national security system (as that term is defined at 44 U.S.C. 3542(b)) so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

239.7302 [Amended]

■ 13. Amend newly redesignated 239.7302 by removing ''covered item'' everywhere it appears and adding ''covered item of supply'' in its place.

239.7304 [Amended]

■ 14. Amend section 239.7304 by—

■ a. In paragraph (b)(1), removing ''239.7305(a)(b) or (c)'' and adding

''239.7305(a), (b), or (c)'' in its place; and

■ b. In paragraph (c)(2)(ii) and (iii) removing ''paragraph (a)'' and adding ''paragraph (a) of this section'' in both places.

■ 15. Amend section 239.7305 by—

■ a. Revising the introductory text; and

■ b. Revising paragraph (d)(2)(i).

The revisions read as follows:

239.7305 Exclusion and limitation on disclosure.

Subject to 239.7304, the individuals authorized in 239.7303 may, in the course of procuring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system—

* * * * *

(d) * * *

(2) * * *

(i) Notify appropriate parties of action taken under paragraphs (a) through (d) of this section and the basis for such action only to the extent necessary to effectuate the action;

* * * * *

■ 16. Revise section 239.7306 to read as follows:

239.7306 Solicitation provision and contract clause.

(a) Insert the provision at 252.239–7017, Notice of Supply Chain Risk, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

(b) Insert the clause at 252.239–7018, Supply Chain Risk, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 17. Revise section 244.201–1 to read as follows:

244.201–1 Consent requirements.

In solicitations and contracts for information technology, whether acquired as a service or as a supply, that is a covered system or covered item of supply as those terms are defined at 239.7301, consider the need for a consent to subcontract requirement regarding supply chain risk (see subpart 239.73). For additional guidance see PGI 244.201–1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.239–7018 [Amended]

■ 18. Amend section 252.239–7018 by—

■ a. Removing the clause date ''(NOV 2013)'' and adding ''(OCT 2015)'' in its place;

■ b. Amending paragraph (b) by removing ''shall maintain controls'' and adding ''shall mitigate supply chain risk'' in its place, and removing the phrase ''to minimize supply chain risk'' before the period; and

■ c. Removing paragraph (e).

[FR Doc. 2015–27463 Filed 10–29–15; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AI67

Defense Federal Acquisition Regulation Supplement: Removal of Cuba From the List of State Sponsors of Terrorism (DFARS 2015–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove Cuba from the definition of ''state sponsor of terrorism'' in two DFARS clauses. This rule implements the Department of Department of State Public Notice: 9162, Rescission of Determination Regarding Cuba.

DATES: Effective October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Kyoung Lee, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends DFARS clause 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, and clause 252.225–7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, by removing Cuba from the definition of ''state sponsor of terrorism'' in these clauses. This rule implements the Department of State Public Notice: 9162, Rescission of Determination Regarding Cuba, announcing removal of Cuba from the U.S. list of state sponsors of terrorism, effective May 29, 2015. This action was based upon the Presidential Report of April 14, 2015, to Congress, indicating the Administration's intent to rescind the designation of Cuba as a state sponsor of terrorism, including the certification that Cuba has not provided any support for international terrorism during the previous six months, and that Cuba has provided assurance that it will not support acts of international terrorism in the future.

II. Publication of This Final Rule for Public Comment is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is only implementing the Department of State Public Notice: 9162, Rescission of Determination Regarding Cuba, announced on June 4, 2015, and, as such, the rule does not have a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7049 [Amended]

■ 2. Amend section 252.225–7049 by—

■ a. Removing the clause date ''(DEC 2014)'' and adding ''(OCT 2015)'' in its place; and

■ b. In the paragraph (a), in the definition of ''State sponsor of terrorism'' removing ''Cuba,''.

252.225–7050 [Amended]

■ 3. Amend section 252.225–7050 by—

■ a. Removing the clause date ''(DEC 2014)'' and adding ''(OCT 2015)'' in its place; and

■ b. In the paragraph (a), in the definition of ''State sponsor of terrorism'' removing ''Cuba,''.

[FR Doc. 2015–27467 Filed 10–29–15; 8:45 am]

BILLING CODE 6820–ep–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2015–0049]

RIN 0750–AI71

Defense Federal Acquisition Regulation Supplement: New Designated Countries—Montenegro and New Zealand (DFARS Case 2015–D033)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Montenegro and New Zealand as newly designated countries under the World Trade Organization Government Procurement Agreement.

DATES: Effective October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, telephone 571–372–6089.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2015, Montenegro became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). New Zealand became party to the WTO GPA on August 12, 2015. The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see Federal Acquisition Regulation (FAR) 25.402).

Effective July 15, 2015, because Montenegro became a party to the WTO GPA and because the U.S. Trade Representative has determined that Montenegro will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice on July 10, 2015, in the **Federal Register** (80 FR 39829) waiving the Buy American Act and other discriminatory provisions for eligible products from Montenegro.

Effective August 12, 2015, New Zealand became party to the WTO GPA, and because the U.S. Trade Representative has determined that New Zealand will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice on August 12, 2015, in the **Federal Register** (80 FR 48386) waiving the Buy American Act and other discriminatory provisions for eligible products from New Zealand.

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines ''designated country'' as a WTO GPA country, a Free Trade Agreement country, a least developed country, or a Caribbean Basin country. Montenegro and New Zealand are now WTO GPA countries and are designated countries, as determined by the U.S. Trade Representative; therefore, this rule adds Montenegro and New Zealand to the list of WTO GPA countries within the definition of ''designated country'' at DFARS 252.225–7017, Photovoltaic Devices; 252.225–7021, Trade Agreements—Basic, and 252.225–7021 Trade Agreements—Alternate II; and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements—Basic, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements—Alternates I, II, and III.

II. Publication of this Final Rule for Public Comment is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is informative only. Under the rule, Montenegro and New Zealand are now WTO GPA countries and will provide appropriate reciprocal competitive procurement opportunities to United States products and services and suppliers of such products and services. As such, the rule is not expected to have a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the rule affects the certification and information collection requirement in the provisions at DFARS 252.225–7018, Photovoltaic Devices-Certificate and 252.225–7020, Trade Agreements Certificate, currently approved under OMB clearance 0704–0229 (expiring March 31, 2017, DFARS Part 225, Foreign Acquisition, and associated clauses). DFARS provisions 252.225–7018 and 252.225–7020 rely on the definition of ''designated country'' in DFARS 252.225–7017 and 252.225–7021, which now includes Montenegro and New Zealand. The impact of this rule, however, is negligible.

List of Subjects in 48 CFR Part 252 Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7017 [Amended]

■ 2. Amend section 252.225–7017, paragraph (a), in the definition of ''Designated country'' in paragraph (i), by adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand''.

252.225–7021 [Amended]

■ 3. Amend section 252.225–7021 by—

■ a. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place;

■ b. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand'';

■ c. In Alternate II:

■ i. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place; and

■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand''.

252.225–7045 [Amended]

■ 4. Amend section 252.225–7045 by—

■ a. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place;

■ b. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand'';

■ c. In Alternate I:

■ i. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place; and

■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand''.

■ d. In Alternate II:

■ i. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place; and

■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand''.

■ e. In Alternate III:

■ i. Removing the clause date ''(NOV 2014)'' and adding ''(OCT 2015)'' in its place; and

■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (i), adding, in alphabetical order, the countries of ''Montenegro'' and ''New Zealand''.

[FR Doc. 2015–27471 Filed 10–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 206, 208, 215, 216, 222, 225, 237, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows—

1. Directs contracting officers to additional DFARS Procedures, Guidance, and Information (PGI) by adding a cross reference at DFARS 201.106 to the PGI list of information collection and recordkeeping requirements that have been approved by the Office of Management and Budget for DFARS requirements;
2. Directs contracting officers to DFARS PGI coverage by adding a reference at DFARS 206.305 to provide further guidance concerning justification and approval documents;
3. Updates cross references at DFARS 208.404(a)(ii), 216.505(1), and 237.170–2(b) by removing ''217.78'' and adding ''217.7'' in each place to conform to changes made in the **Federal Register** final rule 80 FR 51750 published on August 26, 2015;
4. Removes references at DFARS 215.404–76 and DFARS 222.101–3–70 to obsolete internal DoD reporting requirements;
5. Conforms the DFARS subpart 222.13 heading to the Federal Acquisition Regulation (FAR) heading;
6. Updates, at DFARS 222.1310(a)(1), the title of FAR clause 52.222–35 to conform to the FAR title;
7. Updates hyperlinks at DFARS 225.301–4(2) and 252.225–7040; and
8. Corrects a typographical error at DFARS 225.7002–3.

List of Subjects in 48 CFR 201, 206, 208, 215, 216, 222, 225, 237, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 206, 208, 215, 216, 222, 225, 237, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 206, 208, 215, 216, 222, 225, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Add section 201.106 to read as follows:

201.106 OMB approval under the Paperwork Reduction Act.

See PGI 201.106 for a list of the information collection and recordkeeping requirements contained in this regulation that have been approved by the Office of Management and Budget.

PART 206—COMPETITION REQUIREMENTS

■ 3. Add section 206.305 to read as follows:

206.305 Availability of the justification.

See PGI 206.305 for further guidance on the requirements for preparing, obtaining approval, and posting justification and approval documents for contracts awarded using the authority of FAR 6.302–2.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.404 [Amended]

■ 4. In section 208.404, amend paragraph (a)(ii) by removing ''217.78'' and adding ''217.7'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.404–76 [Removed]

■ 5. Remove section 215.404–76.

PART 216—TYPES OF CONTRACTS

216.505 [Amended]

■ 6. In section 216.505, amend paragraph (1) by removing ''Subpart 217.78'' and adding ''subpart 217.7'' in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101–3–70 [Amended]

■ 7. In section 222.101–3–70, amend paragraph (b) by removing the last sentence in the paragraph.

■ 8. Revise the subpart 222.13 heading to read as follows:

Subpart 222.13—Equal Opportunity for Veterans

222.1310 [Amended]

■ 9. In section 222.1310, amend paragraph (a)(1), by removing ''FAR 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans'' and adding ''FAR 52.222–35, Equal Opportunity for Veterans'' in its place.

PART 225—FOREIGN ACQUISITION

225.301–4 [Amended]

■ 10. In section 225.301–4, amend paragraph (2), by—

■ a. Removing ''*http://www.dod.mil/bta/products/spot.html*'' and adding ''*https://spot.dmdc.mil*'' in its place; and

■ b. Removing ''*http://www.acq.osd.mil/log/PS/spot.html*'' and adding ''*http://www.acq.osd.mil/log/PS/ctr_mgt_accountability.html*'' in its place.

225.7002–3 [Amended]

■ 11. Amend section 225.7002–3 introductory text by removing ''223.7002–2'' and adding ''225.7002–2'' in its place.

PART 237—SERVICE CONTRACTING

237.170–2 [Amended]

■ 12. In section 237.170–2, amend paragraph (b) by removing ''Subpart 217.78'' and adding ''subpart 217.7'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7040 [Amended]

■ 13. Amend section 252.225–7040 by—

■ a. Removing the clause date ''(AUG 2015)'' and adding ''(OCT 2015)'' in its place; and

■ b. Amending paragraph (g)(2) by removing ''SPOT business rules.'' and adding ''SPOT Business Rules at *http://www.acq.osd.mil/log/PS/ctr_mgt_accountability.html*.'' in its place.

[FR Doc. 2015–27473 Filed 10–29–15; 8:45 am]

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FEDERAL REGISTER

Vol. 80 Friday,

No. 210 October 30, 2015

Part VIII

The President

Notice of October 28, 2015—Continuation of the National Emergency With Respect to Sudan

Federal Register

Vol. 80, No. 210

Friday, October 30, 2015

Presidential Documents

Title 3—

The President

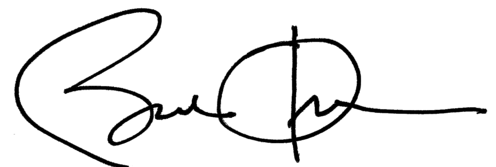
Notice of October 28, 2015

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, the President issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

The actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13067 of November 3, 1997, expanded on April 26, 2006, and with respect to which additional steps were taken on October 13, 2006, must continue in effect beyond November 3, 2015. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for one year the national emergency with respect to Sudan declared in Executive Order 13067.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 28, 2015.

[FR Doc. 2015–27929

Filed 10–29–15; 11:15 am]

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Reader Aids

Federal Register

Vol. 80, No. 210

Friday, October 30, 2015

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Public Laws Update Service (numbers, dates, etc.)	**741–6043**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

Pages	Date
59021–59548	1
59549–60026	2
60027–60274	5
60275–60510	6
60511–60794	7
60795–61086	8
61087–61272	9
61273–61716	13
61717–61974	14
61975–62428	15
62429–63070	16
63071–63408	19
63409–63666	20
63667–63888	21
63889–64304	22
64305–65120	23
65121–65604	26
65605–65880	27
65881–66412	28
66413–66780	29
66781–67260	30

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1500 61087
3002 59549

3 CFR

Proclamations:
9331 59547
9332 60025
9333 60249
9334 60257
9335 60259
9336 60261
9337 60263
9338 60265
9339 60267
9340 60787
9341 60789
9342 60791
9343 61085
9344 61973
9345 63071
9346 63073
9347 63075
9348 63077
9349 63407
9350 63887
9351 64301
9352 64303
9353 65879

Executive Orders:
10431 (superseded by EO 13709) 60793
10431 (amended by EO 13709) 60793
12829 (superseded by EO 13708) 60271
13652 (amended by EO 13708) 60271
13708 60271
13709 60793

Administrative Orders:
Memorandums:
Memorandum of September 24, 2015 60511
Memorandum of September 24, 2015 61273
Memorandum of September 29, 2015 61275
Memorandum of September 29, 2015 62429
Memorandum of October 5, 2015 65605
Memorandum of October 20, 2015 64305
Memorandum of October 18, 2015 66781
Memorandum of October 18, 2015 66783
Notices:
Notice of October 19, 2015 63665
Notice of October 21, 2015 65119
Notice of October 28, 2015 67259
Presidential Determinations:
No. 2015–13 of September 29, 2015 62431
No. 2015–14 of September 29, 2015 62433
No. 2016–01 of October 5, 2015 62435

5 CFR

531 65607
532 61277
875 66785
890 65881
950 64307
1201 66787

6 CFR

Proposed Rules:
27 62504

7 CFR

27 63889
301 59551
319 ....59557, 64307
354 ....59561, 66748
635 62439
789 63890
984 65883
987 65886
1220 63909
3430 64309

Proposed Rules:
925 ....59077, 60570
944 59077
986 66372
989 62506
1211 65972
1753 59080
1755 59080
3555 60298

8 CFR

214 63911
1003 ....59500, 59503
1240 59503
1241 59503

Proposed Rules:
214 63376
274a 63376
1001 ....59514, 61773
1003 ....59514, 61773
1103 ....59514, 61773
1212 ....59514, 61773

1292.....................59514, 61773

9 CFR

97.....................................59561
130...................................59561

10 CFR

2...........................60513, 63409
150...................................63409
430...................................62441
Proposed Rules:
429...................................64370
430 ....61131, 61996, 64370, 65169
431...................................64370

12 CFR

303...................................65889
308...................................65903
330...................................65919
334...................................65913
352...................................62443
361...................................62443
364...................................65903
370...................................65919
390...................................65612
391 ....65889, 65903, 65913
600...................................60275
700...................................66626
701...................................66626
702...................................66626
703...................................66626
713...................................66626
723...................................66626
747...................................66626
1003.................................66128
1026.................................59944
Proposed Rules:
Ch. I.................................60075
Ch. II................................60075
Ch. III...............................60075
703...................................63932

13 CFR

Proposed Rules:
107...................................60077
115...................................59667
120...................................59667
121.......................59667, 60300
123...................................63715
125...................................60300

14 CFR

Ch. I.....................60033, 63912
21.........................59021, 61975
23.....................................66788
25 ....60027, 60028, 60275
39 ....59032, 59568, 59570, 60030, 60281, 60284, 60795, 61088, 61091, 61093, 61098, 61717, 61719, 61720, 61722, 61725, 63079, 63080, 63083, 63420, 63422, 64312, 64314, 65121, 65126, 65128, 65130, 65614, 65616, 65618, 65921, 65925, 65927, 66413, 66790
45.....................................59021
71 ....59035, 59036, 60286, 60289, 60290, 62445, 62446, 62447, 62449, 62450, 62451, 63084, 63085, 63087, 63088, 63089, 63090, 63091, 63425, 63426, 64316, 64317, 64318
73.........................60528, 61727
91.....................................65621
97 ....61975, 61978, 62452, 62455
Proposed Rules:
39 ....59081, 59672, 60303, 60307, 61131, 61133, 61327, 61330, 63132, 63134, 63136, 63141, 63145, 63147, 63151, 64371, 64373, 64375, 65666, 66481, 66482, 66841
71.........................62509, 63473
73.........................60573, 63153
93.....................................60310
147...................................59674
1214.................................63474

15 CFR

730...................................61100
744.......................60529, 61100
748...................................65931
902.......................59037, 60533
950...................................63914
Proposed Rules:
774...................................61137

16 CFR

4.......................................60797
1109.................................61729
1500.................................61729
Proposed Rules:
Ch. II....................65173, 65174
1109.................................61773
1112.....................63155, 63168
1130.................................63155
1229.................................63164
1232.................................63155
1500.................................61773

17 CFR

15.....................................59575
18.....................................59575
36.....................................59575
40.....................................59575
140...................................59575
232...................................59578
Proposed Rules:
Ch. II................................65973
201.......................60082, 60091
210 ....59083, 61332, 62274
270...................................62274
274...................................62274

18 CFR

11.....................................63667
35.....................................67056

19 CFR

4...........................61278, 65134
7...........................61278, 65134
10.........................61278, 65134
12 ....60292, 61278, 65134
18.........................61278, 65134
19.........................61278, 65134
24.........................61278, 65134
54.........................61278, 65134
102.......................61278, 65134
113.......................61278, 65134
123.......................61278, 65134
125.......................61278, 65134
128.......................61278, 65134
132.......................61278, 65134
134.......................61278, 65134
141.......................61278, 65134
142.......................61278, 65134
143.......................61278, 65134
144.......................61278, 65134
145.......................61278, 65134
146.......................61278, 65134
148.......................61278, 65134
151.......................61278, 65134
152.......................61278, 65134
158.......................61278, 65134
163.......................61278, 65134
174.......................61278, 65134
181.......................61278, 65134
191.......................61278, 65134

20 CFR

404...................................63092
416...................................63092
422...................................61733
655...................................62958
Proposed Rules:
404.......................63717, 66843
416.......................63717, 66843

21 CFR

73.....................................66415
107...................................61293
510...................................61293
520...................................61293
522...................................61293
524...................................61293
556...................................61293
558.......................61293, 61298
866...................................65626
870...................................63671
890...................................61298
1308.....................65632, 65635
Proposed Rules:
101...................................63477
172...................................65978
880...................................60809
1271 ....66844, 66845, 66847, 66849, 66850

22 CFR

11.....................................64319
Proposed Rules:
21.....................................61138

23 CFR

625...................................61302

24 CFR

203...................................61980
Proposed Rules:
60.....................................59092
100...................................63720
203...................................62510
291...................................59690

25 CFR

81.....................................63094
82.....................................63094

26 CFR

1 ....60293, 61308, 65637, 66415, 66416
300...................................66792
Proposed Rules:
1 ....61332, 64378, 65670, 66485
20.....................................64378
25.....................................64378
26.....................................64378
31.....................................64378
300...................................66851
301...................................64378

27 CFR

555...................................59580
Proposed Rules:
9.......................................65670

28 CFR

2.......................................63115

29 CFR

20.....................................60797
552...................................65646
1625.................................60539
1910.................................60033
1926.................................60033
2509.................................65135
4022.................................61981
Proposed Rules:
1635.................................66853

30 CFR

917...................................63117
935...................................63120
938...................................63125
1206.................................66417
1210.................................66417
Proposed Rules:
901...................................60107
946...................................63933

31 CFR

Proposed Rules:
1010.................................60575

32 CFR

197...................................65934
236...................................59581
1701.................................63427
Proposed Rules:
188...................................61997

33 CFR

100 ....63674, 63676, 63916
117 ....60293, 60294, 61750, 62456, 62457, 63428, 63674, 63676, 63677, 63918, 63919, 64324, 65137, 65138
147.......................63674, 63676
165 ....59049, 60802, 60803, 61309, 61983, 63674, 63676, 63678, 63919, 63921, 63923, 63926, 65647

34 CFR

668.......................67126, 67204
682...................................67204
685...................................67204
Proposed Rules:
Ch. VI...............................63478

36 CFR

13.........................64325, 66417
Proposed Rules:
1.......................................65572
9.......................................65572

37 CFR

1.......................................65649
201...................................65944
380...................................59588

38 CFR

17.....................................66419
Proposed Rules:
17.....................................63480

39 CFR

20.....................................65139

111....................65149

Proposed Rules:

3050....................63482

40 CFR

9....................59593, 64064
30....................61087
31....................61087
33....................61087
35....................61087
40....................61087
45....................61087
46....................61087
47....................61087
50....................65292
51....................65292
52 ....59052, 59055, 59610, 59611, 59615, 59620, 59624, 60040, 60043, 60045, 60047, 60049, 60295, 60540, 60541, 60805, 61101, 61107, 61109, 61111, 61112, 61311, 61751, 61752, 62457, 63429, 63431, 63436, 63451, 64344, 64346, 65292, 65655, 65660
53....................65292
55....................65661
58....................65292
60....................64510, 64662
62....................65159
63....................62390, 65470
70....................64510
71....................64510
81....................59624, 60049
82....................61985
98....................64262, 64510
122....................64064
123....................64064
124....................64064
127....................64064
180 ....59627, 60545, 61118, 61122, 61125, 62462, 63680, 63683, 63686, 65964, 66795, 66801, 66805
228....................61757
261....................60052
271....................63691
403....................64064
501....................64064
503....................64064
721....................59593

Proposed Rules:

Ch. I....................60577, 60584
51....................61139
52 ....59094, 59695, 59703, 59704, 60108, 60109, 60110, 60314, 60318, 60576, 61140, 61141, 61774, 61775, 62003, 62511, 63185, 63483, 63640, 64160, 64381, 65671, 65672, 65675, 65680, 66862
55....................65683
56....................63935
60 ....61139, 64966, 65979
61....................61139
62....................64966, 65979
63....................61139
70....................60110
78....................64966, 65979
81....................61775, 63640
131....................65980
180....................63731
260....................63284
261....................63284
262....................63284
263....................63284
264....................63284
265....................63284
266....................63284
267....................63284
271....................63284, 63734
273....................63284
372....................60818

41 CFR

Proposed Rules:

102–117....................59094
102–118....................59094

42 CFR

5....................61993
137....................64353
Ch. IV....................66726
412 ....59057, 60055, 62762
418....................60069
483....................60070
495....................62762
Ch. V....................66726

Proposed Rules:

88....................65980
414 ....59102, 59386, 63484
600....................63936

43 CFR

1820....................59634

Proposed Rules:

50....................59113
3160....................61646
3170....................61646

44 CFR

13....................59549
64 ....60071, 63130, 64354, 66809
67....................65161, 65968
78....................59549
79....................59549
152....................59549
201....................59549
204....................59549
206....................59549
207....................59549
208....................59549
304....................59549
360....................59549
361....................59549

45 CFR

170....................62602
1206....................63454
1210....................63454
1211....................63454
1216....................63454
1217....................63454
1218....................63454
1220....................63454
1222....................63454
1226....................63454
2556....................63454

Proposed Rules:

1370....................61890
1630....................61142

46 CFR

2....................62466
5....................62466
11....................62466
15....................65165
107....................62466
113....................62466
114....................62466
117....................62466
125....................62466
159....................62466
162....................62466
175....................62466
180....................62466

Proposed Rules:

30....................64192
150....................64192
153....................64192

47 CFR

1....................66429, 66811
12....................60548, 62470
20....................61918, 66429
27....................66429
51....................63322
52....................66454
63....................63322
64....................61129
73....................64354, 66429
76....................59635

Proposed Rules:

1....................60825
15....................64381
25....................65174
54 ....59705, 60012, 62512
69....................59705
73....................64381
76....................59706

48 CFR

201....................67254
202....................63928, 67244
204....................63928
206....................67254
208....................67244, 67254
212....................63928, 67244
213....................67244
214....................67244
215....................67244, 67254
216....................67254
222....................67254
225....................67254
233....................67244
237....................67254
239....................63928, 67244
244....................67244
252 ....63928, 67244, 67252, 67253, 67254
925....................64361
952....................64361
970....................64361
1823....................60552
1827....................61993
1846....................60552
1852....................60552, 61993

Proposed Rules:

2....................60832
4....................60832
13....................60832
18....................60832
19....................60832
36....................60833
53....................63485
202....................61333, 63735
212....................61333, 63735
215....................61333
246....................63735
252....................61333, 63735

49 CFR

175....................66817
Ch. III....................59065
350....................59065
360....................63695
365....................59065, 63695
366....................63695
368....................63695
375....................59065
377....................59065
381....................59065
383....................59065
384....................59065
385....................59065, 63695
387....................59065, 63695
389....................59065
390....................59065, 63695
391....................59065
392....................63695
393....................59065
395....................59065, 59664
396....................59065
397....................59065
541....................60555
571....................62487
830....................61317

Proposed Rules:

195....................61610
271....................60591
393....................60592
396....................60592
571....................59132, 60320

50 CFR

17 ....59248, 59424, 59976, 60440, 60468, 66821
223....................60560
224....................60560
300 ....59037, 60533, 62488
600....................62488
622 ....59665, 60565, 62501, 65970
635....................60566
648 ....60568, 61994, 63929
660 ....61318, 61765, 62488
665....................61767, 62488
679 ....59075, 60073, 60807, 62502, 63930, 65663, 65971, 66839

Proposed Rules:

16....................67026
17 ....59858, 60321, 60335, 60754, 60834, 60850, 60962, 60990, 61030, 61568
223....................65175
224 ....62008, 65175, 65183
300 ....61146, 64382, 65683
622 ....60601, 60605, 63190
679....................66486
680....................61150, 63950

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 26, 2015

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