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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1222

**[Document Number AMS–FV–14–0082]**

## Paper and Paper-Based Packaging Promotion, Research and Information Order; Late Payment and Interest Charges on Past Due Assessments

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes late payment and interest charges on past due assessments under the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The Order is administered by the Paper and Packaging Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule implements the authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. Two additional changes are being made to reflect current practices and update the Order and regulations. This action contributes to effective administration of the program and was unanimously recommended by the Board.

**DATES:** *Effective Date:* January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; or electronic mail: *Marlene.Betts@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Order (7 CFR part 1222). The Order is authorized under the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

### Executive Order 12866 and Executive Order 13563

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

### Background

This rule prescribes late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule implements authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and will contribute to the effective administration of the program.

Section 1222.52(a) of the Order specifies that the Board's programs and expenses shall be paid by assessments on manufacturers and importers and other income or funds available to the Board. Paragraph (g) of that section specifies further that when a manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest must be prescribed in regulations issued by the Secretary. All late assessments will be subject to the specified late payment charge and interest.

The Order became effective on January 23, 2014. Assessment collection began on March 1, 2014. Manufacturers and importers must pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured or imported. For example, assessments for paper manufactured or imported during the months of January, February and March are due to the Board by April 30.

Entities that domestically manufacture or import to the United States less than 100,000 short tons of

paper and paper-based packaging in a year are exempt from paying assessments. If an entity is both a manufacturer and an importer, the entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year counts toward the 100,000 short ton exemption.

Assessment funds are used for promotion activities that are intended to benefit all industry members. Entities who fail to pay their assessments on time could reap the benefits of Board programs at the expense of others. In addition, they could utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. Thus, it is important that all assessed entities pay their assessments in a timely manner.

**Board Recommendation**

At a meeting held September 25, 2014, the Board unanimously recommended implementing the Order authority regarding late payment and interest charges. Specifically, the Board recommended that a late payment charge be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment charge will be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge will be equal to 10 percent of the assessments due before interest charges have accrued.

The Board also recommended that an interest rate of 1½ percent per month be added to the outstanding balance, including any late payment charge and accrued interest, of any accounts for which payment has not been received within 60 calendar days after the assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C is added to the Order for provisions implementing the paper and paper-based packaging Order, and a new § 1222.520 is added to Subpart C.

This rule also makes two additional changes to the Order. This rule will revise the term ''Board'' as defined in § 1222.2 from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board. This change will simplify the term and bring the Order in line with current industry use. Conforming changes will also be made to § 1222.40(a) and the heading immediately prior to this section where the term is also referenced. In addition, in § 1222.108, the OMB control number will be changed from 0581–NEW to 0581–0281, the control number assigned by the OMB.

**Final Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (manufacturers and importers) as those having annual receipts of no more than $7.0 million.

According to the Board, there are 69 manufacturers in the United States that produce the types of paper and paper-based packaging covered under the Order. Using an average price of $806 per short ton,[1] a manufacturer who produces less than about 8,680 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 8,680 short tons per year. Thus, the majority of manufacturers would not be considered small businesses.

Based on U.S. Customs and Border Protection (Customs) data, it is estimated that in 2014 there were 2,800 importers of paper and paper-based packaging. Ninety importers, or about 3 percent, imported more than $7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, all of the 20 entities that imported 100,000 short tons or more (the Order's exemption threshold) also imported more than $7.0 million worth of paper and paper-based packaging. Therefore, none of the 20 importers covered under the Order would be considered small businesses.

Based on domestic production of approximately 66.1 million short tons in 2014 and an average price of $806 per short ton, the domestic paper and paper-based packaging industry is valued at approximately $53.3 billion. According to Customs data, the value of paper and paper-based packaging imports in 2014 was about $5.9 billion.

This rule prescribes late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule will add a new § 1222.520 that will specify a late payment charge of 10 percent of the assessments due and interest at a rate of 1½ percent per month on the outstanding balance, including any late payment charge and accrued interest. This section will be included in a new Subpart C—Provisions for Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order. This action was unanimously recommended by the Board and is authorized under § 1222.52(g) of the Order and section 517(e) of the 1996 Act. In addition, two additional changes are being made to reflect current practices and update the Order and regulations. These changes are: (1) Revising the name of the Board from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board; and (2) the OMB control number will be changed from 0581–NEW to 0581–0281, the control number assigned by the OMB.

Regarding the economic impact of this rule on affected entities, this action imposes no costs on manufacturers and importers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied the same. As for the impact on the industry as a whole, this action will help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that domestically manufacture or import less than 100,000 short tons annually. It is estimated that

[1] Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2014 was approximately $806 per short ton.

24 out of the 69 domestic manufacturers, or 35 percent, produce less than 100,000 short tons per year and are thus exempt from paying assessments under the Order. Of the 2,800 importers of paper and paper packaging, it is estimated that 2,780, or 99 percent, import less than 100,000 short tons per year and are also exempt from paying assessments. Thus, about 45 domestic manufacturers and 20 importers pay assessments under the Order.

The alternative to this action would be to maintain the status quo and not impose late payment and interest charges on past due assessments. However, the Board determined that implementing these charges will help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed the late payment and interest charges applied by other research and promotion programs and concluded that a 10 percent late payment charge and interest at a rate of 1½ percent per month on the outstanding balance would be appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0281. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on manufacturers and importers of paper and paper-based packaging.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, the Board met on September 25, 2014, and unanimously made its recommendation. The Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on August 19, 2015 (80 FR 50225). The proposal was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 19, 2015, was provided to allow interested persons to submit comments. One comment was received in favor of implementing the late payment and interest charges.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

**List of Subjects in 7 CFR Part 1222**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based packaging promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1222 is amended as follows:

## PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1222 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Section 1222.2 is revised to read as follows:

**§ 1222.2 Board.**

*Board* means the Paper and Packaging Board established pursuant to § 1222.40, or such other name as recommended by the Board and approved by the Department.

■ 3. Revise the undesignated center heading preceding § 1222.40 to read as follows:

**Paper and Packaging Board**

■ 4. Amend § 1222.40 by revising the first sentence of paragraph (a) to read as follows:

**§ 1222.40 Establishment and membership.**

(a) *Establishment of the Board.* There is hereby established a Paper and Packaging Board to administer the terms and provisions of this Order. * * * * * * * * * *

■ 5. Section 1222.108 is revised to read as follows:

**§ 1222.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0281 and 0505–0001.

■ 6. Add Subpart C, consisting of § 1222.520, to read as follows:

**Subpart C—Provisions Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order**

Sec.

1222.520 Late payment and interest charges for past due assessments.

**§ 1222.520 Late payment and interest charges for past due assessments.**

(a) A late payment charge shall be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment shall be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: December 21, 2015.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2015–32448 Filed 12–23–15; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 430

**[Docket No. EERE–2014–BT–TP–0007]**

**RIN 1904–AD17**

### Energy Conservation Program: Test Procedures for Ceiling Fan Light Kits

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** On October 31, 2014, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR)

to amend the test procedures for ceiling fan light kits (CFLKs). That proposed rulemaking serves as the basis for this final rule. In this final rule, DOE updates the current test procedures by replacing references to ENERGY STAR test procedures with references to DOE lamps test procedures for medium screw base lamps and to industry test procedures for pin-based fluorescent lamps. DOE is also adding test procedures to establish an efficacy-based metric for all lamps packaged with CFLKs and for CFLKs with integrated solid-state lighting circuitry. These additional test procedures also specify that DOE lamp test procedures be used to test lamps packaged with CFLKs, and where such test procedures do not exist, lamps packaged with CFLKs be tested according to current industry test procedures for those lamps. This final rule also replaces references to superseded ENERGY STAR Program requirements with tables that contain the specific performance requirements from the ENERGY STAR documents. This final rule addresses standby and off mode energy usage for CFLKs. DOE also provides updated guidance related to accent lighting in CFLKs and the applicability of the existing energy conservation standards to accent lighting. In this final rule, DOE also reinterprets the definition of a ceiling fan to include hugger fans and clarifies that ceiling fans that produce large volumes of airflow also meet the definition. DOE is also issuing a reinterpretation as it relates to compliance with the 190 W limit requirement for CFLKs with sockets other than medium screw base and pin-based for fluorescent lamps.

**DATES:** The effective date of this rule is January 25, 2016. The final rule changes to appendix V will be mandatory for product testing starting June 21, 2016. The final rule test procedures specified by appendix V1 will be mandatory for product testing starting on the compliance date of any amended energy conservation standards (ECS) for CFLKs. Any final rule establishing amended CFLK ECS will provide notice of the required compliance date and corresponding required use of appendix V1.

The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register as of January 25, 2016.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0007.* This Web page will contain a link to the docket for this document on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1604. Email: *ceiling_fan_light_kits@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In this final rule, DOE incorporates by reference into part 430 the following industry standards:

(1) IES LM–66–14 (''IES LM–66–14''), IES Approved Method for the Electrical and Photometric Measurements of Single-Based Fluorescent Lamps, approved December 30, 2014.

(2) IES LM–79–08 (''IES LM–79–08''), IES Approved Method for Electrical and Photometric Measurements of Solid-State Lighting Products, approved December 31, 2007.

Interested persons can obtain copies of IES standards from the Illuminating Engineering Society, 120 Wall Street, Floor 17, New York, NY 10005–4001, (212) 248–5000, or *www.ies.org.*

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## I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291 *et seq.*), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering the ceiling fan light kits (CFLKs) that are the focus of this document.[2] (42 U.S.C. 6293(b)(16)(A)(ii), 6295(ff)(2)-(5))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must follow in order to produce data that is

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

used for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making other representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether products comply with any relevant standards established under EPCA. (42 U.S.C. 6295(s))

EPCA requires that test procedures for ceiling fan light kits be based on the ''ENERGY STAR® Program Requirements for CFLs'' and the ''ENERGY STAR Program Requirements for Residential Light Fixtures'' in effect as of August 8, 2005. (42 U.S.C. 6293(b)(16)(A)(ii)) DOE published a final rule in December 2006 (December 2006 final rule) and established DOE's current test procedures for ceiling fan light kits under 10 CFR part 430, subpart B, appendix V. 71 FR 71340 (Dec. 8, 2006) EPCA also provides, however, that DOE ''may review and revise'' the ceiling fan light kit test procedures. (42 U.S.C. 6293(b)(16)(B)). Accordingly, as discussed in section III.A, DOE is replacing the existing references to ENERGY STAR program requirements with direct references to the latest versions of the appropriate industry test methods.

*General Test Procedure Rulemaking Process*

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) In any rulemaking to amend a test procedure, DOE must also determine to what extent, if any, the proposed test procedure would alter the product's measured energy efficiency as determined under the existing test procedure. (42 U.S.C. 6293(e))

EPCA requires DOE, at least once every 7 years, to evaluate all covered products and either amend the test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3)) or publish a determination in the **Federal Register** not to amend them. (42 U.S.C. 6293(b)(1)(A)) DOE published a NOPR to propose amendments for its test procedures for CFLKs (October 2014 NOPR). 79 FR 64688 (October 31, 2014).

For test procedures of covered products that do not fully account for standby mode and off mode energy consumption, EPCA directs DOE to amend its test procedures to account for standby mode and off mode energy consumption, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) If integrated test procedures are technically infeasible, DOE must prescribe separate standby mode and off mode test procedures for the covered product, if technically feasible. Id.

In the October 2014 NOPR, DOE proposed amendments to the current test procedures and new test procedures that would support amendments to the CFLK energy conservation standards currently being considered by DOE. The October 2014 NOPR also proposed to replace references to ENERGY STAR performance requirements with tables that contain the specific performance requirements from the ENERGY STAR documents and proposed updated guidance related to accent lighting in CFLKs. DOE conducted a public meeting to discuss and receive comments on the October 2014 NOPR on November 18, 2014.

*Background on Related CFLK Standards Rulemaking*

EPCA, as amended, established separate energy conservation standards for three groups of CFLKs: (1) Those with medium screw base sockets, (2) those with pin-based sockets for fluorescent lamps, and (3) all other CFLKs. (42 U.S.C. 6295(ff)(2)-(4)) In a technical amendment published on October 18, 2005, DOE codified the statute's requirements for CFLKs with medium screw base sockets and CFLKs with pin-based sockets for fluorescent lamps. 70 FR 60413. For all other CFLKs, EPCA specified that the prescribed standard for these CFLKs would become effective only if DOE failed to issue a final rule on energy conservation standards for CFLKs by January 1, 2007. (42 U.S.C. 6295(ff)(4)(C)) Because DOE did not issue a final rule on standards for CFLKs by January 1, 2007, DOE published a technical amendment that codified the statute's requirements for all CFLKs other than those with medium screw base and pin-based sockets for fluorescent lamps. 72 FR 1270 (Jan. 11, 2007). DOE subsequently published another technical amendment to codify the EPCA requirement that CFLKs with sockets for pin-based fluorescent lamps be packaged with lamps to fill all sockets. 74 FR 12058 (Mar. 3, 2009).

EPCA allows DOE to amend energy conservation standards for CFLKs any time after January 1, 2010. (42 U.S.C. 6295(ff)(5)) In a separate rulemaking proceeding, DOE is proposing amending energy conservation standards for CFLKs.[3] DOE initiated that rulemaking by publishing a **Federal Register** notice announcing a public meeting and availability of the framework document. 78 FR 16443 (Mar. 15, 2013). DOE held a public meeting to discuss the framework document for the CFLK standards rulemaking on March 22, 2013. DOE issued the preliminary analysis for the CFLK energy conservation standards rulemaking on October 31, 2014. 79 FR 64712 (Oct. 31, 2014). DOE held a public meeting to discuss the preliminary analysis for the CFLK standards rulemaking on November 18, 2014. DOE subsequently issued a NOPR for the CFLK energy conservation standards rulemaking (hereafter ''CFLK ECS NOPR'') and held a public meeting on August 18, 2015. 80 FR 48624 (August 13, 2015).

## II. Synopsis of the Final Rule

This final rule amends DOE's current test procedures for CFLKs contained in 10 CFR part 430, subpart B, appendix V; 10 CFR 429.33; and 10 CFR 430.23(x). This final rule: (1) Requires that representations of efficacy, including certifications of compliance with CFLK standards, be made according to DOE lamp test procedures, where they exist, and industry test procedures where relevant DOE test procedures do not exist; (2) replaces references to superseded ENERGY STAR[4] requirements in appendix V with references to the latest versions of industry standards; and (3) for ease of reference, replaces references to ENERGY STAR requirements in existing CFLK standards contained in 10 CFR 430.32(s) with the specific requirements.

[3] DOE has published a framework document, preliminary analysis, and NOPR for amending energy conservation standards for CFLKs. Further information is available at *www.regulations.gov* under Docket ID: EERE–2012–BT–STD–0045.

[4] ENERGY STAR is a joint program of the U.S. Environmental Protection Agency (EPA) and DOE that establishes a voluntary rating, certification, and labeling program for highly energy efficient consumer products and commercial equipment. Information on the program is available at: *http://www.energystar.gov*.

To support the ongoing ECS rulemaking for CFLKs, this final rule also establishes test procedures for a single efficiency metric measured in lumens per watt (hereafter, ''efficacy''), that is applicable to all CFLKs. These procedures are set forth in a new Appendix V1. Where possible, the CFLK efficiency is determined by measuring the efficacy of the lamp(s) packaged with the CFLK (hereafter, ''lamp efficacy'') and requires the use of existing DOE lamp test procedures, so that lamps will be tested and rated in a uniform manner. Where it is technically infeasible to measure lamp efficacy (*e.g.,* for CFLKs with integrated solid-state lighting [5] circuitry), CFLK efficiency is determined by measuring the efficacy of the CFLK itself (hereafter, ''luminaire efficacy''). DOE also sets forth the test procedures for CFLKs packaged with inseparable light sources that require luminaire efficacy testing and for CFLKs packaged with lamps for which DOE test procedures do not exist in the new Appendix V1. Because these amendments will likely change the measured values required to comply with the existing CFLK standards for all CFLKs except CFLKs with medium screw base sockets, DOE is requiring the use of the new appendix V1 and corresponding updates to 10 CFR 429.33, 10 CFR 430.3 and 10 CFR 430.23(x) to be concurrent with the compliance date of any standards established by the ongoing ECS rulemaking for CFLKs. 79 FR 64712 (October 31, 2014).

In this final rule, DOE also modifies previously issued guidance regarding accent lighting in CFLKs to specify that such light sources in CFLKs must be tested and are subject to current energy conservation standards. DOE also reinterprets the EPCA definition of ceiling fan to include hugger fans and clarifies that ceiling fans that produce large volumes of airflow also meet the EPCA definition. As a result, CFLKs attached to these fans are subject to existing CFLK energy conservation standards. DOE is also clarifying its interpretation regarding compliance with the 190 W limit requirement in 10 CFR 430.32(s)(4) for CFLKs with sockets other than medium screw base and pin-based for fluorescent lamps.

In this final rule, DOE also addresses standby mode and off-mode power consumption for CFLKs. (42 U.S.C. 6295(gg)(2)(A) and (3)) In summary, DOE accounts for standby mode energy consumption of CFLKs under the efficiency metric for ceiling fans rather than under the CFLK efficiency metric.

## III. Discussion

In response to the October 2014 NOPR and in addition to comments received during the November 2014 public meeting, DOE received written comments from the American Lighting Association (ALA) and a joint comment filed on behalf of the Appliance Standards Awareness Project, the Alliance to Save Energy, the American Council for an Energy-Efficient Economy, the Natural Resources Defense Council, the Northwest Energy Efficiency Alliance, and the Northwest Power and Conservation Council (ASAP *et al.*). The issues on which DOE received comments, as well as DOE's responses to those comments and the resulting changes to the test procedures for CFLKs, are discussed in this section.

### *A. Amendments to Existing Test Procedures*

This final rule amends existing test procedures to replace references to superseded ENERGY STAR requirements in appendix V with references to existing DOE lamp test procedures or the latest versions of industry standards. As discussed in the paragraphs that follow, DOE has concluded that these changes will not affect any measurements required to comply with existing standards.

#### 1. Test Procedures for CFLKs Packaged With Medium Screw Bases

For CFLKs with medium screw base sockets, the current DOE test procedure references the ''CFL Requirements for Testing'' of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version 3.0, which in turn references the Illuminating Engineering Society of North America (IES) LM–66–00 test procedures for lamp efficacy testing. In the October 2014 NOPR, DOE proposed to replace the reference to the ENERGY STAR specification with a reference to the current DOE test procedure for medium screw base compact fluorescent lamps (located at 10 CFR 430, subpart B, appendix W). DOE notes that Appendix W currently references IES LM–66–11 and that DOE has proposed to update Appendix W to reference IES LM–66–14. (80 FR 45724, July 31, 2015). DOE received comments from ALA and from ASAP *et al.* supporting the approach to replace references to ENERGY STAR specifications with references to current DOE test procedures. (ALA, No. 6 [6] at p. 1; ASAP *et al.,* No. 5 at p. 1) Consequently, DOE is adopting the proposal without modification, which references 10 CFR 430, subpart B, appendix W for CFLKs packaged with medium screw bases.

#### 2. Test Procedures for CFLKs Packaged With Pin-Based Fluorescent Lamps

For CFLKs with pin-based sockets for fluorescent lamps, the current DOE test procedure at Appendix V references the ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' Version 4.0, which in turn references IES LM–66–00 (for compact fluorescent lamps [CFLs]) and IES LM–9–99 (for all other fluorescent lamps). In the October 2014 NOPR, DOE proposed to replace the reference to the ENERGY STAR specification with direct references to the current industry test procedures. At the time of the October 2014 NOPR, the relevant industry standards for pin-based fluorescent lamps were IES LM–66–11 and IES LM–9–09. Subsequent to the October 2014 NOPR, IES LM–66–11 was replaced with IES LM–66–14 as the latest industry version. The IES LM–66–14 update makes a number of changes, including clarifying that electrodeless CFLs are within the scope of LM–66–14. DOE notes that LM–66–11 and LM–66–14 contain the same methodology for testing compact fluorescent lamps and has concluded, based on a review of the updated test method, that there are no changes between LM–66–11 and LM–66–14 that will materially impact the measurement values of pin-based fluorescent lamps, which are tested on commercially available ballasts. In keeping with DOE's proposal from the October 2014 NOPR to reference the most current industry standards, DOE references LM–66–14 in this final rule.

In the NOPR, DOE referenced sections 4–11 of IES LM–66–11 for testing CFLKs with pin-based compact fluorescent lamps. In this final rule, DOE is referencing sections 4–6 of the updated IES LM–66–14. Further, in the NOPR, DOE incorrectly referenced sections 3–7 of IES LM–9–09 for testing CFLKs with pin-based sockets for all other types of fluorescent lamps. In this final rule, DOE is appropriately referencing sections 4–7 of the IES LM–9–09.

The ENERGY STAR program requirements referenced in the current

[5] Solid-state lighting or ''SSL'' refers to a class of lighting technologies based on semiconductor materials. Light emitting diodes (LEDs) are the most common type of SSL on the market today.

[6] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for CFLKs (Docket No. EERE–2014–BT–TP–0007), which is maintained at *www.regulations.gov.* This notation indicates that the statement preceding the reference is document number 6 in the docket for the CFLKs test procedure rulemaking, and appears at page 1 of that document.

DOE test procedures for CFLKs with pin-based sockets at Appendix V also specify that the efficacy of the lamp should be measured using the ballast with which it is packaged rather than a reference ballast. DOE noted in the October 2014 NOPR that although both IES LM–66–11 and IES LM–9–09 specify that lamps with external ballasts (*e.g.,* pin-based fluorescent lamps) be tested on a reference ballast, they also contain provisions that allow for such lamps to be tested on commercially available ballasts, rather than on a reference ballast, when it is desirable to measure the performance (*e.g.,* system efficacy) of a specific lamp ballast platform. DOE notes that IES LM–66–14 maintains this provision. Because changing the current test procedure to require measurement of pin-based fluorescent lamps on a reference ballast would result in a change in measured values, DOE proposed to specify in appendix V that system efficacy testing of pin-based fluorescent lamps be conducted with ballasts packaged with CFLKs. DOE received comments from ALA and from ASAP *et al.* supporting this approach. (ALA, No. 6 at p. 1; ASAP *et al.,* No. 5 at p. 1)

In this final rule, DOE is adopting the proposed methodology without modification by specifying in appendix V that system efficacy testing of pin-based fluorescent lamps be conducted with ballasts packaged with CFLKs.

3. Clarifications to Energy Conservation Standard Text at 10 CFR 430.32(s)

CFLK energy conservation standards are codified in 10 CFR 430.32(s). Currently the text in 10 CFR 430.32(s) refers to the superseded ENERGY STAR Program requirements for Compact Fluorescent Lamps, version 3.0, for standards applicable to CFLKs packaged with medium screw base lamps and to the superseded ENERGY STAR Program requirements for Residential Light Fixtures, version 4.0, for standards applicable to CFLKs packaged with pin-based fluorescent lamps. In the October 2014 NOPR, DOE proposed to replace the references to ENERGY STAR with tables that contain the specific performance requirements from the ENERGY STAR documents, to state more clearly the minimum requirements for these products. For CFLKs packaged with medium screw base CFLs, the requirements include efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress, and lifetime requirements. Measurements of these parameters are as defined in 10 CFR 430, subpart B, appendix W. For CFLKs packaged with medium screw base light sources other than CFLs, the requirements include efficacy requirements. For CFLKs packaged with pin-based fluorescent lamps, the requirements include system efficacy and a requirement that electronic ballasts be utilized.

ALA, the only stakeholder to comment on this proposal, agreed with DOE's approach to clarify the text specifying existing standards for CFLKs. (ALA, No. 6 at p. 6) This final rule updates 10 CFR 430.32(s) to directly specify the requirements for CFLKs with medium screw base sockets and for CFLKs with pin-based sockets for fluorescent lamps rather than by referencing ENERGY STAR documents to eliminate confusion for stakeholders.

4. Clarifications for Accent Lighting

EPCA requires that CFLKs other than those with medium screw base sockets and pin-based sockets for fluorescent lamps not be capable of operating with lamps that total more than 190 watts. (42 U.S.C. 6295(ff)(4); 10 CFR 430.32(s)(4)) In a December 6, 2006 interpretation, DOE stated that DOE does not consider ceiling fan accent lighting that is not a significant light source to be part of the 190-Watt limitation. (71 FR 71340, Dec. 8, 2006) In the October 2014 NOPR, DOE proposed to withdraw this guidance because DOE determined that the guidance requires a subjective determination of what constitutes ''a significant light source'' that could result in inconsistency in the application of CFLK standards.

While ASAP *et al.* supported DOE's proposal, noting that the proposal would more accurately represent CFLK energy consumption, ALA opposed DOE's proposal. (ASAP *et al.,* No. 5 at pp. 1–2; ALA, No. 6 at pp. 3–5) ALA claimed that DOE did not provide sufficient rationale for changing its position and also claimed that accent lighting falls outside the statutory definition of a CFLK. ALA claimed that DOE's proposed change would result in some previously unregulated products becoming covered products and that substantial lead time would be required to redesign, test, certify and label these products. ALA concluded that this would in effect constitute the establishment of a new standard for certain types of CFLKs. ALA noted that EPCA often provides substantial lead time before compliance when a new standard is required and that EPCA also requires that new standards not be amended for six years. ALA recommended that, to avoid a ''staggering'' effect, in which different types of CFLKs would have different compliance dates, DOE should make the new accent lighting guidance effective on the compliance date of the current ECS rulemaking. (ALA, No. 6 at pp. 3–5)

In response, consistent with its statements in the October 2014 NOPR, DOE has reconsidered the conclusions that led to the 2006 interpretation. DOE concluded in the 2006 rule that, because EPCA defines a ceiling fan light kit, in part, as equipment ''designed to provide light'' (42 U.S.C. 6291(50)), and because accent lighting is typically used for decorative purposes rather than to provide ''direct'' light, accent lighting is not within the EPCA definition of a CFLK. DOE also stated that it was concerned with addressing energy consumption by light sources aligned with the ''primary purpose'' of the ceiling fan light kit. For ceiling fan light kits, DOE stated that the general illumination provided by the light kit is its principal function, and thus should be subject to the 190-watt limitation. DOE believed that other ancillary lighting, such as accent lighting, serves primarily an aesthetic purpose and is therefore not part of the general illumination function of the ceiling fan light kit. DOE further concluded that not subjecting accent lighting to the 190 watt limitation was consistent with EPCA's treatment of ceiling fan light kits with medium-screw base sockets and those with pin-based sockets for fluorescent lamps. For these two types of ceiling fan light kits, DOE noted that section 325(ff) of EPCA regulates only lamps inserted into screw base or pin-based sockets, and not any accent lights otherwise incorporated into the fan. (42 U.S.C. 6295(ff)(2)–(3))

In reconsidering its conclusions from the 2006 interpretation, DOE notes that the purpose of accent lighting is to provide light. Because EPCA does not specify that only ''direct'' or ''general'' lighting fits within the definition at 42 U.S.C. 6291(50), DOE has determined that its previous conclusion was too narrow a reading of the definition of CFLK. The term ''designed to provide light'' can be interpreted to encompass accent lighting, which provides decorative light. In addition, the 190-watt limitation in 42 U.S.C. 6295(ff)(4)(C) applies to ''lamps'' to be used in a CFLK, and the term ''lamps'' does not include or refer to any language limiting its scope to direct or general lighting. Thus, the term ''lamps,'' in this provision, can be interpreted to encompass lamps or light sources used or intended to be used for accent lighting.

DOE emphasizes the stated purposes of EPCA include the conservation of

energy supplies through energy conservation programs and the improved energy efficiency of major appliances and certain other consumer products. *See generally* 42 U.S.C. 6201. A reading of 6291(50) and 6295(ff)(4)(C) that treats accent lighting the same as other uses of lighting is more consistent with these statutory purposes than the more narrow interpretations adopted by DOE in 2006. DOE further notes that many products on the market today cast doubt on important assumptions that underlay DOE's 2006 interpretation. Many of the lamps marketed as ''accent lighting'' attached to fans currently on the market are not low wattage lamps used for aesthetic purposes, but instead high wattage lamps that consumers actually use for more general lighting purposes. Up-lighting, which in 2006 DOE did not recognize as a well-defined term, is an example of this phenomenon. Lights aimed upward from a fan do not directly illuminate a room, and they are often marketed as accent lights. But the indirect illumination from an up-light, reflected from a ceiling, can be effective as the primary light source for a room, much like a torchiere—another covered product subject to a 190-Watt limitation. In general, the ways in which lighting is marketed and in which consumers use lighting show that the distinction between ''accent'' and ''direct'' lighting is much more fluid than DOE appreciated in 2006. DOE is concerned that treating as excluded from the statutory standards a wide scope of lighting that consumers use in the same way as regulated lighting undermines the stated purposes of EPCA.[7]

DOE has also found that changes in technology since 2006 have made it less important to exclude those accent lighting from the 6295(ff)(4) standard. New lighting technologies that have become common in the market since 2006 make it possible to provide substantial amounts of lighting at low wattage. Thus, the small amount of energy used by lamps that are effective only for accent lighting is not likely to be large enough to cause significant difficulty in complying with the 6295(ff)(4) energy conservation standard. DOE's reconsideration of its conclusions in the 2006 technical amendment is also consistent with DOE's concerns in the 2014 NOPR regarding the subjective determination about what constitutes a ''significant light source''. EPCA's provisions at 42 U.S.C. 6291(50) and 6295(ff)(4) are not limited to the significance or, relatedly, purpose of the light source.

In this final rule, after considering public comment, DOE is revising its interpretation of the CFLK definition to state that the requirement for a CFLK to be ''designed to provide light'' includes all light sources in a ceiling fan light kit—that is, accent lighting in addition to direct or general lighting. DOE is also revising its interpretation of 6295(ff)(4)(C) so that the 190-watt limit covers all lamps—including accent or direct—with which a CFLK is capable of operating. DOE has determined that its previous interpretations were too narrow a reading of the applicable EPCA provisions and led to subjective determinations about what constituted accent lighting that was not a ''significant light source'' subject to the standard. DOE's reinterpretations do not constitute an energy conservation standard for which 42 U.S.C. 6295(ff)(5) or 6295(m) would specify a compliance date some years from publication. These provisions apply to amended standards issued under DOE's authorities to amend EPCA standards. See 42 U.S.C. 6295(m)(4) (specifying compliance date for ''an amendment prescribed under this subsection''); 42 U.S.C. 6295(ff)(5)(B) (prescribing compliance date for ''amended standards issued under subparagraph (A)''). In this final rule, DOE is not prescribing or amending a standard using those authorities. Rather, DOE is reinterpreting the definition of ''ceiling fan light kit'' and the provision establishing the 190-watt limitation such that kits including only ''accent'' lighting will be considered CFLKs and all lamps will count toward the 190-watt limit prescribed by EPCA.

DOE recognizes that, as ALA pointed out, the change in DOE's interpretation of the statutory standard changes how the standard operates and how it affects some products. Specifically, some products currently on the market are not consistent with the 190-watt limitation because they enable use of too much energy for the light kit. DOE does not believe that consequence elevates DOE's interpretive action into an amended standard. Every interpretation of a statutory standard has an influence on how the standard operates. Administration of the appliance standards program contemplates the agency's ability to take a variety of different administrative steps that do not rise to an amendment to a standard level; to treat all interpretations as being akin to standards amendments would unnecessarily constrain DOE's ability to undertake necessary steps to implement the statutory regime effectively.

DOE further observes that the compliance date rules in 6295(ff)(5) and 6295(m) are directed specifically at standards amendments, and they address concerns specific to such amendments. EPCA gives DOE fairly wide latitude, within various constraints, to devise the standards best suited to fulfill the statutory purposes as markets and technologies evolve over time. Thus, when DOE develops a new standard, it could in principle be different in nature from the prior standards applicable to a given product. At the same time, DOE must prescribe test procedures for such a new standard. Depending on what new or amended standard DOE prescribes, working out how best to interpret and apply the standard, developing industry expertise with the test procedures, and understanding how to design products to comply with a new standard can require a substantial period of time. Not every amended standard will need the full ramp-up period, but 6295(ff)(5) and 6295(m) ensure that an extended phase-in period will be available whenever DOE prescribes a new or amended standard. By contrast, when DOE simply reinterprets an existing statutory standard, the scope of potential change is much more limited. The standard at issue is familiar and established, and the industry already has experience working with the standard. Thus, the purposes that motivate the compliance date provisions in 6295(ff)(5) and 6295(m) are much less relevant for a reinterpretation.

While DOE's reinterpretation of the CFLK definition and the 190-watt limit requirement will take effect immediately, DOE appreciates the concerns ALA has raised regarding the lead time needed for manufacturers to bring affected products into compliance with the relevant statutory standards. Specifically, ALA contends that ''the process of redesigning, obtaining regulatory approval for, and manufacturing and delivering redesigned CFLKs could take eight to sixteen months under normal circumstances. However, because much of the CFLK industry will be engaged in this process at the same time, these steps could take two years or more for a typical manufacturer.'' ALA further commented in its written comments that if DOE were to withdraw the accent lighting guidance, the effective date of this change should be at the compliance

[7] For these same reasons, DOE's previous focus on consistency with EPCA regulation of only those lamps inserted into screw base or pin-based sockets, pursuant to 42 U.S.C. 6295(ff)(2)–(3), and not any accent lighting otherwise incorporated into the fan, is also an overly-narrow reading of 42 US.C. 6295(ff)(4). The difference between ''accent'' and ''direct'' lighting is not as clear a distinction as DOE believed in 2006, and is not really analogous to the quite clear distinction between lights that have screw bases and those that do not.

date for the amended CFLK efficiency standards. In its upper bound estimate, ALA factored in delays due to redesign, backlog at third-party test laboratories, and/or shipping delays for fans, light kits, or components. (ALA, No. 6 at p. 4)

In addition, at the November 2014 public meeting, a representative of Emerson Electric estimated that it would take 120 days minimum to redesign and requalify new imports for safety organizations such as UL, and requested that it be afforded about six months. Further Emerson Electric stated that 30 days lead time was enough for existing inventory of CFLKs that would be reinterpreted as accent lighting to be sold. (Emerson Electric, Public Meeting Transcript, No. 4 at p. 76) Also, noting that DOE's proposed reinterpretation of ceiling fans (see section III.A.5) affects light kits Westinghouse stated that 30 days would not be sufficient to review the CFLK product lines, to modify or build materials, and add wattage limiters in applicable products. (Westinghouse, Public Meeting Transcript, No. 4 at pp. 73–74) The Minka Group provided further information regarding timing noting that products shipped from Asia realistically require 30 days to reach the U.S. with possible additional times for customs. (The Minka Group, Public Meeting Transcript, No. 4 at p. 83)

In its consideration of these comments, DOE recognizes that re-designing, testing and rating, manufacturing, and shipping fan lighting products that comply with the 190-watt limit will take many months. DOE relied on estimates provided by manufacturers to determine an appropriate lead time to bring products that are compliant with this requirement to market. DOE used ALA's upper bound estimate for each of the processes ALA identified to get a conservative lead time estimate as well as taking the manufacturer-specific feedback into consideration. ALA estimated up to six months for redesign, up to 4 months for testing and rating, and up to 6 months for production and shipping, resulting in a total upper bound lead time of 16 months under normal conditions (ALA, No. 6 at p. 4) DOE understands that delays may occur if a large part of the industry is conducting these activities simultaneously. In response to the October 2014 ceiling fan test procedure NOPR, ALA submitted a similar comment that estimated the total upper bound lead time to be 18 months including testing and rating delays. (ALA, Docket Number EERE–2013–BT–TP–0050, No. 8 at p. 2) Based on these estimates, DOE believes 18 months is an appropriate lead time because it is consistent with ALA's upper bound lead time estimate including extra time for delays. DOE notes that other manufacturers' estimated lead times were as short as 6 months. In addition, varying manufacturer estimates for lead times indicates to DOE that not all manufacturers in the industry will be conducting the same activities and vying for the resources necessary to do so simultaneously. Accordingly, while DOE's interpretation will be effective immediately, DOE will not assert civil penalty authority for violations of the applicable standards arising as a result of this guidance before June 26, 2017. After June 26, 2017, DOE will begin enforcing the 190-watt standard in accordance with the interpretations announced here. In enforcing the standard, DOE will take into consideration a manufacturer's efforts to come into compliance during the 18-month period.

5. Clarification of the Statutory Definition of a Ceiling Fan

In a test procedure rulemaking for ceiling fans, DOE also proposed to reinterpret the definition of a ceiling fan. 79 FR 62521 (Oct. 17, 2014). EPCA defines a ceiling fan as a ''nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.'' 42 U.S.C. 6291(49). DOE previously interpreted the definition of a ceiling fan such that it excluded certain types of ceiling fans commonly referred to as hugger fans. 71 FR 71343 (Dec. 8, 2006). Hugger ceiling fans are typically understood to be set flush to the ceiling (*e.g.,* mounted without a downrod). The previous interpretation exempted hugger fans from standards on the basis that they are set flush to the ceiling. DOE has reconsidered the validity of this distinction and has determined that ''suspended from the ceiling'' does not depend upon whether the unit is mounted with a downrod. The concept of suspension does not require any length between the object and the point of support. This interpretation more accurately reflects the statutory definition and does not draw an artificial distinction between fans that serve the same functional purpose and are both marketed as ceiling fans. Hugger fans generally are indistinguishable from other types of ceiling fans in that they move air via rotation of fan blades, are intended to improve comfort, and are rated on their ability to move air (as measured in cubic feet per minute). Consistent with that observation, the current principal industry standard, CAN/CSA–C814–10, includes hugger fans alongside downrod fans.

DOE notes that the current market includes fans that DOE did not account for in its 2006 interpretation. The market includes a range of a multi-mount ceiling fans, *i.e.,* fans which can be attached to the ceiling in either the hugger or the downrod configurations. The existence of these products supports DOE's equivalent treatment of hugger and downrod fans. Such multi-mount ceiling fans are also considered ''ceiling fans'' under the statutory definition.

DOE also proposed that fans capable of producing large volumes of airflow meet the definition of a ceiling fan. 79 FR 62521 (Oct. 17, 2014).

In response to the Framework Document for the ceiling fan energy conservation standards rulemaking, several commenters, including the ALA, the Appliance Standards Awareness Project (ASAP), the National Consumer Law Center (NCLC), the National Resources Defense Council (NRDC), and the Northwest Energy Efficiency Alliance (NEEA) supported DOE's proposed reinterpretation. (ALA, No. 39[8] 4 at p. 3; ASAP–NCLC–NEEA–NRDC, No. 14[8] at p. 4) DOE received no comments objecting to its proposed reinterpretation.

While ALA supported DOE's proposal, ALA also commented that the effective date of this change should be at the compliance date for amended ceiling fan energy conservation standards. (ALA, No. 8[9] at pp. 1–3) ALA claimed, as above for CFLKs with accent lighting, that DOE's proposed change would result in some previously unregulated products becoming covered products and that substantial lead time would be required to redesign, test, and label these products. ALA concluded that the reinterpretation would in effect constitute the establishment of a new standard for hugger ceiling fans. ALA asserted that EPCA often provides substantial lead time before compliance when a new standard is required and that EPCA requires that new standards not be amended for six years. ALA asserted that if the reinterpretation effective date was not timed to coincide with the compliance date of DOE's concurrent ECS rulemaking, the result would be a ''staggering'' effect in which

[8] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[9] This document was submitted to the docket of DOE's rulemaking to develop test procedures for ceiling fans (Docket No. EERE–2013–BT–TP–0050).

different types of ceiling fans would have different compliance dates. (*Id.*)

In this final rule, after considering public comment, DOE reinterprets the definition of ceiling fan to include hugger fans. In addition, under this interpretation, any ceiling fan sold with the option of being mounted in either a hugger configuration or a standard configuration is included within the ''ceiling fan'' definition. For the reasons stated in the October 2014 ceiling fan test procedure proposed rule, DOE also finalizes its interpretation to include fans capable of producing large volumes of airflow. Under DOE's reinterpretation, DOE considers the following fans to be covered under the definition of ''ceiling fan'' in 10 CFR 430.2:

1. Fans suspended from the ceiling using a downrod or other means of suspension such that the fan is not mounted directly to the ceiling;

2. Fans suspended such that they are mounted directly or close to the ceiling;

3. Fans sold with the option of being suspended with or without a downrod; and

4. Fans capable of producing large volumes of airflow.

As in the discussion on accent lighting, DOE notes that its reinterpretation does not constitute an ''amended standard'' for which the compliance-date provisions of 42 U.S.C. 6295(ff)(6) and 6295(m) would apply. In this final rule, DOE is not prescribing a standard; rather, DOE is reinterpreting the definition of ''ceiling fan'' to include hugger fans and fans capable of producing large volumes of airflow. The changes in interpretation of the ceiling fan definition discussed above result in the applicability of the design standards set forth in EPCA at 42 U.S.C. 6295(ff)(1) to these types of fans immediately. In addition, because ceiling fan light kits are defined as ''equipment designed to provide light from a ceiling fan that can be integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan'' (42 U.S.C. 6291(50)(A) and (B)), DOE further affirms that light kits attached to any of the four fan types listed above are covered ceiling fan light kits under this change in interpretation.

DOE understands the concerns raised regarding the need for additional time for redesigning, testing, certifying and labeling hugger fans and light kits attached to those fans. In the test procedure rulemaking for ceiling fans, ALA submitted comments similar to those in the present rulemaking, contending that this process could take eight to sixteen months ''under normal circumstances,'' and as much as two years or more due to the simultaneous activities of the ceiling fan industry. In its upper bound estimate, ALA factored in delays due to redesign, backlog at third-party test laboratories, and/or shipping delays for fans, light kits, or components. (ALA, No. 8[9] at pp. 1–2) At a November 2014 public meeting held in the ceiling fan test procedure rulemaking, representatives from Emerson Electric and Westinghouse Lighting stated that between 18 and 24 months would be required. (Emerson Electric, Public Meeting Transcript, No. 5 [9] at p. 31; Westinghouse Lighting, Public Meeting Transcript, No. 5 [9] at pp. 29–30) [10] Additionally, in response to the ceiling fan test procedure supplemental NOPR (SNOPR) published on June 3, 2015, ALA noted that the ceiling fan reinterpretation would result in compliance burdens for CFLKs sold with hugger ceiling fans, which would become subject to CFLK standards under the ceiling fan reinterpretation. 80 FR 31487. ALA specifically noted that some of these CFLKs would require redesign to include a 190 watt power limiting device that is not currently required for such CFLKs, as well as retesting and re-rating. ALA stated that this compliance process would require between eighteen and twenty-four months of lead time for the industry. (ALA, No. 14 at pp. 3–4) Additionally, in response to the ceiling fan test procedure SNOPR from June 2015, ALA commented that there may be confusion regarding the compliance date for certain ceiling fans, as a result of the ceiling fan reinterpretation. (*Id.*) ALA expressed concern that ceiling fans that the industry has referred to previously as hugger fans but that do not meet DOE's new definition of a hugger ceiling fan may require immediate compliance with any applicable standards.

In its consideration of these comments, DOE recognizes that re-designing, testing and rating, and producing and shipping fan lighting products that comply with the 190-watt limit will take many months. DOE relied on estimates provided by manufacturers to determine an appropriate lead time to bring products that are compliant with this requirement to market (see section III.A.4). Based on these estimates, DOE has concluded that 18 months is an appropriate lead time because it is consistent with ALA's upper bound lead time estimate including extra time for delays. DOE notes that other manufacturers' estimated lead times as short as 6 months. In addition, varying manufacturer estimates for lead times indicates to DOE that not all manufacturers in the industry will be conducting the same activities and vying for the resources necessary to do so simultaneously.

While DOE's interpretation is effective immediately, DOE will not assert civil penalty authority for violations of the applicable standards arising as a result of this interpretation before June 26, 2017. DOE expects all hugger ceiling fans and any accompanying light kits to be certified compliant by June 26, 2017, and annually thereafter. DOE will take into consideration a manufacturer's efforts to come into compliance during the 18-month period.

6. Clarifications on 190 W Limit Requirement

Current standards require that CFLKs with medium screw base sockets, or pin-based sockets for fluorescent lamps, be packaged with lamps that meet certain efficiency requirements. All other CFLKs must not be capable of operating with lamps that exceed 190 W. In the final rule for energy conservation standards for certain CFLKs published on January 11, 2007, DOE interpreted this 190 W limitation as a requirement to incorporate an electrical device or measure that ensures the light kit is not capable of operating with a lamp or lamps that draw more than a total of 190 W. 72 FR 1270, 1271 (Jan. 11, 2007).

During the November 2014 public meeting, ALA and several of their members sought clarifications from DOE on the applicability of the 190 W limit for CFLKs with integrated SSL components. Specifically, these stakeholders suggested that CFLKs with only integrated SSL components are inherently power limiting and that consumers would be unable to modify these CFLKs in a manner that increases their operating power beyond their rated wattage. These stakeholders suggested that DOE consider clarifying that CFLKs that only have drivers and/or light sources that are not designed to be consumer replaceable with total rated wattages below 190 W be considered to be in compliance with the requirement that they not be capable of operating with lamps that total more than 190 W, as specified in 42 U.S.C. 6295(ff)(4)(C).

In the CFLK ECS NOPR, DOE proposed that CFLKs with SSL circuitry

[10] This document was submitted to the docket of DOE's rulemaking to develop test procedures for ceiling fans (Docket No. EERE–2013–BT–TP–0050).

that (1) have SSL drivers and/or light sources that are not consumer replaceable, (2) do not have both an SSL driver and light source that are consumer replaceable, (3) do not include any other light source, and (4) include SSL drivers with a maximum operating wattage of no more than 190 W are considered to incorporate some electrical device or measure that ensures they do not exceed the 190 W limit.[11] In the CFLK ECS NOPR, DOE proposed to incorporate the clarification in that rulemaking and make it effective 30 days after the publication of the final rule amending CFLK energy conservation standards. DOE discusses the stakeholder comments received regarding this proposal in the paragraphs below.

DOE received several comments regarding the consumer replaceable requirements in its proposal in the CFLK ECS NOPR. Specifically, ALA requested that these requirements be removed and that DOE adopt the interpretation that CFLKs with integrated SSL components and SSL drivers with a maximum operating wattage of no more than 190 W and no other light source comply with EPCA's power limit requirement. (ALA, No. 115 [12] at p. 4)

ALA asserted its proposed clarification was consistent with section 325(ff)(4) of EPCA[13] because consumers will not modify such CFLKs as they do not have a desire to increase the wattage. ALA explained that due to the technology's efficiency, CFLKs with integrated SSL components are designed to operate at wattages less than 50 W for residential and commercial applications and 190 W would produce too much light. (ALA, No. 115 [12] at p. 4) Fanimation and Lutron agreed consumers would not increase total wattage at or above 190 W as they would not need the associated substantial light output. (Fanimation, Public Meeting Transcript, No. 112 [12] at pp. 18–20; Lutron, No. 113 at p. 2) Fanimation further concluded that the requirement of non-consumer replaceable was unnecessary. (Fanimation, Public Meeting Transcript, No. 112 [12] at pp. 18–20)

ASAP agreed that the lumen output at a wattage limit of 190 W would be too high for residential applications. However, ASAP asked if such a high-lumen CFLK could be developed for commercial applications in which CFLKs are mounted higher and require greater levels of light output. (ASAP, Public Meeting Transcript, No. 112 [12] at p. 16) Westinghouse responded that even LEDs used in high bay applications, whether integrated or replaceable, do not draw 190 W. Westinghouse stated that while unlikely, if 15,000 or 18,000 lumens were needed it would be in a commercial application and likely not attached to a ceiling fan. If it existed, such a high-lumen CFLK would more likely be attached to an industrial ceiling fan. (Westinghouse, Public Meeting Transcript, No. 112 [12] at p. 17)

Fanimation pointed out that a non-consumer replaceable requirement would create maintenance difficulties for consumers as they would not be able to replace failed components, in particular the light source. (Fanimation, Public Meeting Transcript, No. 112 [12] at pp. 18–20) ALA stated that because CFLKs with integrated SSL components are typically packaged and sold together with a ceiling fan, failure of a non-consumer replaceable SSL component in a CFLK would require the consumer to replace the entire ceiling fan/CFLK combination. Therefore, the use of consumer replaceable SSL components in CFLKs provides value by allowing the consumer to fix failed components instead of replacing the entire ceiling fan/CFLK. (ALA, No. 115 [12] at p. 5) Westinghouse added that for products under warranty manufacturers do not want to replace the entire fan if just the light source fails. Westinghouse commented that ENERGY STAR has emphasized that non-consumer replaceable technologies are not preferred because consumers do not like discarding the whole CFLK and this is a topic of ongoing discussion for manufacturers that offer CFLKs as an accessory product or participate in the ENERGY STAR program. (Westinghouse, Public Meeting Transcript, No. 112 [12] at p. 24)

Even if consumers did want to increase the wattage, ALA stated there are no commercially available components that would allow them to do so without destructive disassembly/assembly. (ALA, No. 115 [12] at p. 4) Westinghouse commented that they had conducted a search and found no LED drivers that could operate at or above the required wattage threshold. (Westinghouse, Public Meeting Transcript, No. 112 [12] at pp. 15–16)

ASAP stated that they interpreted consumer replaceable to refer to components not requiring tools or removal of the fan from mounting. Therefore, ASAP found that the non-consumer replaceable requirement would prevent incandescent light sources from being used in CFLKs. (ASAP, Public Meeting Transcript, No. 112 [12] at pp. 20–21) Fanimation responded that an incandescent light source could not be used in a CFLK with SSL technology. (Fanimation, Public Meeting Transcript, No. 112 [12] at p. 23) Westinghouse clarified that consumers would either be replacing the light source and not the driver or, more likely, the light source and the driver in the form of a plug-and-play wire/nut connection. In both scenarios there would be no ANSI socket in which a consumer could screw in an incandescent lamp. Therefore, while Westinghouse did not object to the non-consumer replaceable requirement, it was not required because the circuitry and design of such CFLKs would be self-limiting. (Westinghouse, Public Meeting Transcript, No. 112 [12] at pp. 22–23)

Regarding designs of CFLKs with integrated SSL components, Fanimation stated that a non-consumer replaceable requirement would put design restrictions on CFLKs. (Fanimation, Public Meeting Transcript, No. 112 [12] at pp. 18–20) Progress Lighting pointed out that the existing requirement for a wattage limit already applies to CFLKs with consumer replaceable components and if the consumer over-lamps them they destroy the limiter making them unusable. (Progress Lighting, Public Meeting Transcript, No. 112 [12] at p. 32)

In a joint comment, ASAP, the American Council for an Energy-Efficient Economy, the National Resources Defense Council, and the Northwest Energy Efficiency Alliance (''Joint Comment'') and CA IOUs generally agreed that CFLKs meeting the four conditions specified in DOE's proposed interpretation would not exceed 190 W. The Joint Comment, however, did not agree with stating that all CFLKs with integrated SSL components should be determined to not exceed the 190 W limit requirement as this could exclude products such as CFLKs with integrated SSL components and another lighting technology. (Joint Comment, No. 117 [12] at p. 2) Lutron stated it would be sufficient to state that the 190 W limit requirement is satisfied by CFLKs with either non-replaceable SSL lamps or light sources utilizing an LED driver rated less than 190 W.

[11] DOE proposed these four conditions in the preamble of the ECS NOPR. However, the proposed associated regulatory text incorrectly specified that *both* the SSL light source and SSL driver had to be non-consumer replaceable.

[12] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fan light kits (Docket No. EERE–2012–BT–STD–0045).

[13] Section 325(ff)(4) of EPCA specifies the requirements for CFLKs that do not have medium screw base sockets or pin base socket for fluorescent lamps, including that they not be capable of operating with lamps that total more than 190 watts.

Lutron noted that substitution with less efficacious lamps is not possible in either case. (Lutron, No. 113 [12] at p. 2) If DOE does not wish to adopt ALA's proposal of removing the consumer replaceable conditions, ALA preferred the interpretation of the wattage limiter requirement for CFLKs with integrated SSL components that would allow at least either the SSL driver or SSL light source to be consumer replaceable as opposed to neither. (ALA, No. 115 [12] at pp. 5–6)

In consideration of these comments, DOE concludes that the high efficacies of SSL technology would produce lumen output equivalent to the lumen output of a CFLK with incandescent lamps operating at 190 W but at a much lower wattage. DOE concluded that if a consumer were to increase the operating wattage of a CFLK with SSL technology to a significantly higher wattage than that of the SSL system initially sold with the CFLK, the consumer would need to change the driver. DOE concluded this is unlikely because significant increases in the rated wattage of drivers result in significant size increases in the drivers, and the physical constraints of the CFLK designs would not allow for such modification.

In this final rule, DOE is modifying its interpretation of what meets the 190 W limit requirement. DOE has determined that CFLKs with both consumer and non-consumer replaceable SSL components meet the requirement under certain conditions. The CFLKs must use only SSL technology (such as LED technology). The CFLKs must not use an SSL lamp with an ANSI standard base (such as a medium screw base LED lamp) because the consumer could easily remove and replace the lamp with one using less efficient (and typically higher wattage) lighting technology. Thus, DOE has determined that CFLKs that (1) include only SSL technology; (2) do not include an SSL lamp with an ANSI standard base, and (3) include only SSL drivers with a combined maximum operating wattage of no more than 190 W meet the 190 W limit requirement. For example, CFLKs with integrated SSL circuitry or with other SSL products, such as LED light engines, would meet the limit requirement assuming the CFLKs do not also include other non-SSL lighting technologies, do not also include lamps with ANSI standard bases, and do not include SSL drivers that, combined, can exceed 190 W.

Fanimation asked if DOE would be defining the term ''consumer replaceable'' in support of the proposed clarification regarding CFLKs with integrated SSL technology. (Fanimation, Public Meeting Transcript, No. 112 [12] at pp. 18–20) Further, if DOE continues to reference consumer replaceable in the proposed clarification, ALA requested that DOE clarify that a ''consumer replaceable'' SSL component means a component that can be obtained in the consumer marketplace, installed in an existing product by a consumer with no specialized technical knowledge or specialized tools, and installed without invalidating the product warranties of the existing CFLK or other SSL components. (ALA, No. 115 [12] at pp. 5–6) In response to these comments, DOE is not specifying an interpretation of CFLKs with SSL technology that meet the 190 W limit requirement that prohibits consumer replaceable components. DOE is also not defining the term ''consumer replaceable'' in this final rule (see section III.B.2 for further details).

ALA requested that DOE make the clarification of the wattage limiter requirement for CFLKs with integrated SSL components effective as soon as possible, either in a separate notice or in this final rule. (ALA, No. 115 [12] at p. 4, 6)

DOE is issuing this interpretation of the 190 W limit requirement for CFLKs with SSL technology meeting the conditions described in this section effective with publication of the final rule in the **Federal Register**.

*B. Amendments To Implement an Efficacy Metric for All CFLKs*

In the October 2014 NOPR, DOE proposed to amend the CFLK test procedures to expand the efficacy metric to all CFLKs in support of the amended standards being considered as part of the ongoing ECS rulemaking for CFLKs. In the ECS rulemaking, DOE proposed to require that all CFLKs meet minimum efficacy requirements, as is currently required for CFLKs with medium screw base sockets and pin-based sockets for fluorescent lamps. 80 FR 48624 (August 13, 2015).

In the October 2014 NOPR, DOE proposed to amend 10 CFR 429.33 to provide sampling requirements and amend 10 CFR 430.23 to reference lamp test procedures to measure the lamp efficacy of each basic model of a lamp type packaged with a CFLK and to measure the luminaire efficacy of each basic model of CFLK with integrated SSL circuitry.[14] Appendix V currently provides test procedures in support of existing energy conservation standards, which are in terms of lamp efficacy for CFLKs packaged with medium screw base lamps, system efficacy for CFLKs packaged with pin-based fluorescent lamps, and a maximum wattage requirement for CFLKs packaged with all other lamp types. In the October 2014 NOPR, DOE proposed amendments to appendix V to provide test procedures supporting existing energy conservation standards for CFLKs packaged with pin-based fluorescent lamps and proposed amending 10 CFR 430.23 to reference DOE lamp test procedures supporting existing energy conservation standards for CFLKs packaged with medium screw base lamps. Appendix V can be used to demonstrate compliance with existing standards until the time at which compliance with amended standards would be required. Appendix V1, proposed in the October 2014 NOPR, and the proposed amendments to 10 CFR 430.23 provide test procedures in support of amended energy conservation standards, which would be in terms of lamp efficacy for CFLKs packaged with all lamp types and in terms of luminaire efficacy for those with integrated SSL circuitry.

The following sections describe the change in metric for certain CFLKs and how DOE will require measuring lamp and luminaire efficacy to demonstrate compliance with any amended standards.

1. Metric

In the October 2014 NOPR, DOE proposed amendments to the CFLK test procedures that would establish a single metric (efficacy) to quantify the energy efficiency of CFLKs. To the extent technologically feasible, DOE proposed to use lamp efficacy as the measure of efficiency. DOE noted that for CFLKs with integrated solid-state lighting circuitry, it may not be technologically feasible to measure lamp efficacy and thus proposed using luminaire efficacy as the metric for these CFLKs.

ASAP *et al.* supported DOE's proposal to use efficacy as a metric for all CFLKs. ASAP *et al.* further supported DOE's proposal to use lamp efficacy for lamps packaged with CFLKs, to use luminaire efficacy for CFLKs with integrated SSL circuitry, and to use both lamp and luminaire efficacy for CFLKs that included both replaceable lamps and integrated SSL circuitry. (ASAP *et al.,* No. 5 at p. 1)

[14] In the October 2014 NOPR, DOE defined a CFLK with integrated SSL circuitry as a CFLK that has light sources, drivers, or intermediate circuitry, such as wiring between a replaceable driver and a replaceable light source, that are not consumer replaceable. For this final rule, DOE is also including heat sinks as part of the definition of CFLK with integrated SSL circuitry.

ALA supported DOE's proposal to use efficacy as a metric for all CFLKs. ALA also supported DOE's proposal to use lamp efficacy where technically feasible, noting that this approach would minimize the testing burden for CFLK manufacturers. (ALA, No. 6 at p. 1) ALA opposed DOE's proposal to use luminaire efficacy as a metric for CFLKs with integrated SSL circuitry, however. (ALA, No. 6 at pp. 1–3) ALA claimed that using luminaire efficacy would be more burdensome than using lamp efficacy. ALA noted that a luminaire efficacy metric would require testing every variant of a luminaire cover used to make a CFLK with integrated SSL circuitry, resulting in more required testing than analogous CFLKs with replaceable lamps. ALA further claimed that using luminaire efficacy would unfairly disadvantage CFLKs with integrated SSL circuitry (particularly those with dark-colored or opaque luminaire covers) as compared to other CFLK types. This is because the luminaire efficacy testing would account for optical losses from covers included with CFLKs that have integrated SSL circuitry, while the lamp efficacy testing DOE proposed for all other CFLKs would not account for any CFLK covers.

ALA suggested alternatives to luminaire efficacy of CFLKs with integrated SSL circuitry. ALA suggested it may be possible to conduct IES LM–79–08 testing on SSL light engines after they are removed from the CFLK. ALA also proposed an alternative compliance path by which CFLKs with integrated SSL circuitry would be subject to a design standard that they not exceed 50 W rather than be subject to a luminaire efficacy-based metric and test procedure. Lastly, ALA suggested that if DOE does adopt a luminaire efficacy metric for CFLKs with integrated SSL circuitry, DOE should modify its approach so that testing is conducted without luminaire covers to eliminate the need for multiple tests associated with different covers, as well as to make test results more comparable to other CFLK types.

Regarding ALA's comments that it may be possible to make accurate and consistent light source efficacy measurements on the integrated SSL light engines in CFLKs using LM–79–08, DOE notes that the scope of LM–79–08 is limited to SSL products that do not require external circuits or heat sinks. In some CFLK designs, it may be possible for all SSL light sources, drivers, heat sinks, and intermediate circuitry to be removed as an integrated unit. This integrated unit would either meet DOE's definition of an integrated LED lamp or the definition of ''Other SSL products'' as defined in appendix V1. In these cases, test methods proposed in the October 2014 NOPR would allow manufactures to utilize lamp efficacy measurements rather than luminaire efficacy measures.

DOE notes that IES LM–82–12, ''Characterization of LED Light Engines and LED Lamps for Electrical and Photometric Properties as a Function of Temperature,'' may be applicable to situations where SSL light engines are used in combination with additional heat sinks that are not removable from the CFLK. However, test procedures based on measurements of integrated SSL light engines would present challenges for testing reproducibility. Because LED modules and drivers are highly integrated into the CFLK in some CFLK designs, it may be technically infeasible to test without destructively altering the product being tested. Because the design of integrated SSL CFLKs can vary considerably, it would also be difficult to develop uniform and reproducible procedures to ensure that all relevant components from an integrated SSL CFLK are consistently included in testing. Additionally, an approach utilizing LM–82–12 may increase testing burden. LM–82–12 requires using LM–79–08 to make photometric measurements at multiple temperatures to characterize how performance of the device varies over a range of temperatures. The stabilized temperature of an LED light engine must then be measured inside a luminaire (*e.g.,* CFLK) and compared to the LM–82–12 results to estimate the photometric performance of the LED light engine in that luminaire. Because of the temperature control requirements specified in LM–82–12 and the multiple photometric measurements per LM–79–08, LM–82–12 testing is relatively expensive. Consequently, few LED light engines have LM–82–12 test results. Given the relatively higher testing costs of LM–82–12, the likelihood that few LED light engines considered for CFLKs would already have LM–82–12 results, and the fact that additional testing to monitor LED light engine temperatures inside the CFLKs would be required, DOE has concluded that requiring LM–82–12 testing could increase testing burden over luminaire testing with LM–79–08.

DOE has also declined to adopt ALA's suggestion to utilize a 50 W design standard for CFLKs with integrated SSL circuitry, instead of requiring use of the proposed test procedure to determine compliance of these CFLKs with a luminaire efficacy-based metric. DOE's test method meets the requirements of 42 U.S.C. 6293(b)(3), which requires DOE to establish test procedures that are ''designed to produce test results which measure energy-efficiency . . . during a representative average use cycle or period of use'' that ''shall not be unduly burdensome to conduct.'' ALA's suggestion may limit energy consumption but does not provide consumers with representative energy efficiency of the product.

As an alternative, DOE reviewed ALA's recommendation to allow CFLKs with integrated SSL circuitry to be tested without covers. The suggested approach could potentially reduce testing burden associated with certifying multiple models of CFLKs with integrated SSL circuitry that are functionally identical except for the use of different covers. DOE agrees that measurements of CFLKs with integrated SSL circuitry without covers may be more comparable to CFLKs with consumer replaceable lamps. DOE has added a definition for ''covers'' to this test procedure to clarify which components can be removed before testing. Specifically, covers are defined as, ''materials used to diffuse or redirect light produced by an SSL light source in CFLKs with integrated SSL circuitry.'' DOE allows for the removal of consumer replaceable lenses or diffusers from CFLKs with integrated SSL circuitry prior to luminaire efficacy testing. DOE does not allow for the removal of any other components of CFLKs with integrated SSL circuitry (*e.g.,* removable housing or electronic components, hardware utilized to secure covers, etc.) nor does DOE allow for removing covers that are not consumer replaceable (*e.g.,* require destructive disassembly) prior to luminaire efficacy testing. DOE notes that manufacturers of CFLKs with integrated SSL circuitry that have consumer replaceable covers may measure luminaire efficacy with the cover installed if they wish.

DOE notes that utilizing an efficacy metric for all CFLK types will likely increase testing burden in some cases—particularly for CFLKs that are currently subject to the wattage limiter requirement. But the wattage limiter would no longer be needed for compliance with the proposed standards,[15] and the added costs associated with testing are likely to be offset by savings associated with the

[15] Documents related to the ongoing energy conservation standards rulemaking for ceiling fan light kits can be found in docket ID EERE–2012–BT–STD–0045. The proposed standards can be found in the notice of proposed rulemaking, available at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0045-0109.*

removal of the wattage limiter. See section IV.B for a more detailed discussion of how increased testing costs are likely to be offset by those savings.

2.Test Procedure

In the October 2014 NOPR, DOE proposed to reference existing DOE test procedures and to reference industry standard test procedures only where DOE test procedures do not exist. With the exception of ALA's comment about the use of luminaire efficacy as a metric (discussed in section III.B.1), ALA and ASAP *et al.* both agreed with DOE's proposal to reference existing DOE test procedures and to reference current industry standard test procedures where DOE test procedures do not currently exist. Table 1 summarizes the test procedures that will be required for CFLKs based on the lighting technology that they use. As discussed in section III.B.1, CFLKs with integrated SSL circuitry that have consumer replaceable covers may be tested without covers but must otherwise be measured according to the test method in sections 2.0–9.2 of IES LM 79–08. CFLKs that utilize multiple lighting technologies will be subject to all applicable test procedures (*e.g.,* a CFLK with both integrated SSL circuitry and consumer replaceable CFLs would be subject to luminaire efficacy testing with the CFLs removed, measured according to IES LM–79–08, and the CFLs would be subject to lamp efficacy test procedures, measured according to appendix W).

For a CFLK that utilizes only consumer replaceable lamps, manufacturers must measure the lamp efficacy of and certify each basic model of lamp packaged with the CFLK. For any CFLK with only integrated SSL circuitry, manufacturers must measure the luminaire efficacy of and certify the CFLK. For any CFLK that includes both consumer replaceable lamps and integrated SSL circuitry, manufacturers must measure the lamp efficacy of and certify each basic model of lamp packaged with the CFLK and must measure the luminaire efficacy and certify the CFLK with all consumer replaceable lamps removed.

In the NOPR, DOE proposed a definition for the term ''consumer replaceable.'' However, DOE has determined this term is self-explanatory and a definition is not required. Therefore, in this final rule, DOE is not adopting a definition for ''consumer replaceable.''

TABLE 1—TEST PROCEDURES FOR CFLKS BASED ON LIGHTING TECHNOLOGY

| Lighting technology | Lamp or luminaire efficacy measured | Referenced test procedure |
|---|---|---|
| Compact fluorescent lamps (CFLs) | Lamp Efficacy | Appendix W to Subpart B of 10 CFR 430. |
| General service fluorescent lamps (GSFLs) | Lamp Efficacy | Appendix R to Subpart B of 10 CFR 430. |
| Incandescent lamps | Lamp Efficacy | Appendix R to Subpart B of 10 CFR 430. |
| Other (non-CFL and non-GSFL) fluorescent lamps | Lamp Efficacy | IES LM–9–09, sections 4–7. |
| Integrated LED lamps | Lamp Efficacy | To be determined.* |
| All Other SSL products | Lamp Efficacy | IES LM–79–08, sections 2–9.2. |
| CFLKs with integrated SSL circuitry | Luminaire Efficacy | IES LM–79–08, sections 2–9.2. |

*There is currently an open rulemaking to establish test procedures for integrated LED lamps. DOE is reserving certain paragraphs in the CFLK test procedure to reference any final test procedure for integrated LED lamps.

*C. Standby Mode and Off Mode*

DOE believes that CFLKs do not consume power in off mode, and that only CFLKs offering the functionality of a wireless remote control may consume power in standby mode. Because the standby sensor and controller nearly always provide functionality shared between the ceiling fan and the CFLK, DOE proposed in the October 2014 NOPR to account for the energy consumption in standby mode under the ceiling fan efficiency metric rather than under the CFLK efficiency metric. ALA, the only stakeholder to comment on the proposal, agreed with DOE's approach to account for standby power usage in the ceiling fan test procedure rather than in the CFLK test procedure. (ALA, No. 6 at p. 6) Therefore, DOE maintains this approach in this final rule.

*D. Effective Date and Compliance Date for Amended Test Procedure*

The effective date for this final rule is 30 days after publication in the **Federal Register**. Representations of energy efficiency or consumption must be based on the amended test procedure in appendix V as of 180 days after publication of the test procedure final rule in the **Federal Register**. Representations of energy efficiency or consumption must be based on appendix V1 not later than the compliance date of any amended standards from the ongoing ECS rulemaking for CFLKs. Manufacturers are permitted to make representations based on testing in accordance with appendix V1 prior to the compliance date of such standards, if such representations demonstrate compliance with any amended energy conservation standards. Manufacturers must make any representations with respect to energy use or efficiency in accordance with whichever version is selected for testing.

DOE's updated guidance for CFLKs with accent lighting and reinterpretation of the ceiling fan definition is effective immediately. However, DOE will not assert civil penalty authority for violations of the applicable standards arising as a result of the interpretive changes before June 26, 2017.

DOE's interpretation of the 190 watt limiter requirement prescribed in the standards set forth in 10 CFR 430.32(s)(4) is also effective immediately.

## IV. Procedural Issues and Regulatory Review

*A. Review Under Executive Order 12866*

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The final rule prescribes the test procedure amendments that would be used to determine compliance with energy conservation standards for CFLKs.

DOE analyzed the burden to small manufacturers in both the context of the modifications to the existing CFLK test procedures made in appendix V and associated CFRs, as well as in the context of the test procedures to implement an efficacy metric for all covered CFLKs in appendix V1 and amended associated CFRs. With respect to amendments to existing CFLK test procedures, DOE determined that these changes will not have a material impact on small U.S. manufacturers because the changes will not alter the test procedures themselves, but rather, how they are referenced. With respect to test procedures to implement an efficacy metric for all covered CFLKs, however, DOE found that because the amendments will require efficiency performance testing of certain CFLKs that had not required testing previously, all manufacturers, including a substantial number of small manufacturers, may experience a financial burden associated with new testing requirements. While most CFLK manufacturers will likely be able to utilize lamp testing already conducted by lamp manufacturers for certification of most CFLKs, based on the similar assessment DOE made at the time of the NOPR, DOE prepared an IRFA for this rulemaking, which was included in the October 2014 NOPR and a copy was also transmitted to the Chief Counsel for Advocacy of the Small Business Administration for review. DOE did not receive any comments specifically on the IRFA from stakeholders or from the SBA. Stakeholder comments received on the economic impacts of the proposed rule have been addressed elsewhere in the preamble. The FRFA set forth below, which describes the potential impacts on small businesses associated with CFLK testing requirements, incorporates the IRFA while updating the analysis for consistency with the shipments estimates in the ongoing CFLK and ceiling fan energy conservation standard rulemakings.

1. Need for and Objectives of the Rule

A statement of the need for and objectives of the rule is stated elsewhere in the preamble and not repeated here.

2. Significant Issues Raised by Public Comment and any Changes Made in the Proposed Rule

Comments on the economic impacts of the proposed rule and DOE's responses to those comments are provided elsewhere in the preamble and not repeated here. As noted above, DOE updated its analysis for this rule consistent with the shipments estimates in the ongoing CFLK and ceiling fan energy conservation standard rulemakings. DOE modified the proposed rule based on stakeholder comments related to economic impacts. Specifically, as discussed in detail in the preamble, DOE clarified that the 190 W limit requirement is met by CFLKs that (1) include only SSL technology; (2) do not include an SSL lamp with an ANSI standard base, and (3) include only SSL drivers with a combined maximum operating wattage of no more than 190 W. DOE also specified that CFLKs with integrated SSL circuitry could be tested without removable optical covers. These changes are expected to reduce the overall economic impact of the rule.

3. Response to any Comments filed by the SBA

The Chief Counsel for Advocacy of the SBA did not provide any comments on this rule.

4. Estimate of Small Entities to Which the Rule Will Apply

The Small Business Administration (SBA) has set a size threshold for manufacturers, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* CFLK manufacturing is classified under NAICS code 335210,[16] ''Small Electrical Appliance Manufacturing.'' SBA sets a threshold of 750 employees or less for an entity to be considered a small business for this category. This threshold includes all employees in a business' parent company and any other subsidiaries.

To identify small CFLK manufacturers, DOE used feedback from manufacturer interviews and results from an industry characterization analysis, which consists of the market and technology assessment, manufacturer interviews, and publicly available information. DOE then reviewed these data to determine whether the entities met the SBA's definition of a ''small business manufacturer'' of CFLKs and screened out companies that do not offer products subject to this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated. Based on this review, and using data on the companies for which DOE was able to obtain information on the numbers of employees, DOE identified 27 small business CFLK manufacturers [17] in the U.S.

5. Description and Estimate of Compliance Costs

DOE has determined that total CFLK testing costs for small business manufacturers of CFLKs may increase based on changes to the size of the market of covered ceiling fan light kits

[16] Although NAICS 335121, ''Residential Electric Lighting Fixture Manufacturing,'' which has a small business threshold of 500 employees, could also apply to CFLK manufacturers, DOE chose a NAICS code that applied to both ceiling fans and light kits because CFLK manufacturers are generally also ceiling fan manufacturers. DOE notes that the use of NAICS code 335210 in this analysis results in more manufacturers being considered small businesses than an analysis based on NAICS code 335121 would have.

[17] The term ''manufacturers'' is used in this section to include companies that act as importers or labelers of CFLKs.

as a result of clarifications to the statutory definition of a ceiling fan. As a result of the reinterpretation of the definition of ceiling fans to include hugger ceiling fans, products that provide light from hugger fans meet the EPCA definition of CFLKs (42 U.S.C. 6291(50)) and, therefore, are subject to CFLK standards. This reinterpretation effectively increases the size of the CFLK market by approximately 50 percent. Manufacturers of hugger fans may use different CFLK models on their hugger fans than on their other ceiling fans, increasing the number of CFLK models that will require testing. The impact of the hugger fan reinterpretation on ceiling fan light kit testing costs is accounted for in this rule by factoring in a 50 percent increase in shipments due to the inclusion of CFLKs attached to hugger fans. Conversely, DOE's clarification that ceiling fans that produce large volumes of airflow meet the statutory definition of a ceiling fan is not expected to have an impact of the size of the CFLK market, because ceiling fan light kits are almost never sold with ceiling fans of that type. DOE's clarification on the use of accent lighting may lead to an increase in testing burden in some cases but DOE believes only a small fraction of the CFLK market will be impacted based on reviewing product offerings from manufacturer literature.

Based on the analysis described in the remainder of this section, DOE expects the new test procedures to implement an efficacy metric for all covered CFLKs to increase direct testing costs to small CFLK manufacturers. Because compliance with the proposed standards [15] would satisfy the 190 watt limitation without the need for a wattage limiter, however, DOE expects that the savings from eliminating the wattage limiters for all CFLKs other than those with medium screw base sockets and pin-based sockets for fluorescent lamps will likely more than offset these costs. DOE's analysis shows that, in sum, typical small manufacturers are likely to benefit financially from the proposed changes to the test procedures, as detailed below.

DOE requires testing each basic model of a product to establish compliance with energy conservation standards. Products included in a single basic model must have essentially identical electrical, physical, and functional characteristics that affect energy efficiency. Because the efficiency of CFLKs with integrated SSL circuitry is based on luminaire efficacy, variation in light kit designs will likely impact efficiency and result in a greater number of basic models for these types of CFLKs. As noted in section III.B.1, CFLK manufacturers may test CFLKs with integrated SSL circuitry without covers, in part to reduce testing burden. This allows CFLKs with integrated SSL circuitry that are identical expect for the use of different covers to be classified as the same basic model. For CFLKs with consumer replaceable lamps, efficiency is based on lamp efficacy and will likely not be impacted by the design of the light kit, and thus the number of basic models may be limited for these types of CFLKs. Because these CFLKs require lamp testing, changes in luminaire optics, like lens choice, will not affect the measured efficacy, and therefore would not require a new basic model. For these CFLKs, manufacturers will be able to limit the testing burden by using the same lamp model for many CFLK models and/or by obtaining appropriate lamp test results from their lamp supplier(s).

In the sections below, DOE provides an assessment test burden due to the change in test procedures. To provide a framework for DOE's analysis, Table 2 summarizes the market share of different CFLK types and describes how they would be affected by the changes in testing requirements. The assessment reflects the size and composition of a CFLK market which includes CFLKs attached to hugger fans and therefore accounts for the testing costs associated with such CFLKs. The market share projections in Table 2 are for the expected compliance year of the ongoing ECS rulemaking for CFLKs (2019) as estimated in the CFLK ECS NOPR. 80 FR 48624 (August 13, 2015). These market shares reflect DOE's reinterpretation of the definition of ceiling fan to include hugger fans.

TABLE 2—PROJECTIONS OF CFLK MARKET SHARES IN 2019

| CFLK type * | Percent of market in 2019 | Current testing requirement | Future testing requirement | New testing costs? | Savings from removal of wattage limiter under proposal? |
|---|---|---|---|---|---|
| CFLKs with medium screw base sockets. | 89% | 100% lamp efficacy ..... | 100% lamp efficacy ..... | No ..... | No. |
| All Other CFLKs ..... | 11% | None ..... | 34% lamp efficacy ..... | Potentially ** ..... | Yes. |
| | ..... | ..... | 66% luminaire efficacy | Yes ..... | Yes. |

* CFLKs with pin-based sockets are not included in this analysis because their market share is insignificant, at less than 1 percent.

** While most lamps with sockets other than medium screw base sockets will be subject to new DOE testing requirements, many of these lamps are already being testing by lamp manufacturers. In these cases, there would be no additional testing costs as CFLK manufacturers will be able to use lamp manufacturers' test reports.

As shown in Table 2, the new test procedures do not affect testing burden for CFLKs with medium screw base sockets, because no new testing requirements are required for these CFLKs. DOE assumes that 66 percent of CFLKs with socket types other than medium screw base will transition to CFLKs with integrated SSL circuitry (requiring luminaire efficacy measurements) by 2019, while the remaining 34 percent will transition to CFLKs requiring lamp efficacy measurements.[18]

The degree to which testing costs are offset by savings from the elimination of the wattage limiter depends significantly on the number of CFLKs produced per basic model. That is, testing costs are fixed per basic model, but the costs associated with the wattage limiter increase in direct proportion with the total number of CFLKs subject to the requirement. DOE estimates that small manufacturers typically produce about 5,900 CFLKs per basic model per

[18] For the NOPR analysis, DOE used the Bass diffusion curve developed in the *Energy Savings Potential of Solid-State Lighting in General Illumination Applications* (2012) report for general service lamps (GSLs) to estimate the market share apportioned to LEDs. DOE assumed the adoption of LEDs in the CFLK market would trail behind adoption of LED technology in the GSL market by 3.5 years. In the NOPR analysis, DOE's LED incursion curve for CFLKs results in a market share of 14% for all LED CFLKs in 2019. DOE assumed, based on lack of available information to suggest otherwise, that half of the LED CFLKs in 2019 (*i.e.,* 7% of the entire CFLK market, or 66% of the 11% of CFLKs that do not have medium screw base sockets) would have integrated SSL circuitry.

year, and that they are likely to see a net financial benefit from the proposed changes provided that they produce more than approximately 1,000 CFLK units per basic model.

In summary, DOE notes that the estimated savings of the new test procedures greatly exceed the estimated costs to small manufacturers. While these estimates are based on a number of projections and assumptions that have inherent uncertainties, given the degree to which projected savings exceed projected costs, DOE concludes that the new test procedures, which implement an efficacy metric for all covered CFLKs, will not increase compliance costs for small manufacturers of CFLKs.

6. Description of the Steps Taken To Minimize Significant Economic Impact on Small Entities

DOE considered alternatives to the test procedures for CFLKs with integrated SSL circuitry to determine if it was feasible to measure lamp efficacy rather that luminaire efficacy. Specifically, DOE explored the possibility of testing the consumer replaceable SSL light sources and drivers for CFLKs with integrated SSL circuitry rather than testing the entire CFLK. DOE explored the possibility of adopting LM–82–12 for CFLKs with integrated SSL circuitry. Such a method would potentially reduce testing costs (particularly if the same LED module and driver were used in multiple basic models of CFLKs) and would yield test procedures more analogous to the test procedures proposed for all other CFLK types. DOE has concluded that this approach is not technically feasible, however, because: (1) DOE cannot be certain that test results of the LED module and driver would accurately represent the performance of the system when it was installed in the CFLK because the CFLK could provide heat sinking to the LED module in a manner that affected performance; and (2) it is not clear that it would be possible to test for compliance without destructively altering the product being tested because in some CFLK designs, LED modules and drivers are highly integrated into the CFLK. Furthermore, DOE was not able to determine if such an approach would increase or decrease testing burden.

DOE also considered alternatives to the new test procedures for measuring lamp efficacy. Specifically, DOE considered maintaining the current design standard that requires wattage limiters for certain types of CFLKs. As discussed previously, DOE concluded that the new test procedures would not increase compliance costs and are in fact more likely to decrease compliance cost because of the cost savings from eliminating wattage limiter costs.

*C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of CFLKs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CFLKs. *See generally* 10 CFR part 429. The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*D. Review Under the National Environmental Policy Act of 1969*

In this final rule, DOE amends its test procedure for CFLKs to more accurately measure the energy consumption of these products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

When reviewing existing regulations or promulgating new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and

burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined these requirements do not apply because the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of CFLKs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The final rule incorporates testing methods contained in the following commercial standards: IES LM–66–2014, ''IES Approved Method Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps'' and IES LM–79–2008, ''IES Approved Method Electrical and Photometric Measurements of Solid-State Lighting Products.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

*M. Description of Materials Incorporated by Reference*

In this final rule, DOE is incorporating by reference the following industry standards: (1) IES LM–66–14 (''IES LM–66–14''), IES Approved Method for the Electrical and Photometric Measurements of Single-Based

Fluorescent Lamps, and (2) IES LM–79–08 (''IES LM–79–08''), IES Approved Method for Electrical and Photometric Measurements of Solid-State Lighting Products. IES LM–66–14 and IES LM–79–08 are industry accepted test procedures for measuring the performance of single-based fluorescent lamps and solid-state lighting products, respectively. The test procedure in this final rule references various sections of IES LM–66–14 and IES LM–79–08, which specify the test apparatus, general instructions, and procedure for measuring system efficacy. The standards are readily available on the IES Web site at *http://www.ies.org/store/*.

*N. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

**List of Subjects**

*10 CFR Part 429*

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

*10 CFR Part 430*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 15, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Section 429.33 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 429.33 Ceiling fan light kits.**

(a) *Determination of represented value.* Manufacturers must determine represented values, which includes certified ratings, for each basic model of ceiling fan light kit in accordance with following sampling provisions.

(1) The requirements of § 429.11 are applicable to ceiling fan light kits, and

(2) For each basic model of ceiling fan light kit, the following sample size requirements are applicable to demonstrate compliance with the January 1, 2007 energy conservation standards:

(i) For ceiling fan light kits with medium screw base sockets that are packaged with compact fluorescent lamps, determine the represented values of each basic model of lamp packaged with the ceiling fan light kit in accordance with § 429.35.

(ii) [Reserved]

(iii) For ceiling fan light kits with pin-based sockets that are packaged with fluorescent lamps, determine the represented values of each basic model of lamp packaged with the ceiling fan light kit in accordance with the sampling requirements in § 429.35.

(iv) For ceiling fan light kits with medium screw base sockets that are packaged with incandescent lamps, determine the represented values of each basic model of lamp packaged with the ceiling fan light kit in accordance with § 429.27.

(v) For ceiling fan light kits with sockets or packaged with lamps other than those described in paragraphs (a)(2)(i), (ii), (iii), or (iv) of this section, each unit must comply with the applicable design standard in § 430.32(s)(4) of this chapter.

(3) For ceiling fan light kits required to comply with amended energy conservation standards, if established:

(i) Determine the represented values of each basic model of lamp packaged with each basic model of ceiling fan light kit, in accordance with the specified section:

(A) For compact fluorescent lamps, § 429.35;

(B) For general service fluorescent lamps, § 429.27;

(C) For incandescent lamps, § 429.27;

(D) [Reserved]

(E) For other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), § 429.35; and

(F) [Reserved]

(ii) Determine the represented value of each basic model of integrated SSL circuitry that is incorporated into each basic model of ceiling fan light kit by randomly selecting a sample of sufficient size and testing to ensure that any represented value of the energy efficiency of the integrated SSL circuitry basic model is less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and $x_i$ is the $i^{th}$ sample; Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from appendix A to subpart B).

* * * * *

(c) *Rounding requirements.* Any represented value of initial lamp efficacy of CFLKs as described in paragraph (a)(3)(i)(E); system efficacy of CFLKs as described in paragraph (a)(2)(iii); luminaire efficacy of CFLKs as described in paragraph (a)(3)(ii) of this section must be expressed in lumens per watt and rounded to the nearest tenth of a lumen per watt.

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS.

■ 3. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.3 is amended by:
■ a. Removing paragraph (m)(2);
■ b. Redesignating paragraphs (m)(3), (m)(4) and (m)(5) as (m)(2), (m)(3) and (m)(4) respectively;
■ c. Removing from paragraph (o)(2) ''appendix R'' and adding in its place, ''appendices R, V, and V1'';
■ d. Adding new paragraphs (o)(8) and (o)(9);
■ e. Removing paragraph (v)(1);
■ f. Redesignating paragraph (v)(2) as (v)(1) and reserving paragraph (v)(2).

The additions read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(o) * * *

(8) IES LM–66–14, (''IES LM–66–14''), IES Approved Method for the Electrical

and Photometric Measurements of Single-Based Fluorescent Lamps, approved December 30, 2014; IBR approved for appendix V to subpart B.

(9) IES LM–79–08, (''IES LM–79–08''), IES Approved Method for the Electrical and Photometric Measurements of Solid-State Lighting Products, approved December 31, 2007; IBR approved for appendix V1 to subpart B.

* * * * *

■ 5. Section 430.23 is amended by revising paragraph (x) to read as follows:

**§ 430.23 Test procedures for the measurement of energy and water consumption.**

* * * * *

(x) *Ceiling fan light kits.* (1) For each ceiling fan light kit that is required to comply with the energy conservation standards as of January 1, 2007:

(i) For a ceiling fan light kit with medium screw base sockets that is packaged with compact fluorescent lamps, measure lamp efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress test, and time to failure in accordance with paragraph (y) of this section.

(ii) [Reserved]

(iii) For a ceiling fan light kit with pin-based sockets that is packaged with fluorescent lamps, measure system efficacy in accordance with section 4 of appendix V of this subpart.

(iv) For a ceiling fan light kit with medium screw base sockets that is packaged with incandescent lamps, measure lamp efficacy in accordance with paragraph (r) of this section.

(2) For each ceiling fan light kit that is required to comply with amended energy conservation standards, if established:

(i) For a ceiling fan light kit packaged with compact fluorescent lamps, measure lamp efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress test, and time to failure in accordance with paragraph (y) of this section for each lamp basic model.

(ii) For a ceiling fan light kit packaged with general service fluorescent lamps, measure lamp efficacy in accordance with paragraph (r) of this section for each lamp basic model.

(iii) For a ceiling fan light kit packaged with incandescent lamps, measure lamp efficacy in accordance with paragraph (r) of this section for each lamp basic model.

(iv) [Reserved]

(v) For a ceiling fan light kit packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with other SSL products (not integrated LED lamps) or with integrated SSL circuitry, measure efficacy in accordance with section 3 of appendix V1 of this subpart for each lamp basic model or integrated SSL basic model.

* * * * *

■ 6. Appendix V to subpart B of part 430 is revised to read as follows:

## Appendix V to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits With Pin-Based Sockets for Fluorescent Lamps

Prior to June 21, 2016, manufacturers must make any representations with respect to the energy use or efficiency of ceiling fan light kits with pin-based sockets for fluorescent lamps in accordance with the results of testing pursuant to this Appendix V or the procedures in Appendix V as it appeared at 10 CFR part 430, subpart B, Appendix V, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2015. On or after June 21, 2016, manufacturers must make any representations with respect to energy use or efficiency of ceiling fan light kits with pin-based sockets for fluorescent lamps in accordance with the results of testing pursuant to this appendix to demonstrate compliance with the energy conservation standards at 10 CFR 430.32(s)(3).

Alternatively, manufacturers may make representations based on testing in accordance with appendix V1 to this subpart, provided that such representations demonstrate compliance with the amended energy conservation standards. Manufacturers must make all representations with respect to energy use or efficiency in accordance with whichever version is selected for testing.

*1. Scope:* This appendix contains test requirements to measure the energy performance of ceiling fan light kits (CFLKs) with pin-based sockets that are packaged with fluorescent lamps.

*2. Definitions*

2.1. *Input power* means the measured total power used by all lamp(s) and ballast(s) of the CFLK during operation, expressed in watts (W) and measured using the lamp and ballast packaged with the CFLK.

2.2. *Lamp ballast platform* means a pairing of one ballast with one or more lamps that can operate simultaneously on that ballast. Each unique combination of manufacturer, basic model numbers of the ballast and lamp(s), and the quantity of lamps that operate on the ballast, corresponds to a unique platform.

2.3. *Lamp lumens* means a measurement of lumen output or luminous flux measured using the lamps and ballasts shipped with the CFLK, expressed in lumens.

2.4. *System efficacy* means the ratio of measured lamp lumens to measured input power, expressed in lumens per watt, and is determined for each unique lamp ballast platform packaged with the CFLK.

*3. Test Apparatus and General Instructions:*

The test apparatus and instructions for testing pin-based fluorescent lamps packaged with ceiling fan light kits that have pin-based sockets must conform to the following requirements:

| | |
|---|---|
| Any lamp satisfying this description: | must be tested on the lamp ballast platform packaged with the CFLK in accordance with the requirements of: |
| Compact fluorescent lamp | sections 4–6 of IES LM–66–14 (incorporated by reference, see § 430.3) |
| Any other fluorescent lamp | sections 4–7 of IES LM–9–09 (incorporated by reference, see § 430.3) |

*4. Test Measurement and Calculations:* Measure system efficacy as follows and express the result in lumens per watt:

| Lamp type | Method |
|---|---|
| Compact fluorescent lamp | Measure system efficacy according to section 6 of IES LM–66–14 (incorporated by reference; see § 430.3). Use of a goniophotometer is not permitted. |
| Any other fluorescent lamp | Measure system efficacy according to section 7 of IES LM–9–09 (incorporated by reference; see § 430.3). Use of a goniophotometer is not permitted. |

■ 7. Appendix V1 is added to subpart B of part 430 to read as follows:

**Appendix V1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Other SSL Lamps (not Integrated LED Lamps), or With Integrated SSL Circuitry**

**Note:** Any representations about the energy use or efficiency of any ceiling fan light kit packaged with fluorescent lamps other than compact fluorescent lamps or general service fluorescent lamps, packaged with SSL products other than integrated LED lamps, or with integrated SSL circuitry made on or after the compliance date of any amended energy conservation standards must be based on testing pursuant to this appendix. Manufacturers may make representations based on testing in accordance with this appendix prior to the compliance date of any amended energy conservation standards, provided that such representations demonstrate compliance with the amended energy conservation standards.

*1. Scope:* This appendix establishes the test requirements to measure the energy efficiency of all ceiling fan light kits (CFLKs) packaged with fluorescent lamps other than compact fluorescent lamps or general service fluorescent lamps, packaged with SSL products other than integrated LED lamps, or with integrated SSL circuitry.

*2. Definitions*

2.1. *CFLK with integrated SSL circuitry* means a CFLK that has SSL light sources, drivers, heat sinks, or intermediate circuitry (such as wiring between a replaceable driver and a replaceable light source) that are not consumer replaceable.

2.2. *Covers* means materials used to diffuse or redirect light produced by an SSL light source in CFLKs with integrated SSL circuitry.

2.3. *Other (non-CFL and non-GSFL) fluorescent lamp* means a low-pressure mercury electric-discharge lamp in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including but not limited to circline fluorescent lamps, and excluding any compact fluorescent lamp and any general service fluorescent lamp.

2.4. *Other SSL products* means an integrated unit consisting of a light source, driver, heat sink, and intermediate circuitry that uses SSL technology (such as light-emitting diodes or organic light-emitting diodes) and is consumer replaceable in a CFLK. The term does not include LED lamps with ANSI-standard bases. Examples of other SSL products include OLED lamps, LED lamps with non-ANSI-standard bases, such as Zhaga interfaces, and LED light engines.

2.5. *Solid-State Lighting (SSL)* means technology where light is emitted from a solid object—a block of semiconductor—rather than from a filament or plasma, as in the case of incandescent and fluorescent lighting. This includes inorganic light-emitting diodes (LEDs) and organic light-emitting diodes (OLEDs).

*3. Test Conditions and Measurements*

For any CFLK that utilizes consumer replaceable lamps, measure the lamp efficacy of each basic model of lamp packaged with the CFLK. For any CFLK only with integrated SSL circuitry, measure the luminaire efficacy of the CFLK. For any CFLK that includes both consumer replaceable lamps and integrated SSL circuitry, measure both the lamp efficacy of each basic model of lamp packaged with the CFLK and the luminaire efficacy of the CFLK with all consumer replaceable lamps removed. Take measurements at full light output. Do not use a goniophotometer. For each test, use the test procedures in the table below. CFLKs with integrated SSL circuitry and consumer replaceable covers may be measured with their covers removed but must otherwise be measured according to the table below.

| Lighting technology | Lamp or luminaire efficacy measured | Referenced test procedure |
|---|---|---|
| Other (non-CFL and non-GSFL) fluorescent lamps | Lamp Efficacy | IES LM–9–09, sections 4–7.* |
| Other SSL products | Lamp Efficacy | IES LM–79–08, sections 2–9.2.* |
| CFLKs with integrated SSL circuitry | Luminaire Efficacy | IES LM–79–08, sections 2–9.2. |

* (incorporated by reference, see § 430.3)

■ 8. Section 430.32 is amended by revising paragraphs (s)(2), (3), and (4) to read as follows:

**§ 430.32 Energy and water conservation standards and their compliance dates.**

* * * * *

(s) * * *

(2) Ceiling fan light kits manufactured on or after January 1, 2007 with medium screw base sockets must be packaged with medium screw base lamps to fill all sockets. These medium screw base lamps must—

(i) Be compact fluorescent lamps that meet or exceed the following requirements or be as described in paragraph (s)(2)(ii) of this section:

| Factor | Requirements |
|---|---|
| Rated Wattage (Watts) & Configuration [1] | Minimum Initial Lamp Efficacy (lumens per watt) [2] |
| *Bare Lamp:* | |
| Lamp Power <15 | 45.0 |
| Lamp Power ≥15 | 60.0 |
| *Covered Lamp (no reflector):* | |
| Lamp Power <15 | 40.0 |
| 15≤Lamp Power <19 | 48.0 |
| 19≤Lamp Power <25 | 50.0 |
| Lamp Power ≥25 | 55.0 |
| *With Reflector:* | |
| Lamp Power <20 | 33.0 |
| Lamp Power ≥20 | 40.0 |
| Lumen Maintenance at 1,000 hours | ≥ 90.0% |
| Lumen Maintenance at 40 Percent of Lifetime | ≥ 80.0% |
| Rapid Cycle Stress Test | Each lamp must be cycled once for every 2 hours of lifetime. At least 5 lamps must meet or exceed the minimum number of cycles. |
| Lifetime | ≥ 6,000 hours for the sample of lamps. |

[1] Use rated wattage to determine the appropriate minimum efficacy requirements in this table.

[2] Calculate efficacy using measured wattage, rather than rated wattage, and measured lumens to determine product compliance. Wattage and lumen values indicated on products or packaging may not be used in calculation.

(ii) Be light sources other than compact fluorescent lamps that have lumens per watt performance at least equivalent to comparably configured compact fluorescent lamps meeting the energy conservation standards in paragraph (s)(2)(i) of this section.

(3) Ceiling fan light kits manufactured on or after January 1, 2007 with pin-based sockets for fluorescent lamps must use an electronic ballast and be packaged with lamps to fill all sockets. These lamp ballast platforms must meet the following requirements:

| Factor | Requirement |
|---|---|
| System Efficacy Per Lamp Ballast Platform in Lumens Per Watt (lm/w) | ≥ 50 lm/w for all lamps below 30 total listed lamp watts.<br>≥ 60 lm/w for all lamps that are ≤ 24 inches and<br>≥ 30 total listed lamp watts.<br>≥ 70 lm/w for all lamps that are > 24 inches and<br>≥ 30 total listed lamp watts. |

(4) Ceiling fan light kits manufactured on or after January 1, 2009 with socket types other than those covered in paragraphs (s)(2) or (3) of this section, including candelabra screw base sockets, shall be packaged with lamps to fill all sockets and shall not be capable of operating with lamps that total more than 190 watts.

* * * * *

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**BILLING CODE 6450–01–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1026

**RIN 3170–AA19**

### 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; Official interpretations; Correction.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) is making technical corrections to Regulation Z (Truth in Lending) and the Official Interpretations of Regulation Z. These corrections republish certain provisions of Regulation Z and the Official Interpretations that were inadvertently removed from or not incorporated into the Code of Federal Regulations by the ''Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)'' final rule (TILA–RESPA Final Rule).

**DATES:** These corrections are effective on December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Paul Ceja, Senior Counsel and Special Advisor, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In November 2013, pursuant to sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] the Bureau issued the TILA–RESPA Final Rule, combining certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan.[2] On January 20, 2015, the Bureau issued the ''Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)'' final rule (Amendments).[3] On July 21, 2015, the Bureau issued a final rule to delay the effective date of the TILA–RESPA Final Rule and Amendments to October 3, 2015, and to finalize certain technical amendments and corrections.[4]

The publication of the TILA–RESPA Final Rule in the **Federal Register** resulted in several unintended deletions of existing regulatory text from Regulation Z and the Official Interpretations (commentary) in the Code of Federal Regulations (CFR) and, in one case, the omission of regulatory language in the TILA–RESPA Final Rule from the CFR. To correct the CFR, the Bureau is now republishing the deleted and omitted text, consistent with the Bureau's intent in the TILA–RESPA Final Rule.

Specifically, this final rule makes the following corrections to reinsert existing regulatory text that was inadvertently deleted from Regulation Z and its commentary:

- Amends § 1026.22(a)(5) to restore subparagraphs (i) and (ii).
- Amends the commentary to § 1026.17 at paragraph 17(c)(1)–2 to restore subparagraphs i, ii, and iii.
- Amends commentary paragraph 17(c)(1)–4 to restore subparagraphs i.A, and i.B.
- Amends commentary paragraph 17(c)(1)–10 to restore introductory text and subparagraphs iii, iv, and vi.
- Amends commentary paragraph 17(c)(1)–11 to restore subparagraphs i, ii, iii, and iv.
- Amends commentary paragraph 17(c)(1)–12 to restore subparagraphs i, ii, and iii.
- Amends commentary paragraph 17(c)(4)–1 to restore subparagraphs i and ii.
- Amends commentary paragraph 17(g)–1 to restore subparagraphs i and ii.
- Amends the commentary to § 1026.18 at paragraph 18(g)–4 to restore text to subparagraph i.

This rule also amends the commentary to appendix D to Regulation Z to add paragraph 7 that had been included in the TILA–RESPA Final Rule published in the **Federal Register** but that was inadvertently omitted from the commentary to appendix D in the CFR.

These technical corrections are non-substantive changes to the TILA–RESPA Final Rule. No changes have been made to the deleted or omitted text or any text of the TILA–RESPA Final Rule that has already been codified in the CFR. To eliminate confusion among interested persons, the Bureau is republishing all paragraphs containing the deleted and omitted text in their entirety.

## II. Basis for the Corrections

The Bureau is issuing these technical corrections solely to correct the CFR. The Bureau finds that there is good cause to publish these corrections without seeking public comment, consistent with 5 U.S.C. 553(b)(B). Public comment is unnecessary because the rule merely makes technical changes to ensure that the TILA–RESPA Final Rule appears in the CFR as the Bureau intended and because it corrects inadvertent, technical errors about

[1] Public Law 111–203, 124 Stat. 1376, 2103–04, 2107–09 (2010).

[2] 78 FR 79730 (Dec. 31, 2013). The TILA–RESPA Final Rule finalized a proposal the Bureau had issued on July 9, 2012, 77 FR 51116 (Aug. 23, 2012).

[3] 80 FR 8767 (Feb. 19, 2015). The Amendments finalized a proposal the Bureau had issued on October 10, 2014, 79 FR 64336 (Oct. 29, 2014).

[4] 80 FR 43911 (July 24, 2015). This rule finalized a proposal the Bureau had issued on June 24, 2015, 80 FR 36727 (June 26, 2015).

which there is minimal, if any, basis for substantive disagreement. Additionally, the Bureau finds good cause to dispense with a 30-day delay of the effective date. See 5 U.S.C. 553(d)(3). With these corrections, the Bureau is only clarifying how the TILA–RESPA Final Rule should have been codified in the CFR, and preventing incorrect codification in the 2016 hard copy edition of the CFR, which incorporates CFR changes made prior to January 1, 2016. Therefore, the Bureau is publishing these corrections as a final rule that will be effective upon publication in the **Federal Register** because the need to implement the corrections immediately outweighs any need for providing additional time to comply with this rule.

**List of Subjects in 12 CFR Part 1026**

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

**Authority and Issuance**

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

## PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

### Subpart C—Closed End Credit

■ 2. Section 1026.22 is amended by revising paragraph (a)(5) to read as follows:

**§ 1026.22 Determination of annual percentage rate.**

(a) * * *

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 1026.18(d)(1) or § 1026.38(o)(2), as applicable, or § 1026.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

* * * * *

■ 3. In Supplement I to Part 1026—Official Interpretations, under Subpart C—Closed-End Credit:

■ A. In *Section 1026.17—General Disclosure Requirements:*

■ i. Under *17(c) Basis of Disclosures and Use of Estimates:*

■ a. Under *Paragraph 17(c)(1),* paragraphs 2,4,10,11, and 12 are revised.

■ b. Under *Paragraph 17(c)(4),* paragraph 1 is revised.

■ ii. Under *17(g) Mail or Telephone Orders—Delay in Disclosures,* paragraph 1 is revised.

■ B. In *Section 1026.18—Content of Disclosures,* under *18(g) Payment Schedule,* paragraph 4 is revised.

■ C. In *Appendix D—Multiple-Advance Construction Loans*, paragraph 7 is added.

The revisions and addition read as follows:

**Supplement I to Part 1026—Official Interpretations**

* * * * *

### Subpart C—Closed End Credit

Section 1026.17—General Disclosure Requirements

* * * * *

*17(c) Basis of Disclosures and Use of Estimates*

*Paragraph 17(c)(1)*

* * * * *

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement between the consumer and the creditor. But this presumption is rebutted if another agreement between the consumer and creditor legally modifies that note or contract. If the consumer and creditor informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

i. If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to § 1026.19(b) for an example of a preferred-rate transaction that is a variable-rate transaction.)

ii. If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.

iii. If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

* * * * *

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments on the transaction. Consumer buydowns must be reflected as an amendment to the contract's interest rate provision in the disclosure of the finance charge and other disclosures affected by it given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for lower payments for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosure of the finance charge and other disclosures affected by it given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

A. The amount paid by the consumer is a prepaid finance charge (even if deposited in an escrow account).

B. A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.

C. The disclosures under §§ 1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable, must reflect the multiple rate and payment levels resulting from the buydown, except as otherwise provided in those sections. Further, for example, the disclosures must reflect that the transaction is a step rate product under §§ 1026.37(a)(10)(B) and 1026.38(a)(5)(iii).

ii. The rules regarding consumer buydowns do not apply to transactions known as ''lender buydowns.'' In lender buydowns, a creditor pays an amount (either into an account or to the party to

whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosure of the finance charge and other disclosures affected by it for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment 17(c)(1)–3 for the analogous rules concerning third-party buydowns.

* * * * *

10. *Discounted and premium variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and the disclosures required under §§ 1026.18(g) and (s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5), as applicable.

iii. If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 1026.22(a)(3).

v. Examples of discounted variable-rate transactions include:

A. A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus two percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule disclosed pursuant to § 1026.18(g) should show 12 payments of $804.62 and 348 payments of $1,025.31. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $266,463.32 and, for transactions subject to § 1026.18, the total of payments should be $366,463.32.

B. Same loan as above, except with a two-percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule disclosed pursuant to § 1026.18(g) should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $265,234.76 and, for transactions subject to § 1026.18, the total of payments should be $365,234.76.

C. Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule disclosed pursuant to § 1026.18(g) should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. Similarly, the disclosures required by §§ 1026.18(s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) should reflect the effect of this calculation. The finance charge should be $277,040.60, and, for transactions subject to § 1026.18, the total of payments should be $377,040.60.

vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted variable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

11. *Examples of variable-rate transactions.* Variable-rate transactions include:

i. Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a ''refinancing'' of the obligation, as that term is defined by § 1026.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a ''refinancing,'' disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending

on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to § 1026.17(c)(6).)

ii. ''Shared-equity'' or ''shared-appreciation'' mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. (As discussed in the commentary to § 1026.2, other types of shared-equity arrangements are not considered ''credit'' and are not subject to Regulation Z.)

iii. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on the preferred rate.

iv. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

v. ''Price level adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate, except as otherwise provided in §§ 1026.18(s), 1026.37, and 1026.38, as applicable.

12. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, except as otherwise provided in §§ 1026.18(s), 1026.37(c), and 1026.38(c), the disclosures should treat these features as follows:

i. The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

ii. The amount financed does not include the amount of negative amortization.

iii. As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.

iv. The disclosures required by § 1026.18(g) and (s) reflect the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the disclosures required by § 1026.18(g) and (s) may require several different levels of payments, even with the assumption that the original interest rate does not increase. For transactions subject to § 1026.19(e) and (f), see § 1026.37(c) and its commentary for a discussion of different rules for graduated payment adjustable rate mortgages.

* * * * *

*Paragraph 17(c)(4)*

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule pursuant to § 1026.18(g), the disclosures required pursuant to §§ 1026.18(s), 1026.37(c), or 1026.38(c), or the finance charge, annual percentage rate, and other terms. For example:

i. A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.

ii. By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in § 1026.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

* * * * *

*17(g) Mail or Telephone Orders—Delay in Disclosures.*

1. *Conditions for use.* Except for extensions of credit subject to § 1026.19(a) or (e) and (f), when the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

i. The credit request is initiated without face-to-face or direct telephone solicitation. (Creditors may, however, use the special rule when credit requests are solicited by mail.)

ii. The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

* * * * *

*Section 1026.18—Content of Disclosures*

* * * * *

*18(g) Payment Schedule*

* * * * *

4. *Timing of payments.* i. *General rule.* Section 1026.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the ''period of payments'' scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as ''monthly'' or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 1026.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. *See* comment 17(a)(1)–5.iii.

* * * * *

**Appendix D—Multiple-Advance Construction Loans**

* * * * *

7. *Relation to §§ 1026.37 and 1026.38.* A creditor must disclose a projected payments table for certain transactions secured by real property, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g) or the interest rate and payments summary table required by § 1026.18(s). Accordingly, some home construction loans that are secured by real property are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). See comment app. D–6 for a discussion of transactions that are subject to § 1026.18(s). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of these two alternatives:

i. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments ''in disclosing the payment schedule under § 1026.18(g)'' does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.

ii. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

* * * * *

Dated: December 15, 2015.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2015–32463 Filed 12–21–15; 4:15 pm]

**BILLING CODE 4810–AM–P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Parts 1200, 1202, 1203, 1204, 1209, 1215, 1263, and 1264

**RIN 2590–AA79**

### Technical Amendments: FHFA Address and Zip Code Change

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this final rule as a technical change to correct regulatory references to FHFA's address and postal zip code.

**DATES:** Effective December 24, 2015. For additional information, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Crystal Miller, *Crystal.Miller@fhfa.gov,* (202) 649–3079, Paralegal Specialist (not a toll-free number), Office of General Counsel, Federal Housing Finance Agency, Constitution Center, Eighth Floor (OGC), 400 7th Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*FHFA Headquarters Address Change*

In January 2012, FHFA moved to a new headquarters building in Southwest Washington, DC. As a result, the addresses for FHFA's former locations in Northwest Washington, DC, included in 12 CFR 1203.29, 1209.15(a), 1263.5(a)(2), and 1264.6(a) are now out-of-date. This final rule amends those regulations to replace the FHFA's former addresses with its current address, 400 7th Street SW., Washington, DC 20219.

*FHFA Zip Code Change*

Effective November 1, 2015, all mail addressed to FHFA is being processed through a different mail processing facility. This facility change required that FHFA use a new zip code. As a result, the zip code in the addresses for the FHFA included in 12 CFR 1200.1(b), 1200.2(g), 1202.3(c), 1202.5(a), 1202.9(a), 1204.3(b), 1204.5(b)(2), 1209.102(a)(1), and 1215.7(b) are now out-of-date. This final rule amends those regulations to replace the FHFA's zip code, which changed from 20024 to 20219. The street address of 400 7th Street SW., Washington, DC remains the same.

FHFA submitted a change-of-address request to the local United States Post Office to forward mail containing the old zip code; however, mail addressed with the zip code 20024 after November 1, 2015, may result in delayed delivery to all FHFA offices.

## II. Notice and Comment

Pursuant to the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [1] FHFA finds that public notice and comment on this final rule are unnecessary. The final rule's update of FHFA's address and postal zip code is purely a technical change to the Agency's regulations and provides FHFA's regulated entities, interested parties, and other members of the public with FHFA's current and accurate location and mailing address information. For these reasons, FHFA has good cause to conclude that advance notice and comment under the APA for this rulemaking are unnecessary.

## III. Effective Date

This final rule is effective on December 24, 2015. Pursuant to the APA, a final rule may be effective without 30 days advance publication in the **Federal Register** if an agency finds good cause and publishes its finding with the final rule.[2] As described above, the updates made by this final rule to FHFA's physical addresses and zip code are technical changes and will have no substantive effect on FHFA's regulated entities, interested parties, or other members of the public. Therefore, the FHFA finds good cause to dispense with a delayed effective date.

[1] 5 U.S.C. 553(b).

[2] 5 U.S.C. 553(d)(3).

## IV. Regulatory Analysis

*Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA),[3] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.[4] As discussed above, the FHFA has determined for good cause that the APA does not require notice and public comment on this rule and, therefore, FHFA is not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this final rule.

*Paperwork Reduction Act*

This final rule amends FHFA's address within two regulatory provisions (12 CFR 1263.5(a)(2) and 12 CFR 1264.6(a)) containing currently approved collections of information under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520).[5] The final rule does not substantively or materially modify the current, approved information collection.

**List of Subjects**

*12 CFR Part 1200*

Organization and functions (Government agencies), Seals and insignia.

*12 CFR Part 1202*

Appeals, Confidential Commercial Information, Disclosure, Exemptions, Fees, Final Action, Freedom of Information Act, Judicial review, Records, Requests.

*12 CFR Part 1203*

Administrative practice and procedure, Equal access to justice.

*12 CFR Part 1204*

Accounting, Amendment, Appeals, Correction, Disclosure, Exemptions, Fees, Records, Requests, Privacy Act, Social Security numbers.

*12 CFR Part 1209*

Administrative practice and procedure, Penalties.

*12 CFR Part 1215*

Administrative practice and procedure, Courts, Government employees, Records, Subpoenas, Testimony.

*12 CFR Part 1263*

Federal home loan banks, Reporting and recordkeeping requirements.

*12 CFR Part 1264*

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the Supplementary Information and under the authority of 12 U.S.C. 4526, FHFA hereby amends subchapters A and D of chapter XII of title 12 of the Code of Federal Regulations as follows:

**Subchapter A—Organization and Operations**

## PART 1200—[AMENDED]

■ 1. The authority citation for part 1200 continues to read as follows:

**Authority:** 5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526.

**§§ 1200.1 and 1200.2 [Amended]**

■ 2. Part 1200 is amended by removing the zip code ''20024'' wherever it appears and adding ''20219'' in its place in §§ 1200.1(b) and 1200.2(g).

## PART 1202—[AMENDED]

■ 3. The authority citation for part 1202 continues to read as follows:

**Authority:** Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

**§§ 1202.3, 1202.5, and 1202.9 [Amended]**

■ 4. Part 1202 is amended by removing the zip code ''20024'' wherever it appears and adding ''20219'' in its place in §§ 1202.3(c), 1202.5(a), and 1202.9(a).

## PART 1203—[AMENDED]

■ 5. The authority citation for part 1203 continues to read as follows:

**Authority:** 12 U.S.C. 4526, 5 U.S.C. 504.

**§ 1203.29 [Amended]**

■ 6. Section 1203.29 is amended by removing the phrase ''1700 G Street NW., Washington, DC 20552'' and adding ''400 7th Street SW., Washington, DC 20219'' in its place.

## PART 1204—[AMENDED]

■ 7. The authority citation for part 1204 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

**§§ 1204.3 and 1204.5 [Amended]**

■ 8. Part 1204 is amended by removing the zip code ''20024'' wherever it appears and adding ''20219'' in its place in §§ 1204.3(b) and 1204.5(b)(2).

## PART 1209—[AMENDED]

■ 9. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 554, 556, 557, and 701 *et seq.;* 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581–4588, 4631–4641; and 28 U.S.C. 2461 note.

**§ 1209.15 [Amended]**

■ 10. Remove the phrase ''1700 G Street NW., Fourth Floor, Washington, DC 20552'' and add ''400 7th Street SW., Eighth Floor, Washington, DC 20219'' in its place in § 1209.15(a).

**§ 1209.102 [Amended]**

■ 11. Remove the zip code ''20024'' and add ''20219'' in its place in § 1209.102(a)(1).

## PART 1215—[AMENDED]

■ 12. The authority citation for part 1215 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 4526.

**§ 1215.7 [Amended]**

■ 13. Section 1215.7 is amended by removing the zip code ''20024'' and adding ''20219'' in its place in paragraph (b).

**Subchapter D—Federal Home Loan Banks**

## PART 1263—[AMENDED]

■ 14. The authority citation for part 1263 continues to read as follows:

**Authority:** 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

**§ 1263.5 [Amended]**

■ 15. Section 1263.5 is amended by removing the phrase ''1625 Eye Street NW., Washington, DC 20006'' and adding ''400 7th Street SW., Seventh Floor, Washington, DC 20219'' in its place in paragraph (a)(2).

## PART 1264—[AMENDED]

■ 16. The authority citation for part 1264 continues to read as follows:

**Authority:** 12 U.S.C. 1430b, 4511, 4513 and 4526.

**§ 1264.6 [Amended]**

■ 17. Section 1264.6 is amended by removing the phrase ''1625 Eye Street NW., Washington, DC 20006'' and adding ''400 7th Street SW., Seventh Floor, Washington, DC 20219'' in its place in paragraph (a).

[3] 5 U.S.C. 603.

[4] 5 U.S.C. 603(a), 604(a).

[5] OMB Control Nos. 2590–0001 and 2590–0003.

Dated: December 17, 2015.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2015–32199 Filed 12–23–15; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–1281; Directorate Identifier 2014–NM–241–AD; Amendment 39–18346; AD 2015–25–08]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 777 airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the lap splices of the aft pressure bulkhead webs are subject to widespread fatigue damage (WFD) on aging Model 777 airplanes that have accumulated at least 38,000 total flight cycles. This AD requires repetitive inspections for any crack in the aft webs of the radial lap splices of the aft pressure bulkhead, and, if necessary, corrective actions. We are issuing this AD to detect and correct fatigue cracking in the aft webs of the radial lap splices of the aft pressure bulkhead; such cracking could result in reduced structural integrity of the airplane, decompression of the cabin, and collapse of the floor structure.

**DATES:** This AD is effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2016.

**ADDRESSES:** For service information identified in this final rule, 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–2015–1281.

### 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–2015–1281; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket 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 FURTHER INFORMATION CONTACT:** Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on May 12, 2015 (80 FR 27116). The NPRM was prompted by an evaluation by the DAH indicating that the lap splices of the aft pressure bulkhead webs are subject to WFD on aging Model 777 airplanes that have accumulated at least 38,000 total flight cycles. The NPRM proposed to require repetitive inspections for any crack in the aft webs of the radial lap splices of the aft pressure bulkhead, and, if necessary, corrective actions. We are issuing this AD to detect and correct fatigue cracking in the aft webs of the radial lap splices of the aft pressure bulkhead; such cracking could result in reduced structural integrity of the airplane, decompression of the cabin, and collapse of the floor structure.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 27116, May 12, 2015) and the FAA's response to each comment.

FedEx Express stated:

- All of its Boeing Model 777s would be affected.
- The proposed inspection threshold and intervals would fit into its maintenance schedule.
- The number of man-hours and elapsed time to accomplish the inspections would not impact the overall span-time of its maintenance schedule.
- The proposed inspections do not require any special inspection techniques, training, or tooling.

### Request To Clarify Unsafe Condition

Boeing requested that the unsafe condition statement in the NPRM (80 FR 27116, May 12, 2015) be revised to specify that the unsafe condition exists on aging airplanes, rather than new airplanes. Boeing stated that its analysis concluded that airplanes would have to accumulate at least 38,000 total flight cycles before the lap splices of the aft pressure bulkhead webs would be subject to WFD.

We agree with Boeing's request and have revised the unsafe condition statement in the preamble and regulatory text of this final rule accordingly.

### Request To Exclude a Service Information Action

American Airlines (AA) requested that the first action specified in step 3.B.5. of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, be omitted from the requirements of the proposed AD (80 FR 27116, May 12, 2015). The action is to put the airplane back into a serviceable condition. AA stated that this action does not address the unsafe condition addressed by the proposed rule and that most operators would accomplish the proposed AD requirements during a maintenance visit. AA stated that in the context of a maintenance visit, returning the airplane to a serviceable condition immediately after completion of the inspections and any associated corrective actions would not be possible. AA indicated that an operator would wait until all of the maintenance items scheduled for that visit would have been completed before putting the airplane back into a serviceable condition.

We agree with the commenter's statement that this action does not need to be required by this final rule; several other FAA regulations require restoring the airplane to a serviceable condition before further flight. However, the step of returning the airplane to a serviceable condition is not marked required for compliance (''RC'') in Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014; therefore, as noted in

paragraph (i)(4)(ii) of this AD, this step may be delayed using an accepted method in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC). We have not changed this AD in this regard.

**Request for Clarification of Relationship Between the NPRM (80 FR 27116, May 12, 2015) and AD 2012–07–06, Amendment 39–17012 (77 FR 21429)**

Air New Zealand requested clarification regarding the relationship between the NPRM (80 FR 27116, May 12, 2015) and AD 2012–07–06, Amendment 39–17012 (77 FR 21429, April 10, 2012). Specifically, the commenter asked if the NPRM would supersede AD 2012–07–06; if the AMOC approval included in AD 2012–07–06 would be included in the NPRM; and if the proposed inspections in the NPRM should be done in lieu of or in addition to the existing inspections required by AD 2012–07–06.

We agree with the commenter's request for clarification. This is a new AD applicable to all The Boeing Company Model 777 airplanes and requires repetitive inspections for cracking in the aft webs of the radial lap splices of the aft pressure bulkhead, and corrective actions if necessary. AD 2012–07–06, Amendment 39–17012 (77 FR 21429, April 10, 2012), is applicable to certain Model 777 airplanes and requires revising the maintenance program to update inspection requirements to detect fatigue cracking of principal structural elements throughout the airplane.

An AMOC for AD 2012–07–06, Amendment 39–17012 (77 FR 21429, April 10, 2012), was issued so operators could use the corresponding compliance times and inspections specified in Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, for the inspection requirements for the corresponding locations specified in Boeing Model 777 Structural Significant Item 53–80–I13A and paragraphs (g) and (h) of AD 2012–07–06. The information regarding this AMOC is included in Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. Operators are required to accomplish the requirements in this new AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. If the actions of this new AD are done, the requirements of AD 2012–07–06 are met only for areas inspected in accordance with Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014.

Regarding the question about whether the AMOC approval included in AD 2012–07–06, Amendment 39–17012 (77 FR 21429, April 10, 2012), would be included in this AD, paragraph (i) of this AD contains the AMOC approval procedures for this AD. However, because the existing inspections required by AD 2012–07–06 are not sufficient to preclude WFD in this area, we have not included previous AMOCs issued for AD 2012–07–06 as AMOCs for this AD. We have not changed this AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 27116, May 12, 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 27116, May 12, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. This service information describes procedures for inspections of the lap splices in the web of the aft pressure bulkhead for cracking, and corrective actions. 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.

**Costs of Compliance**

We estimate that this AD affects 193 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection ..... | 9 work-hours × $85 per hour = $765 per inspection cycle. | $0 | $765 per inspection cycle ..... | $147,645 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 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**

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 that this AD:

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

(2) Is not a ''significant rule'' under 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.

**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 airworthiness directive (AD):

**2015–25–08 The Boeing Company:** Amendment 39–18346; Docket No. FAA–2015–1281; Directorate Identifier 2014–NM–241–AD.

**(a) Effective Date**

This AD is effective January 28, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F 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 an evaluation by the design approval holder indicating that the lap splices of the aft pressure bulkhead webs are subject to widespread fatigue damage on aging Model 777 airplanes that have accumulated at least 38,000 total flight cycles. We are issuing this AD to detect and correct fatigue cracking in the aft webs of the radial lap splices of the aft pressure bulkhead; such cracking could result in reduced structural integrity of the airplane, decompression of the cabin, and collapse of the floor structure.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection of Lap Splice in the Web of the Aft Pressure Bulkhead**

Except as required by paragraph (h) of this AD: At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, do a medium frequency eddy current inspection for any cracking in the aft webs of the radial lap splices of the aft pressure bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. Repeat the inspection thereafter at intervals not to exceed 8,400 flight cycles from the previous inspection. If any crack is found during any inspection required by this AD, do the applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. If a corrective action described in Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(h) Exception to Service Information Specifications**

Where Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(i) 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 (j) 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, modification, or alteration 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. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (1)(4)(ii) of this AD 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.

**(j) Related Information**

For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

**(k) 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) Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014.

(ii) Reserved.

(3) 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.*

(4) You may view this service information at 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.

(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 Renton, Washington, on December 10, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–31715 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0625; Directorate Identifier 2014–NM–044–AD; Amendment 39–18343; AD 2015–25–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain

Bombardier, Inc. Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This AD was prompted by a report of an aft equipment bay fire due to chafing and subsequent arcing of the integrated drive generator (IDG) power cables. Additionally, we have received several reports of broken support brackets of the hydraulic line. This AD requires a one-time inspection of the IDG power cables for chafing, and for any cracked or broken support bracket of the hydraulic line; and corrective actions if necessary. We are issuing this AD to detect and correct broken support brackets of the hydraulic lines, which could result in inadequate clearance between the IDG power cables and hydraulic lines and chafing of the IDG power cables, and consequent high energy arcing and an uncontrolled fire in the aft equipment bay.

**DATES:** This AD becomes effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 28, 2016.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0625* or in person at the Docket 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.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–85–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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–2014–0625.

**FOR FURTHER INFORMATION CONTACT:** Assata Dessaline, Aerospace Engineer, Avionics and Service Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7301; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The NPRM published in the **Federal Register** on September 17, 2014 (79 FR 55673).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–05, dated January 20, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There has been one reported case on the CL–600–2B19 aeroplane of an aft equipment bay fire occurring due to arcing of chafed integrated drive generator (IDG) power cables. Additionally, the hydraulic line support brackets located at the fuselage station (FS) 672 and FS 682 on a CL–600–2B19 aeroplane could result in inadequate clearance between the IDG power cables and hydraulic lines, potentially resulting in chafing of the IDG power cables. Chafed IDG power cables can generate high energy arcing, which can result in an uncontrolled fire in the aft equipment bay.
>
> It was found that a similar configuration exists on models CL–600–2A12 and CL–600–2B16 aeroplanes. Therefore, a similar unsafe condition exists.
>
> This [Canadian] AD mandates the detailed visual inspection and, if required, rectification of the IDG power cables and hydraulic line support bracket.

Required corrective actions include repair or replacement of the IDG power cable if any chafing is found, and replacement of any cracked or broken support bracket. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0625-0003*.

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 55673, September 17, 2014) and the FAA's response to each comment.

### Request To Correct Typographical Error

Bombardier asked that one of the service bulletin references identified in the ''Relevant Service Information'' section of the NPRM (79 FR 55673, September 17, 2014) be changed to correct a typographical error. Bombardier Service Bulletin ''604–0625,'' as identified in the ''Relevant Service Information'' section, should be identified as Bombardier Service Bulletin ''601–0625.''

We agree with the commenter for the reason provided, and we have changed this reference to correctly specify Bombardier Service Bulletin 601–0625 throughout this final rule.

### Request To Clarify Credit Provisions

Bombardier asked that we clarify the language in paragraph (h) of the proposed AD, ''Credit for Previous Actions.'' Bombardier stated that the current language may cause some confusion because the content is not clear.

We acknowledge the commenter's concern, and we provide the following clarification for the credit language used in paragraph (h) of this AD. Paragraph (h) of this AD matches the intent of the last two paragraphs in the ''Corrective Actions'' section of Canadian AD CF–2014–05, dated January 20, 2014. Both this FAA AD and the Canadian AD give credit for accomplishing Bombardier Service Bulletins 605–24–007, 604–24–026, and 601–0625, all dated September 18, 2012, but only if Service Request for Product Support Action (SRPSA) 27512, SRPSA 30806, SRPSA 32727, SRPSA 32864, or SRPSA 33161 has not been done.

### Clarification of Airplane Models

We have included the airplane models identified in the service information in the ''Related Service Information under 1 CFR part 51'' section, and paragraphs (g)(1), (g)(2), and (g)(3) of this AD (79 FR 55673, September 17, 2014), for clarification.

## Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 55673, September 17, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 55673, September 17, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

## Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Bombardier Service Bulletin 605–24–007, Revision 01, dated January 13,

2014 (for Model CL–600–2B16 airplanes (CL–604 Variant));

• Bombardier Service Bulletin 604–24–026, Revision 01, dated January 13, 2014 (for Model CL–600–2B16 airplanes (CL–604 Variant)); and

• Bombardier Service Bulletin 601–0625, Revision 01, dated January 13, 2014 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 airplanes (CL–601–3A and CL–601–3R Variants)).

This service information describes procedures for a one-time inspection of the IDG power cables for chafing, and for any cracked or broken support bracket of the hydraulic line; and corrective actions if necessary. 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.

**Costs of Compliance**

We estimate that this AD affects 95 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour 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 $8,075, or $85 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair of chafed power cables or cracked or broken support brackets, as specified in this 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 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 that 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/#!docketDetail;D*=FAA–2014–0625; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**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 airworthiness directive (AD):

**2015–25–05 Bombardier, Inc.:** Amendment 39–18343; Docket No. FAA–2014–0625; Directorate Identifier 2014–NM–044–AD.

**(a) Effective Date**

This AD becomes effective January 28, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc. airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Model CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive.

(2) Model CL–600–2B16 (CL–601–3A, CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive.

(3) Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5301 through 5665 inclusive, and 5701 through 5934 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical Power.

**(e) Reason**

This AD was prompted by a report of an aft equipment bay fire due to chafing and subsequent arcing of the integrated drive generator (IDG) power cables. Additionally, we have received several reports of broken support brackets of the hydraulic lines. We are issuing this AD to detect and correct broken support brackets of the hydraulic lines, which could result in inadequate clearance between the IDG power cables and hydraulic lines and chafing of the IDG power cables, and consequent high energy arcing and an uncontrolled fire in the aft equipment bay.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) One-Time Inspection and Corrective Actions**

Within 400 flight hours or 18 months after the effective date of this AD, whichever occurs first: Perform a one-time detailed inspection of the IDG power cables for chafing between the cables and the adjacent hydraulic and pneumatic lines, and for any cracked or broken support bracket of the hydraulic lines, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. If any chafing of the power cables or any cracked or broken support bracket is found, before further flight, repair or replace, as applicable, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Bombardier Service Bulletin 605–24–007, Revision 01, dated January 13, 2014 (for Model CL–600–2B16 airplanes (CL–604 Variant)).

(2) Bombardier Service Bulletin 604–24–026, Revision 01, dated January 13, 2014 (for Model CL–600–2B16 airplanes (CL–604 Variant)).

(3) Bombardier Service Bulletin 601–0625, Revision 01, dated January 13, 2014 (for Model Cl-600–2A12 (CL–601) and CL–600–2B16 airplanes (CL–601–3A and CL–601–3R Variants)).

**(h) Credit for Previous Actions**

This paragraph provides credit for action required by paragraph (g) of this AD, if the

conditions specified in both paragraphs (h)(1) and (h)(2) of this AD are met.

(1) The action was performed before the effective date of this AD using Bombardier Service Bulletin 605–24–007, Bombardier Service Bulletin 604–24–026, or Bombardier Service Bulletin 601–0625, all dated September 18, 2012. This service information is not incorporated by reference in this AD.

(2) The action specified in Service Request for Product Support Action (SRPSA) 27512, SRPSA 30806, SRPSA 32727, SRPSA 32864, or SRPSA 33161 has not been done.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–553. 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–05, dated January 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0625-0003.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

**(k) 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 605–24–007, Revision 01, dated January 13, 2014.

(ii) Bombardier Service Bulletin 604–24–026, Revision 01, dated January 13, 2014.

(iii) Bombardier Service Bulletin 601–0625, Revision 01, dated January 13, 2014.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this 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.

(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 Renton, Washington on December 8, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–31604 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–0083; Directorate Identifier 2014–NM–131–AD; Amendment 39–18347; AD 2015–25–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes; and all Model A340–200 and A340–300 series airplanes. This AD was prompted by reports that a bracket that attaches the cockpit instrument panel to the airplane structure does not sustain the fatigue loads of the design service goal. This AD requires repetitive inspections of that bracket for cracking and to determine if both lugs are fully broken, an inspection for cracking of an adjacent bracket if necessary, and corrective actions if necessary. This AD also provides an optional modification, which terminates the repetitive inspections. We are issuing this AD to detect and correct cracking on a bracket of the cockpit instrument panel, which, combined with failure of the horizontal beam, could lead to collapse of the cockpit panel, and reduced controllability of the airplane.

**DATES:** This AD becomes effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 28, 2016.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0083;* or in person at the Docket 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.

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.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–2015–0083.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes; and all Model A340–200 and A340–300 series airplanes. The NPRM published in the **Federal Register** on February 13, 2015 (80 FR 7989).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0127, dated May 15, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, A330–200 Freighter,

and A330–300 series airplanes; and all Model A340–200, and A340–300 series airplanes. The MCAI states:

> During flight tests, high stress levels have been measured on the bracket No 6 which attaches the cockpit instrument panel to the aeroplane structure, apparently introduced through the nose landing gear due to bumps on the runway. Airbus determined that the bracket does not sustain the fatigue loads during the Design Service Goal (DSG).
>
> This condition, if not detected and corrected, combined with failure of the horizontal beam, could lead to collapse of the cockpit panel, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Airbus developed a program to inspect the condition of the affected cockpit instrument panel bracket No 6, and designed a stronger (reinforced titanium undrilled) bracket. The new bracket can be installed in-service through Airbus Service Bulletin (SB) A330–25–3548 or SB A340–25–4354, as applicable to aeroplane type.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the cockpit instrument panel bracket No 6 and, depending on findings, the accomplishment of applicable corrective actions. This [EASA] AD also provides the installation of the stronger bracket as optional terminating action for the repetitive actions required by this [EASA] AD.

The corrective actions include replacing bracket No. 6 and bracket No. 7 with serviceable parts, and repair, as applicable.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0083-0002*.

**Comments**

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The following presents the comment received on the NPRM (80 FR 7989, February 13, 2015) and the FAA's response.

**Request To Identify Part Numbers in Paragraphs (g) and (h)**

Delta Airlines requested that paragraphs (g) and (h) of the proposed AD (80 FR 7989, February 13, 2015) be revised to specify the part numbers of the affected brackets. Delta suggested that paragraph (g) of the proposed AD be revised to include the part number after the reference to bracket No. 6 (part number (P/N) F2511012820000, pre-modification Number 55128S18242; and P/N F2511373420000, post-modification Number 55128S18242). Delta also requested that paragraph (h)(2) of the proposed AD be revised to include the part number after bracket No. 6 (P/N F2511012820000, pre-modification Number 55128S18242; and P/N F2511373420000, post-modification Number 55128S18242) and bracket No. 7 (P/N F2511012820000, pre-modification Number 55128S18242; and P/N F2511373420000, post-modification Number 55128S18242). Delta stated that Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014, specifies to inspect only P/N F2511012820000, pre-modification Number 55128S18242, and P/N F2511373420000, post-modification Number 55128S18242, and identifies only those part numbers as ''affected'' brackets that are used on both bracket No. 6 and bracket No. 7.

We agree to include the part numbers identified by the commenter in paragraphs (g) and (h)(2) of this AD. We have also included the part numbers in paragraphs (h)(1) and (h)(2)(i) of this AD. The ''Reason/Description/Operational Consequences'' section of Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014, specifies to inspect P/N F2511012820000, pre-modification Number 55128S18242, and P/N F2511373420000, post-modification Number 55128S18242. Also, the Accomplishment Instructions of that service bulletin specify to replace P/N F2511012820000 or P/N F2511373420000, as applicable. We contacted Airbus for verification that only those part numbers are considered to be ''affected'' brackets and Airbus confirmed that only those part numbers are affected. The same affected and replacement parts are used on both Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes; and A340–200 and A340–300 series airplanes.

**Additional Change to This AD**

A typographical error in paragraph (c)(1) of the proposed AD (80 FR 7989, February 13, 2015) has been corrected in this final rule. Paragraph (c)(1) of the proposed AD inadvertently included Model A330–313 airplanes instead of Model A330–343 airplanes. The **SUMMARY** section and preamble of the NPRM stated that the applicability included Model A330–300 series airplanes, which include Model A330–343 airplanes.

**Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 7989, February 13, 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 7989, February 13, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued the following service information.

- Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014, which provides procedures for inspection of cockpit instrument panel bracket 6.
- Airbus Service Bulletin A330–25–3548, dated October 31, 2013, which provides procedures for replacement of cockpit instrument panel bracket 6 with a reinforced titanium bracket.
- Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014, which provides procedures for inspection of cockpit instrument panel bracket 6.
- Airbus Service Bulletin A340–25–4354, dated October 31, 2013, which provides procedures for replacement of cockpit instrument panel bracket 6 with a reinforced titanium bracket.

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.

**Costs of Compliance**

We estimate that this AD affects 76 airplanes of U.S. registry.

We also estimate that it will take about 8 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 $51,680, or $680 per product.

We have received no definitive data that would enable us to provide cost estimates for the follow-on repairs specified in this AD.

In addition, we estimate that any necessary replacements will take about 23 work-hours and require parts costing $0, for a cost of $1,955 per product. We have no way of determining the number of aircraft that might need these actions.

We estimate that the optional modification will take about 9 work hours and require parts costing $1,770, for a cost of $2,535.

**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 that 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/#!docketDetail;D=FAA-2015-0083*; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**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 airworthiness directive (AD):

**2015–25–09 Airbus: Amendment 39–18347.** Docket No. FAA–2015–0083; Directorate Identifier 2014–NM–131–AD.

**(a) Effective Date**

This AD becomes effective January 28, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers except those on which Airbus Modification 203287 has been embodied in production.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

**(e) Reason**

This AD was prompted by reports that a bracket that attaches the cockpit instrument panel to the airplane structure does not sustain the fatigue loads of the design service goal. We are issuing this AD to detect and correct cracking on a bracket of the cockpit instrument panel, which, combined with failure of the horizontal beam, could lead to collapse of the cockpit panel, and reduced controllability of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection of Bracket No. 6 of the Cockpit Instrument Panel**

At the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do a detailed inspection of bracket No. 6 (part number (P/N) F2511012820000, pre-modification Number 55128S18242; or P/N F2511373420000, post-modification Number 55128S18242) of the cockpit instrument panel for cracking and to determine if both bracket lugs are fully broken, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; or Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; as applicable. Repeat the inspection thereafter at intervals not to exceed 2,600 flight cycles.

(1) Prior to accumulating 17,200 total flight cycles since the airplane's first flight.

(2) Prior to bracket No. 6 of the cockpit instrument panel accumulating 17,200 total flight cycles since installation on an airplane.

(3) Within 500 flight cycles after the effective date of this AD.

**(h) Inspection and Corrective Actions**

(1) If, during any inspection required by paragraph (g) of this AD, any cracking of bracket No. 6 (P/N F2511012820000, pre-modification Number 55128S18242; or P/N F2511373420000, Post-modification Number 55128S18242) of the cockpit instrument panel is found, and both bracket lugs are not fully broken: Within 2,600 flight cycles after that inspection, replace bracket No. 6 of the cockpit instrument panel with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; or Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; as applicable. Replacement of bracket No. 6 (P/N F2511012820000, pre-modification Number 55128S18242; or P/N F2511373420000, post-modification Number 55128S18242) of the cockpit instrument panel does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD.

(2) If, during any inspection required by paragraph (g) of this AD, any cracking of bracket No. 6 (P/N F2511012820000, pre-modification Number 55128S18242; or P/N F2511373420000, Post-modification Number 55128S18242) of the cockpit instrument panel is found and both bracket lugs are fully broken: Before further flight, do a detailed inspection of bracket No. 7 (P/N F2511012820000, pre-modification Number 55128S18242; or P/N F2511373420000, Post-modification Number 55128S18242) of the cockpit instrument panel for cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; or Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; as applicable.

(i) If, during the inspection required by paragraph (h)(2) of this AD, no cracking is found in bracket No. 7 of the cockpit instrument panel: Before further flight, replace bracket No. 6 and bracket No. 7 of the cockpit instrument panel with serviceable parts, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; or Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; as applicable. Replacement of bracket No. 6 (P/N F2511012820000, pre-

modification Number 55128S18242; or P/N F2511373420000, post-modification Number 55128S18242) of the cockpit instrument panel does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD.

(ii) If, during the inspection required by paragraph (h)(2) of this AD, any cracking is found in bracket No. 7 of the cockpit instrument panel: Although Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; and Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; specify to contact Airbus for repair instructions, and specify that action as ''RC'' (Required for Compliance), repair the cracking before further flight using a repair method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

**(i) Optional Terminating Modification for Paragraph (g) of This AD**

Modifying an airplane by replacing bracket No. 6 of the cockpit instrument panel with a new, reinforced bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–25–3548, dated October 31, 2013; or Airbus Service Bulletin A340–25–4354, dated October 31, 2013; as applicable; terminates the repetitive inspections required by paragraph (g) of this AD.

**(j) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, which is not incorporated by reference in this AD.

(1) Airbus Service Bulletin A330–25–3538, dated September 10, 2013.

(2) Airbus Service Bulletin A330–25–3538, Revision 01, dated April 24, 2014.

(3) Airbus Service Bulletin A340–25–4351, dated September 10, 2014.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (h)(2)(ii) of this AD, if Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014; or Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014; contain procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from, using accepted methods in accordance with the operators maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0127, dated May 15, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0083-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

**(m) 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 this AD specifies otherwise.

(i) Airbus Service Bulletin A330–25–3538, Revision 02, dated April 24, 2014.

(ii) Airbus Service Bulletin A330–25–3548, dated October 31, 2013.

(iii) Airbus Service Bulletin A340–25–4351, Revision 01, dated January 31, 2014.

(iv) Airbus Service Bulletin A340–25–4354, dated October 31, 2013.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this 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.

(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 Renton, Washington, on December 9, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–31714 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–0828; Directorate Identifier 2014–NM–146–AD; Amendment 39–18341; AD 2015–25–03]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2013–23–03, which applies to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. AD 2013–23–03 required a detailed inspection of certain attach fittings for a cylindrical defect, and replacement if necessary. For certain airplanes, this new AD requires new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement if necessary. This new AD also limits the compliance time for doing the replacement for certain other airplanes. This AD was prompted by a report that a machining defect was also found on some of the actuator assemblies inspected during manufacture. This defect could lead to fatigue cracking and subsequent fracture. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

**DATES:** This AD is effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 29, 2013 (78 FR 68345, November 14, 2013).

**ADDRESSES:** 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. It is also available on the Internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0828.

**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–2015–0828; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket 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 FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013). AD 2013–23–03 applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. The NPRM published in the **Federal Register** on April 15, 2015 (80 FR 20178). The NPRM was prompted by a report that a machining defect was also found on some of the actuator assemblies inspected during manufacture. The NPRM proposed to continue to require doing a detailed inspection of certain attach fittings for a cylindrical defect and replacing if necessary. This defect could lead to fatigue cracking and subsequent fracture. For certain airplanes, the NPRM proposed to mandate new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. The NPRM also proposed to limit the compliance time for doing the replacement for certain other airplanes. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 20178, April 15, 2015) and the FAA's response to each comment.

**Request to Add Terminating Action**

Boeing asked that we revise the NPRM (80 FR 20178, April 15, 2015) to specify that no additional action is required for a wall thickness of 0.140 inch or greater with no machining defect present, as also provided in Table 1 of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

We agree with the commenter that no additional action is required for a wall thickness of 0.140 inch or greater with no machining defect present. However, we do not agree with the request to revise the AD because if this condition exists, no action is required by this AD. Only actions that are required to address the identified unsafe condition are specified in this AD. We have made no change to the AD in this regard.

**Request to Revise Certain Requirements**

Paragraph (k) of the proposed AD (80 FR 20178, April 15, 2015) would have affected certain inboard actuator attach fittings that were inspected using Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013. United Airlines (UAL) requested that we remove this inspection criterion. UAL noted that there was no requirement to identify the actuators; therefore, operators would not be likely to positively identify them. UAL added that actuators are not likely to be tracked in position, and could have been moved between airplanes as a result of maintenance. UAL also stated that, in general, it would be better if the AD as a whole was worded not to depend on a record of previous inspection accomplishment, but rather on parts identification.

We acknowledge the commenter's concerns. We realize that paragraph (k) of this AD is predicated on the fact that operators kept records from the inspection specified in Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013. The intent of this AD is to either replace inboard actuator attach fittings having part number (P/N) 65B08564–7, or to inspect P/N 65B08564–7 for cylindrical defects, machining defects, and wall thickness, and accomplish applicable corrective actions. For that reason we have changed the introductory text of paragraph (k) of this AD so that it applies to airplanes on which doing the detailed inspection required by paragraph (h)(1) of this AD was done before the effective date of this AD and a cylindrical defect was found but a replacement was not done. We have also revised paragraph (k)(1) of this AD to require an ultrasonic inspection to determine the minimum thickness or mechanically determine the minimum thickness and to allow a records review for the inspections. This change ensures all inspections are done on airplanes with P/N 65B08564–7 that did not replace P/N 65B08564–7 after complying with AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013).

To address airplanes on which inboard actuator attach fittings were replaced after complying with paragraph (h)(1) of AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013), we have added new paragraph (m) to this AD, which specifies that for airplanes on which the detailed inspection required by paragraph (h)(1) of this AD is done before the effective date of this AD and the inboard actuator attach fitting has been replaced since that inspection, the inspection to determine the part number specified in paragraph (g) of this AD must be done within 90 days after the effective date of this AD, and the applicable actions specified in paragraphs (h), (i), and (j) of this AD must be done within the applicable times specified in paragraphs (h), (i), and (j) of this AD. We have also added a records review as an option if records are available that can conclusively determine the part number. We

redesignated subsequent paragraphs accordingly.

**Request to Add Inspection**

UAL stated that the actions specified in paragraph (l) of the proposed AD (80 FR 20178, April 15, 2015) would also depend on the record of findings from inspections made in accordance with AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013). UAL added that there was no AD requirement to record these findings. UAL noted that operators conducted the inspections and took actions that were required. UAL stated that it would be better to call out a new inspection in the AD to determine which condition the actuator is in, and then take action as appropriate.

We acknowledge the commenter's concerns. We have revised paragraph (l) of this AD to specify that no actuator attach fitting having P/N 65B08564–7 may be installed on any airplane unless the inspection specified in paragraph (h)(1) of this AD is done prior to installation and the applicable actions specified in paragraphs (i) and (j) of this AD are done within the applicable times specified in paragraphs (i) and (j) of this AD. We have also added a records review as an option if records are available that can conclusively determine if the actions have been done.

**Change to Paragraph (h)(2) of the Proposed AD ((80 FR 20178, April 15, 2015)**

We have revised paragraph (h)(2) of this AD by referring to Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014, as an appropriate source of service information for accomplishing the required actions.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 20178, April 15, 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 20178, April 15, 2015).

We also determined that this change will not increase the economic burden on any operator or increase the scope of this AD.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013; and Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. The service information describes procedures for new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. 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.

**Costs of Compliance**

We estimate that this AD affects 184 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained inspection for part number in AD 2013-23–03, Amendment 39-17658 (78 FR 68345, November 14, 2013). | 7 work-hours × $85 per hour = $595 | $0 | $595 | $109,480 |
| New proposed inspections for machining defect. | 8 work-hours × $85 per hour = $680 | 0 | 680 | $125,120 |
| Replacement for airplanes without any defect | 6 work-hours × $85 per hour = $510 | 13,720 | 14,230 | $14,230 per airplane |

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this 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 have 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 that this AD:

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

(2) Is not a ''significant rule'' under 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.

**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 removing Airworthiness Directive (AD) 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013), and adding the following new AD:

**2015–25–03 The Boeing Company:** Amendment 39–18341; Docket No. FAA–2015–0828; Directorate Identifier 2014–NM–146–AD.

**(a) Effective Date**

This AD is effective January 28, 2016.

**(b) Affected ADs**

This AD replaces AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013).

**(c) Applicability**

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by a report of the fracture of an inboard actuator attach fitting of the outboard flap. An inspection of the attach fitting revealed that it was incorrectly machined with a cylindrical profile instead of a conical profile, resulting in reduced wall thickness. A machining defect was also found on some actuator assemblies inspected during manufacture at the point where the tapered machining transitioned to the hemispherical machining at the top of the inner surface. This defect could lead to fatigue cracking and subsequent fracture. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Retained Part Number Inspection With Revised Service Information**

This paragraph restates the requirements of paragraph (g) of AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013), with revised service information. Within 90 days after November 29, 2013 (the effective date of AD 2013–23–03): Inspect to determine the part number of the inboard actuator attach fittings of the outboard flaps, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013; or Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014, may be used.

**(h) Retained Actions for Certain Attach Fittings With Revised Service Information**

This paragraph restates the requirements of paragraph (h) of AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013), with revised service information. If, during the inspection required by paragraph (g) of this AD, any inboard actuator attach fitting having part number (P/N) 65B08564–7 is found, before further flight, do the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Do a detailed inspection of the inboard actuator attach fitting for a cylindrical defect, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013; or Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014, may be used. For airplanes on which the detailed inspection is done before the effective date of this AD: If any cylindrical defect is found, before further flight, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Do a minimum thickness inspection of the inboard actuator attach fitting to determine minimum wall thickness of the actuator fitting assembly, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013; or Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013.

(ii) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013; or Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014, may be used.

**(i) New Actions for Certain Airplanes on Which Any Cylindrical Defect Is Found**

For airplanes on which the detailed inspection required by paragraph (h)(1) of this AD is done on or after the effective date of this AD: If any cylindrical defect is found during any inspection required by paragraph (h)(1) of this AD, before further flight, do the actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) Determine the minimum wall thickness of the actuator attach fitting either by doing an ultrasonic inspection or by mechanically measuring the thickness and do a detailed inspection of the inner conical section to determine if the machining defect is present, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(i) If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(ii) If the minimum thickness of the wall is 0.140 inch or greater and the machining defect is present, before further flight, do the actions specified in paragraph (i)(1)(ii)(A) or (i)(1)(ii)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iii) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is not present, within 48 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iv) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is present, before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

**(j) New Actions for Airplanes on Which No Cylindrical Defects Are Found**

If no cylindrical defect is found during any inspection required by paragraph (h)(1) of this AD, within 24 months after the effective date of this AD, do the actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) Determine the minimum wall thickness of the actuator attach fitting either by doing an ultrasonic inspection or by mechanically measuring the thickness and do a detailed inspection of the inner conical section to determine if the machining defect is present, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(i) If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747 57A2443, Revision 1, dated June 23, 2014.

(ii) If the minimum thickness of the wall is 0.140 inch or greater and the machining defect is present, before further flight, do the actions specified in paragraph (j)(1)(ii)(A) or (j)(1)(ii)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iii) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is not present, within 48 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iv) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is present, before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

**(k) New Inspection or Replacement for Certain Fittings That Were Previously Inspected**

For airplanes on which the detailed inspection required by paragraph (h)(1) of this AD is done before the effective date of this AD, except as required by paragraph (m) of this AD: If any cylindrical defect is found during any inspection required by paragraph (h)(1) of this AD and the replacement of the inboard actuator attach fitting of the outboard flap was not done as specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, within 24 months after the effective date of this AD, do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Do a detailed inspection of the inner conical section for machining defects and do an ultrasonic inspection to determine the minimum thickness or mechanically determine the minimum thickness, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014. A review of airplane maintenance records, if available, is acceptable to determine the wall thickness and to determine if there are machining defects, provided wall thickness and machining defects can be positively determined from the records review.

(i) If any machining defect is found and the minimum thickness of the wall is 0.140 inch or greater: Before further flight, do the actions specified in paragraph (k)(1)(i)(A) or (k)(1)(i)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(ii) If any machining defect is found and the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iii) If no machining defect is found and the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch: Within 48 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(iv) If a machining defect is or is not found and the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

**(l) Parts Installation Limitation**

As of the effective date of this AD, no actuator attach fitting having P/N 65B08564–7 may be installed on any airplane unless the inspection specified in paragraph (h)(1) of this AD is done prior to installation and the applicable actions specified in paragraphs (i) and (j) of this AD are done within the applicable times specified in paragraphs (i) and (j) of this AD. A review of airplane maintenance records, if available, is acceptable to determine if the inspection and applicable actions have been done, provided the inspection and actions can be positively determined from the records review.

**(m) Action for Parts Installed After AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013) Was Accomplished**

For airplanes on which the detailed inspection required by paragraph (h)(1) of this AD is done before the effective date of this AD and the inboard actuator attach fitting was replaced since that inspection: Within 90 days after the effective date of this AD, inspect to determine the part number of the inboard actuator attach fittings of the outboard flaps and, for inboard actuator attach fittings having P/N 65B08564–7, do the applicable actions specified in paragraphs (h), (i), and (j) of this AD within the applicable times specified in paragraphs (h), (i), and (j) of this AD. A review of airplane maintenance records, if available, is acceptable to determine the part number, provided the part number can be positively determined from the records review.

**(n) 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 (o) 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) If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified 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 steps identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

(5) AMOCs approved for AD 2013–23–03, Amendment 39–17658 (78 FR 68345, November 14, 2013) are approved as AMOCs for the corresponding provisions of this AD.

**(o) Related Information**

For more information about this AD, contact Nathan Weigand, Aerospace

Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

**(p) 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.

(3) The following service information was approved for IBR on January 28, 2016.

(i) Boeing Alert Service Bulletin 747–57A2443, Revision 1, dated June 23, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on November 29, 2013 (78 FR 68345, November 14, 2013).

(i) Boeing Alert Service Bulletin 747–57A2443, dated September 12, 2013.

(ii) Reserved.

(5) 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.*

(6) You may view this 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.

(7) 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 Renton, Washington, on November 24, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate,Aircraft Certification Service.*

[FR Doc. 2015–30881 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

**RIN 3038–AE23**

## Records of Commodity Interest and Related Cash or Forward Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is amending Commission Regulation 1.35(a) to: Provide that all records required to be maintained under this regulation must be maintained in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information; clarify that all records, except records of oral and written communications leading to the execution of a commodity interest transaction and related cash or forward transactions, must be kept in a form and manner that allows for identification of a particular transaction; exclude members of designated contract markets (''DCMs'') and of swap execution facilities (''SEFs'') that are not registered or required to register with the Commission (''Unregistered Members'') from the requirements to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions, keep text messages, and keep records in a particular form and manner; and exclude commodity trading advisors (''CTAs'') from the oral recordkeeping requirement (''Final Rule'').

**DATES:** Effective December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Katherine Driscoll, Associate Chief Counsel, (202) 418–5544, *kdriscoll@cftc.gov;* August A. Imholtz III, Special Counsel, (202) 418–5140, *aimholtz@cftc.gov;* or Lauren Bennett, Special Counsel, (202) 418–5290, *lbennett@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission amended Regulation 1.35(a) in December 2012 as part of a series of rulemakings intended to integrate certain existing Commission rules more fully with the framework created by the Dodd-Frank Wall Street Reform and Consumer Protection Act for swap dealers and major swap participants (the ''2012 Amendment'').[1]

Regulation 1.35(a) requires each futures commission merchant (''FCM''), retail foreign exchange dealer (''RFED''), introducing broker (''IB''), and member of a DCM or of a SEF to keep full, complete, and systematic records of all transactions relating to its business of dealing in commodity interest and related cash or forward transactions.[2] The Commodity Exchange Act (''CEA'') defines ''member'' as an individual, association, partnership, corporation, or trust—(i) owning or holding membership in, or admitted to membership representation on, the registered entity [3] or derivatives transaction execution facility; or (ii) having trading privileges on the registered entity or derivatives transaction execution facility.[4]

Regulation 1.35(a) requires FCMs, RFEDs, IBs, and members of a DCM or of a SEF to keep records of written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions. Additionally, Regulation 1.35(a) includes a requirement to keep records of certain oral communications, which applies to each FCM, RFED, large IB (defined as an IB that has generated over $5 million in aggregate gross revenues over the preceding three years from its activities as an IB), and member of a DCM or of a SEF that is registered or required to register with the Commission as a floor broker (''FB'') (only with regard to acting as an agent for a non-affiliated client) or as a CTA.[5] Unlike the written recordkeeping requirement that applies to both commodity interest transactions and related cash or forward transactions, the oral recordkeeping requirement is limited to commodity interest transactions.[6] The scope of records covered by Regulation 1.35(a) includes communications by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media.[7] These communications include text messages. Regulation 1.35(a) also mandates that all records be kept in a form and manner identifiable and searchable by transaction.

[1] *See* Adaptation of Regulations to Incorporate Swaps—Records of Transactions, 77 FR 75523 (December 21, 2012) (''2012 Amendment Adopting Release'').

[2] 17 CFR 1.35(a)(1).

[3] The term ''registered entity'' is defined in CEA section 1a(40) to include both DCMs and SEFs. *See* CEA sections 1a(40)(A) (DCMs) and (D) (SEFs).

[4] 7 U.S.C. 1a(34).

[5] As stated in the 2012 Amendment, the oral recordkeeping requirement in Regulation 1.35(a) does not apply to: (i) Oral communications that lead solely to the execution of a related cash or forward transaction; (ii) oral communications provided or received by a floor broker that do not lead to the purchase or sale for any person other than the floor broker of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Commodity Exchange Act; (iii) an introducing broker that has generated over the preceding three years $5 million or less in aggregate gross revenues from its activities as an introducing broker; (iv) a floor trader; (v) a commodity pool operator; (vi) a swap dealer; (vii) a major swap participant; or (viii) a member of a DCM or SEF that is not registered or required to be registered with the Commission in any capacity. 17 CFR 1.35(a)(1).

[6] 17 CFR 1.35(a)(1).

[7] *Id.*

The 2012 Amendment became effective on February 19, 2013.[8] Shortly thereafter, a variety of market participants began raising concerns regarding the practical impact of the rule, including its impact on non-financial commercial end-users. Commission staff hosted an End-User Roundtable Discussion on April 3, 2014 to discuss these concerns with affected parties. Commission staff subsequently issued no-action letters that addressed certain of the issues with the 2012 Amendment. CFTC Staff Letter No. 14–72 provided temporary no-action relief to Unregistered Members, relieving them from the requirements to (i) maintain text messages; and (ii) maintain records in a form and manner identifiable and searchable by transaction.[9] CFTC Staff Letter No. 14–60 provided temporary no-action relief to CTAs that are members of a DCM or of a SEF, relieving them from the requirement to maintain records of oral communications in connection with the execution of swaps.[10] CFTC Staff Letter No. 14–147 extended the temporary no-action relief provided to CTAs in CFTC Staff Letter No. 14–60, and expanded the scope of the relief to include oral communications that lead to the execution of a commodity interest transaction, in addition to communications that lead to the execution of a swap transaction.[11]

## II. The Proposal

On November 14, 2014, the Commission published for comment in the **Federal Register** a proposal to amend Regulation 1.35(a) (the ''Proposed Amendment'' or ''Proposal'') to: (i) Provide that all records required to be maintained under the regulation must be searchable; (ii) clarify that all records must be kept in a form and manner that allows for identification of a particular transaction, except that records of oral and written communications leading to the execution of a commodity interest transaction and related cash or forward transactions are not required to be kept in a form and manner that allows for the identification of a particular transaction; (iii) exclude Unregistered Members from the requirements to retain text messages and to maintain records in a particular form and manner; and (iv) exclude CTAs from the oral recordkeeping requirement.[12]

## III. Discussion

The Commission received 18 comment letters in response to the Proposal. The commenters represented a variety of interests, including eight commercial end-user trade groups, five advisor and broker trade groups, two exchanges, one technology vendor, one mortgage lending association, and one self-regulatory organization.[13] After carefully considering all of the comments received, the Commission is adopting the Final Rule largely as proposed, with two exceptions. First, the Commission is clarifying the requirements governing the form and manner in which records must be kept. Second, the Commission is excluding Unregistered Members from the requirement to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions (in addition to adopting the proposed exclusions of Unregistered Members from the requirements to retain text messages and to maintain records in a particular form and manner).[14]

### *A. Proposal To Clarify the ''Identifiable'' and ''Searchable'' Requirements of the Rule Generally and To No Longer Require That Pre-Trade Communications Be Identifiable by Transaction*

Regulation 1.35(a) mandates that required records, including records of oral and written communications that lead to the execution of a transaction, be maintained in a form and manner ''identifiable and searchable by transaction.'' [15] Prior to the publication of the Proposed Amendment, the Commission received numerous requests for guidance regarding compliance with this form and manner requirement.[16] Therefore, the Commission proposed to clarify the rule by stating that all required records must be searchable, but not ''searchable by transaction.'' [17] The Commission further proposed to replace the requirement in Regulation 1.35(a) that records be ''identifiable'' with the requirement that records be ''kept in a form and manner that allows for the identification of a particular transaction.'' [18]

In considering the Proposed Amendment, the Commission noted that access to searchable pre-trade communications is an important element of its oversight of the derivatives market and enforcement of Commission rules and regulations.[19] The Commission recognized, however, that keeping these records in a form and manner that allows for the identification of a particular transaction could pose significant challenges to some market participants.[20] Therefore, the Commission also proposed to amend Regulation 1.35(a) to state that, although they still must be searchable, records of oral and written communications that lead to the execution of a transaction are not required to be kept in a form and manner that allows for identification of a particular transaction.[21] This proposed change meant that market participants would not have to link or otherwise identify a record of a communication that leads to the execution of a transaction with a particular transaction.

#### i. Comments on Form and Manner Generally

Many commenters generally supported the proposed changes to the form and manner requirements of the

[8] 2012 Amendment Adopting Release at 75524.

[9] CFTC Staff Letter No. 14–72, *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-72.pdf.*

[10] CFTC Staff Letter No. 14–60, *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-60.pdf.*

[11] CFTC Staff Letter No. 14–147, *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-147.pdf.* Commission staff recently extended the relief in CFTC Staff Letter No. 14–147 until the effective date of any final Commission action with respect to the Proposed Amendment. *See* CFTC Staff Letter No. 15–65, *available at http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-65.pdf.*

[12] *See* Notice of proposed rulemaking: Records of Commodity Interest and Related Cash or Forward Transactions, 79 FR 68140 (November 14, 2014).

[13] Comment letters were received from American Gas Association (''AGA''), Commodity Markets Council (''CMC''), Commercial Energy Working Group (''CEWG''), Coalition of Physical Energy Companies (''COPE''), Edison Electric Institute (''EEI''), Federal Home Loan Banks (''FHLB''), Investment Adviser Association (''IAA''), Intercontinental Exchange (''ICE''), Investment Company Institute (''ICI''), International Energy Credit Association (''IECA''), Managed Funds Association (''MFA''), Minneapolis Grain Exchange (''MGEX''), National Rural Electric Cooperative Association and American Public Power Association (Joint letter, ''NRECA & APPA''), National Council of Farmer Cooperatives (''NCFC''), National Futures Association (''NFA''), National Introducing Brokers Association (''NIBA''), Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA AMG''), Voitrax Corporation (''Voitrax''). Public comments may be viewed on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1538.*

[14] NFA and NIBA both requested that the Commission consider raising the revenue threshold that exempts small introducing brokers from the requirement to record oral communications. Neither proposed a specific alternate threshold. The Commission is not revising the revenue threshold for defining ''small'' introducing brokers for the purposes of the rule, as such a revision is outside of the scope of this rulemaking.

[15] 17 CFR 1.35(a)(1).

[16] *See* Proposal at 68143.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

rule, although some stated that the Commission should further clarify certain terms. AGA stated that the ''searchable'' and ''identifiable'' components of the Proposed Amendment are undefined terms that could create confusion. SIFMA AMG recommended that the Commission adopt an interpretation of ''searchable'' that is similar to the approach of the Securities and Exchange Commission (''SEC''), which does not prescribe any particular methodology. SIFMA AMG argued that this flexible application of the term would enable firms to adopt new technology and preserve records in a cost-effective manner without impeding regulatory oversight.

Voitrax, a technology company, did not support the Proposed Amendment, stating that it was developing low-cost technology which would make the rule's existing requirement that records be ''identifiable and searchable by transaction'' both feasible and cost-effective. Voitrax stated that the Proposed Amendment's standalone requirement that records be searchable (rather than indexed) is not cost-effective, and that ''at higher volumes searching becomes infeasible.'' Voitrax also noted that it had devoted significant resources to creating software to address the requirements in the 2012 Amendment, and if the Proposed Amendment is finalized, there may be a disincentive for companies to invest in technology solutions related to regulatory requirements in the future.

In the Commission's view, records are ''searchable'' when they are kept in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information.[22] Therefore, with respect to the form and manner in which records are required to be kept, the Commission is replacing the term ''searchable'' with the phrase ''maintained in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information.'' Further, the Commission is clarifying that for the purpose of this rule, records ''allow for identification of a particular transaction'' when a market participant can identify those records that pertain to a particular transaction.

The Commission notes that the Final Rule does not require market participants to convert their records to searchable electronic databases. Rather, the Final Rule is deliberately drafted in a way that permits market participants subject to the rule to keep their paper and electronic records in a manner which they deem prudent and appropriate for their particular business. There is no prescribed methodology under Regulation 1.35(a) by which records must be searched or retrieved, so long as those searches yield prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information.

The Commission has carefully considered Voitrax's comment opposing the Proposed Amendment, but disagrees with Voitrax's contention that the requirement that records be searchable is not cost-effective, and is also infeasible at high volumes. As explained above, the Commission notes that the Final Rule does not prescribe any particular methodology or corresponding technology with which records must be searchable; rather, the rule can be satisfied using a variety of approaches with varying costs. The Commission also acknowledges Voitrax's concern that the Commission's changes to an existing rule may create a disincentive for some firms to develop technology to address Commission rules. Any rule amendment may have some effect on market participants, as well as the vendors that support those market participants. In this case, the Commission has tailored the rule to address some concerns that market participants have presented in a manner consistent with the overall purpose of the rule. Although Voitrax disagreed with the Proposed Amendment, the Commission believes that the Final Rule preserves the core market integrity and customer protection aspects of the rule, while reducing certain elements of the recordkeeping obligations imposed by the rule.[23]

ii. Comments Addressing Regulation 1.31

Regulation 1.35(a) states that market participants ''shall retain the records required to be kept by this section in accordance with the requirements of § 1.31.'' [24] Although the Commission did not propose to amend Regulation 1.31 in connection with the Proposed Amendment, several commenters raised concerns regarding the perceived incompatibility of Regulation 1.35(a) and Regulation 1.31.[25] In particular, many commenters stated that the requirement under Regulation 1.35(a) that records be ''searchable'' conflicts with the requirement in Regulation 1.31 that records be maintained in native file format.[26] Some commenters stated that reconciling these requirements was ''impossible'' or ''practically impossible,'' while another commenter stated that it would require a substantial investment in technology to obtain such functionality.[27]

Commenters proposed several solutions to address these perceived inconsistencies. AGA suggested that Regulation 1.35(a) should not contain any form and manner requirements, and that form and manner should be dictated solely by Regulation 1.31. Further, AGA proposed a safe harbor for end-users to rely on the record retention performed by a DCM, SEF, or a CFTC-registered counterparty, with respect to any of the records required under Rules 1.35(a) and 1.31. They proposed that in the absence of a safe harbor, the Commission should add language to the rule stating that it would consider ''good faith compliance'' with recordkeeping rules as a mitigating factor when exercising its enforcement authority. CMC proposed that members of DCMs or of SEFs that are not fiduciaries should be excluded from the requirement that records required to be maintained pursuant to Regulation 1.35(a) be kept in accordance with Regulation 1.31. MGEX proposed eliminating the ''searchable'' and ''identifiable'' requirements from Regulation 1.35(a). As an alternative, they supported keeping the searchable requirement in Regulation 1.35(a) in conjunction with a significant amendment to Regulation 1.31 regarding the storage of electronic communications.

MFA noted that it, along with IAA and the Alternative Investment Management Association (''AIMA''), submitted to the Commission a petition

[22] The Commission observes that these requirements are substantially similar to those contained in the SEC rules for investment adviser recordkeeping. *See* 17 CFR 275.204–2(g)(2).

[23] The Commission notes that the technology described in Voitrax's Comment Letter may still be useful in helping market participants comply with the form and manner requirements prescribed in the Final Rule.

[24] 17 CFR 1.35(a)(1).

[25] *See* AGA, CMC, EEI, IAA, MFA, MGEX, and SIFMA AMG Comment Letters. *See also* 17 CFR 1.31. Regulation 1.31 sets forth the form and manner in which all books and records required to be kept by the Commodity Exchange Act or Commission Rules must be maintained. Among other things, it mandates that records ''shall be kept in their original form (for paper records) or native file format (for electronic records) for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period.'' The rule also requires all market participants who exclusively use electronic storage for some or all of their records to employ at least one third-party technical consultant to manage the storage of those records. Some Unregistered Members raised interpretive questions regarding Regulation 1.31, a rule which they may not otherwise be subject to absent their inclusion in Regulation 1.35.

[26] *See* CMC, IAA, MFA, MGEX, and SIFMA AMG Comment Letters.

[27] *See* CMC, MFA, and MGEX Comment Letters.

for rulemaking (''1.31 Petition'') to amend Regulation 1.31 to be, among other things, ''more flexible with regard to permitted formats.'' [28] MFA stated that in the event the Proposed Amendment is finalized prior to any Commission action regarding the 1.31 Petition, the Commission should provide interim relief to CPOs and CTAs that are members of a DCM or of a SEF from the requirements of Regulation 1.31. They also suggested that the Commission grant substituted compliance with the SEC's electronic recordkeeping requirements for those CFTC-registered CTAs and CPOs that are also SEC-registered investment advisers. Absent this relief, MFA asserted that these entities ''will have to institute recordkeeping requirements that are obsolete or unworkable.'' Similarly, SIFMA AMG requested that the Commission grant temporary no-action relief to all asset managers that are members of a DCM or of a SEF, including all CPOS and CTAs, from compliance with Rule 1.31 pending the Commission's consideration of the 1.31 Petition.

The Commission is aware that some commenters are concerned with the relationship between the requirements of Regulations 1.35(a) and 1.31. The Commission notes that most of the comments in this area centered on perceived inconsistencies with the requirement in Regulation 1.35(a) that records be searchable. The Commission believes that the clarification of the form and manner requirements of Regulation 1.35(a), as stated above, should allay some commenters' concerns regarding compliance with both rules. Searchable records are indispensable to the Commission's ability to conduct surveillance inquiries and investigations in an efficient and effective manner for the protection of customers and ensuring market integrity. For example, searchable records facilitate the timely pursuit of potential violations, which can be important in seeking to freeze and recover any customer funds received from illegal activity or address market disruptions. As noted above, the Commission reiterates that the Final Rule does not require market participants to convert their records to searchable electronic databases. Rather, this rule was deliberately drafted in a way that permits market participants to maintain their paper and electronic records in a manner which they deem prudent and appropriate for their particular business. There is no prescribed methodology under Regulation 1.35(a) by which records must be searched or retrieved, so long as those searches yield prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information.

*B. Proposal To Exclude Unregistered Members From the Requirements To Retain Text Messages and To Maintain Required Records in a Particular Form and Manner*

i. Text Messages and the Form and Manner Requirement

Regulation 1.35(a) generally mandates that the market participants subject to its requirements retain records that are transmitted by, among other things, telephone, mobile device, or other digital or electronic media.[29] This includes text messages.[30] Prior to the publication of the Proposed Amendment, many end-users told the Commission that text messages were a primary means of communication for their commodity trading businesses. They stated, however, that it was prohibitively expensive to retain those records.[31] In considering the Proposed Amendment, the Commission observed that its oversight of the derivatives market would not be unduly affected if Unregistered Members were not required to retain text messages.[32] Therefore, the Commission proposed to exclude Unregistered Members from the requirements in Regulation 1.35(a) to retain text messages.

As discussed above, Regulation 1.35(a) also requires that all records be kept in a form and manner that is ''identifiable and searchable by transaction.'' [33] Prior to the publication of the Proposed Amendment, many end-users stated that it was difficult to maintain their records in this particular format due to the nature of the relationship between their cash or forward transactions and their trading and hedging practices in the derivatives market.[34] The Commission had previously stated that the requirements that records be ''searchable'' and ''identifiable'' do not require entities to link all of their transactions in commodity interests to related cash or forward transactions by a specific identifier.[35] However, in considering the Proposed Amendment, the Commission noted that these form and manner requirements may nonetheless impose additional burdens on some Unregistered Members.[36] The Commission recognized that excluding Unregistered Members from the requirement to maintain their records in a particular form and manner may impose an incremental burden on the Commission. However, the Commission observed that as long as those entities were required to retain their records, this exclusion would not unduly compromise the Commission's ability to oversee the derivatives market.[37] Therefore, the Commission also proposed to exclude Unregistered Members from the requirement in Regulation 1.35(a) to maintain records in a particular form and manner.[38]

In response, the Commission received comments from representatives of commercial end-users in the agriculture and energy industry, two exchanges, one advisor trade group, and a mortgage lending association.[39] These commenters were supportive of these aspects of the Proposal related to Unregistered Members, but all contended that the Commission did not go far enough in its proposed relief.

Regarding the proposal to exclude Unregistered Members from the requirement to keep text messages, several commenters asked the Commission to clarify the term ''text message.'' [40] AGA requested that the Commission eliminate what it characterized as the ''arbitrary distinction'' the rule makes between text messages and other forms of real-time communications, including instant messaging and chat rooms. EEI, IECA, NRECA, and APPA requested further guidance on what types of communications qualify as text messages. In response to commenter requests to define the ''text message,'' the Commission is clarifying that the term ''text message,'' for the purposes of this rule, means any written communication sent from one telephone number to one or more telephone numbers by short message service (''SMS'') or multimedia messaging service (''MMS''), and not those written communications exchanged by proprietary messaging services. Proprietary messaging services are internet-based, which enables users to send and store messages interchangeably on mobile devices and

[28] *See* Petition for Rulemaking to Amend CFTC Regulations 1.31, 4.7(b), and (c), 4.23 and 4.33, attached to MFA Comment Letter.

[29] 17 CFR 1.35(a)(1).

[30] *Id.*

[31] *See* Proposal at 68143.

[32] *Id.*

[33] 17 CFR 1.35(a)(1).

[34] *See* Proposal at 68143.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See* CMC, NCFC, AGA, CEWG, COPE, EEI, IECA, NRECA & APPA, ICE, MGEX, SIFMA AMG and FHLB Comment Letters.

[40] *See* AGA, EEI, IECA, and NRECA & APPA Comment Letters.

computers, whereas SMS and MMS messages are traditionally only sent and stored on a mobile device.

Given that some Unregistered Members have informed the Commission that they conduct their commodity interest and related cash or forward transactions primarily via text message, it may be unduly burdensome to require them to implement the additional technology to allow these messages to be stored on computers. Registered market participants, on the other hand, tend to rely more heavily on other forms of communication to execute commodity interest transactions and related cash or forward transactions. To the extent these registered market participants choose to avail themselves of the ability to use text messages, they could more easily expand their existing communications retention infrastructure to include text message storage.

ii. Written Communications That Lead to the Execution of a Transaction

Commenters representing commercial end-users also raised issues regarding an element of the existing rule which the Commission had not proposed to change. Specifically, the commenters addressed the requirement that firms maintain records of communications that ''lead to'' the execution of a commodity interest transaction and related cash or forward transactions. Several commenters stated that market participants cannot readily identify which communications will ''lead to'' the execution of transactions in commodity interests and related cash or forward transactions. Market participants therefore may be forced to retain every communication related to their commodity trading business.[41] AGA stated that the ''cumbersome and costly'' requirement to retain all communications that lead to the execution of a transaction will deter market participants from participating on exchanges. AGA and CEWG suggested that Unregistered Members should not have to retain records of pre-trade communications; rather, they should only be required to retain written records of a final agreement or those that contain the material economic terms of a transaction.

The Commission has previously stated that records of communications that lead to the execution of a transaction can serve to protect market participants and promote the integrity of the markets.[42] However, the Commission is persuaded that the nature of the activities of many Unregistered Members in the commodity interest markets—which activities predominantly involve the hedging of risks associated with their commercial businesses—does not justify the burden Unregistered Members may have in identifying and retaining records of communications that lead to the execution of commodity interest and related cash or forward transactions. The Commission therefore has determined that Unregistered Members should not be required to keep records of written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions. Instead, Unregistered Members will only be required to keep records of their transactions.

In addition to the comments addressed above, nine commenters representing a variety of commercial interests requested that Unregistered Members be excluded from the rule altogether.[43] Several commenters argued that the rule is simply too burdensome for Unregistered Members, particularly for Unregistered Members that are commercial end-users.[44] MGEX argued that the rule places a significant burden upon those Unregistered Members that are individuals that trade only for themselves, have purchased a membership for investment purposes, and/or only engage in low-risk commercial hedging. COPE and EEI stated that the Commission's recordkeeping rules relating to swaps and to large trader reporting already impose sufficient recordkeeping obligations on Unregistered Members, making compliance with Regulation 1.35(a) unnecessary. Multiple commenters asserted that the rule should only apply to intermediaries. Several commenters stated that the rule discourages Unregistered Members from membership on DCMs and SEFs. Finally, several commenters argued that there is no statutory basis for including Unregistered Members in the rule.[45]

As far as Regulation 1.35(a) may present unique issues for Unregistered Members, the Commission is tailoring this Final Rule to accommodate those issues. Specifically, Unregistered Members do not have to keep records of written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions. They do not have to keep text messages and they do not have to maintain records in any particular form and manner. The Commission understands that Unregistered Members may wish to be excluded from Regulation 1.35(a) entirely. The Commission has already determined, however, that Unregistered Members are properly subject to the rule.[46] The policy reasons for this determination that were enunciated in 2012 continue to apply.[47] The recordkeeping requirements of Regulation 1.35(a), including those imposed on Unregistered Members, are an important component of the Commission's efforts to ensure fair, orderly and efficient markets, and to detect and deter abusive, disruptive, fraudulent, and manipulative acts that can harm market integrity and customers.[48]

*C. Proposal To Exclude Commodity Trading Advisors From the Requirement To Record and Maintain Oral Communications*

Regulation 1.35(a) requires CTAs that are members of a DCM or of a SEF to record all oral communications that lead to the execution of a transaction in a commodity interest.[49] In considering the Proposed Amendment, the Commission noted that many CTAs who are members of a DCM or of a SEF have discretionary trading authority over customers' accounts and, therefore would not have routine telephone conversations with customers that lead to the execution of a transaction in a commodity interest.[50] The Commission noted, however, that some CTAs may execute an order on behalf of a customer on a non-discretionary basis.[51] The Commission stated that capturing customer orders was consistent with the regulatory goals of Regulation 1.35(a), although the costs of recording and keeping oral communications weighs against the benefit of achieving those goals.[52] The Commission stated that the same was not true with respect to the costs of recording and maintaining written records, which the Commission understood to be significantly less than the costs of recording and maintaining

[41] *See* AGA, MGEX, CEWG, CMC, IECA and ICI Comment Letters.

[42] *See* 2012 Amendment Adopting Release at 75538.

[43] *See* CMC, CEWG, COPE, EEG, FHLB, ICE, IECA, and NRECA & APPA Comment Letters.

[44] *See* CMC, IECA, MGEX, and NCFC Comment Letters.

[45] *See* CMC, IECA, and MGEX Comment Letters.

[46] 2012 Amendment Adopting Release at 75525. The issues that commenters have raised regarding Unregistered Members, as summarized immediately above, are largely the same as the issues that were raised by commenters, and considered by the Commission, in 2012. *Id.* at 75527.

[47] *Id.* at 75528.

[48] *Id.*

[49] 17 CFR 1.35(a)(1).

[50] *See* Proposal at 68143.

[51] *Id.*

[52] *Id.*

oral communications.[53] Therefore, the Commission proposed to amend Regulation 1.35(a) to exclude CTAs from the requirement to record oral communications that lead to the execution of a transaction in a commodity interest.

In response to the Proposed Amendment and its effects on CTAs, the Commission received comments from representatives of five advisor and broker trade groups, one self-regulatory organization, and one exchange.[54] The commenters were supportive of this aspect of the Proposed Amendment, with most noting that CTAs and CPOs trade primarily on a discretionary basis, and therefore have little to no communication with customers regarding transactions. In addition, some commenters stated that CTAs are subject to extensive ''analogous'' recordkeeping requirements under Regulation 4.33 and SEC rules for investment advisers, which makes compliance with the oral recordkeeping requirement of Regulation 1.35(a) unnecessary and unduly burdensome.[55] No commenters suggested that the Commission refrain from excusing CTAs from the requirement to record oral communications that lead to the execution of a transaction in a commodity interest.

Commenters also requested that the Commission provide CTAs with additional relief from the requirements of Regulation 1.35(a). IAA and ICI cited the reasons the Commission offered to exclude CTAs and CPOs from oral recordkeeping to argue that asset managers should be excluded from Regulation 1.35(a) entirely. For example, IAA and ICI stated that CTAs and CPOs act on a discretionary basis and have little to no communication with customers regarding orders. They also noted that any discussions CTAs and CPOs may have with market intermediaries regarding orders are captured by those intermediaries, making CTAs' and CPOs' records duplicative. Further, they noted that CTAs and CPOs are already subject to extensive recordkeeping rules under CFTC, SEC and state regulations. SIFMA AMG argued that the relief that the Commission staff provided to Unregistered Members, by excusing them from the requirements to retain text messages and to maintain other required records in a particular form and manner should be expanded to include all asset managers. SIFMA AMG stated that asset managers, including registered CTAs and CPOs, utilize text messages in a similar capacity as Unregistered Members. SIFMA AMG stated that the technology does not exist to maintain text messages pursuant to the rule. SIFMA AMG also argued that the costs associated with these recordkeeping obligations will ''almost certainly'' reduce the liquidity that asset managers provide to the swap markets. Further, as noted above, SIFMA AMG observed that asset managers are also subject to extensive regulation under other CFTC, SEC and state regulations.

The Commission has carefully considered commenters' requests that, in addition to the proposed relief from oral recordkeeping requirements, the Commission grant CTAs relief from the written recordkeeping requirements of Regulation 1.35(a). The Commission has stated in the past that access to searchable written records is an important tool the Commission needs to ensure market integrity and protect customers.[56] As some commenters have acknowledged, CTAs already maintain extensive written records that are analogous to those required by the rule.[57] The Commission's interest in ensuring customer protection and market integrity justifies the incremental costs to maintain these and other records pursuant to Regulation 1.35(a).

In response to SIFMA AMG's request to extend the relief granted to Unregistered Members to all asset managers, the Commission notes that asset managers are uniquely situated compared to Unregistered Members, in that asset managers may act as intermediaries.[58] As such, an asset manager's written records are more critical to the Commission's interest in promoting customer protection than those of Unregistered Members. The Commission nonetheless recognizes the burdens that CTAs face when complying with Regulation 1.35(a), and has alleviated some of that burden by excluding them entirely from the oral recordkeeping requirements of the rule. Therefore, the Commission is adopting the Final Rule as proposed.

*D. Reorganization of Paragraph (a) of Commission Regulation 1.35*

The final rule text of paragraph (a) of Commission Regulation 1.35 as adopted in this release has been reorganized to provide greater clarity regarding the regulatory obligations of affected Commission registrants and Unregistered Members. To this end, the reorganized rule text defines separate categories of required records and then separately specifies for each type of Commission registrant, and for Unregistered Members, the category or categories of records each is required to keep. For the avoidance of doubt, other than as modified by the amendments to paragraph (a) of Commission Regulation 1.35 that the Commission is adopting in this release, the Commission reiterates that the text of paragraph (a) has only been reorganized; the reorganized rule text is not intended to modify the regulatory obligations of Commission registrants or Unregistered Members under Commission Regulation 1.35(a) in any other respect.

## IV. Related Matters

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act requires that Federal agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, they must provide a regulatory flexibility analysis respecting the impact.[59] Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act[60] a regulatory flexibility analysis or certification typically is required.[61] The Commission stated in the Proposal that, if adopted, the Proposal would not have a significant economic impact on affected entities because it would relieve them from certain regulatory obligations that would otherwise apply to them. Specifically, the Final Rule provides relief from certain recordkeeping requirements in Regulation 1.35(a), and the Final Rule does not impose any new regulatory obligations on affected persons. Commenters agreed that the Proposal would decrease regulatory burdens on certain market participants. No commenter stated that the Proposal would impose any new regulatory obligations on affected persons.

[53] *Id.*

[54] *See* IAA, ICI, MFA, SIFMA AMG, NIBA, NFA, and MGEX Comment Letters.

[55] *See* IAA, ICI, MFA, and SIFMA AMG Comment Letters.

[56] *See* 2012 Amendment Adopting Release at 75528.

[57] *See* IAA, ICI, MFA, and SIFMA AMG Comment Letters.

[58] CFTC Staff Letter No. 14–72 granted relief to Unregistered Members from the requirements to retain text messages and to maintain records in a particular form and manner. The Proposal sought to codify that relief.

[59] 5 U.S.C. 601 *et seq.*

[60] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[61] *See* 5 U.S.C. 601(2), 603–05.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule amendment adopted herein will not have a significant economic impact on a substantial number of small entities.[62]

*B. Paperwork Reduction Act*

As the Commission stated in the Proposal, this rulemaking does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act (''PRA''). All recordkeeping or information collection requirements relevant to the subject of this rulemaking, or discussed herein, already exist under current law. The title for this collection of information is ''Adaptation of Regulations to Incorporate Swaps—Records of Transactions,'' OMB control number 3038–0090. The Commission invited public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the Proposed Amendment. The Commission did not receive any comments that addressed whether additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the adoption of the Proposal. Nevertheless, the Commission notes that the final rule will reduce the current burden of OMB control number 3038–0090. Accordingly, the Commission will, by separate action, publish in the **Federal Register** a notice and request for comment on the amended PRA burden associated with the final rule, and submit to OMB an information collection request to amend the information collection, in accordance with 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d).

*C. Cost-Benefit Considerations*

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In adopting the Final Rule, the Commission has considered the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors, and sought comments from interested persons regarding the nature and extent of such costs and benefits.

In summary, as the Commission stated in the 2012 Amendment, the records (as well as the form and manner in which such records must be kept) under Regulation 1.35 are an important component of the Commission's efforts to ensure fair, orderly and efficient markets, and to detect and deter abusive, fraudulent and manipulative acts and practices that can harm market integrity and customers. In furthering the important policy and practical objectives of the rule, the Commission carefully considered the potential impact on the market and market participants. The adoption of the Final Rule reflects the agency's efforts to consider the need to promote market integrity and protect customers, while mitigating potential cost to market participants, and in particular, commercial end-users.

1. Background

The Commission is amending Regulation 1.35(a) to: (i) Provide that all records that are required to be maintained under this regulation must be maintained in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information; (ii) clarify that the requirement that records be kept in a form and manner identifiable by transaction means that the records must be kept in a form and manner that allows for identification of a particular transaction, except that records of oral and written communications leading to the execution of a commodity interest transaction and related cash or forward transactions are not required to be kept in a form and manner that allows for identification of a particular transaction; (iii) exclude Unregistered Members of DCMs and of SEFs from the requirements to: keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions; keep text messages; and keep records in a particular form and manner; and (iv) exclude commodity trading advisors CTAs from the oral recordkeeping requirement. The Commission stated in the Proposal that the baseline for this cost and benefit consideration is the existing Regulation 1.35(a). While CFTC Staff Letters 14–72 and 14–147, as discussed above, currently provide no-action relief that is substantially similar to much of the relief the Final Rule provides to certain Commission registrants and Unregistered Members, the Commission believes that CFTC Staff Letters 14–72 and 14–147 should not set or affect the baseline from which the Commission considered the costs and benefits of the Final Rule. This is because, as they indicate, CFTC Staff Letters 14–72 and 14–147 do not necessarily represent the position or view of the Commission or any other office or division of the Commission.

The Commission invited comments from the public on all aspects of its preliminary consideration of the costs and benefits associated with the Proposal, and the Cost-Benefit Considerations section of the Proposal included specific questions regarding certain aspects of potential costs or potential benefits associated with the Proposal. While those who commented on the Proposal generally did not specifically address the Cost-Benefit Considerations section of the Proposal, certain of the comments raised issues that relate to the Commission's cost-benefit considerations. Accordingly, although the Commission has addressed those comments above in connection with the specific proposed regulatory provision of the Proposal to which they referred, the Commission is also addressing those comments in the discussion that follows.

2. Costs

The Commission stated in the Proposal that it would not impose any new or additional costs directly upon affected market participants, but instead would reduce some of the regulatory burdens and associated costs that Regulation 1.35(a) imposes upon them. The Commission stated that it is difficult to quantify what costs, if any, the Proposed Amendment would impose upon other market participants, the markets themselves, or the general public. The Commission observed, however, that one possible cost associated with the Proposed Amendment would be that certain market participants, such as CTAs that are members of a DCM or of a SEF and Unregistered Members, would no longer be required to keep certain types of records that may be useful for the Commission in exercising its oversight of the markets, including for market surveillance, enforcement, and ensuring market integrity. The Commission invited public comments on the costs of the Proposal.

[62] The Chairman made the same certification in the Proposed Amendment.

No commenter attempted to quantify the costs, if any, associated with the Proposal. Two commenters specifically stated that the Proposal would not affect market oversight.[63] Additionally, some commenters representing advisor trade groups noted that CTAs and CPOs are subject to extensive recordkeeping obligations under other CFTC, SEC and state regulations that are substantially similar to the requirements of Regulation 1.35(a). Therefore, the commenters that addressed this issue agreed that the Proposal would not significantly impact the Commission's ability to oversee the markets. The majority of commenters stated that the Proposal would reduce the regulatory burdens and costs associated with Regulation 1.35(a).

Many commenters argued, however, that the Proposal should have provided additional relief to Unregistered Members, especially those Unregistered Members that are commercial end-users. These commenters argued that this lack of additional relief would cause some end-users to avoid membership on DCMs and SEFs, resulting in increased transaction costs for those entities. These commenters also argued that such additional costs may cause market participants to conduct some swap transactions away from SEFs, which would, in turn, decrease market transparency and the Commission's ability to oversee the markets. As explained above, in adopting the Final Rule that provides additional relief to Unregistered Members, the Commission has attempted to address some of the concerns raised by end-users, which in turn should mitigate the impact of the rule on the broader market.

Finally, Voitrax commented that the Commission's changes to an existing rule may create a disincentive for some firms to develop technology to address Commission rules. Any rule amendment may have some effect on market participants, as well as the vendors that support those market participants. In this case, the Commission has tailored the rule to address some concerns that market participants have presented in a manner consistent with the overall purpose of the rule. However, the Commission believes that the Final Rule preserves the core market integrity and customer protection aspects of the rule, while reducing the recordkeeping obligations imposed by the rule.[64] The Commission therefore believes the costs associated with the Final Rule, to the extent that such costs exist, are negligible.

3. Benefits

The Commission stated in the Proposal that it would have a direct and tangible benefit for those market participants that are excused from certain aspects of the recordkeeping obligations of Regulation 1.35(a). The Commission reduced the burden of Regulation 1.35(a) by excluding CTAs and Unregistered Members from certain aspects of the rule. The Commission replaced the requirement that records be searchable by transaction with the more general requirement that records be searchable. The Commission observed that it may be difficult to quantify what other benefits the Proposal may have for other market participants, the markets themselves, or the general public. The Commission invited public comments on the benefits of the Proposal. In response to those comments, the Commission is further reducing the burden of Regulation 1.35(a) by replacing the term ''searchable'' that was in the Proposal with the phrase ''maintained in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information.'' No commenters attempted to quantify the benefits associated with the Proposal. Commenters generally agreed that the Proposal would reduce recordkeeping costs for certain market participants. The Commission believes the benefits associated with the Final Rule, which are difficult to quantify in the aggregate, will be realized in different ways by different market participants affected by the rule depending on the precise nature of their business and the attendant recordkeeping obligations that accompany that business.

4. Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

a. Protection of Market Participants and the Public

The Commission stated in the Proposal that it would reduce some of the regulatory burdens on certain market participants. The Commission recognizes that there may be a trade-off between reducing regulatory burdens and ensuring that the recordkeeping obligations Rule 1.35(a) imposes upon those market participants subject to the rule are sufficient to support the effort by the Commission to fulfill its regulatory mission. As noted above, the Proposal would relieve certain market participants from the requirement under Regulation 1.35(a) to keep certain types of records that can be useful for the Commission in exercising its oversight of the markets, including for market surveillance, enforcement, and ensuring market integrity. The Commission invited public comment on these issues.

No commenter stated that the Proposal would adversely affect the ability of the Commission to provide effective oversight of the markets. Two commenters specifically stated that the Proposal would not affect market oversight.[65] Additionally, some commenters representing advisor trade groups noted that CTAs and CPOs are subject to extensive recordkeeping obligations under other CFTC, SEC and state regulations that are substantially similar to the requirements of Regulation 1.35(a). Therefore, the commenters that addressed this issue agreed that the Proposal would not significantly impact the Commission's ability to oversee the markets. The Commission agrees with commenters that its access to records will remain sufficient to protect market participants and the public.

Some commenters argued that that the Proposal did not go far enough in relieving burdens on commercial end-users, which they argue creates a disincentive to transact on DCMs and SEFs, thereby lowering market transparency. As explained above, in adopting the Final Rule that provides additional relief to Unregistered Members, the Commission has attempted to address some of the concerns raised by end-users, which in turn should mitigate the impact of the rule on the broader market.

b. Efficiency, Competitiveness, and Integrity of Markets

The Amendments to Rule 1.35(a) are intended, in part, to reduce some of the regulatory burdens on certain market participants and end-users. The Commission invited public comment on whether the Proposed Amendment, if adopted, would actually decrease these regulatory burdens, and whether the decreased regulatory burdens would result in increased resource-allocation efficiency and competition without compromising market integrity.

Commenters generally stated that the Proposal would decrease the regulatory burdens on affected market participants. No commenters addressed whether the relief provided in the Proposed Amendment would result in increased

[63] CEWG and IECA Comment Letters.

[64] The Commission notes that the technology described in Voitrax's Comment Letter may still be useful in helping market participants comply with the form and manner requirements prescribed in the Final Rule.

[65] CEWG and IECA Comment Letters.

efficiency and competition among market participants. No commenter stated that the Proposal would compromise market integrity. In fact, no commenters addressed whether the Proposal would affect market integrity.

The Commission believes that the Final Rule will decrease the regulatory burdens on affected market participants. The Commission believes that this should result in increased resource-allocation efficiency for market participants overall. The Commission believes that the Final Rule should not have any effect on competition. Finally, the Commission believes that the Final Rule will not compromise market integrity. The Final Rule is narrowly tailored to provide relief to certain market participants with respect to certain types of records. This targeted relief does not unduly compromise the recordkeeping requirements of Regulation 1.35(a), the CEA, or other Commission Regulations.

Some commenters stated that the lack of sufficient relief provided in the Proposed Amendment would cause many market participates to avoid utilizing SEFs. Further, one commenter stated that costs associated with these recordkeeping obligations will ''almost certainly'' reduce the liquidity that asset managers provide to the swap markets. Many commenters agreed that although the Proposal decreased the regulatory burdens on Unregistered Members, it did not go far enough, resulting in decreased resource-allocation efficiency of the markets. As explained above, in adopting the Final Rule that provides additional relief to Unregistered Members, the Commission has attempted to address some of the concerns raised by end-users, which in turn should mitigate the impact of the rule on the broader market.

c. Price Discovery

The Commission stated that the Proposed Amendment would not have any effect on price discovery. The Commission invited public comments regarding what effect, if any, the Proposed Amendment would have on price discovery. Only one commenter addressed price discovery, stating that the Proposal would not have any effect on price discovery.[66] The Commission has no basis to believe that the Final Rule will have any effect on price discovery.

d. Sound Risk Management

The Proposal is intended, in part, to reduce some of the regulatory burdens on certain market participants. The Commission invited public comment on whether the Proposed Amendment would have any effect on the risk management practices of market participants and end-users. Commenters agreed that the Proposed Amendment would, if adopted, decrease regulatory burdens on certain market participants. Commenters did not address whether these decreased regulatory burdens would have an effect on market participants' risk management practices. One commenter stated that the Proposed Amendment did not provide sufficient relief to Unregistered Members that are commercial end-users, which they assert perpetuates a disincentive for these firms to transact on SEFs.[67] The commenter argues that any disincentive to SEF utilization decreases the risk management options that are available to Unregistered Members. As explained above, in adopting the Final Rule that provides additional relief to Unregistered Members, the Commission has attempted to address some of the concerns raised by end-users, which in turn should mitigate the impact of the rule on the broader market.

e. Other Public Interest Considerations

The Commission did not identify any other public interest considerations for this rulemaking, nor were any identified by commenters.

**List of Subjects in 17 CFR Part 1**

Agricultural commodity, Agriculture, Brokers, Committees, Commodity futures, Conflicts of interest, Consumer protection, Definitions, Designated contract markets, Directors, Major swap participants, Minimum financial requirements for intermediaries, Reporting and recordkeeping requirements, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 1 as set forth below:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. In § 1.35, revise paragraphs (a)(1) through (4) and add paragraphs (a)(5) through (9) to read as follows:

**§ 1.35 Records of commodity interest and related cash or forward transactions.**

(a) * * *

(1) *Futures commission merchants, retail foreign exchange dealers, and certain introducing brokers.* Each futures commission merchant, retail foreign exchange dealer, and introducing broker that has generated over the preceding three years more than $5 million in aggregate gross revenues from its activities as an introducing broker, shall:

(i) Keep full, complete, and systematic records (including all pertinent data and memoranda) of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions, which shall include all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of its business of dealing in commodity interests and related cash or forward transactions (for purposes of this section, all records described in this paragraph (a)(1)(i) are referred to as ''*commodity interest and related records*'');

(ii) If such person is a member of a designated contract market or swap execution facility, retain and produce for inspection all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission, the designated contract market or the swap execution facility (for purposes of this section, all records described in this paragraph (a)(1)(ii) are referred to as ''*original source documents,*'' and, together with commodity interest and related records, ''*transaction records*''); and

(iii) Keep all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and any related cash or forward transactions (but not oral communications that lead solely to the execution of a related cash or forward transaction), whether transmitted by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media (for purposes of this section, all communications described in this paragraph (a)(1)(iii) are referred to as ''*oral pre-trade communications*'' if transmitted orally or as ''*written pre-trade communications*'' if transmitted in writing, and all such communications

[66] IECA Comment Letter.

[67] IECA Comment Letter.

are referred to collectively as ''*pre-trade communications*'').

(2) *Registered members of designated contract markets or swap execution facilities.* Each introducing broker that is not subject to paragraph (a)(1) of this section and is a member of a designated contract market or swap execution facility, and each member of a designated contract market or swap execution facility that is registered or required to be registered with the Commission as a floor trader, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant, shall keep:

(i) All transaction records; and

(ii) All written pre-trade communications.

(3) *Other introducing brokers.* Each introducing broker that is not subject to paragraph (a)(1) or (2) of this section shall keep:

(i) All commodity interest and related records; and

(ii) All written pre-trade communications.

(4) *Floor broker members of designated contract markets or swap execution facilities.* Each member of a designated contract market or swap execution facility that is registered or required to be registered with the Commission as a floor broker shall keep:

(i) All transaction records;

(ii) All written pre-trade communications; and

(iii) All oral pre-trade communications that lead to the purchase or sale of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Commodity Exchange Act for the account of any person other than such floor broker.

(5) *Form and manner.* All records required to be kept pursuant to paragraphs (a)(1), (2), (3), and (4) of this section shall be kept in a form and manner that:

(i) Permits prompt, accurate, and reliable location, access, and retrieval of any particular record, data, or information; and

(ii) Other than pre-trade communications, allows for identification of a particular transaction.

(6) *Unregistered members of designated contract markets or swap execution facilities.* Each member of a designated contract market or swap execution facility that is not registered or required to be registered with the Commission in any capacity, shall keep all transaction records; *provided* that such records need not include transmissions by short message service (SMS) or multimedia messaging service (MMS).

(7) *Definition of related cash or forward transaction.* For purposes of this section, ''*related cash or forward transaction*'' means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest transaction where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(8) *Other requirements.* Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall retain the records required to be kept by this section in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice.

(9) *Alternative Compliance Schedule.* (i) The Commission may in its discretion establish an alternative compliance schedule for the requirement to record oral communications under paragraph (a)(1) or (4) of this section that is found to be technologically or economically impracticable for an affected entity that seeks, in good faith, to comply with the requirement to record oral communications under paragraph (a)(1) or (4) of this section within a reasonable time period beyond the date on which compliance by such affected entity is otherwise required.

(ii) A request for an alternative compliance schedule under paragraph (a)(9)(i) of this section shall be acted upon within 30 days from the time such a request is received, or it shall be deemed approved.

(iii) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to exercise the discretion. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (a)(9)(i) of this section.

(iv) Relief granted under paragraph (a)(9)(i) of this section shall not cause an affected entity to be out of compliance or deemed in violation of any recordkeeping requirements.

* * * * *

Issued in Washington, DC, on December 18, 2015, by the Commission.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendices to Records of Commodity Interest and Related Cash or Forward Transactions—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

### Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Timothy G. Massad

Today, the Commission is adopting significant changes to a rule that will reduce recordkeeping obligations for commercial end-users. The changes ensure that the rule strikes an appropriate balance between the costs of recordkeeping and the benefits to market oversight. This will help ensure that businesses as well as farmers and ranchers that depend on the derivatives markets are able to continue using them effectively and efficiently.

Commercial end-users were not the cause of the crisis, and should not bear the burdens of reforms designed to rein in systemic risk. Since I became Chairman, the CFTC has taken a number of actions to fine-tune our rules to ensure they do not impose unintended burdens on those who use the derivatives markets to hedge commercial risk. Today, I'm pleased to support another final rule that makes important strides towards that goal.

This final rule amends recordkeeping requirements set forth under Commission Regulation 1.35. This regulation requires various types of market participants to keep written and oral records of their commodity interest and related cash or forward transactions. It is very important to our efforts to ensure our markets are strong, transparent, and operate free of fraud and manipulation.

This rule was first implemented in 1948. CFTC made changes to this regulation in 2012, to ensure it accurately reflected evolution of the market and changes in the CFTC's jurisdiction. But we have been evaluating the rule since then, and we have determined that for some market participants, the costs of complying with certain aspects of the changes may exceed the potential benefits. Throughout this process, we have benefitted from the input of many commercial businesses and other market participants. We appreciate their feedback.

Today's final rule clarifies that members of exchanges and swap execution facilities not registered with the Commission—typically, end-users—do not have to keep pre-trade communications or text messages. Further, it simplifies the requirements for keeping records of final transactions. The amended rule also states that commodity trading advisors do not have to record oral communications regarding their transactions.

I believe this rule is an important change that will reduce recordkeeping burdens on end-users, and I applaud my fellow commissioners for their unanimous support.

## Appendix 3—Statement of Commissioner J. Christopher Giancarlo

I am pleased to support this final rule that revises Rule 1.35. In the end, after numerous iterations, several comment periods, significant legislative interest from Congress, and months of negotiating, the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') thankfully listened to the concerns of market participants. I am appreciative of the CFTC staff's diligent work over the past few months to make key revisions to this rule. Fixing this regulation was one of the first issues that I raised with my fellow Commissioners upon my arrival at the CFTC. I believe we have now produced a more workable rule that will not impose needless regulatory costs on America's agricultural producers, grain elevator operators or energy producers, to name a few.

As background, the Commission revised long-standing Rule 1.35 in 2012 despite the fact that the Dodd-Frank Act [1] contained no mandate to change the CFTC's recordkeeping rules.[2] The revised rule proved to be unworkable. Its publication was followed by requests for no-action relief and a public roundtable at which entities impacted by the rule voiced their inability to tie all communications leading to the execution of a transaction to a particular transaction or transactions. End-user exchange members pointed out that business that was once conducted by telephone had moved to text messaging, so the carve out in the rule for oral communications had little utility. They pointed out that it was simply not technologically feasible to keep pre-trade text messages in a form and manner ''identifiable and searchable by transaction.'' Further, bipartisan Congressional action on the rule's unworkable nature made it clear that the Commission should re-open the rule to lessen the burden on market participants not registered with the CFTC.[3]

In November 2014, the CFTC did propose changes to Rule 1.35.[4] Unfortunately, I could not support that proposal because it did not go far enough in addressing concerns about the feasibility and cost of compliance.[5] It continued to contain provisions that were overly burdensome in practice for certain covered entities. For example, the proposal kept 2012 rule revisions that required the keeping of all oral and written records that lead to the execution of a transaction in a commodity interest and related cash or forward transaction, in a form and manner ''identifiable and searchable by transaction.''[6] This ''searchable'' requirement also conflicted with the requirements of Commission Rule 1.31, which applies to all books and records required to be kept by the Commodity Exchange Act and Commission regulations.

Appropriately, the final revisions to Rule 1.35 address many of the issues raised in my year-old dissent. End-user exchange members that are not registered or required to be registered with the Commission now must only keep transaction records, which is a logical and prudent course of regulatory policy. Text messages are also excluded from the recordkeeping requirement for end-users, but communications through internet-based messaging services must be kept on file. I anticipate that this distinction will generate interesting public commentary.[7]

Aside from the technical points of the final rule, it is appropriate to comment on the skyrocketing compliance costs associated with trading in American commodity markets. There is an undeniable need for the CFTC to police these markets and root out fraud and abuse. Confidence and trust in our markets is essential so that farmers, manufacturers and other end-users can safely hedge their risks and costs of production. Yet, agricultural intermediaries, particularly small futures commission merchants, are being squeezed by the prolonged environment of low interest rates and increased regulatory burdens. Regulators must always balance the public's interest in collecting commercial information for use in investigations and enforcement, against costs and burdens placed on American commerce and industry and the jobs they generate. In this protracted period of weak economic growth with an enormous number of Americans out of the workforce, we must scrupulously avoid needless red tape and compliance costs that are invariably passed along through higher costs for everyday items like a loaf of bread or a gallon of gasoline, milk or winter heating oil.

I believe the final Rule 1.35 generally gets the balance right. Yet, I must give a plain and simple warning: The elimination of unnecessary recordkeeping burdens provided in this final rule will be paradoxically tossed aside for many small market participants if Regulation Automated Trading (''Regulation AT'') is finalized as proposed.[8] Under Regulation AT, many unregistered market participants would be forced to register for the first time with the CFTC as ''floor traders'' due to the broad definition of ''algorithmic trading.''[9] As new floor traders, these market participants would then be subject to heighted recordkeeping requirements under Rule 1.35, such as keeping all ''written communications provided or received concerning quotes, bids, offers, instructions, trading, and prices *that lead to the execution of a transaction.''*[10] As I said in my statement accompanying the Notice of Proposed Rulemaking for Regulation AT, I encourage market participants to carefully review and consider the compliance and cost consequences of that potential new regulatory regime and compare it to today's common-sense revisions to Rule 1.35.

As I have mentioned in the past, I have been fortunate during my time as a Commissioner to visit with agricultural and energy producers and intermediaries in Illinois, Indiana, Iowa, Minnesota, Texas, Louisiana and Kentucky. The common refrain I hear again and again is that Washington does not listen to everyday Americans. It imposes rules and regulations without regard to their obvious impact on ordinary people. Well, I believe this rule benefits from listening to those concerns and is a step in the right direction. I am hopeful that it is an indicator of future action by the CFTC that more readily takes to heart these common concerns in all of our regulatory actions.

[FR Doc. 2015–32416 Filed 12–23–15; 8:45 am]

**BILLING CODE 6351–01–P**

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* Adaptation of Regulations to Incorporate Swaps-Records of Transactions, 77 FR 75523 (Dec. 21, 2012), *available at https://www.gpo.gov/fdsys/pkg/FR-2012-12-21/pdf/2012-30691.pdf.*

[3] *See* H.R. 4413, the *Customer Protection and End-User Relief Act,* Sec. 353 (113th Congress) and H.R. 2289, the *Commodity End-User Relief Act,* Sec. 308 (114th Congress).

[4] *See* Records of Commodity Interest and Related Cash or Forward Transactions, 79 FR 68140 (Nov. 14, 2014), *available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2014-26983a.pdf.*

[5] *See id.* at 68147–148 (Dissenting Statement of Commissioner J. Christopher Giancarlo).

[6] *See supra* note 4.

[7] As finalized, the rule excludes text messages based on SMS and MMS technology, but includes internet-based messaging services such as iPhone messages because they are easier to store and retrieve on computers. While this outcome is puzzling and not technologically neutral, the best manner to ensure compliance with CFTC regulations is education on our rules.

[8] *See* CFTC Notice of Proposed Rulemaking (3038–AD52), Regulation Automated Trading (Dec. 14, 2015), *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister112415.pdf.*

[9] *See* definition of ''Algorithmic Trading'' in proposed Commission regulation 1.3(zzzz), which is very broad and would appear to capture market participants using off-the-shelf type automated systems or simple excel spreadsheets to automate trading.

[10] Emphasis added; *see* Commission Rule 1.35(a)(1)(iii) (defining ''written pre-trade communications'') and Rule 1.35(a)(2)(ii) (requiring all ''floor traders'' to keep all ''written pre-trade communications'').

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 578

**[Docket No. FR–5783–C–03]**

**RIN 2501–AD66**

## Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Conforming Amendments; Correction

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Housing and Urban Development is correcting a final rule that was published in the **Federal Register** on December 7, 2015 (80 FR 75931). The December 7, 2015, final rule contains an amendatory instruction that is inconsistent with amendments made by a final rule that was published on December 4, 2015 (80 FR 75791).

**DATES:** Effective January 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Scott Moore, Financial Operations Analyst, Office of the Chief Financial Officer, Financial Policy & Procedures Division, 451 7th Street SW., Room 3210, Washington, DC 20410, telephone number 202–402–2277, or Loyd LaMois, Supervisory Program Analyst, Office of Strategic Planning and Management, 451 7th Street SW., Room 3156, Washington, DC 20410, telephone number 202–402–3964. These are not a toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** In FR Doc 2015–29692 appearing at page 75931 in the **Federal Register** of Monday, December 7, 2015, the following correction is made:

**§ 578.103 [Corrected]**

On page 75940, in the second column, amendatory instruction 98.a., is corrected to read as follows: ''a. In paragraph (a)(17)(iii), remove '24 CFR 85.36 and 24 CFR part 84' and add in its place '2 CFR part 200, subpart D'; and''.

Dated: December 21, 2015.

**Aaron Santa Anna,**

*Assistant General Counsel for Regulations.*

[FR Doc. 2015–32470 Filed 12–23–15; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Parts 315, 353, and 360

**[Docket No.: FISCAL–2015–0002]**

**RIN 1530–AA11**

## Regulations Governing United States Savings Bonds

**AGENCY:** Bureau of the Fiscal Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of the Treasury, Bureau of the Fiscal Service, is issuing a final rule amending regulations governing United States savings bonds to address certain state escheat claims.

**DATES:** Effective December 24, 2015.

**ADDRESSES:** You can download this final rule at the following Internet address: *http://www.regulations.gov, http://www.gpo.gov,* or *http://www.fiscal.treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Theodore C. Simms II, Senior Counsel, 202–504–3710 or *Theodore.Simms@fiscal.treasury.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The United States Department of the Treasury has issued savings bonds since 1935 on the credit of the United States to raise funds for federal programs and operations. Article 8, Section 8, Clause 2 of the Constitution authorizes the federal government to ''borrow money on the credit of the United States.'' Under this grant of power, ''the Congress authorized the Secretary of the Treasury, with the approval of the President, to issue savings bonds in such form and under such conditions as he may from time to time prescribe. . . .'' *Free* v. *Bland,* 369 U.S. 663, 667 (1962) (citing the predecessor to 31 U.S.C. 3105). Congress provided that the proceeds of savings bonds may be used by the federal government for any expenditures authorized by law. See 31 U.S.C. 3105(a).

Congress expressly authorized the Secretary of the Treasury to establish the terms and conditions that govern the savings bond program. 31 U.S.C. 3105(c). Treasury's savings bond regulations implement this authority, setting forth a contract between the United States and savings bond purchasers. This contract gives purchasers confidence that the United States will honor its debts when a purchaser surrenders a savings bond for payment. The contract also protects the public fisc by ensuring that Treasury does not face multiple claims for payment on a single savings bond.

Under Treasury regulations, savings bonds have always been registered securities. The regulations authorize several forms of registration, including registration to individuals who are owners, co-owners, and beneficiaries, as well as to fiduciaries and institutions. See 31 CFR 315.7, 353.7, and 360.6. The regulations also provide that savings bonds are not transferrable and are payable only to the registered owner, except as described in Treasury regulations. See 31 CFR 315.15, 353.15, and 360.15. Detailed regulations describe when payment will be made to a person or entity that is not the registered owner.

To redeem a paper savings bond, the registered owner or a successor specified in the regulations must surrender the physical bond. Although there are exceptions to the requirement that the bond be surrendered, the exceptions are carefully drawn to protect the owner's rights and to protect Treasury against competing claims. For example, if a claimant cannot surrender the bond, the claimant must provide satisfactory evidence of the loss, theft, or destruction of the bond, or a satisfactory explanation of the mutilation or defacement, as well as sufficient information to identify the bond by serial number. See, *e.g.,* 31 CFR parts 315 and 353, subpart F. An owner's right to payment continues indefinitely. Pursuant to statutory authority, Treasury regulations allow owners to keep their bonds indefinitely and to surrender them for payment even years after the bonds mature. See 31 U.S.C. 3105(b) and 31 CFR parts 315 and 353, subpart H.

### II. State Escheat Claims for the Custody of Savings Bonds

Many state escheat laws allow states to take custody of unclaimed or abandoned property. Treasury's savings bond regulations do not explicitly address the topic of abandoned savings bonds, or the effect of custody escheat statutes on the rights of savings bond owners. Treasury has addressed the topic in guidance and in litigation.

In 1952, Treasury issued a bulletin to the Federal Reserve Banks providing guidance on custody escheat claims. The bulletin addressed a state claim to the custody of four savings bonds in the state's possession, which had belonged to a ward of the state who died without heirs.[1] In this context, Treasury stated that it will not recognize a state claim to the custody of savings bonds, but will recognize an escheat judgment that confers title on a state because ''in escheat the state is 'the ultimate heir.' '' [2] The 1952 bulletin does not identify a specific regulation authorizing state escheat claims, the full criteria under which they will be considered, or a process for submitting them. Because the state did not claim title over the bonds, this kind of detail was unnecessary.

Treasury addressed a new, broader custody escheat claim in 2004 and 2006,

[1] Public Debt Bulletin No. 111, Subject: State Statutes Concerning Abandoned Property (Feb. 27, 1952) at 1.

[2] *Id.* at 3.

when several states attempted to claim the proceeds of all matured, unredeemed bonds registered to residents in their state. Unlike the claim addressed by the 1952 bulletin, these states did not possess the bonds they sought to redeem, which presumably were still held by their owners. Treasury rejected these claims. Noting that Treasury has a contract with the savings bond owners, and is obligated to pay these owners in perpetuity when the bonds are presented for payment, Treasury informed the states that they must obtain title to the bonds and then apply to Treasury for payment under existing procedures. These procedures require claimants to surrender the physical bond or provide evidence that the bond has been lost, stolen, or destroyed. Treasury's 2004 letters specifically said that the states must possess the bonds they seek to redeem.[3]

Several of these states sued Treasury to claim the proceeds of all matured, unredeemed bonds registered to persons with addresses in their states. See *New Jersey* v. *United States Treasury,* 684 F.3d 382 (3rd Cir. 2012). In *New Jersey,* the United States Court of Appeals for the Third Circuit considered the validity of state statutes that deemed savings bonds to be ''abandoned'' if the owners did not redeem their bonds by a certain time after maturity. Relying on their own statutes, the states argued that they were entitled to take custody of the proceeds of the unredeemed bonds, and upon taking custody the states would become the entity responsible for paying the bond owners.

The Third Circuit rejected the states' argument, explaining that the state unclaimed property statutes conflict with federal law in many ways. See *New Jersey,* 684 F.3d at 407–408. The court emphasized that, in advancing the goal of making the bonds ''attractive to savers and investors,'' *Free,* 369 U.S. at 669, Congress had authorized Treasury to implement regulations specifying that ''owners of savings bonds may keep the bonds after maturity.'' 31 U.S.C. 3105(b)(2)(A). The states' unclaimed property laws, by contrast, specified that matured bonds are abandoned and their proceeds are subject to the laws if not redeemed within a time period as short as one year after maturity. *New Jersey,* 684 F.3d at 407–408. Declaring the laws preempted, the Third Circuit observed that the state laws purported to alter the terms of the contracts between the United States and the bond owners, and potentially could make the United States subject to multiple obligations on a single bond. *Id.* at 408–409.

## III. State Escheat Claims for the Title of Savings Bonds

Beginning in 2000, certain states enacted title escheat laws specifically for savings bonds that the states deemed to be ''unclaimed'' or ''abandoned.'' Pursuant to these title escheat laws, states have attempted to claim title to bonds in their possession, as well as to a broad class of bonds the states do not possess. Kansas enacted the first statute in 2000. Other states enacted their laws more recently. Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, and South Dakota enacted their statutes in 2014. Arkansas, Florida, Georgia, Indiana, Maine, New Hampshire, Ohio, and South Carolina enacted their statutes in 2015.

These title escheat statutes raise similar concerns to the custody escheat statutes that the Third Circuit declared preempted in *New Jersey.* Under the title escheat statutes, states presume a savings bond to be abandoned if it has not been redeemed by a certain time. The bonds are presumed abandoned even if they have not matured and are in the owner's possession, without regard to the owner's intention to redeem them later or to pass them along to a registered beneficiary or heir. In Louisiana, for example, the state presumes that a bond is abandoned if it has not been redeemed between eight and eighteen years after issuance (depending on the bond series), long before the bond even matures.

Under many of these laws, states may initiate an escheat proceeding to claim any bonds that are presumed abandoned; for bonds that a state does not possess, the state often publishes a statement in local newspapers of its intention to claim title to bonds of a particular description, and requires bond owners to respond to the escheat proceeding in order to protect their ownership of the bonds. Bond owners are not parties to the escheat proceeding, and may never learn that the state is attempting to claim title over their bonds, especially if they live out-of-state. To avoid escheat, savings bond owners would need to monitor state laws, newspapers, and judicial proceedings in states where they may not live in order to protect their rights.

Despite the broad reach of these title escheat statutes, state law can only affect savings bond ownership to the extent allowed by federal regulation. Treasury's savings bond regulations determine ownership, describing in detail the rights of registered owners and their successors, including the right to hold paper bonds indefinitely. States do not have any explicit rights under these federal regulations to obtain title to savings bonds through a state escheat proceeding. To the extent that state escheat statutes purport to convey title to savings bonds in conflict with federal law, the escheat statutes would be preempted. See, *e.g., Free* v. *Bland,* 369 U.S. 663 (1962); *New Jersey* v. *U.S. Dept. of Treasury,* 684 F.3d 382, 407–408 (3rd Cir. 2012) (state unclaimed property laws preempted by federal statutes and savings bond regulations).

The new title escheat statutes also frustrate the objectives and operations of the federal savings bond program by creating the potential for multiple claims over the same bonds. Under these state statutes, a state may attempt to claim bonds that are still in the possession of registered owners, who can submit them for payment at any time. A state may also attempt to claim bonds that are in the possession of another state, where both states have a claim to title under their own state laws. State laws may define ''abandonment'' in different ways, with an advantage going to the state that can claim escheat title soonest. The potential for competing claims exposes Treasury to the risk of double-payment and costly litigation, as well as threatens the vested rights of bond owners.

Under the current savings bond regulations, Treasury has informed several states by letter that their title escheat claims will not be honored for bonds they do not possess. Given the recent increase in escheat laws specifically addressing savings bonds, the time is ripe for Treasury to clarify its prior statements on escheat and to describe more formally the criteria Treasury will use to evaluate escheat claims. Through a uniform federal rule governing title escheat claims, Treasury will provide formal notice to all states about the escheat claims it will recognize and how it will protect the rights of bond owners still in possession of their savings bonds.

## IV. Public Comments and Treasury Responses

Treasury voluntarily sought public comment on the proposed rule for 45 days to assist the agency in giving full consideration to the matters discussed in the proposed rule. We received comments on behalf of six state officials and associations:

1. National Association of Unclaimed Property Administrators.

[3] In 2004, Treasury sent nearly identical letters to Connecticut, the District of Columbia, Illinois, Kentucky, New Hampshire, North Carolina and South Dakota rejecting their claims to a class of bonds they did not possess. In 2006, Treasury sent a similar letter to Florida. These letters are available in the docket for this rule at *www.regulations.gov.*

2. National Association of State Treasurers.

3. Joint comments from state officials in Kansas, Louisiana, South Dakota, Pennsylvania, Mississippi, Kentucky, North Dakota, Iowa, South Carolina, and Maine.

4. The Treasurer of North Carolina.

5. The Treasurer of Missouri.

6. The State Auditor of Arkansas.

The commenters offered a range of observations, primarily opposing the proposed rule.

*Comment:* Several commenters urged Treasury to withdraw the proposed rule because it would hinder states' efforts to ''reunite'' bondholders with their unredeemed, matured savings bonds. In the commenters' view, bonds that have not been redeemed for some period after maturity are forgotten, abandoned, or lost. States should have the role of locating bond owners, according to the commenters, in part because states already have effective unclaimed property programs and in part because the United States does not have an incentive to locate bond owners. Because the proposed rule does not allow states to take title to bonds they do not possess, the commenters contend that states cannot assist in locating most owners of matured, unredeemed bonds. This disadvantages bond owners and discourages the public from purchasing new savings bonds, according to the commenters.

*Response:* The proposed rule is designed to protect the rights of savings bond owners, which are safeguarded by Treasury regulations and the savings bond contract. Under these regulations, bond owners have the contractual right to retain their bonds indefinitely, to pass them along to registered co-owners, beneficiaries, heirs, and other successors, and to present them for payment by the United States government. The proposed rule protects these rights by explicitly limiting states' ability to claim title and the right to payment for themselves. Contrary to the assertion of the commenters, there is no need to ''reunite'' the bond owners with their U.S. savings bonds, which remain in the hands of their registered owners; the regulation clarifies that Treasury will not consider a state's request to redeem a bond that the state does not possess.

Additionally, the commenters emphasized that state unclaimed property programs will attempt to locate savings bond owners after a state claims title to their bonds. The rigor of state efforts to locate bond owners, however, would be outside federal control. Once in possession of bond proceeds, states have little incentive to locate a bond's former owner, particularly if that owner lives in another state. In addition, states may impose burdensome processes on former owners who seek payment, and may not pay former owners in full. The law in Arkansas, for example, only provides that a state ''may'' pay a claim from a former bond owner after deducting certain expenses from the payment. Ark. Code Ann. § 18–28–231(g)(2)(A). A person who owns a savings bond expects to be paid in full by the federal government, not by a state that has taken title to the owner's unredeemed bond.

Treasury recognizes that savings bonds can be abandoned, with no one eligible under Treasury regulations to redeem them. States are encouraged to assist in locating the owners of bonds in the states' possession, and through advertising and other methods to persuade their citizens to redeem savings bonds that have matured. These efforts can continue without impairing a bond owner's title and rights under the savings bond contract. The commenters did not offer any evidence, however, to support their claim that matured, unredeemed bonds are necessarily lost or abandoned. Based on its contact with tens of thousands of bond owners, Treasury has learned that many bond owners choose to retain their bonds after maturity for a variety of personal and financial reasons. To protect the rights of these bond owners, Treasury has not made any changes to the proposed regulation in response to this comment.

*Comment:* Several commenters asserted that the proposed rule exceeds Treasury's legal authority by preempting state property law regimes. In the commenters' view, states have the right to determine when property is unclaimed, and Treasury's proposed rule would unduly limit this right by allowing Treasury to scrutinize state escheat judgments and by preventing states from taking title to bonds that are not in the state's possession. The commenters urged that states be allowed to determine when property is abandoned, and to submit claims for bonds that are not in their possession.

*Response:* The ownership of savings bonds arises from Treasury's savings bond regulations, which have been issued under an explicit grant of authority from Congress. 31 U.S.C. 3105. Under these regulations, the owner has a contract with the federal government that defines not only the registered owner's rights, but also those of successors specified in the regulations, such as a beneficiary named on the bond or the bond owner's estate. Federal courts have upheld these federal rules of succession against contrary claims founded on state law. See, *e.g., Free* v. *Bland,* 369 U.S. 663 (1962).

Treasury has long recognized that savings bonds can be abandoned, particularly in the context of a deceased person without heirs. When no person appears able under Treasury regulations to satisfy the requirements for payment, and the state can establish that a bond has been abandoned, Treasury has allowed a state to escheat the bond and submit it for payment. This does not interfere with any rights protected by the savings bond regulations, because no one else is eligible under the Treasury regulations to receive payment. Treasury has allowed states to redeem bonds belonging to a deceased owner under 31 CFR part 315, subpart L, and bonds in a state's possession when the state can establish that they are abandoned and can satisfy the requirements for a waiver under 31 CFR 315.90.

The definition of abandonment, however, cannot be left entirely to states because of the potential for states to impair the rights of ownership provided by federal law. As the United States General Accounting Office (GAO) explained in a 1989 report, the amounts that the United States owes to owners of matured savings bonds are not considered ''unclaimed because these moneys are currently payable to the rightful owners upon presentation of a proper claim and without any time limitation.'' [4] If states are allowed to define when a bond is abandoned or unclaimed, the states could impose requirements on bond owners that are outside the savings bond regulations, such as a requirement to redeem the bond within a certain time after issuance, or to maintain some active communication with the state or Treasury to prove the bond owner's continuing interest in the bond. Persons holding matured bonds with an expectation that they can be redeemed anytime—an expectation reasonably based on the savings bond regulations—should not be required to consult state law to determine if their federal property rights are protected. Because the ownership rights for savings bonds arise under federal law, they cannot be taken away by a contrary state law.

For this reason, Treasury has required more evidence of abandonment than is required under some state laws. While some states presume that a bond is

[4] General Accounting Office, *Unclaimed Money: Proposals for Transferring Unclaimed Funds to States* 17 (1989). GAO found that Treasury was receiving claims amounting to $7,000 to $10,000 each day for bonds that had matured many years earlier. *Id.* at 23.

abandoned if it has not been redeemed within a certain time after issuance, Treasury has required positive evidence that the owner has relinquished a claim over the bond. In particular cases, this evidence has included the state's physical possession of the bond and affidavits showing that the registered owner did not seek to claim it after notice. When the evidence of abandonment is sufficient, Treasury is able to recognize a state's claim to title under the waiver provisions of 31 CFR 315.90, 353.90, and 360.90 (depending on the bond series). Under these provisions, Treasury may waive a savings bond regulation if (a) the waiver would not be inconsistent with law or equity, (b) the waiver would not impair any existing rights, and (c) Treasury is satisfied that the waiver would not subject the United States to any substantial expense or liability.

The proposed rule disallows escheat claims for ''unclaimed'' bonds that are not in a state's possession in part because states cannot produce sufficient evidence that these bonds are abandoned. States typically have little information about bonds that are not in their possession. In the claims reviewed by Treasury, states could not specify the original or current owner of these bonds, their physical location, or the evidence that bonds have been abandoned by their owner. Instead, states identified these bonds by general description, typically the bond series, the date range when the bonds were issued, and the state recorded in the registration. The states presumed that the bonds were abandoned based on a deadline in state law, a concept that is alien to Treasury's savings bond regulations. In contrast, a state in possession of a bond may be able to show that the bond is abandoned. Often, a state acquires possession of the bond from a bank or other entity, which made unsuccessful efforts to return the bond to its owner. The fact that a state possesses the bond is itself evidence, though not conclusive, that the bond has been abandoned. Such evidence is unavailable when a state does not possess the bonds.

Based on Treasury's review of several claims, a state escheat proceeding produces little or no evidence of actual abandonment for bonds that are not in the state's possession. At the outset, a state will publish a general notice in local newspapers that the state is initiating an escheat proceeding for a class of bonds. These notices are a mere formality. The notice does not list the bond owners' names. Bond owners in possession of their bonds have no reason to search for their bonds in a listing of ''unclaimed'' property. Bond owners may not reside in the state initiating escheat proceedings or have any connection to that state. In these circumstances, few if any bond owners are likely to see the notice and come forward in time to contest the state's claim to their bonds. When a state court issues an uncontested finding that such bonds are ''unclaimed'' or ''abandoned'' under such a statute, there is an insufficient basis to conclude that owners have actually abandoned their claim to the bonds.

Some commenters asserted that states should be allowed under 31 CFR parts 315, 353, and 360, subpart F, to submit evidence that bonds they have escheated have been lost, stolen, or destroyed. Treasury does not accept the commenters' unproven assumption that a bond is necessarily lost, stolen, or destroyed simply because it has not been redeemed by a date specified in a state escheat law. If an unforeseen instance arises in which a state escheats a bond that it cannot surrender for payment, and the state can show particularized evidence about that bond as required in subpart F, Treasury can consider that request under the waiver provisions in 31 CFR 315.90, 353.90, or 360.90. The proposed rule is consistent with the rights of bond owners safeguarded by Treasury's current savings bond regulations. Accordingly, no changes have been made to the rule in response to this comment.

*Comment:* Several commenters argued that the preamble and proposed rule take a position on escheat that is at odds with past statements, where Treasury acknowledged that it would recognize state escheat claims to the title of savings bonds. The commenters specifically cited statements in 1952, 1983, and a brief filed on behalf of the United States opposing certiorari in *New Jersey* v. *U.S. Dept. of Treasury,* a case involving custody escheat claims.

*Response:* State escheat claims are not explicitly recognized in the savings bond regulations. While the regulations specifically acknowledge the rights of beneficiaries, heirs, and others to succeed to ownership of savings bonds, the ability of states to claim title by escheat is not mentioned. However, Treasury has said that it will recognize state claims to title in savings bonds in particular contexts.

Treasury's statement on escheat in 1952, the earliest cited by commenters, arose in the context of a state seeking custody of bonds in its possession. In that statement, the Secretary of the Treasury addressed a request by the Comptroller of New York to redeem four United States savings bonds that came into the state's possession after the registered owner died as a ward of the state, leaving no heirs. The Secretary informed the Comptroller that Treasury would not redeem the bonds in the state's possession unless the state obtained title to the bonds based on an escheat judgment. The Secretary's 1952 letter did not suggest that a state could demand redemption of U.S. savings bonds that the state did not possess.

The commenters also refer to a statement first posted on Treasury's Web site in 2000, which discusses Treasury's views on escheat claims when a state seeks title to bonds in its possession, and to a 1983 letter that discusses escheat in the context of a state's claim for custody of ''abandoned bonds and notes.'' The 1983 letter may not concern savings bonds at all, but rather bonds and notes that Treasury has issued under different legal authority. Neither of these statements addresses claims by states to the title of savings bonds that are still in the registered owner's possession.

The commenters also cite to a brief filed by the United States in a case involving state claims to the custody of savings bonds. This brief, opposing certiorari in the Supreme Court, does not advance a new position on escheat. Rather, it explains Treasury's longstanding view that states cannot escheat savings bonds under custody escheat statutes. In a background section, the brief summarizes the views expressed in the 1952 bulletin, the 1983 letter, and the notice on Treasury's Web site, and notes the general proposition that a state cannot receive payment without completing an escheat proceeding that satisfies due process and that awards title to the bond to the state. The litigation did not concern, and the Solicitor General did not address, the full criteria that Treasury would apply under a title escheat statute when a state seeks to redeem savings bonds that it does not possess.

The commenters did not mention the letters that Treasury sent to states in 2004 and 2006 addressing the states' demand that Treasury pay them the proceeds of all matured, unredeemed savings held by residents of those states. Three commenters on the proposed rule, North Carolina, South Dakota and Kentucky, were recipients of these letters. As noted earlier, Treasury's 2004 and 2006 letters rejected the states' claims to bonds they did not possess. The letters specifically informed the states that they must obtain title to the bonds and then apply to Treasury for payment under existing procedures. These procedures require claimants to surrender the physical bond or provide

evidence that the bond has been lost, stolen, or destroyed. The 2004 letters specifically said that the states must possess the bonds they seek to redeem.

The proposed rule does not conflict with the statements cited by commenters or with Treasury's 2004 and 2006 letters. The proposed rule permits states to escheat savings bonds in their possession when they meet specified criteria. It also permits states to escheat the savings bonds of owners who die without successors named in the regulations, when the states meet the requirements that apply to all claimants from deceased owners, co-owners, and beneficiaries. The proposed rule does not permit states to escheat bonds that they do not possess, a position that is consistent with letters sent to states in 2004 and 2006, and more recent letters sent to Kansas and other states.

The proposed rule is also consistent with Treasury's longstanding view that a bond owner can redeem matured bonds in the owner's possession at any time. It does not conflict with the statements cited by commenters, because those statements did not specifically address a title escheat claim for bonds that are not in a state's possession. To the extent the statements cited by commenters require interpretation, this preamble and the final rule clarify that Treasury will not recognize *every* state escheat judgment purporting to convey title over savings bonds. In keeping with Treasury's longstanding position, savings bond owners remain entitled to submit their paper bonds to Treasury for payment indefinitely, notwithstanding a state escheat judgment that purports to give the state title over bonds that the state does possess.

The statements on escheat cited by commenters also did not excuse states from satisfying Treasury's payment requirements. Generally, Treasury regulations require a claimant seeking payment to surrender the bond. See, *e.g.,* 31 CFR parts 315 and 353, subpart H, and 31 CFR 316.10. If a claimant cannot surrender the bond, the claimant must provide satisfactory evidence of the loss, theft, or destruction of the bond, or a satisfactory explanation of the mutilation or defacement, as well as sufficient information to identify the bond by serial number. See, *e.g.,* 31 CFR parts 315 and 353, subpart F. Treasury will not consider any claim for a missing bond that is filed more than six years after a bond's final maturity, unless the claimant supplies the serial number of the bond. 31 CFR 315.29(c) and 353.29(c). When a state does not possess a bond, and does not have specific information about a bond's location, history, or serial numbers, the state cannot satisfy Treasury's requirements for payment. The proposed rule is consistent with the payment requirements in Treasury's existing savings bond regulations.

The commenters seem to prefer that Treasury consider their escheat claims under 31 CFR parts 315, 353, or 360 subpart E (depending on the bond series), instead of the waiver provisions in sections 315.90, 353.90, or 360.90. Treasury has considered the commenters' arguments carefully. Subpart E provides in part that Treasury ''will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings, but only as specifically provided in this subpart.'' See, *e.g.,* 31 CFR 315.20(b). The subpart then describes the types of adverse claims covered by this subpart (payment to judgment creditors, divorce, and gifts causa mortis), and the type of evidence necessary to establish the validity of judicial proceedings. Treasury has the right to require other evidence to establish the validity of judicial proceedings under sections 315.91(a), 353.91(a), and 360.91.

As stated in the preamble to the proposed rule and other public documents, Treasury interprets subpart E to apply only to the adverse proceedings specifically listed there. Escheat proceedings are not among the listed proceedings, and because they are *in rem* proceedings, they do not qualify as ''a claim against an owner of a savings bond'' in section 315.20(b), 353.20(b), or 360.20(b). State escheat proceedings are claims against an intangible asset, which is why state courts do not obtain jurisdiction over the bond owner in order to issue an escheat judgment. This position is not inconsistent with the 1952 letter, the 1983 letter, or the 2000 Web site entry that the commenters cite, because none of these documents cites to subpart E or any specific regulation that allows states to claim title by escheat. Treasury's letters to states in 2004 and 2006 regarding escheat also did not cite to subpart E as the basis for state escheat claims. To the extent there is any ambiguity in Treasury's prior statements on the applicability of subpart E to escheat proceedings, the final rule is intended to clarify these statements: Subpart E does not apply to escheat proceedings.

But even when subpart E does apply, it only applies to ''valid'' judicial proceedings. Treasury has never maintained that it would recognize *every* title escheat judgment, under subpart E or any other savings bond regulation. When evaluating the validity of a proceeding under subpart E, Treasury expects more than evidence that a state judgment was entered. Treasury may require that a claimant submit any evidence pertaining to the judgment under 31 CFR 315.23, 315.91, 353.23, 353.91, 360.23, and 360.91. Treasury may require evidence, for example, that the proceeding provided due process and that the judgment does not interfere with the rights of bond owners. A state judgment is not valid under subpart E, for example, if it ''gives effect to an attempted voluntary transfer inter vivos of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a coowner or beneficiary.'' See, *e.g.,* 31 CFR 315.20(a); see also *Free* v. *Bland,* 368 U.S. 663 (1962). A state judgment also will not be valid if it purports to convey custody over bonds to the state. See *New Jersey* v. *U.S. Dept. of Treasury,* 684 F.3d 382 (3rd Cir. 2012). These examples illustrate that the validity of a state judgment for purposes of subpart E depends in part on its substantive compliance with law.

To the extent there is any ambiguity about the scope of ''valid'' proceedings under subpart E, the final rule has been amended to make clear that Treasury may review judicial proceedings to determine whether they provided due process, complied with the savings bond regulations, and complied with relevant state law. No other changes have been made to the proposed rule in response to this comment.

*Comment:* Several commenters describe the proposed rule as a ''convenient litigating position,'' which they believe should not be applied in the litigation with Kansas.

*Response:* The regulation addresses escheat claims from all states, and reflects Treasury's longstanding positions on the rights of bond owners. It also reflects Treasury's consideration of new title escheat statutes and new claims for bonds that a state does not possess. No changes have been made to the regulation in response to this comment.

*Comment:* Several commenters questioned Treasury's authority to review state escheat judgments. According to the commenters, only the Supreme Court has jurisdiction over appeals from final state court judgments, relying on *Lance* v. *Dennis,* 546 U.S. 459 (2006), a case construing

the bounds of federal jurisdiction under 28 U.S.C. 1257.

*Response:* Contrary to the assertions of the commenters, *Lance* is inapposite because Treasury's consideration of the savings bond redemption request does not constitute judicial appellate review. To be sure, the United States Supreme Court has exclusive jurisdiction to hear appeals from final state court judgments under 28 U.S.C. 1257, but that principle only applies when invoked against a losing party in the underlying state judicial action. *Lance,* 546 U.S. at 464. Because Treasury is not a party to state escheat proceedings, and is not in a position to request Supreme Court review of the state judgment, *Lance* and 28 U.S.C. 1257 do not apply here. No changes have been made to the regulation in response to this comment.

*Comment:* One commenter viewed the savings bond regulations as an unconstitutional delegation of legislative authority.

*Response:* Under its constitutional power to borrow money, Congress has authorized the Secretary of the Treasury, with approval of the President, to issue savings bonds in such form and under such conditions as he may prescribe. *Free* v. *Bland,* 369 U.S. 663, 666–667 (1962); 31 U.S.C. 3105. This authority allows Treasury to issue regulations prescribing restrictions on transfer and conditions governing redemption. 31 U.S.C. 3105(c). The proposed savings bond regulations fit within this authority. No changes have been made to the regulation in response to this comment.

*Comment:* One commenter asserted that the proposed rule is a ''major rule'' subject to the Congressional Review Act (CRA), 5 U.S.C. 804. The commenter claimed that the rule would substantially decrease the likelihood that bond owners will ''recover'' over $16,000,000,000 in matured savings bonds, thereby surpassing the Act's $100,000,000 threshold for economic impact. The commenter also asserted that the proposed rule could substantially increase costs for states seeking to restore unclaimed property to their citizens.

*Response:* The CRA defines a ''major rule'' as any rule that the Office of Management and Budget finds has resulted or is likely to result in ''(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' 5 U.S.C. 804(2). The commenter asserted that the rule triggers the first two definitions of a major rule.

The rule does not alter the United States' obligation to redeem savings bonds in accordance with the savings bond regulations. Current bond owners may continue to surrender their matured, unredeemed bonds to Treasury for payment, as many people do every year. Because the rule protects the existing rights of bond owners under the savings bond contract, its effect on the economy does not meet the threshold test for a major rule.

The commenter did not offer evidence that the proposed rule will cause a major increase in costs or prices for state unclaimed property programs. When a state seeks to escheat bonds in a state's possession, Treasury's rule would require states to show that bonds are actually abandoned and that the state escheat proceeding provided due process and was consistent with federal and state law. Treasury does not expect that this requirement will impose major, new costs on states.

No changes have been made in the proposed rule in response to this comment.

## V. Summary of the Final Rule

The final rule describes when Treasury will recognize an escheat judgment vesting title in the state to abandoned savings bonds. For bonds in the state's possession, the final rule requires a state to demonstrate that it made reasonable efforts to provide actual and constructive notice of the state escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond. The state must also demonstrate that those persons had an opportunity to be heard before the escheat judgment was entered. The steps normally required in a state escheat proceeding may be adequate to establish abandonment, but Treasury is not bound by these proceedings. Because state escheat rules may vary and state escheat proceedings are often uncontested, Treasury reserves the right to require additional evidence of abandonment. Existing regulations already allow Treasury to require a bond of indemnity, with or without surety, in any case for the protection of the United States' interests. See 31 CFR 315.91, 353.91, and 360.91. These regulations remain in effect.

The final regulation also makes explicit that Treasury will not recognize escheat judgments that convey custody, but not title, to a state. This principle is well established in Federal case law and has been incorporated into the final regulation.

Treasury's decision to recognize escheat judgments for bonds in a state's possession will be a discretionary matter, because the breadth of state escheat laws is not within Treasury's control. In exercising discretion, Treasury will consider whether a state's escheat claim impairs any existing rights under Treasury regulations and will assess the risk to Treasury of duplicative payment claims. Requiring states to possess the bonds that they seek to redeem protects these interests, and enables Treasury to locate records of the bonds for which the state seeks payment. Treasury will also assess whether the state has followed its own escheat rules, to ensure (for example) that a state judgment only covers bonds that were eligible for escheat.

The final rule on escheat claims to unclaimed property does not apply when a state claims title to a definitive savings bond as the heir to a deceased owner. Treasury has long recognized circumstances in which a state may obtain title to a savings bond by escheat when the bond owner has died. These escheat claims will be considered under existing savings bond regulations that pertain to the estates of deceased owners, co-owners, and beneficiaries. See 31 CFR part 315, subpart L; part 353, subpart L; and part 360, subpart K.

The final rule does reflect one change in the proposed rule. The final rule provides additional information about how Treasury will assess whether a state proceeding is ''valid'' under 31 CFR 315.20, 353.20, and 360.20. Under the final rule, Treasury may require any evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this Part, and complied with relevant state law.

## VI. Procedural Requirements

### *A. Administrative Procedure Act (APA)*

Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rulemaking falls within the contract exception to the APA at 5 U.S.C. 553(a)(2). Treasury, however, voluntarily sought public comment to assist the agency in giving full consideration to the matters discussed in the proposed rule. Treasury fully considered and responded to those comments in the preamble to this final rule.

*B. Congressional Review Act (CRA)*

This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.* It is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect upon publication in the **Federal Register**.

*C. Paperwork Reduction Act (PRA)*

We ask for no collections of information in this final rule. Therefore, the PRA, 44 U.S.C. 3501 *et seq.* does not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* does not apply to this rulemaking because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment. The rule will not have a significant economic impact on a substantial number of small entities. The rule primarily affects states and is not expected to have a direct impact on any small entities.

*E. Executive Order 12866*

This rule is not a significant regulatory action pursuant to Executive Order 12866.

**List of Subjects in 31 CFR Parts 315, 353, and 360**

Government securities, Savings bonds.

Accordingly, for the reasons set out in the preamble, 31 CFR parts 315, 353, and 360 are amended to read as follows:

## PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

■ 1. The authority citation for part 315 continues to read as follows:

**Authority:** 31 U.S.C. 3105 and 5 U.S.C. 301.

■ 2. Amend § 315.20 by revising paragraph (b) to read as follows:

**§ 315.20 General.**

* * * * *

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 315.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

* * * * *

■ 3. Redesignate subpart O as subpart P.

■ 4. Add a new subpart O to read as follows:

### Subpart O—Escheat and Unclaimed Property Claims by States

**§ 315.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached the final extended maturity date and is in the State's possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final extended maturity date. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

## PART 353—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 5. The authority citation for part 353 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 6. Amend § 353.20 by revising paragraph (b) to read as follows:

**§ 353.20 General**

* * * * *

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 353.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

* * * * *

■ 7. Redesignate subpart O as subpart P.

■ 8. Add a new subpart O to read as follows:

### Subpart O—Escheat and Unclaimed Property Claims by States

**§ 353.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached final maturity and is in the State's possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final maturity. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States'

obligations to the same extent as if payment had been made to the registered owner.

## PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 9. The authority citation for part 360 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

■ 10. Amend § 360.20 by revising paragraph (b) to read as follows:

### § 360.20 General

* * * * *

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 360.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

* * * * *

■ 11. Redesignate subpart M as subpart N.

■ 12. Add a new subpart M to read as follows:

## Subpart M—Escheat and Unclaimed Property Claims by States

### § 360.77 Payment to a State claiming title to abandoned bonds.

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has stopped earning interest and is in the State's possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L of this part, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that is still earning interest. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

Dated: December 18, 2015.

**David A. Lebryk,**

*Fiscal Assistant Secretary.*

[FR Doc. 2015–32488 Filed 12–23–15; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2015–1082]**

## Drawbridge Operation Regulation; Arthur Kill, Staten Island, New York

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Arthur Kill (AK) Railroad Bridge across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey. This deviation allows the bridge to remain in the closed position to facilitate scheduled maintenance. This deviation is necessary to facilitate tie and miter rail replacement on the lift span.

**DATES:** This deviation is effective from 8:21 a.m. on January 9, 2016 to 6:45 p.m. January 31, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2015–1082] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The AK Railroad Bridge, across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey has a vertical clearance in the closed position of 31 feet at Mean High Water and 35 feet at Mean Low Water. The existing drawbridge operation regulations are listed at 33 CFR 117.702.

The waterway supports both commercial and recreational navigation of various vessel sizes. The operator of the bridge, Conrail, requested a temporary deviation to facilitate scheduled maintenance and to replace the tie and miter rail on the bridge. The bridge must remain in the closed position to perform this maintenance.

Under this temporary deviation, the draw may remain in the closed position as follows:

On January 9, 2016 from 8:21 a.m. to 1:02 p.m. and from 3:02 p.m. to 6:46 p.m.

On January 10, 2016 from 8:59 a.m. to 1:46 p.m. and 3:46 p.m. to 7:26 p.m.

On January 16, 2016 from 8:19 a.m. to 12:08 p.m. and from 2:08 p.m. to 6:43 p.m.

On January 17, 2016 from 9:30 a.m. to 1:09 p.m. and from 3:09 p.m. to 7:47 p.m.

On January 23, 2016 from 8:31 a.m. to 1:02 p.m. and from 3:02 p.m. to 6:59 p.m.

On January 24, 2016 from 9:15 a.m. to 1:47 p.m. and from 3:47 p.m. to 7:45 p.m.

On January 30, 2016 from 7:27 a.m. to 11:33 a.m. and from 1:33 p.m. to 5:51 p.m.

On January 31, 2016 from 8:27 a.m. to 12:17 p.m. and from 2:17 p.m. to 6:45 p.m.

Vessels able to pass through the bridge in the closed positions may do so at anytime. There are no alternate routes for vessel traffic. The bridge can be opened in an emergency. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 16, 2015.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2015–32447 Filed 12–23–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2015–1057]**

### Drawbridge Operation Regulation; Annisquam River and Blynman Canal, Gloucester, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Blynman (SR127) Bridge across the Annisquam River and Blynman Canal at mile 0.0 at Gloucester, MA. The deviation is necessary due to the inhabitability of the operator's house associated with a settling of the adjacent seawall resulting in a partial collapse of the house rendering the structure unsafe for occupancy. This deviation allows the bridge to be opened with a two hour advanced notice during the hours of 8 p.m. through 4 a.m. from January 1, 2016 through April 30, 2016.

**DATES:** This deviation is effective from 8 p.m. on January 1, 2016 through 4 a.m. April 30, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–USCG–2015–1057] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Scott White, First Coast Guard District Bridge Branch, Coast Guard; telephone 617–223–8364, email *Scott.C.White@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Blynman (SR 127) Bridge across the Annisquam River and Blynman Canal, mile 0.0, at Gloucester, Massachusetts, has a vertical clearance in the closed position of 8.2 feet at mean high water and 16 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.586.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the normal operating schedule to open on signal after at least a two hour advance notice is provided between the hours of 8 p.m. to 4 a.m. for the period of January 1, 2016 through April 30, 2016.

The waterways are transited primarily by seasonal recreation vessels of various sizes. Historical records indicate infrequent requests for openings occur during this timeframe. Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies however the northern entrance to the Annisquam River can be used as an alternate route for vessels unable to pass through the bridge in closed positions. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 21, 2015.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2015–32446 Filed 12–23–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### 37 CFR Part 6

**[Docket No. PTO–T–2015–0077]**

**RIN 0651–AD06**

### International Trademark Classification Changes

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (''USPTO'') issues a final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are effective January 1, 2016, and are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (10th ed., ver. 2016), which is published by the World Intellectual Property Organization (WIPO). In addition, the USPTO is making a change that appeared in an earlier revision of the Nice Agreement and minor revisions to punctuation and grammar to conform to what appears in the Nice Agreement.

**DATES:** This rule is effective on January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8946 or *TMFRNotices@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* As noted above, the revised rule benefits the public by providing notice regarding classification changes adopted by the Nice Agreement that will become effective on January 1, 2016.

*Summary of Major Provisions:* The USPTO is revising § 6.1 in part 6 of title 37 of the Code of Federal Regulations to incorporate classification changes and modifications that will become effective January 1, 2016, or that appeared in earlier revisions of the Nice Agreement, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (10th ed., 2016) (Nice Classification), published by WIPO. In addition, the USPTO is making minor revisions to punctuation and grammar so that § 6.1 will conform to what appears in the Nice Agreement.

The Nice Agreement is a multilateral treaty, administered by WIPO, that establishes the international classification of goods and services for the purposes of registering trademarks and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies to all applications filed on or after September 1, 1973, and their resulting registrations, for all statutory purposes. See 37 CFR 2.85(a). As of January 1, 2015, eighty-four states are parties to the Nice Agreement. Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on

the WIPO Web site, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and year of the effective date (*e.g.,* ''Nice Classification, 10th edition, version 2013'' or ''NCL 10–2013''). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another. New editions of the Nice Classification continue to be published electronically and include all changes adopted annually since the previous edition, as well as goods or services transferred from one class to another or new classes that are created.

The annual revisions contained in this final rule, which consist of modifications to the class headings, have been incorporated into the Nice Agreement by the Committee of Experts. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to Article 1.

*Costs and Benefits:* This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

**Discussion of Rule Changes**

The Office is revising § 6.1 as follows:

The wording ''metals in foil and powder form for painters, decorators, printers and artists'' in Class 2 is amended to ''metals in foil and powder form for use in painting, decorating, printing and art.''

The wording ''Pharmaceutical and veterinary preparations'' in Class 5 is amended to ''Pharmaceuticals, medical and veterinary preparations.''

The wording ''goods of common metal not included in other classes'' in Class 6 is deleted.

The comma after ''apparatus and instruments'' in Class 10 is changed to a semicolon.

The wording ''and goods in precious metals or coated therewith, not included in other classes'' in Class 14 is deleted.

The wording ''Paper, cardboard and goods made from these materials, not included in other classes'' in Class 16 is amended to ''Paper and cardboard.'' The wording ''(not included in other classes)'' is deleted from the phrase ''plastic materials for packaging (not included in other classes).''

The wording ''Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes'' in Class 17 is amended to ''Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials.''

The wording ''and goods made of these materials and not included in other classes'' is deleted from the phrase ''Leather and imitations of leather, and goods made of these materials and not included in other classes'' in Class 18.

The wording ''goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics'' in Class 20 is amended to ''unworked or semi-worked bone, horn, ivory, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.''

The wording ''not included in other classes'' is deleted from the phrase ''glassware, porcelain and earthenware not included in other classes'' in Class 21.

The wording ''Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes);'' in Class 22 is amended to ''Ropes and string; nets; tents, awnings and tarpaulins; sails;'' and the wording ''paper, cardboard,'' is added before the term ''rubber'' in the phrase ''padding and stuffing materials (except of rubber or plastics).''

The wording ''Textiles and textile goods, not included in other classes'' is replaced with ''Textiles and substitutes for textiles'' in Class 24.

The wording ''not included in other classes'' is deleted from the phrase ''gymnastic and sporting articles not included in other classes'' in Class 28.

The term ''pastry'' is amended to ''pastries'' in Class 30. The term ''edible'' is inserted before the term ''ices.''

The wording ''Grains and agricultural, horticultural and forestry products not included in other classes'' and ''seeds'' in Class 31 is amended to ''Agricultural, horticultural and forestry products; raw and unprocessed grains and seeds.''

**Rulemaking Requirements**

*Administrative Procedure Act:* The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'') (citation and internal quotation marks omitted); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice,'' quoting 5 U.S.C. 553(b)(A)). The 30-day delay in effectiveness is not applicable because this rule is not a substantive rule as the changes in this rule have no impact on the standard for reviewing trademark applications. As discussed above, the changes in this rulemaking involve rules of agency practice and procedure, and consist of modifications to the class headings that are used to classify goods and services in the trademark-application process. These changes are administrative in nature and will have no substantive impact on the evaluation of a trademark application. The purpose of a delay in effectiveness is to allow affected parties time to modify their behaviors, businesses, or practices to come into compliance with new regulations. This rule imposes no additional requirements on the affected entities. Therefore, the requirement for a 30-day delay in effectiveness is not applicable, and the rule is made effective upon the date of publication.

*Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), is required. *See* 5 U.S.C. 603.

*Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Executive Order 13563 (Improving Regulation and Regulatory Review):* The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

*Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Unfunded Mandates Reform Act of 1995:* The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*Paperwork Reduction Act:* This final rule does not involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 37 CFR Part 6**

Administrative practice and procedure, Classification, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

## PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 1. The authority citation for part 6 continues to read as follows:

**Authority:** Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 6.1 to read as follows:

### § 6.1 International schedule of classes of goods and services.

**Goods**

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical use or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paintbrushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging; printers' type; printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-

metallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; unworked or semi-worked bone, horn, ivory, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; combs and sponges; brushes (except paintbrushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware.

22. Ropes and string; nets; tents, awnings and tarpaulins; sails; sacks; padding and stuffing materials (except of paper, cardboard, rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and substitutes for textiles; bed covers; table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games and playthings; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables; natural plants and flowers; live animals; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

**Services**

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

Dated: December 18, 2015.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2015–32467 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2015–0685; FRL–9940–01]**

### Propiconazole on Tea; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of propiconazole in or on tea. The Tea Association of the U.S.A., Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 24, 2015. Objections and requests for hearings must be received on or before February 22, 2016, 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–2015–0685, 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.*

*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–2015–0685 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 February 22, 2016. 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–2015–0685, 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 October 21, 2015 (80 FR 63731) (FRL–9935–29), 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 4E8300) by the Tea Association of the U.S.A., Inc., 362 5th Avenue, Suite 801, New York, New York, 10001. The petition requested that 40 CFR 180.434 be amended by establishing a tolerance for residues of the fungicide propiconazole in or on tea at 4.0 parts per million (ppm). That document referenced a summary of the petition prepared by the Tea Association of the U.S.A., Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* No comments concerning this tolerance action were received.

## 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 propiconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propiconazole follows.

### *A. Toxicological Profile*

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

The primary target organ for propiconazole toxicity in animals is the liver. Increased liver weights were seen in mice after subchronic or chronic oral exposures to propiconazole. Liver lesions such as vacuolation of hepatocytes, ballooned liver cells, foci of enlarged hepatocytes, hypertrophy, and necrosis are characteristic of propiconazole toxicity in rats and mice. Decreased body weight gain was also seen in subchronic, chronic, developmental and reproductive studies in animal studies. Dogs appeared to be more sensitive to the localized toxicity of propiconazole as manifested by stomach irritations at 6 milligram/kilogram/day (mg/kg/day) and above.

In rabbits, developmental toxicity occurred at a higher dose than the maternally toxic dose, while in rats, developmental toxicity occurred at lower doses than maternal toxic doses. Increased incidences of rudimentary ribs occurred in rat and rabbit fetuses. Increased cleft palate malformations were noted in two studies in rats. In one published study in rats, developmental effects (malformations of the lung and kidneys, incomplete ossification of the skull, caudal vertebrae and digits, extra rib (14th rib), and missing sternbrae) were reported at doses that were not maternally toxic. In the 2-generation reproduction study in rats, offspring toxicity occurred at a higher dose than the parental toxic dose suggesting lower susceptibility of the offspring to the toxic doses of propiconazole.

The acute neurotoxicity study produced severe clinical signs of toxicity (decreased activity, cold, pale, decreased motor activity, etc.) in rats at the high dose of 300 milligram/kilogram (mg/kg). Limited clinical signs (piloerection, diarrhea, tip toe gait) were observed in the mid-dose animals (100 mg/kg), while no treatment related signs were observed at 30 mg/kg. The current acute dietary assessment for the general population is based on the no-observed-adverse-effect-level (NOAEL) of 30 mg/kg from the acute neurotoxicity study. A subchronic neurotoxicity study in rats did not produce neurotoxic signs at the highest dose tested that was associated with decreased body weight.

Propiconazole was negative for mutagenicity in the *in vitro* BALB/3T3 cell transformation assay, bacterial reverse mutation assay, Chinese hamster bone marrow chromosomal aberration assay, unscheduled DNA synthesis studies in human fibroblasts and primary rat hepatocytes, mitotic gene conversion assay, and the dominant lethal assay in mice. It caused proliferative changes in the rat liver with or without pretreatment with an initiator, like phenobarbital, a known liver tumor promoter. Liver enzyme induction studies with propiconazole in mice demonstrated that propiconazole is a strong phenobarbital type inducer of xenobiotic metabolizing enzymes. Hepatocellular proliferation studies in mice suggest that propiconazole induces cell proliferation followed by treatment-related hypertrophy in a manner similar to the known hypertrophic agent phenobarbital.

Propiconazole was carcinogenic to male mice but was not carcinogenic to rats or to female mice. The Agency classified propiconazole as a possible human carcinogen and recommended that, for the purpose of risk characterization, the reference dose (RfD) approach be used for quantification of human risk. Propiconazole is not genotoxic and this fact, together with special mechanistic studies, indicates that propiconazole is a threshold carcinogen. Propiconazole

produced liver tumors in male mice only at a high dose that was toxic to the liver. At doses below the RfD, liver toxicity is not expected; therefore, tumors are also not expected.

Specific information on the studies received and the nature of the adverse effects caused by propiconazole as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Propiconazole Human Health Risk Assessment for the New Use of Propiconazole on Imported Tea'' at pp. 41–46 in docket ID number EPA–HQ–OPP–2015–0685.

*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 propiconazole used for human risk assessment is shown in Table 1.

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

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–50 years of age). | NOAEL = 30 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.3 mg/kg/day.<br>aPAD = 0.3 mg/kg/day | Developmental Study—Rat MRID 40425001<br>LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate. |
| Acute dietary (General population including infants and children). | NOAEL = 30 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.3 mg/kg/day.<br>aPAD = 0.3 mg/kg/day | Acute neurotoxicity study Rat MRID 46604601<br>LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females). |
| Chronic dietary (Adult Males and Females 50+ yrs). | NOAEL= 10 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.1 mg/kg/day.<br>cPAD = 0.1 mg/kg/day | 24-month carcinogenicity study on CD–1 mice. MRID 00129918<br>LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: Masses/raised areas/swellings/nodular areas mainly). |
| Incidental oral short-term (1 to 30 days). | NOAEL= 30 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF= 1x | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | Acute Neurotoxicity Study—Rats MRID 46604601<br>LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females). |
| Incidental oral intermediate-term (1 to 6 months). | NOAEL= 10 mg/kg/day.<br>$UF_A$= 10x<br>$UF_H$= 10x<br>FQPA SF= 1x | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | 24 Month carcinogenicity Study—Mice MRID 00129918<br>LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: Masses/raised areas/swellings/nodular areas mainly). |
| Dermal Short Term (1–30 days) | NOAEL= 30 mg/kg/day.<br>$UF_A$= 10x<br>$UF_H$= 10x | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | Acute Neurotoxicity Study—Rats MRID 46604601<br>LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females). |
| Dermal Intermediate Term (1–6 months). | NOAEL= 10 mg/kg/day.<br>$UF_A$= 10x<br>$UF_H$= 10x | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | 24 Month carcinogenicity Study—Mice MRID 00129918<br>LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: Masses/raised areas/swellings/nodular areas mainly). |
| Inhalation Short-term (1 to 30 days). | NOAEL= 30 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x | Occupational LOC for MOE = 100. | Acute Neurotoxicity Study—Rats MRID 46604601<br>LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females). |
| Inhalation Intermediate-Term (1 to 6 months). | NOAEL = 10 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x | Occupational LOC for MOE = 100. | 24 Month carcinogenicity Study—Mice MRID 00129918<br>LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: Masses/raised areas/swellings/nodular areas mainly). |

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

| Exposure/scenario | Point of departure and uncertainty/ safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Cancer (all routes—oral, dermal, inhalation). | Classification: Group C, possible human carcinogen, RfD approach for risk characterization. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_{DB}$ = to account for the absence of data or other data deficiency. $UF_H$ = 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 propiconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing propiconazole tolerances in 40 CFR 180.434. EPA assessed dietary exposures from propiconazole 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 propiconazole. 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 conducted an acute dietary analysis for propiconazole residues of concern using tolerance levels and 100 percent crop treated (PCT) for all existing and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA. This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA conducted a chronic dietary analysis for propiconazole residues of concern average field trial residues, tolerance levels and 100 PCT for all existing and proposed uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to propiconazole. 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.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for propiconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propiconazole. 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.*

The Agency does not expect any additional residues of propiconazole in drinking water as a result of the imported tea use. Therefore, the Agency is relying on the previous drinking water assessment for assessing propiconazole tolerances. The previously assessed turf EDWCs are approximately one order of magnitude higher and more protective than the EDWCs for the new use.

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model—Ground Water (PRZM–GW) models, the estimated drinking water concentrations (EDWCs) of propiconazole for acute exposures are estimated to be 35.2 parts per billion (ppb) for surface water and 37.9 ppb for ground water, and for chronic exposures are estimated to be 18.6 ppb for surface water and 35.1 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 37.9 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 35.1 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).

Although there are no proposed residential uses associated with the imported tea use, propiconazole is currently registered for the following uses that could result in residential exposures: Turf, landscapes, ornamentals, and in paint. The highest incidental oral and dermal exposure scenarios are expected from residential use on turf. EPA assessed short-term risk to toddlers from incidental oral and dermal exposure as well as from post-application dermal exposure. The highest post application exposure from residential use on turf was used to assess risk to short-term aggregate exposures.

The only residential use scenario that will result in potential intermediate-term exposure to propiconazole is wood treatment, which the Agency assumes may result in dermal and incidental oral post-application exposures to children. 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.''

Propiconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse rand of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes.

Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's 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*.

Propiconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including propiconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). The Agency retained a 3X for the LOAEL to NOAEL safety factor when the reproduction study was used. In addition, the Agency retained a 10X for the lack of studies including a DNT. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket ID Number EPA–HQ–OPP–2005–0497.

An updated aggregate human health risk assessment for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP) was completed on April 9, 2015, in association with the registration requests for several triazole fungicides (propiconazole, difenoconazole, and flutriafol). That analysis concluded that risk estimates were below the Agency's level of concern for all population groups. This assessment may be found on *http://www.regulations.gov* by searching for the following title and docket ID number: ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address The New Section 3 Registrations For Use of Propiconazole on Tea, Dill, Mustard Greens, Radish, and Watercress; Use of Difenoconazole on Globe Artichoke, Ginseng and Greenhouse Grown Cucumbers and Conversion of the Established Foliar Uses/Tolerances for Stone Fruit and Tree Nut Crop Groups to Fruit, Stone, Group 12–12 and the Nut, Tree, Group 14–12.; and Use of Flutriafol on Hops'' located under docket ID number EPA–HQ–OPP–2015–0685.

*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.* In the developmental toxicity study in rats, fetal effects observed in this study at a dose lower than that evoking maternal toxicity are considered to be quantitative evidence of increased susceptibility of fetuses to *in utero* exposure to propiconazole. Neither quantitative nor qualitative evidence of increased susceptibility was observed *in utero* or post-natally in either the rabbit developmental or 2-generation reproduction rat study. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of clinical toxicity at the high dose of 300 mg/kg, but no evidence of neuropathology from propiconazole administration.

Although there was quantitative evidence of increased susceptibility of the young following exposure to propiconazole in the developmental rat study, the Agency determined there is a low degree of concern for this finding and no residual uncertainties because the increased susceptibility was based on minimal toxicity at high doses of administration, clear NOAELs and LOAELs have been identified for all effects of concern, and a clear dose-response has been well defined.

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 propiconazole is complete.

ii. Other than the mild effects seen at 300 mg/kg in the acute neurotoxicity study, neurotoxicity and neurobehavioral effects were not seen in the propiconazole toxicity database. The liver, not the nervous system, is the primary target organ of propiconazole toxicity.

iii. Although an apparent increased quantitative susceptibility was observed in fetuses and offspring, for reasons noted in this Unit, residual uncertainties or concerns for prenatal and/or postnatal toxicity are minimal.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues, while the chronic used a combination of tolerance-level residues and reliable data on average field trial residues and 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propiconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. A turf transferable residue study is unavailable but being requested from the registrant for registration review of propiconazole. In all probability this

study will reduce exposure estimates for both the incidental oral and post-application exposure to children. These assessments will not underestimate the exposure and risks posed by propiconazole.

*E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 85% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propiconazole from food and water will utilize 24% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propiconazole is not expected.

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

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 MOEs from post-application activities (the highest exposure scenario) of 200 for adults and 96 for children 1–2 years old. This assessment is considered conservative since the short-term endpoints are based on a conservative LOAEL that is 3x higher than the NOAEL. Therefore, the true NOAEL is likely higher and would result in MOEs greater than 100. Further, the assessment is based on a combination of tolerance-level residues and reliable data on average field-trial residues and 100 PCT, conservative assumptions in the ground and surface water modeling, and conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. Additionally, the assessment could be further refined by using PCT estimates and anticipated residues for all crops. Although dietary (food and water) is not the aggregate exposure driver, incorporating PCT would likely increase the aggregate MOE further above 100. For example, the Agency's latest PCT figures indicate that the highest average PCT reported for propiconazole residues on crops is 55%, which is much less than the 100 PCT the Agency used for all commodities in its assessment. Accordingly, even though this MOE for children 1–2 years old is slightly below the target MOE of 100, the difference is small and is more than offset by the conservative exposure assumptions and therefore 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).

Propiconazole is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 110 for children 1–2 years old. Because EPA's level of concern for propiconazole is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA considers the chronic aggregate risk assessment to be protective of any aggregate cancer risk. As there is no chronic risk of concern, EPA does not expect any cancer risk to the U.S. population from aggregate exposure to propiconazole.

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 propiconazole residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology, a high performance liquid chromatography with ultraviolet detection method (HPLC/UV Method AG–671A) 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 an MRL for propiconazole on tea.

## V. Conclusion

Therefore, tolerances are established for residues of propiconazole, including its metabolites and degradates, in or on tea at 4.0 ppm. As there are currently no U.S. registrations for propiconazole for use on tea, EPA is adding a footnote to the regulation to clarify that fact.

## VI. Statutory and Executive Order Reviews

This action establishes a tolerance 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: December 16, 2015.

**Susan Lewis,**

*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 § 180.434:

■ a. Redesignate paragraph (a) as paragraph (a)(1).

■ b. Add a new paragraph (a)(2).

The amendments read as follows:

### § 180.434 Propiconazole; tolerances for residues.

(a) *General.* (1) * * *

(2) Tolerances are established for propiconazole, 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 propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, in or on the commodity.

| Commodity | Parts per million |
|---|---|
| Tea [1] ..... | 4.0 |

[1] There are no United States registrations for use of propiconazole on tea as of December 24, 2015.

* * * * *

[FR Doc. 2015–32328 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2013–0730; FRL–9933–39]**

### Spinetoram; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of spinetoram in or on multiple commodities that are identified and discussed later in this document. In addition, this regulation removes a number of existing tolerances for residues of spinetoram that are superseded by this action. Interregional Research Project # 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 24, 2015. Objections and requests for hearings must be received on or before February 22, 2016, 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–2013–0730, 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*.

*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–2013–0730 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 February 22, 2016. 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–2013–0730, 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 Monday, December 30, 2013 (78 FR 79359) (FRL–9903–69) and Wednesday, November 4, 2015 (80 FR 68289) (FRL–9936–13), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing and subsequent filing of an amendment to pesticide petition (PP 3E8203) by IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180 be amended by establishing tolerances for the combined residues of the insecticide spinetoram, expressed as a combination of XDE–175–J: 1-;H-as-indaceno[3,2d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2Hpyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro 14-methyl-(2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR); XDE–175–L: 1H-as-indaceno[3,2d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L mannopyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2Hpyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-(2S,3aR,5aS,-5bS,9S,13S,14R,16aS,16bS); ND–J: (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)-9-ethyl-14-methyl-13-[[(2S,5S,6R)-6-methyl-5-(methylamino) tetrahydro-2H-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-2-yl 6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-manno pyranoside; and NF–J: (2R,3S,6S)-6-([(2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)-2-[(6-deoxy-3-Oethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2d] oxacyclododecin-13-yl]oxy)-2-methyl tetrahydro-2H-pyran-3-yl(methyl) formamide in or on the following raw agricultural commodities: Berry, low growing, subgroup 13–07G, except blueberry, lowbush, and cranberry at 1.0 parts per million (ppm); bushberry subgroup 13–07B, except lingonberry at 0.25 ppm; caneberry subgroup 13–07A at 0.7 ppm; coffee, green bean at 0.2 ppm; coffee, instant at 0.4 ppm; coffee, roasted bean at 0.4 ppm; cottonseed subgroup 20C at 0.04 ppm; fruit, citrus, group 10–10 at 0.3 ppm; fruit, pome group 11–10 at 0.2 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.5 ppm; fruit, stone, group 12–12 at 0.2 ppm; nuts, tree, group 14–12 at 0.1 ppm; onion, bulb, subgroup 3–07A at 0.1 ppm; onion, green, subgroup 3–07B at 2.0 ppm; quinoa, grain at 0.04 ppm; and vegetable, fruiting, group 8–10 at 0.4 ppm. In addition, the petitioner proposes based upon establishment of the new tolerances above, to remove the following established spinetoram tolerances that are superseded by this action: Bushberry subgroup 13B at 0.25 ppm; caneberry subgroup 13A at 0.70 ppm; cotton, undelinted seed at 0.04 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; grape at 0.50 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; nut tree, group 14 at 0.10 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; pistachio at 0.10 ppm; salal at 0.25 ppm; strawberry at 1.0 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; and vegetable, fruiting group 8 at 0.4 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov*. A single comment was received on the notice of filing, EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has made certain modifications to petitioned-for actions. 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 spinetoram including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with spinetoram follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their 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.

Spinetoram and spinosad are considered by EPA to be toxicologically identical for human health risk assessment based on their very similar chemical structures and similarity of the toxicological databases for currently available studies. The primary toxic effect observed from exposure to spinosad or spinetoram was histopathological changes in multiple organs (specific target organs were not identified). Vacuolization of cells and/or macrophages was the most common histopathological finding noted across both toxicological databases with the dog being the most sensitive species. In addition to the numerous organs observed with histopathological changes, anemia was noted in several studies.

There was no evidence of increased quantitative or qualitative susceptibility from spinosad or spinetoram exposure. In developmental studies, no maternal or developmental effects were seen in rats or rabbits. In the rat reproduction toxicity studies, offspring toxicity was seen in the presence of parental toxicity at approximately the same dose for both chemicals (75–100 milligram/kilogram/day (mg/kg/day)). Parental toxicity was evidenced by increased organ weights, mortality, and histopathological findings in several organs. Offspring effects included decreased litter size, survival, and body weights with spinosad while an increased incidence of late resorptions and post-implantation loss was seen with spinetoram. Dystocia and/or other parturition abnormalities were observed with both chemicals.

Spinosad and spinetoram are classified as having low acute toxicity via the oral, dermal, and inhalation routes of exposure. Neither chemical is an eye or dermal irritant. Spinetoram was found to be a dermal sensitizer. No hazard was identified for dermal exposure; therefore a quantitative dermal assessment is not needed. In acute and subchronic neurotoxicity studies, there was no evidence of neurotoxicity from exposure to spinosad or spinetoram. In an immunotoxicity study with spinosad, systemic effects (decreased body weights, increased liver weights, and abnormal hematology results) were seen at the highest dose tested (141 mg/kg/day); however, there was no evidence of immunotoxicity.

Spinosad and spinetoram are classified as ''not likely to be carcinogenic to humans'' based on lack of evidence of carcinogenicity in mice and rats and negative findings in mutagenicity assays.

Specific information on the studies received and the nature of the adverse effects caused by spinetoram and spinosad 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 documents including: 1) ''Spinosad and Spinetoram—Human Health Risk Assessment to Support the Section 3 Registration Request for Application to Coffee and for Updates to Several Crop Group/Subgroup Commodity Definitions,'' dated March 10, 2015 at pp. 31, and 2) ''Spinosad/Spinetoram. Addendum to Human Health aggregate Risk assessment D415812 (T. Bloem *et al.,* 10–Mar–2015) to Support a New Use on Quinoa'', dated November 2015 in docket ID number EPA–HQ–OPP–2013–0730.

*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 LOEAL 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://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides*.

Spinosad and spinetoram should be considered toxicologically identical in the same manner that metabolites are generally considered toxicologically identical to the parent. Although, as stated above, the doses and endpoints for spinosad and spinetoram are similar, they are not identical due to variations in dosing levels used in the spinetoram and spinosad toxicological studies. EPA compared the spinosad and spinetoram doses and endpoints for each exposure scenario and selected the lower of the two doses for use in human risk assessment.

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

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPINOSAD/SPINETORAM 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) | A dose and endpoint of concern attributable to a single dose was not observed. | | |

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPINOSAD/SPINETORAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Chronic dietary (All populations) | NOAEL= 2.49 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.0249 mg/kg/day.<br>cPAD = 0.0249 mg/kg/day | Chronic Toxicity—Dog Study (with spinetoram) LOAEL = 5.36/5.83 mg/kg/day (males/females) based on arteritis and necrosis of the arterial walls of the epididymides in males and of the thymus, thyroid, larynx, and urinary bladder in females. |
| Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months). | NOAEL= 4.9 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Residential LOC for MOE <100. | Subchronic Oral Toxicity—Dog Study (with spinosad) LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in body weights and food consumption, and biochemical evidence of anemia and liver damage. |
| Inhalation short-term (1 to 30 days) and Intermediate-Term (1–6 months). | Inhalation (or oral) study NOAEL= 4.9 mg/kg/day (inhalation assumed equivalent to oral).<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Residential LOC for MOE <100. | Subchronic Oral Toxicity—Dog Study (with spinosad) LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in body weights and food consumption, and biochemical evidence of anemia and liver damage. |
| Cancer (Oral, dermal, inhalation). | Classified as "not likely to be carcinogenic to humans." | | |

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

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spinetoram and spinosad, EPA considered exposure under the petitioned-for tolerances as well as all existing spinetoram tolerances in 40 CFR 180.635 as well as existing spinosad tolerances. EPA assessed dietary exposures from spinetoram and spinosad 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 spinetoram or spinosad; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* Spinosad is registered for application to all of the same crops as spinetoram, with similar pre-harvest and retreatment intervals, and application rates greater than or equal to spinetoram. Further, both products control the same pest species. For this reason, EPA has concluded it would overstate exposure to assume that residues of both spinosad and spinetoram would appear on the same food. Rather, EPA aggregated exposure by assuming that all commodities contain spinosad residues (because side-by-side spinetoram and spinosad residue data indicated that spinetoram residues were less than or equal to spinosad residues).

In conducting the chronic dietary exposure assessment for spinetoram, EPA used the Dietary Exposure Evaluation Model—Food Consumption Intake Database (DEEMFCID, ver. 3.16) which incorporates food consumption data from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). The chronic analysis assumed 100 percent crop treated (PCT), average field-trial residues or tolerance-level residues for crop commodities, average residues from the livestock feeding studies, experimental processing factors when available, and modeled drinking water estimates.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that spinetoram 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 100 percent crop treated (PCT) information were used.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

*2. Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spinetoram and spinosad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spinetoram and spinosad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Surface Water Concentration Calculator (SWCC) and Screening Concentration in Ground Water (SCIGROW) models, the estimated drinking water concentrations (EDWCs) of spinetoram for acute

exposures are estimated to be 8.6 parts per billion (ppb) for surface water and 0.072 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 5.9 ppb for surface water and 0.072 ppb for ground water. EDWCs of spinosad for acute exposures are estimated to be 25.0 ppb for surface water and 1.1 ppb for ground water. For chronic exposures for noncancer assessments are estimated to be 21.7 ppb for surface water and 1.1 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 21.7 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).

Spinetoram and spinosad are currently registered for uses that could result in residential exposures including lawns, gardens, turfgrass, ornamentals, fire ant mounds, and spot-on pet applications. There is potential for residential handler and postapplication exposures to both spinosad and spinetoram. Since spinosad and spinetoram control the same pests, EPA concludes that these products will not be used for the same uses in combination with each other and thus combining spinosad and spinetoram residential exposures would overstate exposure. EPA assessed residential exposure for both spinosad and spinetoram using the most conservative residential exposure scenarios for either chemical.

EPA assessed residential exposure using the following assumptions: Residential handler (short-term inhalation exposures) and post-application (short-term incidental oral) exposures are expected as a result of the following registered uses: (1) Application of spinosad to gardens, turfgrass, ornamentals and fire ant mounds; (2) application of spinetoram to lawns, gardens, and ornamentals; and (3) spot-on application of spinetoram to cats and kittens. The Agency determined the ''worst-case'' scenarios for handler and post-application exposures as: (1) Adult residential handler inhalation exposure from mixing/loading/applying liquid formulations to turf via backpack sprayer, and (2) child (1–<2 years) residential post-application incidental oral (hand-to-mouth) exposure from liquid formulation on turf/home gardens/ornamentals. These worst-case exposure estimates were used in the aggregate assessment of residential exposure to spinosad and spinetoram.

Aggregating exposure resulting from the turf and pet uses was not conducted as the products control different pests and, therefore, application on the same day is unlikely. Use survey data indicate that concurrent use of separate pesticide products that contain the same active ingredient to treat the same or different pests does not typically occur. Furthermore, a number of issues are considered when combining residential exposure scenarios, including whether aggregating additional uses is appropriate in light of the already conservative assumptions inherent in the assessment. When assessing individual short-term residential postapplication exposure scenarios, EPA assumes exposure occurs to zero-day residues (*i.e.,* day of application residues) day after day. EPA also assumes that an individual performs the same postapplication activities, intended to represent high end exposures as described in the Residential SOPS, day after day for the same amount of time every day (*i.e.,* no day to day variation), although doing intense contact activities on the day of application subsequent to application for multiple chemicals would not be anticipated. Once calculated, these exposure estimates are then compared to points of departure that are typically based on weeks of dosing in test animals. For spinosad/spinetoram, the short-term risk assessment has the additional conservatism of basing the level of concern for short-term exposure (30-days) on a toxicity study involving continuous exposure over 90 days.

Current EPA policy requires assessment for residential post-application exposures of short- (1 to 30 days), intermediate- (1 to 6 months), and long-term (greater than 6 months) exposures from spot-on products due to the preventative nature of these products and the potential for extended usage in more temperate parts of the country. However, for spinetoram, there is no progression of toxicity with time; therefore, the short-term assessment is protective of intermediate- and long-term exposure.

Available turf transferable residue (TTR) data on spinosad in support of turf uses and spinetoram data on dislodgeable residues from petting after topical administration to cats were incorporated into the exposure assessment. Spinosad and spinetoram dislodgeable-foliar residue (DFR) studies are unnecessary at this time as there is no hazard via the dermal route of exposure.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide*.

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 spinosad or spinetoram to share a common mechanism of toxicity with any other substances, and neither spinosad nor spinetoram appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spinosad and spinetoram do 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://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

*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.* There was no evidence of increased quantitative or qualitative susceptibility of rat and rabbit fetuses to *in-utero* exposure to spinetoram or spinosad. In developmental studies, no maternal or developmental effects were seen in rats or rabbits. In the rat reproduction

toxicity studies, offspring toxicity was seen in association with parental toxicity at approximately the same dose for both spinetoram and spinosad. Therefore, there is no evidence of increased susceptibility and there are no concerns or residual uncertainties for pre-natal and/or post-natal toxicity.

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

i. The toxicity database for spinetoram and spinosad is complete. There is no evidence of neurotoxicity, developmental/reproductive toxicity, immunotoxicity, mutagenicity, or carcinogenicity from spinetoram or spinosad exposure. Therefore, no additional database uncertainty factor (UF) is needed.

ii. There is no indication of spinetoram or spinosad neurotoxicity from available acute and subchronic neurotoxicity studies in rats and there is no need for a developmental neurotoxicity study.

iii. There is no evidence that spinetoram or spinosad 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 spinetoram and spinosad exposure databases. The dietary exposure assessment is conservative as it assumes 100 PCT and residue estimates are based on field trial data. Moreover, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to spinetoram and spinosad 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 spinetoram and spinosad.

### *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, spinetoram and spinosad are 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 spinetoram and spinosad from food and water will utilize 64% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of spinetoram and spinosad is not expected.

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

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 MOEs of 220 for children and 1,000 for adults. Because EPA's level of concern for spinetoram and spinosad is a MOE of < 100, these MOEs are not of concern.

EPA has concluded that the combined intermediate-term and long-term food, water, and residential exposures result in aggregate MOEs that will not fall below the short-term aggregate MOEs since there is no progression of spinetoram toxicity with time. Because EPA's level of concern for spinetoram and spinosad is a MOE of < 100, these MOEs are not of concern.

*4. Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies with spinosad, spinetoram 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 spinetoram residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Method GRM 05.04 is a high-performance liquid chromatography (HPLC)/mass spectrometry (MS)/MS method which has been determined to be adequate for enforcement of existing spinetoram plant tolerances. The method has been validated on a wide-variety of crops and EPA concluded that it is sufficient to enforce the tolerances established by this action.

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 for spinetoram are currently established in or on several of the relevant crops or crop groups or subgroups affected by this action. EPA harmonizes with existing Codex MRLs whenever feasible. The recommended fruit, stone, group 12–12 tolerance and the Codex MRL are harmonized. But harmonization with the currently established Codex MRLs is inappropriate for the following crop groups and subgroups as harmonization may result in exceedances of the tolerances when the pesticide is applied using the labeled instructions: Bushberry, subgroup 13–07B; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F; nut, tree, group 14–12; onion, green, subgroup 3–07B; and vegetable, fruiting, group 8–10. Also, EPA is not harmonizing the U.S. tolerance for onion, bulb, subgroup 3–07A (0.10 ppm)

with the Codex MRL (0.01 ppm). The current U.S. spinetoram tolerance of 0.10 is based on components XDE–175–J, XDE–175–L, ND–J, and NF–J, with the limit of quantitation (LOQ) for each of 0.01 ppm. EPA concludes that a spinetoram tolerance <0.04 ppm is not appropriate and harmonization with a Codex MRL at 0.01 ppm is not practical.

*C. Response to Comments*

One comments was received from the Center for Biological Diversity and concerned endangered species; specifically stating that EPA cannot approve these new uses prior to completion of consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (''the Services''). This comment is not relevant to the Agency's evaluation of safety of the spinetoram tolerances; section 408 of the FFDCA focuses on the potential harms to human health and does not permit consideration of effects on the environment.

*D. Revisions to Petitioned-for Tolerances*

EPA made corrections to several commodity definitions to conform to current Agency practices and revised certain proposed tolerance levels based on the available field trial data, the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures and/or for purposes of harmonization, including the following: (1) Proposed tolerance of 0.2 ppm in/on coffee, green bean was established at 0.04 ppm; (2) proposed tolerance in/on fruit, stone, group 12–12 at 0.20 ppm, established at 0.30 ppm; (3) proposed tolerance in/on caneberry, subgroup 13–07A at 0.7 ppm, established at 0.80 ppm; (4) proposed tolerance in/on bushberry, subgroup 13–07B at 0.25 ppm, established at 0.50 ppm; (5) proposed tolerance in/on berry, low growing, subgroup 13–07G, except cranberry at 1.0 ppm, established at 0.90 ppm; and (6) a proposed tolerance of 0.04 ppm in/on both coffee, instant and coffee, roasted bean was determined to be unnecessary because the tolerance on the raw agricultural commodity covers residues on the processed commodities.

In addition, the Agency is updating the tolerance expression for spinetoram as follows to reflect current EPA policies: ''Tolerances are established for residues of the insecticide spinetoram, 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 the sum of XDE–175–J: 1-*H-as*-indaceno[3,2d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-*O*-methyl-α-*L*mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14methyl-,(2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*); XDE–175–L: 1*H-as*-indaceno[3,2d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L* mannopyranosyl)oxy]-13-[[(2*R*,5 S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl, (2*S*,3a*R*,5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*); ND–J: (2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-9-ethyl-14-methyl-13-[[(2*S*,5*S*,6R)-6-methyl-5-(methylamino)tetrahydro-2*H*-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H-as*-indaceno[3,2-d]oxacyclododecin-2-yl-6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranoside; and NF–J: (2*R*,3*S*,6*S*)-6[[(2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H-as*-indaceno[3,2-d] oxacyclododecin-13-yl]oxy)-2methyltetrahydro-2*H*-pyran-3-yl(methyl)formamide, calculated as the stoichiometric equivalent of spinetoram.

**V. Conclusion**

Therefore, tolerances are established for residues of the insecticide spinetoram, including its metabolites and degradates, in or on the commodities listed below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of XDE–175–J: 1-*H-as*-indaceno[3,2-d]oxacyclododecin-7,15-dione,2-[(6deoxy-3-O-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14-methyl-,(2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*, 16a*S*,16b*R*); XDE–175–L: 1*H-as*-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[(6deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-,(2*S*,3a*R*,5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*); ND–J: (2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,*R*,16a*S*,16b*R*)-9-ethyl-14-methyl-13[[(2*S*,5*S*,6R)-6-methyl-5-(methylamino) tetrahydro-2*H*-pyran-2-yl]oxy]-7,15-dioxo2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H-as*-indaceno[3,2d]oxacyclododecin-2-yl-6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranoside; and NF–J: (2*R*,3*S*,6*S*)-6-([[(2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H-as-indaceno[3,2d] oxacyclododecin-13-yl]oxy)-2-methyltetrahydro-2H*-pyran-3-yl(methyl) formamide, calculated as the stoichiometric equivalent of spinetoram in or on berry, low growing, subgroup 13–07G, except cranberry at 0.90 ppm; bushberry, subgroup 13–07B at 0.50 ppm; caneberry subgroup 13–07A at 0.80 ppm; coffee, green bean at 0.04 ppm; cottonseed subgroup 20C at 0.04 ppm; fruit, citrus, group 10–10 at 0.30 ppm; fruit, pome, group 11–10 at 0.20 ppm; fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit at 0.50 ppm; fruit, stone 12–12 at 0.30 ppm; nut, tree, group 14–12 at 0.10 ppm; onion, bulb, subgroup 3–07A at 0.10 ppm; onion, green, subgroup 3–07B at 2.0 ppm; quinoa, grain at 0.04 ppm; and vegetable, fruiting, group 8–10 at 0.40 ppm. In addition, EPA is removing the following existing spinetoram tolerances that are superseded by this action including: Bushberry subgroup 13B at 0.25 ppm; caneberry subgroup 13A at 0.70 ppm; cotton, undelinted seed at 0.02 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; grape at 0.50 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; nut tree, group 14 at 0.10 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; pistachio at 0.10 ppm; salal at 0.25 ppm; strawberry at 1.0 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; and vegetable, fruiting group 8 at 0.4 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 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: December 15, 2015.

**Susan Lewis,**

*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 § 180.635, in paragraph (a):
■ a. Revise the introductory text.
■ b. Remove from the table in paragraph (a) the entries for: Bushberry subgroup 13B at 0.25 ppm; caneberry subgroup 13A at 0.70 ppm; cotton, undelinted seed at 0.02 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; grape at 0.50 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; nut tree, group 14 at 0.10 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; pistachio at 0.10 ppm; salal at 0.25 ppm; strawberry at 1.0 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; and vegetable, fruiting group 8 at 0.4 ppm.
■ c. Add alphabetically the following commodities to the table in paragraph (a).

The revision and additions read as follows:

**§ 180.635 Spinetoram; tolerance for residues.**

(a) *General*. Tolerances are established for residues of the insecticide spinetoram, 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 the sum of XDE–175–J: 1-*H-as*-indaceno[3,2-d]oxacyclododecin-7,15-dione,2-[(6deoxy-3-O-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R,*5*S,*6*R*)-5(dimethylamino) tetrahydro-6-methyl-2*H*-pyran-2-yl] oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11, 12,13,14,16a,16b-hexadecahydro-14-methyl-,(2*R,*3a*R,*5a*R,*5b*S,*9*S,*13*S,*14*R,* 16a*S,*16b*R*); XDE–175–L: 1*H-as*-indaceno[3,2-d]oxacyclododecin-7,15-dione,2-[(6deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R,*5*S,*6*R*)-5(dimethylamino) tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14, 16a,16b-tetradecahydro-4,14-dimethyl-, (2*S,*3a*R,*5a*S,*5b*S,*9*S,*13*S,*14*R,*16a*S,*16b*S*); ND–J: (2*R,*3a*R,*5a*R,*5b*S,*9*S,*13*S,*14*R,* 16a*S,*16b*R*)-9-ethyl-14-methyl-13[[(2*S,* 5*S,*6R)-6-methyl-5-(methylamino) tetrahydro-2*H*-pyran-2-yl]oxy]-7,15-dioxo2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13, 14,15,16a,16b-octadecahydro-1*H-as*-indaceno[3,2d]oxacyclododecin-2-yl-6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranoside; and NF–J: (2*R,*3*S,* 6*S*)-6-[[(2*R,*3a*R,*5a*R,*5b*S,*9*S,*13*S,*14*R,* 16a*S,*16b*R*)-2-[(6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5, 5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H-as*-indaceno[3,2d] oxacyclododecin-13-yl]oxy)-2-methyltetrahydro-2*H*-pyran-3-yl(methyl) formamide, calculated as the stoichiometric equivalent of spinetoram.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Berry, low growing, subgroup 13–07G, except cranberry | 0.90 |
| * * * * * | |
| Bushberry subgroup 13–07B | 0.50 |
| Caneberry subgroup 13–07A | 0.80 |
| * * * * * | |
| Coffee, green bean | 0.04 |
| * * * * * | |
| Cottonseed subgroup 20C | 0.04 |
| * * * * * | |
| Fruit, citrus, group 10–10 | 0.30 |
| Fruit, pome, group 11–10 | 0.20 |
| Fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit | 0.50 |
| Fruit, stone 12–12 | 0.30 |
| * * * * * | |
| Nut, tree, group 14–12 | 0.10 |
| * * * * * | |
| Onion, bulb, subgroup 3–07A | 0.10 |
| Onion, green, subgroup 3–07B | 2.0 |
| * * * * * | |
| Quinoa, grain | 0.04 |
| * * * * * | |
| Vegetable, fruiting, group 8–10 | 0.40 |
| * * * * * | |

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[FR Doc. 2015–32329 Filed 12–23–15; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket Nos. 13–184 and 10–90; FCC 14–189]**

## Modernizing the E-rate Program for Schools and Libraries

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Second E-rate Modernization Report and Order and Order on Reconsideration* (*Second E-rate Modernization Order*). This document is consistent with the (*Second E-rate Modernization Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

**DATES:** 47 CFR 54.504(a)(1)(iii), published at 80 FR 5961, February 4, 2015, is effective December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** James Bachtell, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This document announces that, on December 2, 2015, OMB approved, for a period of three years, the new information collection requirements contained in the Commission's *Second E-rate Modernization Order,* FCC 14–189, published at 80 FR 5961, February 4, 2015. The OMB Control Number is 3060–0806. The Commission publishes this document as an announcement of the effective date of 47 CFR 54.504(a)(1)(iii).

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0806, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

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

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on December 2, 2015, for the information collection requirements contained in the Commission's rule at 47 CFR 54.504(a)(1)(iii).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0806.

The foregoing document is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–0806.

*OMB Approval Date:* December 2, 2015.

*OMB Expiration Date:* December 31, 2018.

*Title:* Universal Service—Schools and Libraries Universal Service Program, FCC Forms 470 and 471.

*Form Numbers:* FCC Forms 470 and 471.

*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. 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 Commission'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*), 79 FR 49160, August 19, 2014 and *Second E-rate Modernization Order,* 80 FR 5961, February 4, 2015. 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.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015–32321 Filed 12–23–15; 8:45 am]

BILLING CODE 6712–01–P

**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 845**

**RIN 3147–AA02**

**[Docket No. NTSB–GC–2012–0002]**

## Rules of Practice in Transportation: Investigative Hearings, Meetings, Reports, and Petitions for Reconsideration

**AGENCY:** National Transportation Safety Board (NTSB or Board).

**ACTION:** Final rule.

**SUMMARY:** The NTSB amends its regulations which contain the NTSB's procedures for holding investigative hearings, various types of meetings, issuing reports, and responding to petitions for reconsideration. The NTSB introduced a number of substantive and technical changes in its notice of proposed rulemaking (NPRM). In the preamble to this final rule NTSB responds to the five comments the agency received, and explains the adopted changes, including reorganizing the regulation into different subparts to ensure the entire part is easy to follow.

**DATES:** Effective January 25, 2016.

**ADDRESSES:** A copy of the final rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy of the NPRM is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2012–0002).

**FOR FURTHER INFORMATION CONTACT:** David Tochen, General Counsel, (202) 314–6080.

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Proposed Rulemaking

On March 19, 2015, the NTSB published an NPRM inviting public comments concerning the NTSB's procedural rules for investigative hearings, Board meetings, agency reports, and petitions for reconsideration, codified at 49 CFR part 845. 80 FR 14339. In addition to various technical changes, the NTSB proposed reorganizing the part into subparts and including descriptions of Board products.

The NTSB issued its NPRM in accordance with its June 25, 2012 notice indicating the agency's intent to undertake a review of all NTSB regulations to ensure they are updated. 77 FR 37865. Executive Order 13579, ''Regulation and Independent Regulatory Agencies'' (76 FR 41587, July 14, 2011), prompted the NTSB to conduct its review of all NTSB regulations. The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011), which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB explained in its June 25, 2012, notice that it is committed to ensuring its regulations remain updated and comply with these principles. The NTSB published an additional notice in the **Federal Register** on January 8, 2013, describing the NTSB's plan for updating all regulations. 78 FR 1193. In accordance with these two notices published in the **Federal Register**, the NTSB reviewed all sections within 49 CFR part 845, in the interest of ensuring they accomplish the objectives stated in Executive Order 13563. The NTSB published the NPRM pursuant to the agency's plan of retrospective review.

### II. Comments Received and Responses Thereto

The NTSB received five comments in response to the March 19, 2015 NPRM. Two of the comments addressed proposed changes to 49 CFR part 845, as well as the changes and additions we proposed in our August 12, 2014 NPRM to reorganize and change 49 CFR part 831 (''Investigation Procedures''). 79 FR 47064. In this regard, Airlines for America (A4A) submitted a comment reiterating its concerns about our proposed use of the term ''event'' in our NPRM for part 831, and recommended we expand our protections of voluntarily submitted information in § 831.6. In addition, The Boeing Company (Boeing) included a copy of its comment in response to our part 831 NPRM. Boeing also reiterated its recommendation that we adopt a practice of sharing draft Board reports with parties.

The Air Line Pilots Association, International (ALPA) urged us to change the terms ''probable cause'' to ''probable cause(s)'' throughout the part. Similarly, the United States Coast Guard (USCG) submitted a comment requesting we remove the term ''event'' from part 845; in particular, the USCG mentioned § 845.2 (''Investigative hearings'') in this suggestion. In addition, ALPA encouraged the NTSB to continue to use the terms ''accident'' and ''incident'' for aviation-specific investigations rather than the term ''event.''

We understand commenters' concerns regarding use of the term ''event'' throughout this part. Several commenters expressed similar concerns in response to our part 831 NPRM. In our forthcoming final rule to finalize the changes to part 831, we will explain our responses to such comments concerning the term ''event.'' For this final rule to finalize changes to part 845, we simply note we understand the concerns with the term, and we have removed it from the regulatory text appearing in this final rule.

The commenters also submitted recommendations for specific sections, to which we respond below.

*A. Section 845.9, ''Prehearing Conference''*

1. Comments Received

Regarding § 845.9, in which the NTSB proposed retaining most of the text of § 845.23 describing prehearing conferences, ALPA recommends retaining the existing language in § 845.23(b) and adding the following text to § 845.9(b): ''copies of all exhibits proposed for admission by the board of inquiry and the parties shall be furnished to the board and to all the parties, *insofar as available at the time.*'' The text the NTSB proposed would require all parties be advised of the witnesses to be called, the areas in which the witnesses would be examined, and the evidence to be offered. The proposed text would also require parties to the hearing to submit, at the prehearing conference, copies of any additional documentary exhibits they desire to offer for admission at the hearing. The proposed text did not include the phrase, ''insofar as available at the time.''

2. Response to Comments

The NTSB believes it is unnecessary to include the phrase, ''insofar as available at the time [of the prehearing conference],'' as ALPA suggests. As proposed, the sentence requiring submission of copies of exhibits expected to be offered at hearings is sufficient to connote the exhibits would be available when offered. As ALPA noted, this requirement already exists in the current version of § 845.23(b). In addition, paragraph (c) of § 845.9 addresses the issue of a party to a hearing holding information the party

knows it intends to produce at the hearing.

*B. Section 845.13, ''Proposed Findings''*

1. Comments Received

Boeing recommends we adopt the International Civil Aviation Organization (ICAO) protocol of sharing draft reports with all parties to an NTSB investigation. Boeing contends not sharing draft reports can be detrimental to the quality of Board reports. In its submission, Boeing also attached a copy of its comment to our NPRM for part 831 regarding this issue.[1]

A4A generally supports all the changes we proposed in part 845. A4A does not object to our proposed text in § 845.13 (''Proposed findings''), but asks us to remain cognizant that partial releases of information could cause ''unproductive speculation.'' In the comment A4A submitted in response to our NPRM proposing changes to part 831, A4A stated it strongly supports the practice of sharing draft reports for parties' review prior to the Board's review of the draft, in accordance with the ICAO practice.

2. Response to Comments

The NTSB understands parties' interest in reviewing draft reports prior to the Board's review of them. In this regard, the agency has considered carefully the feedback we received in response to the part 831 NPRM. The agency appreciates the candor and recommendations commenters offered concerning this issue, and we are mindful that our practice differs from that of ICAO. At present, the agency believes changing its practice of the review process for draft reports is best left to internal agency procedures and need not be the subject of a rulemaking exercise. As a result, the NTSB will not change the proposed text of § 845.13 to address the sharing of draft reports.

*C. Sections 845.20 (''Meetings'') and 845.21, ''Symposiums, Forums, and Conferences''*

1. Comments Received

The Association of American Railroads (AAR) stated it believes the NTSB is attempting impermissibly to expand our authority. AAR opines our description of our practice for holding forums, symposiums, and conferences in § 845.21 is improper because these proceedings are ''not within the scope of the NTSB's mandate or authority.'' In addition, AAR challenges our process for choosing which investigations are worthy of Board meetings. In the NPRM, the agency proposed § 845.20 to state the Board may hold a meeting whenever ''the Board determines holding a meeting is in the public interest.'' AAR believes ''the 'public interest' standard is not in the current regulation at 49 CFR 804.3, and it essentially presumes an unrestricted ability to hold public meetings about any topic.''

ALPA supports our proposed language in § 845.21(b) stating symposiums, forums, and conferences are not intended to obtain evidence or establish facts for a particular NTSB investigation.

Regarding § 845.21, the USCG cautions, to the extent a proceeding may have a relationship to ongoing investigation(s) and the proceeding occurs prior to the completion of an investigation, holding the proceeding could result in premature or incomplete findings and recommendations. The USCG also states our proposed language ''does not consider other investigations that are conducted concurrently, such as internal agency investigations, and the facts and conclusions that may result from those efforts.'' The USCG recommends we remove the term ''ongoing'' from the regulatory text.

2. Response to Comments

We disagree with AAR's contention that we lack the authority to hold forums, symposiums, and conferences. Under 49 U.S.C. 1116, we have held such proceedings for purposes of educating the agency and the public on transportation trends or aspects of transportation that could benefit from safety improvements. Section 1116(b) provides broad authority to the NTSB to accomplish this purpose.

Given this statutory language, it is axiomatic that the NTSB's responsibility is not limited to the requirements of 49 U.S.C. 1131 and 1132 regarding investigations, or section 1133 regarding the review of aviation and mariner certificate and license appeals. The NTSB is also required to conduct special studies and investigations concerning transportation safety in general. The NTSB is best situated to exercise this mandate, given the expertise of its staff and the experiences the agency gains in investigations of accidents and incidents that safety improvements could prevent.

In light of this responsibility, the NTSB holds forums, symposiums, and conferences concerning transportation issues the agency determines warrant further interest or research. The NTSB's proposed regulatory text for § 845.21 reflects this objective, as it includes a statement that the agency does not hold such proceedings for purposes of obtaining evidence for a specific investigation of an accident or incident.

We also appreciate the USCG's comment regarding § 845.21(b). Specifically, our proposed text stated forums, symposiums, and conferences ''may have a relationship to previous or ongoing investigative activities; however, their purpose is not to obtain evidence for a specific investigation.''

The clear purpose of NTSB forums, symposiums, and conferences is to focus attention on and educate the public, transportation regulators, and the NTSB itself on key transportation safety issues. Taking advantage of the educational opportunities these proceedings provide helps to ensure comprehensive NTSB investigations. Our acknowledgement in the regulatory text that such proceedings are not held for obtaining evidence, but for focusing attention, raising awareness, encouraging dialogue, educating the agency, or generally advancing or developing safety recommendations, is consistent with our past practices and our statutory responsibility, pursuant to 49 U.S.C. 1116. Given the purpose of these proceedings, as described in the proposed text for § 845.21, we decline to alter the text, as we do not believe the proceedings could result in premature or incomplete findings and recommendations.

*D. Sections 845.30, ''Board Products,'' and 845.31, ''Public Docket''*

1. Comments Received

Regarding our proposed text describing public dockets, which contain information pertinent to an investigation, the USCG recommends we include text stating we will coordinate with the USCG concerning public release of information in marine investigations.

In its comment, AAR mentions § 845.31 in reiterating its position that the changes the NTSB proposed in part 845 are beyond the scope of the agency's authority. Regarding the text of § 845.31, AAR states the language would allow the NTSB to open a public docket ''concerning a safety study or report, special investigation report, or other agency product'' in addition to doing so for an actual investigation.

AAR also mentions § 845.30(b) in the context of whether the section encompasses documents beyond the scope of the NTSB's authority. AAR states § 845.30(b) ''covers 'Board Products' and now includes (a) NTSB studies and reports 'of more than one event that share commonalities', (b)

[1] While Boeing's comment is also applicable to § 845.30(a), the organization discussed sharing of draft reports only within the context of § 845.13.

safety studies and reports, and (c) safety recommendations 'as a stand-alone Board product.' '' With regard to all the sections AAR identified as containing language that exceeds the scope of the NTSB's authorization, AAR states, ''NTSB occupying itself with these types of activities will divert resources from the critical mission given to NTSB by Congress at 49 U.S.C. 1131.'' AAR, however, mentions the railroads support public education and involvement, ''particularly in matters related to safety,'' but contends the NTSB's proposed text describes activities beyond the scope of NTSB's statutory authority.

2. Response to Comments

Regarding the USCG's comment recommending we include text stating for marine investigations, we will coordinate release of public dockets in advance with the USCG, although we decline to adopt this change in § 845.31. Section 845.31, which is largely duplicative of the existing version of § 845.50, describes public dockets in general terms, and provides information concerning how the public may obtain a copy of a public docket. The NTSB believes specific protocols concerning coordination with other agencies is more suitable for an interagency agreement or discussion.

The NTSB disagrees with AAR's opinion that the NTSB should not conduct safety studies and issue reports. As discussed above, Congress specifically directed the NTSB to conduct safety studies on a variety of issues. In addition, the NTSB's responsibility to issue safety recommendations is clear, both in the agency's authorizing legislation and legislative history. 49 U.S.C. 1135; H.R. Rep. No. 103–239(I) at 1 (1993) (emphasizing the importance of the NTSB's safety recommendations and stating that such recommendations ''have saved countless human lives''). As a result of this statutory direction, the NTSB will not alter its practice of conducting safety studies, issuing safety recommendations, and creating and issuing other types of documents that will improve transportation safety. The agency can only achieve its broad mandate by issuing such documents. The NTSB's choice of the term ''Board products'' will ensure adequate flexibility in the future, to encompass a variety of documents the agency determines will aid in achieving the ultimate goal of improving transportation safety.

*E. Section 845.32, ''Petitions for Reconsideration or Modification of Report''*

Although no comments addressed the issue of whether the NTSB's disposition of a petition for reconsideration or modification should be subject to judicial review, the agency notes a recent judicial order denying a petition for review. On June 19, 2015, the Court of Appeals for the District of Columbia Circuit held the NTSB's disposition of a petition for reconsideration was not subject to a federal court's review. *Joshi* v. *Nat'l Transp. Safety Bd.,* 791 F.3d 8 (D.C. Cir. 2015), pet. for cert. filed, 2015 WL 7593160 (Nov. 17, 2015). The *Joshi* case arose out of an aircraft accident in which the pilot and four passengers died in Indiana in April 2006.

The agency denied the petition for reconsideration, and the petitioner sought review of both the NTSB's reports of its investigation and the response to his petition for reconsideration. The appellate court held that, because neither the reports nor the response can be considered a final order subject to judicial review, the court lacked jurisdiction to hear the case.

In reaching its conclusion, the court cited 49 CFR 831.4 (''Nature of investigation''), which states the NTSB uses its investigations ''to ascertain measures that would best tend to prevent similar accidents or incidents in the future.'' 49 CFR 831.4. The court went on to quote the regulation further, which states NTSB investigations are considered ''fact-finding proceedings with no formal issues and no adverse parties. They are not subject to the provisions of the Administrative Procedure Act and are not conducted for the purpose of determining the rights or liabilities of any person.'' *Id.; Joshi,* 791 F.3d at 12.

The court stated it lacked jurisdiction to consider not only the agency's reports and conclusions, but it also could not review the NTSB's denial of the petition for reconsideration. The court based this conclusion on the fact that the reconsideration procedure the petitioner used was not created by any statute, but was a process set forth in the NTSB's regulations. The court described the process as one that allows the agency to receive new evidence after it completes an accident investigation and noted this procedure functions to ensure the NTSB ''develops safety recommendations based on the most complete record possible.'' 791 F.3d at 12. As a result, the court characterized petitions for reconsideration as ''simply another stage of the accident investigation procedure.'' *Id.* Therefore, the NTSB's disposition of petitions are not subject to review in federal court. The NTSB believes it is worthwhile to mention the *Joshi* decision in this rulemaking document, due to its relevance to the NTSB's disposition of petitions for reconsideration.

*F. Additional Edits*

In this final rule, the NTSB re-inserts the phrase ''in the event of a catastrophic accident'' within § 845.4 (''Determination to hold hearing''). The regulatory text of the NPRM did not include this phrase, even though the phrase currently exists in the regulatory text of § 845.10. Upon further evaluation of the regulation, the NTSB has determined it is prudent to retain the phrase.

The NTSB's NPRM proposed two sections that both described the procedure of providing notice of the time and place of the investigative hearing. Section 845.5(c)(1) proposed text stating the ''NTSB'' would provide notice of the time and place of the investigative hearing to all known interested persons. Section 845.7 proposed text stating the investigative hearing officer, upon designation by the NTSB Chairman, would have the authority to give notice concerning the time and place of investigative hearing. While the text of these sections is not inconsistent, and is identical to the language that exists in the current versions of §§ 845.12 and 845.21, the NTSB nevertheless believes, as an administrative matter, it is appropriate to remove from § 845.5(c)(1) the statement that, ''[t]he NTSB will provide notice of the time and place of the investigative hearing. . . .'' The NTSB provides such notice by way of delegating to the hearing officer the responsibility and the authority to do so. In the interest of providing regulations that are concise and abundantly clear, the NTSB removes the aforementioned statement from § 845.5(c)(1). In addition, in § 845.7, the NTSB herein adds the phrase, ''or a Board Member designated by the Chairman'' to the introductory text stating the investigative hearing officer, upon designation by the NTSB Chairman or a Board Member designated by the Chairman will have the list of ''powers'' that follows within the section. This addition will ensure the designation of a hearing officer can occur at times the NTSB Chairman has delegated his or her authority.

**III. Regulatory Analysis**

In the NPRM, the NTSB included a regulatory analysis section concerning

various Executive Orders and statutory provisions. 80 FR 14341 (Mar. 19, 2015). The NTSB did not receive any comments concerning the results of the analysis. The NTSB again notes the following concerning such Executive Orders and statutory provisions.

This final rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' Therefore, Executive Order 12866 does not require a Regulatory Assessment, and the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. In addition, on July 11, 2011, the President issued Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' 76 FR 41587, July 14, 2011). Section 2(a) of the Executive Order states:

> Independent regulatory agencies ''should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

76 FR at 41587. Consistent with Executive Order 13579, the NTSB's amendments to 49 CFR part 845 reflect its judgment that this part should be updated and streamlined.

This rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

The NTSB has also analyzed these amendments in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism.'' This final rule does not contain any regulations that would: (1) Have a substantial direct effect 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; (2) impose substantial direct compliance costs on state and local governments; or (3) preempt state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The NTSB is also aware that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review its rulemaking to assess the potential impact on small entities, unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The NTSB certifies this final rule will not have a significant economic impact on a substantial number of small entities.

Regarding other Executive Orders and statutory provisions, this final rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''; Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks''; Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments''; Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

**List of Subjects in 49 CFR Part 845**

Administrative practice and procedure, Investigations, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the NTSB revises 49 CFR part 845 to read as follows:

## PART 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS, REPORTS, AND PETITIONS FOR RECONSIDERATION

Sec.



**Authority:** Sec. 515, Pub. L. 106–554, App. C, 114 Stat. 2763, 2763A–153 (44 U.S.C. 3516 note); 49 U.S.C. 1112, 1113(f), 1116, 1131, unless otherwise noted.

### § 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (NTSB), the provisions of this part shall govern all NTSB proceedings conducted under the authority of 49 U.S.C. 1113 and 1131, and reports issued by the Board.

## Subpart A—Investigative Hearings

### § 845.2 Investigative hearings.

Investigative hearings are convened to assist the NTSB in further developing the facts, conditions, and circumstances of the transportation accident or incident, which will ultimately assist the Board in determining the cause or probable cause of the accident or incident, and in ascertaining measures that will tend to prevent such accidents or incidents and promote transportation safety. Investigative hearings are fact-finding proceedings with no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 554) and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity.

### § 845.3 Sessions open to the public.

(a) All investigative hearings shall normally be open to the public. However, no person shall be allowed at any time to interfere with the proper and orderly functioning of the hearing.

(b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

### § 845.4 Determination to hold hearing.

(a) The Board may order an investigative hearing as part of an investigation whenever a hearing is deemed necessary in the public interest.

(b) If a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold an investigative hearing may be made by the Chairman of the Board.

### § 845.5 Board of inquiry.

(a) *Composition of board of inquiry.* The board of inquiry shall consist of a chairman of the board of inquiry, as specified in paragraph (c) of this section, and other members in accordance with Board policy.

(b) *Duties of board of inquiry.* The board of inquiry shall examine witnesses and secure, in the form of a public record, facts pertaining to the

accident or incident under investigation and surrounding circumstances and conditions from which the Board may determine probable cause and may formulate recommendations and/or other documents for corrective or preventative action.

(c) *Chairman of board of inquiry.* The chairman of the board of inquiry, or his or her designee, shall have the following powers:

(1) To designate parties to the investigative hearing and revoke such designations;

(2) To open, continue, or adjourn the investigative hearing;

(3) To determine the admissibility of and to receive evidence and to regulate the course of the investigative hearing;

(4) To dispose of procedural requests or similar matters; and

(5) To take any other appropriate action to ensure the orderly conduct of the investigative hearing.

**§ 845.6 Designation of parties.**

(a) The chairman of the board of inquiry shall designate as parties to the investigative hearing those persons and organizations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence. Parties to the investigative hearing shall be represented by suitable representatives who do not occupy legal positions.

(b) No party to the investigation and/or investigative hearing shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party to the investigative hearing.

**§ 845.7 Hearing officer.**

The investigative hearing officer, upon designation by the NTSB Chairman or a Board Member designated by the Chairman, shall have the following powers:

(a) To give notice concerning the time and place of investigative hearing;

(b) To administer oaths and affirmations to witnesses; and

(c) To issue subpoenas requiring the attendance and testimony of witnesses and production of documents. The investigative hearing officer may, in consultation with the chairman of the board of inquiry and the NTSB Managing Director, add witnesses until the time of the prehearing conference.

**§ 845.8 Technical panel.**

The appropriate office director(s) and/or the hearing officer, in consultation with the NTSB Managing Director, shall determine if a technical panel is needed and, if so, shall designate members of the NTSB technical staff to participate in the investigative hearing. Members of the technical panel may conduct pre-screening of witnesses through interviews, and may take other actions to prepare for the hearing. At the hearing, the technical panel will initially examine the witnesses through questioning. The technical panel shall examine witnesses and secure, in the form of a public record, facts pertaining to the accident or incident under investigation and surrounding circumstances and conditions.

**§ 845.9 Prehearing conference.**

(a) Except as provided in paragraph (d) of this section, the chairman of the board of inquiry, or his/her designee, shall hold a prehearing conference with the parties to the investigative hearing at a convenient time and place prior to the hearing. At the prehearing conference, the parties shall be advised of the witnesses to be called at the investigative hearing, the topics about which they will be examined, and the exhibits that will be offered in evidence.

(b) At the prehearing conference, parties to the investigative hearing shall submit copies of any additional documentary exhibits they desire to offer for admission at the hearing.

(c) A party to the investigative hearing who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he or she intends to submit, or additional witnesses he or she desires to examine, shall be prohibited from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.

(d) The board of inquiry may hold an investigative hearing on an expedited schedule. The chairman of the board of inquiry may hold a prehearing conference for an expedited investigative hearing. When an expedited investigative hearing is held, the chairman of the board of inquiry may waive the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence.

**§ 845.10 Right of representation.**

Any person who appears to testify at an investigative hearing has the right to be accompanied, represented, or advised by counsel or by any other representative.

**§ 845.11 Examination of witnesses.**

(a) *Examination.* In general, the technical panel shall initially examine witnesses. Following such examination, parties to the investigative hearing shall be given the opportunity to examine such witnesses. The board of inquiry shall then conclude the examination following the parties' questions.

(b) *Objections.* (1) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the investigative hearing or any other person.

(2) Such matters shall be controlled by rulings of the chairman of the board of inquiry on his or her own motion. If the examination of a witness by a party to the investigative hearing is interrupted by a ruling of the chairman of the board of inquiry, the party shall have the opportunity to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

**§ 845.12 Evidence.**

In accordance with § 845.2, the chairman of the board of inquiry shall receive all testimony and evidence that may be of aid in determining the probable cause of the transportation accident or incident. He or she may exclude any testimony or exhibits that are not pertinent to the investigation or are merely cumulative.

**§ 845.13 Proposed findings.**

Following the investigative hearing, any party to the hearing may submit proposed findings to be drawn from the testimony and exhibits, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents or incidents. The proposals shall be submitted within the time specified by the investigative hearing officer at the close of the hearing, and shall be made a part of the public docket. Parties to the investigative hearing shall serve copies of their proposals on all other parties to the hearing.

**§ 845.14 Transcript.**

A verbatim report of the investigative hearing shall be taken. Any interested person may obtain copies of the transcript from the NTSB or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See part 801, subpart G, Fee schedule.)

**§ 845.15 Payment of witnesses.**

Any witness subpoenaed to attend the investigative hearing under this part shall be paid such fees for travel and attendance for which the hearing officer shall certify.

## Subpart B—Meetings

### § 845.20 Meetings.

The Board may hold a meeting concerning an investigation or Board product, as described in § 804.3 of this chapter or any other circumstance, when the Board determines holding a meeting is in the public interest.

### § 845.21 Symposiums, forums, and conferences.

(a)(1) *Definitions.* (i) A symposium is a public proceeding focused on a specific topic, where invited participants provide presentations of their research, views or expertise on the topic and are available for questions.

(ii) A forum is a public proceeding generally organized in a question-and-answer format with various invited participants who may make presentation and are available for questioning by the Board or designated NTSB staff as individuals in a panel format.

(iii) A conference is a large, organized proceeding where individuals present materials, and a moderator or chairperson facilitates group discussions.

(2) These proceedings are related to transportation safety matters and will be convened for the purpose of focusing attention, raising awareness, encouraging dialogue, educating the NTSB, or generally advancing or developing safety recommendations. The goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB.

(b) A quorum of Board Members is not required to attend a forum, symposium, or conference. All three types of proceedings described in paragraph (a) of this section may have a relationship to previous or ongoing investigative activities; however, their purpose is not to obtain evidence for a specific investigation.

(c) Symposiums, forums, and conferences are voluntary for all invited participants.

## Subpart C—Miscellaneous Provisions

### § 845.30 Board products.

(a) *Reports of investigations.* (1) The Board will adopt a report on the investigation. The report will set forth the relevant facts, conditions, and circumstances relating to the accident or incident and the probable cause thereof, along with any appropriate safety recommendations and/or safety alerts formulated on the basis of the investigation. The scope and format of the report will be determined in accordance with Board procedures.

(2) The probable cause and facts, conditions, and circumstances of other accidents or incidents will be reported in a manner and form prescribed by the Board. The NTSB allows the appropriate office director, under his or her delegated authority as described in § 800.25 of this chapter, to issue a ''brief,'' which includes the probable cause and relevant facts, conditions, and circumstances concerning the accident or incident. Such briefs do not include recommendations. In particular circumstances, the Board in its discretion may choose to approve a brief.

(b) *Studies and reports*—(1) *NTSB studies and reports.* The NTSB may issue reports describing investigations of more than one accident or incident that share commonalities. Such reports are similar to accident or incident investigation reports, as described in paragraph (a)(1) of this section. Such reports often include safety recommendations and/or safety alerts, which the Board adopts.

(2) *Safety studies and reports.* The NTSB issues safety studies and reports, which usually examine safety concerns that require the investigation of a number of related accidents or incidents to determine the extent and severity of the safety issues. Such studies and reports often include safety recommendations and/or safety alerts, which the Board adopts.

(c) *Safety recommendations.* The Board may adopt and issue safety recommendations, either as part of a Board report or as a stand-alone Board product.

### § 845.31 Public docket.

(a) *Investigations.* (1) As described in § 801.3 of this chapter, the public docket shall include factual information concerning the accident or incident. Proposed findings submitted pursuant to § 831.14 or § 845.13 and petitions for reconsideration and modification submitted pursuant to § 845.32, comments thereon by other parties, and the Board's rulings on proposed findings and petitions shall also be placed in the public docket.

(2) The NTSB shall establish the public docket following the accident or incident, and material shall be added thereto as it becomes available. Where an investigative hearing is held, the exhibits will be introduced into the record at the hearing and will be included in the public docket.

(b) *Other Board reports and documents.* The NTSB may elect to open and place materials in a public docket concerning a safety study or report, special investigation report, or other agency product. The NTSB will establish the public docket following its issuance of the study or report.

(c) *Availability.* The public docket shall be made available to any person for review, as described in § 801.30 of this chapter. Records within the public docket are available at *www.ntsb.gov.*

### § 845.32 Petitions for reconsideration or modification of report.

(a) *Requirements.* (1) The Board will only consider petitions for reconsideration or modification of findings and determination of probable cause from a party or other person having a direct interest in an investigation.

(2) Petitions must be in writing and addressed to the NTSB Chairman. Please send your petition via email to *correspondence@ntsb.gov.* In the alternative, you may send your petition via postal mail to: NTSB Headquarters at 490 L'Enfant Plaza SW., Washington, DC 20594.

(3) Petitions must be based on the discovery of new evidence or on a showing that the Board's findings are erroneous. (i) Petitions based on the discovery of new matter shall: Identify the new matter; contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and state why the new matter was not available prior to Board's adoption of its findings.

(ii) Petitions based on a claim of erroneous findings shall set forth in detail the grounds upon which the claim is based.

(b) *Acceptance of petitions.* The Board will not consider petitions that are repetitious of proposed findings submitted pursuant to § 845.13, or of positions previously advanced.

(c) *Proof of service.* (1) When a petition for reconsideration or modification is filed with the Board, copies of the petition and any supporting documentation shall be served on all other parties to the investigation or investigative hearing and proof of service shall be attached to the petition.

(2) Any party served with a copy of the petition may file comments no later than 90 days after service of the petition.

(d) *Oral presentation.* Oral presentation normally will not form a part of proceedings under this section. However, oral presentation may be permitted where a party or interested person specifically shows the written petition for reconsideration or modification is an insufficient means by

which to present the party's or person's position.

**§ 845.33 Investigation to remain open.**

The Board never officially closes an investigation, but provides for the submission of new and pertinent evidence by any interested person. If the Board finds such evidence is relevant and probative, the evidence shall be made a part of the public docket and, where appropriate, the Board will provide parties an opportunity to examine such evidence and to comment thereon.

**Christopher A. Hart,**

*Chairman.*

[FR Doc. 2015–32264 Filed 12–23–15; 8:45 am]

**BILLING CODE 7533–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 141021887–5172–02]**

**RIN 0648–XE368**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod 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 reallocating the projected unused amounts of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear and catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear to catcher/processors (C/Ps) using hook-and-line gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2015 total allowable catch of Pacific cod to be harvested.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), December 21, 2015, through 2400 hours, Alaska local time (A.l.t.), December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (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 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI is 13,641 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and reallocations (80 FR 57105, September 22, 2015, 80 FR 65971, October 28, 2015, and 80 FR 76250, December 8, 2015). The Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI will not be able to harvest 1,750 mt of the remaining 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*).

The 2015 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 12,380 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and reallocations (80 FR 51757, August 26, 2015, and 80 FR 57105, September 22, 2015). The Regional Administrator has determined that catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will not be able to harvest 1,750 mt of the remaining 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*2*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(C), NMFS reallocates 3,500 mt of Pacific cod to C/Ps using hook-and-line gear in the Bering Sea and Aleutian Islands management area.

The harvest specifications for Pacific cod included in the final 2015 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015, 80 FR 51757, August 26, 2015, 80 FR 57105, September 22, 2015 and 80 FR 65971, October 28, 2015, and 80 FR 76250, December 8, 2015) are revised as follows: 11,891 mt for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, 10,630 mt for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and 118,871 mt for C/Ps using hook-and-line gear.

### 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 reallocation of Pacific cod specified from multiple sectors to C/Ps using hook-and-line gear in the Bering Sea and Aleutian Islands management area. 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 December 15, 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: December 21, 2015.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–32444 Filed 12–21–15; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 80, No. 247
Thursday, December 24, 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–2015–7777; Directorate Identifier 2015–CE–036–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; B–N Group Ltd. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3 BN2A, BN2B, and BN2A MKIII (all models on TCDS A17EU and A29EU) airplanes that would supersede AD 2007–06–06. This proposed AD results from 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 cracks in the inner shell of certain pitot/static pressure heads. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by February 8, 2016.

**ADDRESSES:** You may send comments 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the 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.

*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–2015–7777; 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–3047; email: *raymond.johnston@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–7777; Directorate Identifier 2015–CE–036–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://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

On March 6, 2007, we issued AD 2007–06–06, Amendment 39–14987 (72 FR 12557; March 16, 2007). That AD required actions intended to address an unsafe condition on B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3 BN2A, BN2B, and BN2A MKIII (all models on TCDS A17EU and A29EU) airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2007–06–06, there are reports of premature failures of the affected part number (P/N) DU130–24 pitot-static probes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2015–0199, dated October 7, 2015 (referred to after this as ''the MCAI''), to correct the above-referenced unsafe condition for the specified products. The MCAI states:

> In 2005, occurrences were reported of finding cracks in the inner shell of certain pitot/static pressure heads, Part Number (P/N) DU130–24.
>
> This condition, if not detected and corrected, could lead to incorrect readings on the pressure instrumentation, *e.g.* altimeters, vertical speed indicators (rate-of-climb) and airspeed indicators, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, B–N Group issued Service Bulletin (SB) 310 to provide inspection and test instructions. Consequently, CAA UK issued AD G–2005–0034 (EASA approval 2005–6447) to require repetitive inspections and leak tests and, depending on findings, accomplishment of applicable corrective action(s).
>
> Subsequently, B–N Group published SB 310 issue 2, prompting EASA to issue AD

2006–0143 making reference to SB 310 at issue 2, while the publication of BNA SB 310 issue 3 prompted EASA AD 2006–0143R1, introducing BNA modification (mod) NB–M–1728 (new pitot/static pressure head not affected by the AD requirements) as optional terminating action for the repetitive inspections and leak tests.

Since that AD was issued, operators have reported a number of premature failures of the affected P/N DU130–24 pitot-static probes.

Prompted by these reports, BNA issued SB 310 issue 4 to reduce the interval for the inspections and leak tests.

For the reason described above, this AD retains the requirements of EASA AD 2006–0143R1, which is superseded, but requires those actions at reduced intervals.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7777.

**Related Service Information Under 1 CFR part 51**

B–N Group Ltd. has issued Britten-Norman Service Bulletin Number SB 310, Issue 4, dated September 25, 2015. The service information describes procedures for inspections, and if necessary, replacement of the pitot/static pressure head. 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 and Requirements of the Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between the Proposed AD and the MCAI**

The FAA has reviewed the MCAI and related service information and, in general, agree with their substance. The proposed AD does differ from the MCAI in that it does not reference BNA Mod NB–M–1728 as an optional terminating action for the repetitive inspections and leak tests. The FAA is unable to make these instructions reasonably available to interested parties so therefore we are unable to include this in the AD. After issuance of the final AD, the FAA will consider this modification as an alternative method of compliance (AMOC) to the AD provided it is submitted following the instructions in the AD and 14 CFR 39.19.

**Costs of Compliance**

We estimate that this proposed AD will affect 93 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,905, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $10,000, for a cost of $10,170 per product. We have no way of determining the number of products that may need these actions.

**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 removing Amendment 39–14987 (72 FR 12557; March 16, 2007) and adding the following new AD:

**B–N Group Ltd.:** Docket No. FAA–2015–7777; Directorate Identifier 2015–CE–036–AD.

**(a) Comments Due Date**

We must receive comments by February 8, 2016.

**(b) Affected ADs**

This AD supersedes AD 2007–06–06 (72 FR 12557; March 16, 2007).

**(c) Applicability**

This AD applies to B–N Group Ltd. BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3 BN2A, BN2B, and BN2A MKIII, BN2A, BN2B, and BN2A MKIII (all models on TCDS A17EU and A29EU) airplanes, all serial numbers, certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 34: Navigation.

**(e) Reason**

This AD was prompted by cracks in the inner shell of certain pitot/static pressure heads. We are issuing this proposed AD to inspect the inner shell of certain pitot/static pressure heads for cracks, and replace if necessary.

**(f) Actions and Compliance**

Unless already done, do the following actions in paragraphs (f)(1) through (f)(4) of this AD:

(1) *For airplanes equipped with pitot/static pressure head part number (P/N) DU130–24:* Within 50 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours TIS, inspect the pitot/static pressure head for cracks and/or separation and perform a leak test following the procedures in the action section of Britten-Norman Service Bulleting SB 310, Issue 4, dated September 25, 2015.

(2) *For airplanes equipped with pitot/static pressure head part number (P/N) DU130–24:* If, during an inspection or test required in paragraph (f)(1) of this AD discrepancies are found, before further flight, replace the pitot/static pressure head with an airworthy part.

(3) *For airplanes equipped with pitot/static pressure head part number (P/N) DU130–24:* Corrections performed on airplanes as required in paragraph (f)(2) of this AD do not constitute terminating action for the repetitive actions required in paragraph (f)(1) of this AD.

(4) *For airplanes not equipped with a pitot/static pressure head P/N DU130–24 on the effective date of this AD:* After the effective date of this AD, do not install a pitot/static pressure head P/N DU130–24.

**(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: Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–3047; email: *raymond.johnston@faa.gov.* Before using any approved AMOC on any airplane 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.

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0199, dated October 7, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7777. For service information related to this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the 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.

Issued in Kansas City, Missouri, on December 11, 2015.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–31850 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2014–16–02, for certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. AD 2014–16–02 currently requires revising the airplane flight manual to prohibit thrust reverser operation, doing repetitive detailed inspections of both engine thrust reversers for cracks, and modifying the thrust reversers if necessary. The modification of the thrust reversers is also an optional terminating action for the repetitive inspections. Since we issued AD 2014–16–02, we have determined that it is necessary to add a requirement to repair or modify the thrust reversers, which would terminate the requirements of AD 2014–16–02. We are proposing this AD to detect and correct cracks of the translating sleeve at the thrust reverser actuator attachment points, which could result in deployment or dislodgement of an engine thrust reverser in flight and subsequent reduced control of the airplane.

**DATES:** We must receive comments on this proposed AD by February 8, 2016.

**ADDRESSES:** You may send comments 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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.

**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–2015–7529; 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 Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–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 based on 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**

On August 4, 2014, we issued AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014). AD 2014–16–02 requires actions intended to address an unsafe condition on certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. AD 2014–16–02 is parallel to Canadian AD CF–2014–19, dated June 20, 2014, which additionally mandated repair or modification of the thrust reversers. At that time, we had determined that the compliance time for that action would allow enough time to provide notice and opportunity for prior public comment on the merits of the actions. The preamble to AD 2014–16–02 indicated we were considering further rulemaking to require repair or modification of the thrust reversers. We now have determined that further rulemaking is necessary.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the Mandatory Continuing Airworthiness Information (MCAI) and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 18 airplanes of U.S. registry.

The actions required by AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), and retained in this proposed AD, take about 29 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2014–16–02 is $2,465 per product.

We also estimate that it would take about 100 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $509 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $162,162, or $9,009 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

**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 removing Airworthiness Directive (AD) 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), and adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD.

**(a) Comments Due Date**

We must receive comments by February 8, 2016.

**(b) Affected ADs**

This AD replaces AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014).

**(c) Applicability**

This AD applies to Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes, certificated in any category, serial numbers 1004 through 1085.

**(d) Subject**

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

**(e) Reason**

This AD was prompted by reports of partial deployment of an engine thrust reverser in flight caused by a failure of the translating sleeve at the thrust reverser attachment points. We are issuing this AD to detect and correct cracks of the translating sleeve at the thrust reverser actuator attachment points, which could result in deployment or dislodgement of an engine thrust reverser in flight and subsequent reduced control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Retained Airplane Flight Manual (AFM) Revision With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), with no changes. Within 1 calendar day after August 12, 2014 (the effective date of AD 2014–16–02): Revise the applicable sections of the AFM to include the information specified in the temporary revisions (TRs) identified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable. These TRs introduce procedures to prohibit thrust reverser operation. Operate the airplane according to the limitations and procedures in the TRs identified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable. The revision required by paragraph (g) of this AD may be done by inserting copies of the applicable TRs identified in paragraphs (g)(1), (g)(2), (g)(3),

and (g)(4) of this AD into the AFM. When these TRs have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the applicable TRs, and the TRs may be removed.

(1) Canadair TR 600/29, dated June 20, 2014, to the Canadair CL–600–1A11 AFM.

(2) Canadair TR 600/30, dated June 6, 2014, to the Canadair CL–600–1A11 AFM.

(3) Canadair TR 600–1/24, dated June 20, 2014, to the Canadair CL–600–1A11 AFM (Winglets) including Erratum, Publication No. PSP 600–1AFM (US), TR No. 600–1/24, June 20, 2014.

(4) Canadair TR 600–1/26, dated June 6, 2014, to the Canadair CL–600–1A11 AFM (Winglets).

**(h) Retained Repetitive Inspections With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), with no changes. Within 25 flight cycles or 90 days, whichever occurs first, after August 12, 2014 (the effective date of AD 2014–16–02), do detailed inspections (including a borescope inspection) of both engine thrust reversers for cracks, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014.

(1) If no cracking is found during any inspection required by paragraph (h) of this AD, repeat the inspection required by paragraph (h) of this AD thereafter at intervals not to exceed 100 flight cycles until the repair or modification specified in paragraph (i) or (k) of this AD is done.

(2) If any cracking is found during any inspection required by paragraph (h) of this AD, before further flight, modify the thrust reversers on both engines, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014.

**(i) Retained Optional Terminating Modification With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), with no changes. Modifying the thrust reversers on both engines, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014, terminates the inspections required by paragraph (h) of this AD.

**(j) Retained Credit for Previous Actions With No Changes**

This paragraph restates the requirements of paragraph (j) of AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), with no changes. This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before August 12, 2014 (the effective date of AD 2014–16–02) using Bombardier Alert Service Bulletin A600–0769, dated June 19, 2014, which is not incorporated by reference in this AD.

**(k) New Requirement of This AD: Repair/Modify**

Within 24 months after the effective date of this AD, repair or modify the thrust reversers on both engines, using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). Accomplishment of the repair or modification of all thrust reversers terminates the requirements of paragraphs (h) and (i) of this AD.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2014–19, dated June 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7529.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–955–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this 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 December 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service,*

[FR Doc. 2015–32085 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0651; Directorate Identifier 2014–NM–043–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. The NPRM proposed to supersede Airworthiness Directive (AD) 2013–22–19, which requires inspecting to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance or inspection program to include revised instructions for continued airworthiness. The NPRM also proposed to require revising the airplane maintenance program to include a fuel leak check of the fuel boost pumps, using new service information. The NPRM was prompted by reports of two independent types of failure of the fuel boost pump: overheat damage on the internal components and external housing, and fuel leakage. This action revises the NPRM by reducing the compliance time for revising the airplane maintenance program. We are proposing this supplemental NPRM (SNPRM) to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

**DATES:** We must receive comments on this SNPRM by February 8, 2016.

**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: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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.

*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–2014–0651; 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:** Sanjana Murthy, Aersopace Engineer, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone: 404–474–5573; fax: 404–474–5567; email: *sanjana.murthy@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0651; Directorate Identifier 2014–NM–043–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 issued an NPRM to amend 14 CFR part 39 to supersede AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), which applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. The NPRM published in the **Federal Register** on October 1, 2014 (79 FR 59162). The NPRM proposed to continue to require inspecting to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance or inspection program to include revised instructions for continued airworthiness. The NPRM also proposed to require revising the airplane maintenance program to include a fuel leak check of the fuel boost pumps, using new service information.

**Actions Since Previous NPRM (79 FR 59162, October 1, 2014) Was Issued**

Since we issued the NPRM (79 FR 59162, October 1, 2014), we have determined it is necessary to reduce the compliance time for revising the airplane maintenance or inspection program in order to address the identified unsafe condition in a timely manner. Paragraph (i) of the proposed AD specifies a compliance time of ''within 500 flight hours after the effective date of this AD'' to accomplish the revision, which incorporates the fuel leak check inspection of the fuel boost pumps. The leak check is intended to be performed at 500-hour increments after the installation of the part number (P/N) 1159SCP500–7 boost pump. However, operators that have already installed the P/N 1159SCP500–7 boost pump would not be required to perform the leak check until after the maintenance or inspection program is revised, *i.e.,* within 500 flight hours after the effective date of the AD instead of within 500 flight hours after installation. We have determined a compliance time of ''within 30 days after the effective date of this AD'' represents an appropriate interval of time to revise the airplane maintenance or inspection program. We have revised paragraph (i) of this proposed AD accordingly.

**Comments**

We gave the public the opportunity to participate in developing this proposed AD. The following presents the comments received on the NPRM (79 FR 59162, October 1, 2014) and the FAA's response to each comment.

**Request To Use Later Revision of the Service Information**

Gulfstream requested that the FAA reference the upcoming revision to the airworthiness limitations section of the GV, G500, and G550 maintenance manuals. Gulfstream stated that the maintenance manuals will include a revised fuel leak check interval of 500 hours ±50 hours. Gulfstream stated that drafts of the maintenance manuals were scheduled to be submitted to the FAA by December 2014, with FAA approval expected. Gulfstream also stated that the revisions to the airplane maintenance program include revised instructions for continued airworthiness to avoid future AD revisions on this subject. Gulfstream stated that AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), references the 05–20–00, Table 20 Fuel Boost Pump fuel leak check interval of 500 hours, which would prohibit the ±50-hour provision that the Gulfstream safety assessment allows, limiting the flexibility of Gulfstream's operators to perform this fuel leak check concurrently with other scheduled maintenance.

We have reviewed the supporting data for this request and we agree with the request to change the compliance time. We have revised paragraph (i) of this proposed AD to accommodate this request. In order to decrease the burden on operators, we are adding 50 hours to the compliance time, which will enable operators to complete the requirements of this proposed AD as well as their mandatory inspection requirement during the same overhaul.

Operators may request approval to use a later revision of the referenced service information, when it is approved, as an alternative method of compliance (AMOC) under the provisions of paragraph (m) of this proposed AD.

**Request To Revise the Compliance Time**

Gulfstream requested that a compliance time specified in paragraph (i)(2) of the proposed AD (79 FR 59162, October 1, 2014) be revised. Gulfstream requested that the following language be included in paragraph (i)(2) of the proposed AD, which is for airplanes on which the inspection required by paragraph (g) of the proposed AD reveals that a fuel boost pump with

Gulfstream P/N 1159SCP500–7 has been installed:

> The initial compliance time . . . is within 500 flight hours after installation of the P/N 11 59SCP500–7 pump, or within 50 flight hours after doing the inspection required by paragraph (g) of this AD if 500 flight hours have accumulated since installation of the P/N 1159SCP500–7 pump and an initial leak check of the pump has not been accomplished.

We agree to revise the compliance time. The leak check is intended to be performed at 500-hour increments ± 50 flight hours after the installation of the P/N 1159SCP500–7 boost pump. We have added new paragraph (i)(2)(i) to this proposed AD to specify compliances times relative to installation of the P/N 1159SCP500–7 pump.

**FAA's Determination**

We are proposing this SNPRM 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. Certain changes described above expand the scope of the proposed AD (79 FR 59162, October 1, 2014). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

**Proposed Requirements of This SNPRM**

This SNPRM would require inspecting to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance or inspection program to include revised instructions for continued airworthiness.

**Related Service Information Under 1 CFR Part 51**

We have reviewed Gulfstream G500 Customer Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes designated as G500), which describes procedures for inspecting and replacing the fuel boost pumps.

We have also reviewed the following service information, as applicable, which describes, among other actions, a fuel leak check of the fuel boost pumps and inspection intervals:

- Table 18, 500 Flight Hours Scheduled Inspection Table, in Section 05–20–00, of Chapter 5, Time Limits/Maintenance Checks, of the Gulfstream V Maintenance Manual, Revision 42, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of Chapter 28, Fuel, of the Gulfstream V Maintenance Manual, Revision 42, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Checks, in Table 20, 500 Flight Hours Scheduled Inspection Table, in Section 05–20–00, of Chapter 5, Time Limits/Maintenance Checks, of the Gulfstream G500 Maintenance Manual, Revision 23, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of Section 26, Fuel Boost Pumps, of Chapter 28, Fuel, of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, in Table 20, 500 Flight Hours Scheduled Inspection Table, in Section 05–20–00, of Chapter 5, Time Limits/Maintenance Checks, of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013; and
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of Section 26, Fuel Boost Pumps, of Chapter 28, Fuel, of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013.

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.

**Costs of Compliance**

We estimate that this proposed AD would affect 357 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 |
|---|---|---|---|---|
| Inspection to determine if a certain part number is installed [retained actions from AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013)]. | 1 work-hour × $85 per hour = $85 | $0 | $85 | $30,345 |
| Maintenance program revision [new proposed action] | 1 work-hour × $85 per hour = $85 | 0 | 85 | 30,345 |

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COST

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | 24 work-hours × $85 per hour = $2,040 | $7,600 | $9,640 |

**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 removing Airworthiness Directive (AD) 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), and adding the following new AD:

**Gulfstream Aerospace Corporation:** FAA–2014–0651; Directorate Identifier 2014–NM–043–AD.

**(a) Comments Due Date**

We must receive comments by February 8, 2016.

**(b) Affected ADs**

This AD replaces AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013).

**(c) Applicability**

This AD applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Unsafe Condition**

This AD was prompted by reports of two independent types of failure of the fuel boost pump: overheat damage on the internal components and external housing, and fuel leakage. We are issuing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Retained Inspection To Determine the Part Number, With Revised Service Information**

This paragraph restates the actions required by paragraph (g) of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), with revised service information. Within 36 months after January 7, 2014 (the effective date of AD 2013–22–19), inspect the fuel boost pumps to determine whether Gulfstream part number (P/N) 1159SCP500–5 is installed, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; including Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011; and GE Service Bulletin 31760–28–100, dated February 15, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the fuel boost pumps can be conclusively determined from that review.

(1) For Model GV airplanes: Gulfstream V Customer Bulletin 197, dated April 11, 2012.

(2) For Model GV–SP airplanes designated as G500: Gulfstream G500 Customer Bulletin 122, dated April 11, 2012; or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(3) For Model GV–SP airplanes designated as G550: Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

**(h) Retained Replacement With Revised Service Information**

This paragraph restates the actions required by paragraph (h) of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), with revised service information. If the inspection required by paragraph (g) of this AD reveals a fuel boost pump with Gulfstream P/N 1159SCP500–5: Within 36 months after January 7, 2014 (the effective date of AD 2013–22–19), replace the fuel boost pump with a serviceable pump having Gulfstream P/N 1159SCP500–7, in accordance with the applicable service information identified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD; including Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011; and GE Service Bulletin 31760–28–100, dated February 15, 2011.

(1) For Model GV airplanes: Gulfstream V Customer Bulletin 197, dated April 11, 2012.

(2) For Model GV–SP airplanes designated as G500: Gulfstream G500 Customer Bulletin 122, dated April 11, 2012; or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(3) For Model GV–SP airplanes designated as G550: Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

**(i) New Revision of the Maintenance or Inspection Program**

Within 30 days after the effective date of this AD, revise the airplane maintenance or inspection program, as applicable, to include the fuel leak check inspection of the fuel boost pumps specified in the applicable task identified in paragraph (j) of this AD.

(1) For airplanes on which fuel boost pump Gulfstream P/N 1159SCP500–5 has been replaced in accordance with paragraph (h) of this AD: The initial compliance time for the leak check inspection specified in the applicable task identified in paragraph (j) of this AD is within 550 flight hours after doing the replacement specified in paragraph (h) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspection required by paragraph (g) of this AD reveals that a fuel boost pump with Gulfstream P/N 1159SCP500–7 has been installed: The initial compliance time for the leak check inspection specified in the applicable task identified in paragraph (j) of this AD, is at the later of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Within 550 flight hours after the installation of the P/N 1159SCP500–7 pump; except if 550 flight hours have accumulated since installation of the P/N 1159SCP500–7 pump and an initial leak check of the pump has not been accomplished, the compliance time is within 50 flight hours after doing the inspection required by paragraph (g) of this AD.

(ii) Within 30 days after the effective date of this AD.

**(j) Service Information for Maintenance Program Revision**

Use the applicable service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD to revise the airplane maintenance or inspection program, as applicable, as required by paragraph (i) of this AD.

(1) For Model GV airplanes: Use table 18, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of chapter 28, Fuel; of the Gulfstream V Maintenance Manual, Revision 42, dated June 20, 2013.

(2) For Model GV–SP airplanes designated as G500: Use task 28–26–01, Fuel Boost Pumps—Fuel Leak Checks, in table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26, Fuel Boost Pumps, of chapter 28, Fuel; of the Gulfstream

G500 Maintenance Manual, Revision 23, dated June 20, 2013.

(3) For Model GV–SP airplanes designated as G550: Use task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, in table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26, Fuel Boost Pumps, of chapter 28, Fuel; of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013.

**(k) No Alternative Actions or Intervals**

After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (m) of this AD.

**(l) Parts Installation Prohibition**

As of January 7, 2014 (the effective date of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013)), no person may install a fuel boost pump having Gulfstream P/N 1159SCP500–5 on any airplane.

**(m) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta 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 (n)(1) of this AD.

(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) AMOCs approved for AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), are approved as AMOCs for the corresponding provisions of this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(4)(i) and (m)(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.

**(n) Related Information**

(1) For more information about this AD, contact Sanjana Murthy, Aerospace Engineer, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone: 404–474–5573; fax: 404–474–5567; email: *sanjana.murthy@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912 965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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 November 24, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–30810 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–7530; Directorate Identifier 2014–NM–257–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. 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 Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by a report of cracking in a certain section of the secondary structure of the wing. This proposed AD would require a one-time inspection of the trailing edge rib, and corrective action if necessary. We are proposing this AD to detect and correct cracking that could lead to failure of the affected rib and consequent reduced control of the airplane.

**DATES:** We must receive comments on this proposed AD by February 8, 2016.

**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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.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.

*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–2015–7530; 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 Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–7530; Directorate Identifier 2014–NM–257–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 based on 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**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0271, dated December 12, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

> Service experience with the Fokker 100 type design has shown that cracking can occur in the secondary structure of the wing at station 8700, rib Part Number (P/N) D15445–013/–014 (or lower dash number) in the trailing edge section. The hydraulic actuator assembly, hydraulic lines, the cable pulleys, the anti-upfloat quadrant and the associated mechanical linkages including flutter dampers are all positioned in the affected area, between wing stations 8200 and 9270.
>
> This condition, if not detected and corrected, could lead to failure of the affected rib, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services published Service Bulletin (SB) SBF100–57–048, which provides inspection instructions to detect any cracks in the affected area.
>
> For the reasons described above, this AD requires a one-time [detailed] inspection of the trailing edge rib at wing station 8700 and, depending on findings, accomplishment of applicable corrective action(s).
>
> This AD is considered to be an interim action and further AD action may follow, possibly to introduce new ALS [Airworthiness Limitations Section] tasks, if justified by the inspection results.

Corrective actions include repair of cracking in the secondary structure of the wing at station 8700, rib Part Number (P/N) D15445–013/-014 (or lower dash number), in the trailing edge section.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7530.

**Related Service Information Under 1 CFR Part 51**

We reviewed Fokker Service Bulletin SBF100–57–048, dated October 27, 2014. This service information describes procedures for inspecting the trailing edge section at the rib of wing station 8700 for cracking. 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 and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

**Costs of Compliance**

We estimate that this proposed AD affects 8 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $680, or $85 per product.

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 3**

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):

**Fokker Services B.V. Airplanes:** Docket No. FAA–2015–7530; Directorate Identifier 2014–NM–257–AD.

**(a) Comments Due Date**

We must receive comments by February 8, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Reason**

This AD was prompted by report of cracking in the secondary structure of the wing at station 8700. We are issuing this AD to detect and correct cracking that could lead to failure of the affected rib and consequent reduced control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection**

Within 12 months after the effective date of this AD, do a detailed inspection for cracking of the trailing edge rib at wing station 8700, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–048, dated October 27, 2014. If any crack is found: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organizational Authority (DOA).

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116 -AMOC-REQUESTS@faa.gov.* 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. The AMOC approval letter must specifically reference this AD.

*(2) Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(i) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Airworthiness Directive 2014–0271, dated December 12, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7530.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this 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 December 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–32086 Filed 12–23–15; 8:45 am]

**BILLING CODE ????–??–?**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2015–4836; Airspace Docket No. 15–ASW–16]**

## Proposed Establishment of Class E Airspace; Danville, AR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Danville, AR. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Danville Municipal Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before February 8, 2016.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–4836; Docket No. 15–ASW–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Danville Municipal Airport, Danville, AR.

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–4836/Airspace Docket No. 15–ASW–16.'' The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Central Service Center, Operation Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Availability and Summary of Documents Proposed for Incorporation by Reference**

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 11.0-mile radius of Danville Municipal Airport, Danville, AR, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

ASW AR E5 Danville, AR [New]
Danville Municipal Airport, AR
(Lat. 35°05′13″ N., long. 093°25′39″ W.)
That airspace extending upward from 700 feet above the surface within a 11.0-mile radius of Danville Municipal Airport.

Issued in Fort Worth, TX, on December 15, 2015.

**Robert W. Beck,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2015–32157 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 35

**[Docket No. RM16–3–000]**

### Ownership Information in Market-Based Rate Filings

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide. The Commission proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be

reported to the Commission via a notice of change in status.

**DATES:** Comments are due February 22, 2016.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Ashley Dougherty (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8851, *ashley.dougherty@ferc.gov.*

Laura Chipkin (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8615, *laura.chipkin@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

Paragraph Numbers



**Notice of Proposed Rulemaking (December 17, 2015)**

1. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide.[1] The Commission proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be reported to the Commission via a notice of change in status.

## I. Background

2. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power. In Order No. 697, the Commission stated that ''[t]he first step for a seller seeking market-based rate authority is to file an application to show that it and its affiliates do not have, or have adequately mitigated, market power.'' [2] In Order No. 697, the Commission adopted two indicative screens for assessing horizontal market power: The pivotal supplier screen and the wholesale market share screen, each of which serves as a cross check on the other to determine whether sellers may have market power and should be further examined.[3] 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 or qualifies for the blanket OATT waiver provided by Order No. 807,[4] before granting a seller market-based rate authorization.[5] The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.[6] 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; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies.[7] 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.[8]

3. On rehearing, in Order No. 697–A, the Commission set forth a requirement that a seller seeking to obtain or retain market-based rate authority must identify all of its upstream owners as well as describe the business activity of its owners and whether they are involved in the energy industry. Specifically, footnote 258 of Order No. 697–A states:

> A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership. To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or retain market-based rate authority must identify those upstream owners. Sellers must trace

[1] All references in this NOPR to ''seller'' (or ''sellers'') refer to both applicants seeking to obtain market-based rate authority and to sellers seeking to retain market-based rate authority.

[2] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 290, *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).

[3] *Id.,* FERC Stats. & Regs. ¶ 31,252 at PP 62–63.

[4] *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities,* Order No. 807, 80 FR 17,654 (Apr. 1, 2015), FERC Stats. & Regs. ¶ 31,367 (2015).

[5] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408. *See also Kingfisher Wind, LLC,* 151 FERC ¶ 61,276, at PP 26–27 (2015) (providing guidance on how qualified sellers can claim blanket OATT waiver under Order No. 807 and demonstrate lack of vertical market power).

[6] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 440–451.

[7] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at 447; 18 CFR 35.37(e) (2015). The Commission previously had also required sellers to describe sites for generation capacity, but eliminated this requirement in Order No. 816. *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, 80 FR 67,056 (Oct. 30, 2015), 153 FERC ¶ 61,065, at PP 212, 368 (2015) (Order No. 816).

[8] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 447–448.

upstream ownership until all upstream owners are identified. Sellers must also identify all affiliates. Finally, an entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.[9]

4. However, as discussed below, after seven years of experience in implementing the requirements of footnote 258, we believe that the associated burdens on the industry of providing this information may outweigh the benefits of this information for purposes of assessing whether a seller should be granted market-based rate authorization.[10] As part of that assessment, the Commission requires the submission of an asset appendix containing the generation and transmission assets of the seller and its affiliates.[11] Further, in Order No. 816, the Commission instituted a requirement for the submission of a corporate organizational chart depicting all affiliates, as defined in section 35.36(a)(9) of the Commission's regulations.[12]

5. In conjunction with the new organizational chart requirement in Order No. 816, we propose in this NOPR to provide a new complementary framework under which sellers can describe their ownership structure, as described more fully below. Consistent with this new framework, we also propose to clarify when a change in ownership would trigger the requirement in section 35.42 to file a notice of change in status.

## II. Proposed Reform

### *A. Ownership Information Required in Initial Applications and Triennial Updated Market Power Analyses*

6. Following the issuance of Order No. 697–A in 2008, corporate families, structures, and ownership in the energy industry have become increasingly complex. Through the Commission's implementation of the requirements of footnote 258, it has become clear that the upstream ownership structure of sellers is often layered with numerous levels and types of ownership interests (*e.g.,* full and partial, passive and controlling, etc.). In many instances, sellers initially do not fully comply with the requirements of footnote 258 in their market-based rate filings. Many sellers have difficulty obtaining the names of all owners, particularly those that own a small percentage of the seller or are a partial owner of a partial indirect owner. As a result, in response to requests by Commission staff for the information required by footnote 258, some sellers submit multiple amendments to their filings, resulting in extra expenditures for the seller and significant processing delays for information that does not directly affect the analysis of the seller's market power.

7. Sellers have frequently alleged that it is very difficult to identify and describe individual shareholders, particularly those with less than ten percent voting interests, because they do not know and cannot obtain this information themselves.[13] In such circumstances, strict adherence to the requirements of footnote 258 could require rejection of filings on procedural grounds irrespective of any market power concerns.[14]

8. As noted above, a seller seeking market-based rate authority must show that it and its affiliates do not have, or have adequately mitigated, horizontal market power. Further, the Commission's review of a seller's ability to exercise vertical market power, whether through ownership of transmission facilities or other barriers to entry, involves examining the seller and its affiliates.[15] However, because information about owners that are not considered affiliates under section 35.36(a)(9) is not necessary to evaluate horizontal and/or vertical market power (and is not required to be identified in the asset appendix or the corporate organizational chart), continuing to require information on unaffiliated owners may create a burden that is unrelated to the Commission's approach to determining whether a seller should have market-based-rate authority.[16]

9. Accordingly, we propose to amend section 35.37(a)(2) of the Commission's regulations to provide a new framework under which sellers would be required to describe their ownership structure that is both less burdensome for the industry and more useful to the Commission for purposes of whether a seller should have market-based-rate authority. Under this new framework, we propose to revise section 35.37(a)(2) of the Commission's regulations to define an affiliate owner as an owner that meets the definition of affiliate provided in 18 CFR 35.36(a)(9).[17] We propose to require that a seller seeking to obtain or retain market-based rate authority identify and describe two categories of upstream owners. First, a seller must identify and describe the furthest upstream affiliate owner(s) in its ownership chain, which we propose to define as the seller's ''ultimate affiliate owner(s).'' [18] Second, a seller must identify and describe all affiliate owners that have a franchised service area or market-based rate authority, or that directly own or control: Generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal

[9] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at n.258.

[10] Market-based rate filings include initial market-based rate applications, notices of change in status and triennial updated market power analyses.

[11] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 895; 18 CFR 35.37(a)(2) (2015).

[12] Order No. 816, 153 FERC ¶ 61,065 at P 333 (to be codified at 18 CFR 35.37(a)(2) (2015)).

[13] *See, e.g.,* 2014 ESA Project Company, LLC, Amended Filing at 2, Docket No. ER15–1496–001 (filed June 4, 2015) (''Shareholders are not required to notify, or obtain consent from, [Applicant's managing organization] when shareholders transfer their shares or the associate beneficial interests or voting rights'').

[14] *See* 18 CFR 35.5 (2015) (providing for rejection of rate filing for failure to comply with the applicable requirements).

[15] *See* 18 CFR 35.37 (2015).

[16] We note that the Commission recently issued a NOPR seeking comment on a proposal to require each regional transmission organization and independent system operator 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 58,382 (Sept. 29, 2015), FERC Stats. & Regs. ¶ 32,711 (2015) (cross-referenced at 152 FERC ¶ 61,219 (2015)). We recognize that some of the ownership information that is proposed herein to be no longer necessary for determining whether to grant market-based rate authority would be required under the connected entities NOPR for the purposes described in that proceeding.

[17] As specified in the Commission's current regulations, ''*affiliate''* of a specified company means: (i) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company; (ii) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company; (iii) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and (iv) Any person that is under common control with the specified company. For purposes of paragraph (a)(9)of the Commission's regulations, owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control. 18 CFR 35.36(a)(9) (2015).

[18] A seller may have more than one ultimate affiliate owner. For example, if a seller is owned 50 percent by affiliate A and 50 percent by affiliate B, there are two ownership ''chains'' or ''branches.'' The seller must identify and describe the ultimate affiliate owner at the top of each chain/branch, *i.e.,* the last affiliate owner in that chain/branch.

supplies.[19] To the extent that an affiliate owner does not fall into either of the two categories described above, the seller will not need to identify it when describing its ownership structure.

10. Identifying the ultimate affiliate owner is necessary for the Commission to form a meaningful picture of a seller's ownership structure and to understand what affiliates ultimately have the power to influence a seller's operations. The seller should also describe each ultimate affiliate owner's connection to the seller, and this description should be sufficient to allow the Commission to understand the relation between the seller and the ultimate affiliate owner(s), and could include references to the required corporate organizational chart. Identifying affiliate owners that have a franchised service area or market-based rate authority, or that directly own or control: Generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies assists the Commission in its analysis of a seller's horizontal and vertical market power.

11. In addition, where sellers are directly or indirectly owned or controlled by a foreign government or any political subdivision of a foreign government or any corporation which is owned in whole or in part by such entity, we propose to require that the seller identify such foreign government, political subdivision, or corporation.

12. We caution sellers to examine all ownership information to ensure that the required affiliate owners are identified. Sellers should not assume that owners are not affiliates of the seller without looking to the top of the ownership chain. For example, suppose seller (Company A) has four owners (Companies B, C, D, and E) each of which directly owns eight percent of the voting securities of A. If Company F owns 100 percent of the voting securities of Companies B, C, D, and E, under the Commission's affiliate definition, Company F indirectly owns 32 percent of the voting securities of Company A and is an affiliate of Company A. Under our proposed new framework, sellers must identify Company F only if Company F is an ultimate affiliate owner or if it is an affiliate owner that has a franchised service area or market-based rate authority, or that directly owns or controls: Generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.[20]

13. With respect to owners that a seller represents to be passive, we propose to require that the seller affirm that its passive owners own a separate class of securities, have limited consent rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause.[21]

14. We seek comments on these proposals.

*B. Ownership Information Required in Change in Status Filings*

15. The Commission requires market-based rate sellers to timely report any change in status that would ''reflect a departure from the characteristics that the Commission relied upon in granting market-based rate authority.'' Section 35.42 of the Commission's regulations, 18 CFR 35.42, which provides a non-exhaustive list of events that could trigger the change in status reporting requirement, is silent as to generic ownership changes, but requires that a seller must report certain new affiliations with any entity not disclosed in the application for market-based rate authority that has a franchised service area, or that directly owns or controls: generation facilities; transmission facilities; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. However, a literal reading of footnote 258 requires sellers to report changes in upstream ownership via notices of change in status filings.[22]

16. We believe that uncertainty as to the interpretation of footnote 258 has led to inconsistent reporting of changes in ownership. In our experience, some sellers report any change in ownership, other sellers only report changes in ownership when the new owner would be considered an affiliate pursuant to section 35.36(a)(9), and yet other sellers only report changes in ownership when the change in ownership causes a change in one of the triggering events explicitly listed in section 35.42. Accordingly, we propose to resolve the uncertainty and create a consistent reporting standard by amending section 35.42 of the Commission's regulations[23] to specify the types of ownership changes that would require a change in status filing.

17. In light of our proposal to require sellers to identify and describe in their initial applications and triennial updated market power analyses their ultimate affiliate owners, and all affiliate owners that have franchised service areas or market-based rate authority or that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies it follows that the identity of such affiliate owners are characteristics that the Commission relies upon in granting the seller market-based rate authority. However, we are also mindful of Order No. 816, in which the Commission amended section 35.42 to provide a 100 MW threshold for reporting new affiliations, and thus we propose that these two concepts be combined, as described below. In addition, we propose in the instant rulemaking to specify the following scenario as an additional departure from the characteristics the Commission relied upon in granting market-based rate authority and which should be reported to the Commission: when the seller acquires a new ultimate affiliate owner(s). Accordingly, we propose to require sellers to submit a notice of change in status in this scenario as well. In summary, combining all three of the above concepts, we propose that a change in status reporting requirement will be triggered by: (a) Any change in the seller's ultimate affiliate owner(s); or (b) the introduction of any new affiliate owner of the seller that has a franchised service area or that: directly owns or controls generation (if it represents a 100 MW or more net increase in seller and affiliate generation); owns, operates or controls transmission; or that directly

[19] To the extent sellers will be describing such affiliate owners in the horizontal and vertical market power sections of the filing, that description will fulfill this requirement.

[20] We further caution sellers to be mindful that the Commission does not allow for a derivative share method to calculate ownership interests in downstream, partially-owned entities for purposes of identifying affiliates. *See Tonopah Solar Energy, LLC,* 151 FERC ¶ 61,203, at PP 11–12 (2015).

[21] *See, e.g., AES Creative Resources, L.P.,* 129 FERC ¶ 61,239 (2009) (*AES Creative*) (distinguishing between controlling interests and passive investment interests). *See also EquiPower Resources Management, LLC,* Docket No. ER10–1089–000 (June 16, 2010) (deficiency letter asking seller to demonstrate that certain interests were passive by providing answers to clarifying questions).

[22] Footnote 258 provides: ''To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or *retain* market-based rate authority must identify those upstream owners.'' *See* Order No. 687–A, FERC Stats. & Regs. ¶ 31,628 at n.258 (emphasis added).

[23] In Order No. 816, the Commission amended, among other things, sections 35.37 and 35.42 of its regulations. The further proposed regulatory text changes in this NOPR are keyed off of the new regulatory text as promulgated in Order No. 816.

owns or controls: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.[24] We remind sellers that the provisions in section 35.42(a)(1) apply to the seller and its affiliates because the Commission considers affiliates' assets when assessing a seller's horizontal and vertical market power.[25]

## III. Information Collection Statement

18. The Paperwork Reduction Act (PRA)[26] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB's regulations,[27] in turn, require approval of certain information collection requirements imposed by agency rules. 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 collection(s) of information unless the collection(s) of information display a valid OMB control number.

19. The Commission is submitting the proposed modifications to its information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.

20. The following table provides the estimated burden reduction proposed in RM16–3:[28]

FERC–919, ESTIMATED CHANGES, DUE TO PROPOSED RULE IN RM16–3

| Type of requirement | Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden hours & cost per response[29] | Annual burden hours & total annual cost |
|---|---|---|---|---|---|
| | (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) |
| Reduction of requirement for sellers to describe entire ownership structure in Initial Applications and Triennial Updated Market Power Analyses, & Change of Status —[*Decrease in burden and cost*]. | 509 | 1 | 509 | −40 hrs.; −$3,858 | −20,360 hrs.; −$1,963,722 |

*Title:* FERC–919, Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.

*Action:* Proposed revision to existing collection.

*OMB Control No:* 1902–0234.

*Respondents:* Business or other for profit, and not for profit institutions.

*Frequency of Responses:* As needed.

*Necessity of the Information:* This NOPR reduces the amount and scope of ownership information that sellers must provide in their market-based rate filings. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

21. Comments concerning the information collection proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please refer to OMB Control Number 1902–0234 in your submission to OMB.

## IV. Environmental Analysis

22. 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.[30]

23. 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.[31] The actions here fall within this categorical exclusion in the Commission's regulations.

## V. Regulatory Flexibility Act

24. The Regulatory Flexibility Act of 1980 (RFA)[32] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of

[24] We note that some of these requirements exist in the current regulation or the regulation as revised by Order No. 816.

[25] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 1017 (''the Commission's change in status requirements are intended to track the requirements embedded in the horizontal and vertical analysis as well as the affiliate abuse representations.''). *See also id.* P 3 n.2 (major aspects of the Commission's market-based rate regulatory regime include ''whether a market-based rate seller or any of its affiliates has market power in generation or transmission and, if so, whether such market power has been mitigated'' and ''whether the seller or its affiliates can erect other barriers to entry.'')

[26] 44 U.S.C. 3501–3520.

[27] 5 CFR 1320 (2015).

[28] In Order No. 697–A, the Commission required that sellers seeking to obtain or retain market-based rate authority identify all upstream owners and affiliates. Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 181 n.258. The Commission most recently updated the burden estimates associated with the market-based rate program in Order No. 816, which will become effective on January 28, 2016. The PRA package and burden estimates for the Order No. 816 are pending OMB review.

[29] 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 average hourly cost (salary plus benefits) of $96.45 is based on the following occupational categories:

- Lawyer (Code 23–0000), $129.87/hour.
- Management Analyst (Code 13–1111), $63.03/hour.

[30] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[31] 18 CFR 380.4(a)(2)(ii) (2015).

[32] 5 U.S.C. 601–612 (2012).

employees including affiliates.[33] This NOPR, if adopted, reduces (for small and large entities) the burden and expense associated with filing market-based rate applications and triennial market power updates by clarifying the current regulations and by requiring identification of only the ultimate affiliate owner(s) and affiliate owners that directly own or control generation, transmission, or inputs to electric power production, have a franchised service area, or have market-based rate authority, rather than the comprehensive ownership information currently required. In addition, the Commission clarifies and limits the types of ownership changes that must be reported to the Commission via a notice of change in status. Accordingly, the Commission certifies that this NOPR, if adopted, will not have a significant economic impact on a substantial number of small entities. An analysis under the RFA is not required.

**VI. Comment Procedures**

25. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 22, 2016. Comments must refer to Docket No. RM16–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

26. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

27. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

[33] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77,343 (Dec. 23, 2013).

**VII. Document Availability**

29. 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.

30. 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.

31. 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.*

**List of Subjects in 18 CFR Part 35**

Electric power rates; Electric utilities; Reporting and record-keeping requirements.

By direction of the Commission.

Issued: December 17, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, *Code of Federal Regulations,* to read 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 § 35.37 by revising paragraph (a)(2) to read as follows:

**§ 35.37 Market power analysis required.**

(a)(1) * * *

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include a description of its ownership structure that identifies all ultimate affiliate owner(s), *i.e.,* the furthest upstream affiliate(s) in the ownership chain. A Seller must also identify all affiliate owners that have a franchised service area or market-based rate authority, and all affiliate owners that directly own or control: Generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. The term ''affiliate owner'' means any owner of the Seller that is an affiliate of the Seller as defined in § 35.36(a)(9) of this chapter. The Seller must also provide 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.

* * * * *

■ 3. Amend § 35.42 by revising paragraph (a)(2)(iv) and adding paragraph (a)(2)(v) to read as follows:

**§ 35.42 Change in status reporting requirement.**

(a) * * *

(2) * * *

(iv) Has a franchised service area; or

(v) Is an ultimate affiliate owner, defined as the furthest upstream affiliate(s) in the ownership chain.

* * * * *

[FR Doc. 2015–32273 Filed 12–23–15; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF LABOR

### 29 CFR Parts 29 and 30

**RIN 1205–AB59**

## Apprenticeship Programs; Equal Employment Opportunity; Extension of Comment Period

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Department of Labor (Department) issued a proposed rule in the **Federal Register** of November 6, 2015 [80 FR 68907], concerning proposed updates to the equal opportunity regulations that implement the National Apprenticeship Act of 1937. This document extends the comment period an additional 15 days, from January 5, 2016, to January 20, 2016. The Department received a request for additional time to develop comments on the proposed rulemaking. The Department is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before January 20, 2016. The comment period for the proposed rule published on November 6, 2015 (80 FR 68907) is extended. Comments, identified by RIN 1205–AB59, must be received on or before January 20, 2016.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB59, by any one of the following methods:

• *Federal e-Rulemaking Portal www.regulations.gov.* Follow the Web site instructions for submitting comments.

• *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method and within the designated comment period. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters against including personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration's (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the ETA Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** Adele Gagliardi, Office of Policy Development and Research, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210; Telephone (202) 693–3700 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** proposed rule of November 6, 2015. In that document, the Department proposed amendments to its regulations governing equal opportunity regulations that implement the National Apprenticeship Act of 1937. These regulations prohibit discrimination in registered apprenticeship on the basis of race, color, religion, national origin, and sex, and require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs. The Department is hereby extending the comment period, which was set to end on January 5, 2016 to January 20, 2016.

**List of Subjects in 20 CFR Parts 29 and 30**

Administrative practice and procedure, Apprenticeship, Employment, Equal employment opportunity, Reporting and recordkeeping requirements, Training.

**Portia Wu,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2015–32310 Filed 12–23–15; 8:45 am]

**BILLING CODE 4510–FP–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### 31 CFR Parts 1010, 1020, 1023, 1024, and 1026

**[Docket Number: FinCEN–2014–0001]**

## Notice of Availability of Regulatory Impact Assessment and Initial Regulatory Flexibility Analysis Regarding the Customer Due Diligence Requirements for Financial Institutions

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

**ACTION:** Notice of availability; Regulatory Impact Assessment and Initial Regulatory Flexibility Analysis.

**SUMMARY:** By this notice, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) announces the availability of two related documents that are part of the Customer Due Diligence Requirements for Financial Institutions Proposed Rulemaking: A Regulatory Impact Assessment (RIA) and an Initial Regulatory Flexibility Analysis (IRFA).

**DATES:** Written comments on the RIA and IRFA must be received on or before January 25, 2016.

**ADDRESSES:** The RIA and IRFA are available on FinCEN's Web site at *http://www.fincen.gov* and at *http://www.regulations.gov.* Comments on the RIA and IRFA may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB25, by any of the following methods:

• *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB25 in the submission. Refer to Docket Number FINCEN–2014–0001.

• *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB25 in the body of the text. Please submit comments by one method only. All comments submitted in response to this Notice of Availability will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

• Inspection of comments: The public dockets for FinCEN can be found at Regulations.gov. **Federal Register** notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at Regulations.gov as their complete, official-record docket;

all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** FinCEN's Resource Center, (800) 767–2825.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary has delegated to the Director of FinCEN the authority to implement, administer and enforce compliance with the Bank Secrecy Act (BSA) and associated regulations.[1] FinCEN is authorized to impose anti-money laundering (AML) program requirements on financial institutions, [2] as well as to require financial institutions to maintain procedures to ensure compliance with the BSA and the regulations promulgated thereunder or to guard against money laundering.[3]

## II. The Notice of Proposed Rulemaking

On August 4, 2014, FinCEN published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** entitled ''Customer Due Diligence Requirements for Financial Institutions,'' that would amend existing BSA regulations to clarify and strengthen customer due diligence (CDD) requirements for banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities (collectively covered financial institutions). It also proposed to impose a new requirement under the BSA to identify the beneficial owners of legal entity customers, subject to certain exemptions.

## III. Comments

The comment period for the proposed rule closed on October 3, 2014. FinCEN received a total of 135 comments representing a wide range of views covering most aspects of the NPRM. A large number of commenters asserted that the NPRM lacked sufficient data to support its estimate of costs and substantially underestimated implementation and compliance-related costs.

### *A. Regulatory Impact Assessment*

The primary purpose of the proposed CDD requirements is to assist financial investigations by law enforcement in order to severely impair criminals' ability to exploit the anonymity provided by the of use legal entities to engage in financial crimes including fraud, money laundering, terrorist financing, corruption, and sanctions evasion.

Based on comments and information received during further outreach to some financial institutions that provided comments on the proposal, FinCEN determined that the implementation and compliance-related costs may exceed $100 million annually, making this rulemaking an ''economically significant regulatory action.'' In such cases, Executive Orders 13563 and 12866 require agencies to conduct an RIA, which the agencies must publish for comment. At FinCEN's request, Treasury's Office of Economic Policy conducted an RIA of the proposed rule, developed in accordance with these Executive Orders, which evaluates the economic costs and benefits of the CDD rule and its alternatives. According to Office of Management and Budget (OMB) guidance, an RIA must contain the following three basic elements: (1) A statement of the need for the regulatory action; (2) a clear identification of a range of regulatory approaches; and (3) an estimate of the benefits and costs—both quantitative and qualitative—of the proposed regulatory action and its alternatives.

The *2015 National Money Laundering Risk Assessment* estimated the annual volume of money laundering or illicit proceeds generated in the United States due to financial crimes at $300 billion. The RIA for the proposed CDD rule provides an economic rationale for the rulemaking, and outlines the anticipated costs and benefits of the proposal. Because some of the important benefits and costs generated by the proposed rule cannot be fully quantified, the RIA employs a ''threshold'' or ''breakeven'' analysis to evaluate how minimally effective the proposed rule would have to be such that its benefits would just justify its costs. Such analysis is utilized to evaluate how likely it is that a proposed policy change would create a net benefit to society in instances where the costs or benefits are not fully quantifiable.[4]

To disrupt the flow of illicit proceeds more effectively, the proposed CDD rule would provide Federal and state regulators and law enforcement with easier access to beneficial ownership information of legal entities—*i.e.,* the natural persons who own or control these entities—to support law enforcement and counter-terrorism investigations. FinCEN believes that the proposed CDD rule would lead to a meaningful reduction in the flow of illicit proceeds in the United States. For example, shell and front companies are often used to launder proceeds of drug trafficking and fraud. The imposition of a beneficial ownership requirement, through the proposed CDD rule, would provide increased transparency into shell or front companies, thereby assisting law enforcement and regulators to identify the bad actors behind such companies and providing a greater deterrent to their use with respect to illicit gains. Furthermore, FinCEN believes that the proposed CDD rule would lead to a reduction in other illicit activities, the costs of which can run into the billions of dollars in terms of property destruction, foregone tax revenues, and even loss of life when considering the violent actions undertaken by terrorist and other criminal organizations that are facilitated by the movement of funds through legal entities.

Although the potential benefits of the rule are difficult to quantify, the breakeven analysis utilized in the RIA indicates that the proposed CDD rule would only need to generate a very modest relative decrease in illicit activity to justify the costs it would impose. Taking into account only the estimated annual flow of illicit funds in the United States of $300 billion, the breakeven analysis allows FinCEN to conservatively conclude that the CDD rule would need to reduce the estimated annual flow of illicit proceeds by only 0.45 percent (in each year of 2016–2025, the years covered by the RIA) in order to justify the costs the rule would impose over a ten-year period. FinCEN expects more benefits given that greater transparency would reduce illicit activity in other ways, as referenced above.

### *B. Initial Regulatory Flexibility Analysis*

The IRFA evaluates the economic impact of the CDD rule on small entities, and was developed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Regulatory Flexibility Act requires agencies to assess the impact of regulatory action on small entities, and is a requirement independent from the RIA (although the IRFA relies in part on the analysis conducted in the RIA). As a result of this analysis, Treasury and FinCEN continue to believe that, while

[1] Treasury Order 180–01 (Jul. 1, 2014).

[2] 31 U.S.C. 5318(h)(2).

[3] 31 U.S.C. 5318(a)(2).

[4] *See* Custom and Border Protection, Department of Homeland Security, ''Importer Security Filings and Additional Carrier Requirements,'' 73 FR 71730 (November 25, 2008). *See also* Customs and Border Protection, Department of Homeland Security, ''Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels,'' 72 FR 48320 (August 23, 2007).

the proposed rule would apply to a substantial number of small entities, it would not have a significant economic impact on a substantial number of small entities.

**Jamal El-Hindi,**

*Deputy Director, Financial Crimes Enforcement Network.*

[FR Doc. 2015–32378 Filed 12–23–15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**RIN 0648–BD68**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures; Amendment 28

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 28 would revise the Gulf of Mexico (Gulf) red snapper commercial and recreational sector allocations of the stock annual catch limit (ACL). If Amendment 28 is approved and implemented, it would result in changes to the red snapper commercial and recreational quotas and the recreational annual catch target (ACT). Additionally, the Federal charter vessel/headboat and private angling component ACLs and ACTs, which are based on the recreational sector's ACL and ACT, would also be revised. The intent of Amendment 28 is to reallocate the Gulf red snapper harvest consistent with the 2014 red snapper update assessment while ensuring the allowable catch and recovery benefits from the rebuilding red snapper stock are fairly and equitably allocated between the commercial and recreational sectors to achieve optimum yield (OY).

**DATES:** Written comments must be received on or before February 22, 2016.

**ADDRESSES:** You may submit comments on Amendment 28, identified by ''NOAA–NMFS–2013–0146'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0146,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 28, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *Peter.Hood@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 28 was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, OY from federally managed fish stocks. The Magnuson-Stevens Act requires that in allocating fishing privileges among fishermen, such allocation shall be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. For stocks like red snapper, which are subject to a rebuilding plan, the Magnuson-Stevens Act also requires that harvest restrictions and recovery benefits are fairly and equitably allocated among the commercial, recreational, and charter fishing sectors. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Amendment 28 would reallocate red snapper harvest from the commercial sector to the recreational sector. The reallocation would reduce the current commercial allocation from 51 percent to 48.5 percent of the stock ACL and the recreational allocation would increase from 49 percent to 51.5 percent of the stock ACL. All weights described in this notice are in round (whole) weight.

*Management Measures Contained in Amendment 28*

The initial Gulf red snapper allocation was set in Reef Fish Amendment 1 to the FMP and was based on the percentage of total landings during the base period of 1979–1987 (55 FR 2078, January 22, 1990). In Amendment 28, the Council evaluated several different Gulf red snapper allocation alternatives. These alternatives included straightforward allocation percentage changes, changes based on the red snapper stock ACL increases, and changes in the recreational catch information used in the 2014 update assessment to the 2013 Gulf red snapper Southeast Data, Assessment, and Review (SEDAR) 31 benchmark assessment. The Council initially considered alternatives that would increase the commercial sector's red snapper allocation. At that time, analyses from the NMFS Southeast Fisheries Science Center (SEFSC) suggested that shifting red snapper allocation from the commercial to the recreational sector would increase net economic benefits. Thus, the Council determined that reallocating red snapper to the commercial sector would not achieve the purpose of the amendment at that time, which was to increase the net benefits from red

snapper fishing and increase the stability of the red snapper component of the reef fish fishery, particularly for the recreational sector. Therefore, the Council removed these alternatives from the amendment. After the 2014 update assessment, the purpose and need statement of the amendment was revised to reallocating the red snapper harvest consistent with the assessment update to ensure the allowable catch and recovery benefits are fairly and equitably allocated between the commercial and recreational sectors. When the draft environmental impact statement (EIS) was published for comment, it included this revised purpose and need statement and two new alternatives added by the Council to address the new information and the revised purpose and need. The draft EIS did not include alternatives that would increase the commercial sector's allocation because the new scientific information did not change any previous understanding of commercial landings. More information about the Council's decision not to include these alternatives and an analysis of the environmental consequences of increasing the commercial allocation are provided in the response to comments section (Appendix D) of Amendment 28 and integrated final EIS.

The preferred alternative in Amendment 28 would revise the Gulf red snapper allocation to 48.5 percent of the stock ACL to the commercial sector and 51.5 percent of the stock ACL to the recreational sector. This results in proposed commercial quotas (48.5 percent of the stock ACL) of 6.768 million lb (3.070 million kg) and 6.664 million lb (3.023 million kg) for the 2016 and 2017 fishing years, respectively. The recreational quota (51.5 percent of the stock ACL) would be 7.192 million lb (3.262 million kg) and 7.076 million lb (3.210 million kg) for the 2016 and 2017 fishing years, respectively. For the recreational sector, the ACT would be set 20 percent less than the recreational quotas and, as described in Amendment 40 to the FMP, the recreational quota and ACT would be further divided into Federal charter vessel/headboat and private angling component quotas and ACTs (80 FR 22422, April 22, 2015).

A proposed rule that would implement Amendment 28 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 28 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the preliminary determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

**Consideration of Public Comments**

The Council submitted Amendment 28 for Secretarial review, approval, and implementation. Comments received by February 22, 2016, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 28. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2015.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–32445 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 80, No. 247
Thursday, December 24, 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

### Domestic Sugar Program: Overall Allotment Quantity and Marketing Allotments

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Notice.

**SUMMARY:** The Farm Service Agency (FSA) on behalf of the Commodity Credit Corporation (CCC) is issuing this notice to publish the sugar Overall Allotment Quantity (OAQ), beet and cane sugar marketing allotments, and processor allocations for fiscal year (FY) 2016 (October 1, 2015–September 30, 2016), as well as a summary of the OAQ's, sugar marketing allotments, and allocations for FY 2015 and FY 2014. Although the actions in this notice have already been announced through United States Department of Agriculture (USDA) news releases, each determination establishing, adjusting, or suspending sugar marketing allotments issued by the Secretary is required by the Agricultural Adjustment Act of 1938, as amended, to be published in the **Federal Register**.

**DATES:** Effective: December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Barb Fecso, telephone: (202) 720–4146. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:**

### Initial FY 2016 OAQ, State Allotments, and Processor Allocations

Section 359c of the Agricultural Adjustment Act of 1938 (Pub. L. 75–430), as amended, (7 U.S.C. 1359cc) requires that the OAQ be established at not less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year, and that fixed percentages of the OAQ be assigned to the beet sector and cane sector, and further allocated to the States in the cane sector. In a September 29, 2015 news release, CCC established the FY 2016 (2015-crop year) OAQ at the minimum quantity of 10,093,750 short tons, raw value (STRV). CCC distributed the FY 2016 beet sugar allotment of 5,485,953 STRV (54.35 percent of the OAQ) to the beet sugar processors and the cane sugar allotment of 4,607,797 STRV (45.65 percent of the OAQ) to the sugarcane states and processors.

The FY 2016 (2015-crop year) beet sugar and cane sugar marketing allotments and allocations to date are listed in the following table:

FY 2016 Overall Beet/Cane Allotments and Allocations

| Distribution | Initial FY16 allocations |
|---|---|
| Date of Announcement | September 29, 2016 |
| Beet Sugar | 5,485,953 |
| Cane Sugar | 4,607,797 |
| TOTAL OAQ | 10,093,750 |
| BEET PROCESSORS' MARKETING ALLOCATIONS: | |
| Amalgamated Sugar Co. | 1,174,584 |
| American Crystal Sugar Co. | 2,017,406 |
| Michigan Sugar Co. | 566,565 |
| Minn-Dak Farmers Co-op | 380,994 |
| So. Minn Beet Sugar Co-op | 740,429 |
| Western Sugar Co. | 560,041 |
| Wyoming Sugar Growers, LLC | 45,935 |
| TOTAL BEET SUGAR | 5,485,953 |
| STATE CANE SUGAR ALLOTMENTS: | |
| Florida | 2,344,636 |
| Louisiana | 1,813,839 |
| Texas | 203,823 |
| Hawaii | 245,499 |
| TOTAL CANE SUGAR | 4,607,797 |
| CANE PROCESSORS' MARKETING ALLOCATIONS: | |
| Florida: | |
| Florida Crystals | 965,348 |
| Growers Co-op of FL | 421,765 |
| U.S. Sugar Corp. | 957,522 |
| TOTAL | 2,344,636 |
| Louisiana: | |
| Louisiana Sugar Cane Products, Inc. | 1,259,225 |

FY 2016 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

| Distribution | Initial FY16 allocations |
|---|---|
| Date of Announcement | September 29, 2016 |
| M.A. Patout & Sons | 554,615 |
| TOTAL | 1,813,839 |
| Texas: | |
| Rio Grande Valley | 203,823 |
| Hawaii:. | |
| Hawaiian Commercial & Sugar Company | 245,499 |

**FY 2015 OAQ, State Allotments, and Processor Allocations**

On September 26, 2014, CCC announced the initial FY 2015 OAQ of 9,987,500 STRV, the distribution of the FY 2015 beet sugar allotment of 5,428,206 STRV (54.35 percent of the OAQ) to sugar beet processors, and the distribution of the 4,559,294 STRV cane sugar allotment (45.65 percent of the OAQ) to sugarcane states and processors.

In mid-year, CCC reviewed current inventories, estimated production, expected marketings, and other factors affecting each sugar beet or sugarcane processor's ability to market its full allocation. On May 4, 2015 CCC announced an increase in the FY 2015 OAQ to 10,080,150 STRV, which was 85 percent of the estimate for domestic human consumption published in the April 2015 World Agricultural Supply and Demand Estimates Report (WASDE). CCC also announced the reassignment of projected surplus beet sugar and cane sugar marketing allotments and allocations under the FY 2015 Sugar Marketing Allotment Program. The reassignment, which transferred allocations from processors with surplus allocation to processors with deficit allocation, was expected to increase the available supply of domestically-produced refined beet sugar.

As part of the domestic Sugar Program, CCC is required to reassign allocation to raw cane sugar imports if it is determined that processors will be unable to market their allocations and there is no CCC inventory. Data supplied by the processors in April 2015 indicated that the beet sugar sector would be unable to market 400,000 STRV of its current sugar marketing allotment, while the raw cane sugar sector would be unable to market 600,000 STRV of its sugar marketing allotment. Therefore, the allotments were reduced to 5,078,562 STRV for beet sugar and 4,001,588 STRV for cane sugar, while 1,000,000 STRV was reassigned to raw cane sugar imports already displayed in the WASDE report. This reassignment to imports was merely an accounting effort to comply with Sugar Program requirements as specified in 7 U.S.C. 1359ee and was not an increase in the raw sugar tariff-rate quota.

On August 28, 2015, CCC announced a second reassignment of projected FY 2015 surplus beet sugar marketing allocation among beet processors and a reassignment of projected surplus cane sugar marketing allocation among cane processors. CCC transferred beet sugar marketing allocations from beet sugar processors with surplus allocation to another beet processor requiring more allocation to market its record high crop. Similarly, CCC transferred cane sugar marketing allocation from two sugar processors in Florida with surplus allocation to another processor requiring more allocation to market its larger-than-expected crop.

The FY 2015 (2014-crop) beet sugar and cane sugar marketing allotments and allocations are listed in the following table:

FY 2015 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS

| Distribution | Initial FY15 allocations | Change in OAQ due to change in food use | Reassignment among processors | Reassignment to imports | Adjusted allocations | Reassignment within states | Reassignment among processors | Adjusted allocations |
|---|---|---|---|---|---|---|---|---|
| Date of Announcement | September 26, 2014 | May 4, 2015 | | | | August 28, 2015; | | |
| Beet Sugar | 5,428,206 | 50,355 | 0 | (400,000) | 5,078,562 | — | — | 5,078,562 |
| Cane Sugar | 4,559,294 | 42,295 | 0 | (600,000) | 4,001,588 | — | — | 4,001,588 |
| Reassignment to Raw Cane Sugar Imports | 0 | 0 | 0 | 1,000,000 | 1,000,000 | — | — | 1,000,000 |
| TOTAL OAQ | 9,987,500 | 92,650 | 0 | 0 | 10,080,150 | — | — | 10,080,150 |
| BEET PROCESSORS' MARKETING ALLOCATIONS: | | | | | | | | |
| Amalgamated Sugar Co. | 1,162,220 | 10,781 | −29,979 | −71,320 | 1,071,703 | — | (2,770) | 1,068,933 |
| American Crystal Sugar Co. | 1,996,116 | 18,565 | −75,752 | −180,217 | 1,758,711 | — | (11,701) | 1,747,010 |
| Michigan Sugar Co. | 560,601 | 5,200 | 121,322 | 0 | 687,124 | — | 31,896 | 719,020 |
| Minn-Dak Farmers Co-op. | 376,983 | 3,497 | 44,520 | 0 | 425,000 | — | (4,025) | 420,975 |
| So. Minn Beet Sugar Co-op. | 732,635 | 6,796 | −58,187 | −138,428 | 542,816 | – | (5,319) | 537,497 |
| Western Sugar Co. | 554,200 | 5,093 | −4,218 | −10,034 | 545,042 | — | (7,555) | 537,487 |
| Wyoming Sugar Growers, LLC | 45,451 | 422 | 2,294 | 0 | 48,167 | — | (527) | 47,640 |
| TOTAL BEET SUGAR | 5,428,206 | 50,355 | 0 | −400,000 | 5,078,562 | – | – | 5,078,562 |
| STATE CANE SUGAR ALLOTMENTS: | | | | | | | | |

FY 2015 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

| Distribution | Initial FY15 allocations | Change in OAQ due to change in food use | Reassignment among processors | Reassignment to imports | Adjusted allocations | Reassignment within states | Reassignment among processors | Adjusted allocations |
|---|---|---|---|---|---|---|---|---|
| Date of Announcement | September 26, 2014 | May 4, 2015 | | | | August 28, 2015; | | |
| Florida | 2,318,566 | 22,732 | 0 | −332,253 | 2,009,046 | — | — | 2,009,046 |
| Louisiana | 1,793,672 | 17,586 | 0 | −201,973 | 1,609,285 | — | — | 1,609,285 |
| Texas | 201,557 | 1,976 | 0 | −57,275 | 146,258 | — | — | 146,258 |
| Hawaii | 245,499 | 0 | 0 | −8,499 | 237,000 | — | — | 237,000 |
| TOTAL CANE SUGAR | 4,559,294 | 42,295 | 0 | −600,000 | 4,001,588 | — | — | 4,001.588 |
| CANE PROCESSORS' MARKETING ALLOCATIONS: | | | | | | | | |
| Florida | | | | | | | | |
| Florida Crystals | 954,615 | 9,360 | 0 | −210,252 | 753,723 | (17,376) | — | 736,347 |
| Growers Co-op. of FL | 417,076, | 4,089 | 0 | −25,825 | 395,341 | (2,134) | — | 393,206 |
| U.S. Sugar Corp. | 946,876 | 9,284 | 0 | −96,177 | 859,983 | 19,510 | — | 879,493 |
| TOTAL | 2,318,566 | 22,732 | 0 | −332,253 | 2,009,046 | — | — | 2,009,046 |
| Louisiana | | | | | | | | |
| Louisiana Sugar Cane Products, Inc. | 1,245,224 | 12,209 | 0 | −168,664 | 1,088,768 | — | — | 1,088,768 |
| M.A. Patout & Sons | 548,448 | 5,377 | 0 | −33,308 | 520,517 | — | — | 520,517 |
| TOTAL | 1,793,672 | 17,586 | 0 | −201,973 | 1,609,285 | — | — | 1,609,285 |
| Texas | | | | | | | | |
| Rio Grande Valley | 201,557 | 1,976 | 0 | −57,275 | 146,258 | — | — | 146,258 |
| Hawaii | | | | | | | | |
| Hawaiian Commercial & Sugar Company | 245,499 | 0 | 0 | −8,499 | 237,000 | — | — | 237,000 |

**FY 2014 OAQ, State Allotments, and Processor Allocations**

On August 30, 2013, CCC announced the initial FY 2014 OAQ of 9,843,000 STRV, the distribution of the FY 2014 beet sugar allotment of 5,349,671 STRV (54.35 percent of the OAQ) to sugar beet processors, and the distribution of the 4,493,330 STRV cane sugar allotment (45.65 percent of the OAQ) to sugarcane states and processors.

In a May 30, 2014 news release, CCC announced the reassignment of projected surplus beet sugar and cane sugar marketing allotments and allocations under the FY 2014 Sugar Marketing Allotment Program. The reassignment, which transferred allocations from processors with surplus allocation to processors with deficit allocation, was expected to increase the supply of domestically-produced sugar.

Data supplied by the processors indicated that the beet sugar sector would be unable to market 100,000 STRV of its sugar marketing allotment, while the raw cane sugar sector would be unable to market 550,000 STRV of its sugar marketing allotment. Hence, the allotments were reduced to 5,249,671 STRV for beet sugar and 3,943,330 STRV for cane sugar, while 650,000 STRV was reassigned to raw cane sugar imports already expected in the WASDE report. This reassignment to imports was merely an accounting effort to comply with the Sugar Program requirements as specified in 7 U.S.C. 1359ee and was not an increase in the raw sugar tariff-rate quota.

The FY 2014 (2013-crop) beet sugar and cane sugar marketing allotments and allocations are listed in the following table:

FY 2014 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS

| Distribution | Initial FY14 allocations | Reassignments among processors | Reassignment to imports | Adjusted allocations |
|---|---|---|---|---|
| Date of Announcement | August 30, 2013 | May 29, 2014 | | |
| Beet Sugar | 5,349,671 | ..... | (100,000) | 5,249,671 |
| Cane Sugar | 4,493,330 | ..... | (550,000) | 3,943,330 |
| Reassignment to Imports of Raw Cane Sugar | ..... | ..... | 650,000 | 650,000 |
| TOTAL OAQ | 9,843,000 | ..... | ..... | 9,843,000 |
| BEET PROCESSORS' MARKETING ALLOCATIONS: | | | | |
| Amalgamated Sugar Co. | 1,145,405 | (68,408) | (37,305) | 1,039,693 |
| American Crystal Sugar Co | 1,967,161 | (34,459) | (18,791) | 1,913,912 |
| Michigan Sugar Co. | 552,490 | 107,128 | ..... | 659,618 |
| Minn-Dak Farmers Co-op | 371,529 | 76,249 | ..... | 447,778 |
| So. Minn Beet Sugar Co-op | 722,035 | (75,606) | (41,230) | 605,200 |
| Western Sugar Co. | 546,256 | (345) | (73) | 546,050 |
| Wyoming Sugar Growers, LLC | 44,794 | (4,771) | (2,602) | 37,421 |
| TOTAL BEET SUGAR | 5,349,671 | ..... | (100,000) | 5,249,671 |
| STATE CANE SUGAR ALLOTMENTS: | | | | |
| Florida | 2,283,112 | (22,051) | (411,110) | 1,849,951 |

FY 2014 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

| Distribution | Initial FY14 allocations | Reassignments among processors | Reassignment to imports | Adjusted allocations |
|---|---|---|---|---|
| Date of Announcement | August 30, 2013 | May 29, 2014 | | |
| Louisiana | 1,766,244 | (6,044) | (112,681) | 1,647,519 |
| Texas | 198,475 | (1,406) | (26,209) | 170,860 |
| Hawaii | 245,499 | 29,501 | ..... | 275,000 |
| TOTAL CANE SUGAR | 4,493,330 | ..... | (550,00) | 3,943,330 |
| CANE PROCESSORS' MARKETING ALLOCATIONS: | | | | |
| Florida | | | | |
| Florida Crystals | 940,017 | (12,711) | (236,976) | 690,330 |
| Growers Co-op of FL | 410,698 | (3,543) | (66,055) | 341,100 |
| U.S. Sugar Corp. | 932,397 | (5,797) | (108,079) | 818,521 |
| TOTAL | 2,283,112 | (22,051) | (411,110) | 1,849,951 |
| Louisiana | | | | |
| Louisiana Sugar Cane Products, Inc. | 1,226,182 | (4,826) | (89,968) | 1,131,388 |
| M.A. Patout & Sons | 540,061 | (1,218) | (22,712) | 516,131 |
| TOTAL | 1,766,244 | (6,044) | (112,681) | 1,647,519 |
| Texas: | | | | |
| Rio Grande Valley | 198,475 | (1,406) | (26,209) | 170,860 |
| Hawaii: | | | | |
| Hawaiian Commercial & Sugar Company | 245,499 | 29,501 | ..... | 275,000 |

**Authority:** 15 U.S.C. 714b and 7 U.S.C. 1359hh(c).

**Val Dolcini,**

*Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2015–32456 Filed 12–23–15; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by February 22, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Fax: (202) 720–8435.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5164, 1400 Independence Avenue SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

*Title:* 7 CFR part 1728, Electric Standards and Specifications for Materials and Construction.

*OMB Control Number:* 0572–0131.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* RUS provides loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act). Section 4 of the RE Act requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the Borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act and, in order to assure that loans made or guaranteed by the Agency are adequately secure, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure the Agency that: (1) Appropriate standards and specifications are maintained; (2) RUS loan security is not adversely affected, and; (3) Loan and loan guarantee funds are used effectively and for the intended purposes. The regulation, 7 CFR part 1728, establishes Agency policy that materials and equipment purchased by RUS Electric Borrowers or accepted as contractor-furnished material must

conform to Agency standards and specifications where established and, if included in RUS Publication IP 202–1, ''List of Materials Acceptable for Use on Systems of Agency Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS.

*Estimate of Burden:* This collection of information is estimated to average 20 hours per response.

*Respondents:* Business or other for-profits.

*Estimated Number of Respondents:* 38.

*Estimated Number of Responses per Respondent:* 2.63.

*Estimated Total Annual Burden on Respondents:* 2,000 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, Fax: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 18, 2015.

**Brandon McBride,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2015–32442 Filed 12–23–15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by February 22, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Fax: (202) 720–8435.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5164, 1400 Independence Avenue SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

*Title:* Operating Reports for Telecommunications and Broadband Borrowers.

*OMB Control Number:* 0572–0031.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture (USDA) utilities programs, is a credit agency. RUS makes mortgage loans and loan guarantees to finance electric, broadband, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of the Agency's main objectives is to safeguard loan security until the loan is repaid.

This collection of information covers the Telecommunications Operating Report, the Broadband Operating Report, and RUS Form 674, ''Certificate of Authority to Submit or Grant Access to Data.'' The data collected via the Telecommunications Operating Report is collected through the USDA Data Collection System. The data collected via the Broadband Operating Report is collected through the USDA Broadband Collection and Analysis System. The data collected via the Telecommunication and Broadband Operating reports is required by the loan contract and provides Rural Development with vital financial information necessary to ensure the maintenance of the security for the Government's loans, and statistical data to enable the Agency to ensure the provision of quality telecommunications and broadband services as mandated by the Rural Electrification Act (RE Act) of 1936. The data collected through the operating reports provides financial information to ensure loan security consistent with due diligence and is essential to protect loan security.

The data collected via RUS Form 674 provides information to the Agency to allow Rural Development Electric, Telecommunications and Broadband program Borrowers to file electronic Operating Reports with the Agency using the USDA Data Collection System. RUS Form 674, accompanied by a Board Resolution, identifies the name and USDA eAuthentication ID for a certifier and security administrator who will have access to the USDA Data Collection System for purposes of filing electronic Operating Reports. The information collected on the RUS Form 674 is submitted in hard copy by Borrowers only when revisions are required or, in the case of a first time Borrower, when initially submitting the data.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 3.67 hours per response.

*Respondents:* Business or other for-profits and not-for-profit Institutions.

*Estimated Number of Respondents:* 730.

*Estimated Number of Responses per Respondent:* 1.86.

*Estimated Total Annual Burden on Respondents:* 4,990 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, Fax: (202) 720–8435. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 18, 2015.

**Brandon McBride,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2015–32443 Filed 12–23–15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Boundary and Annexation Survey (BAS).

*OMB Control Number:* 0607–0151.

*Form Number(s):* BAS 1, BAS 2, BAS 3, BAS 5, BAS 6. BASSC.

*Type of Request:* Regular Submission.

*Number of Respondents:* 86,555.

*Annual Response Notification:* 39,400.

*No Change Response:* 25,000.

*Telephone Follow-up:* 14,000.

*Packages with Changes:* 5,000.

*State Certification Review:* 49.

*State Certification Local Review:* 1,000.

*Boundary Quality Assessment Reconciliation Project (BQARP):* 16.

*Redistricting Data Program (RDP) Reconciliation State Review:* 50.

*RDP Reconciliation Local Review:* 2,000.

*Research Projects:* 40.

*Average Hours per Response:* Varies.

*Annual Response Notification:* 30 minutes.

*No Change Response:* 4 hours.

*Telephone Follow-up:* 30 minutes.

*Packages with Changes:* 8 hours.

*State Certification Review:* 10 hours.

*State Certification Local Review:* 2 hours.

*BQARP:* 25 hours.

*RDP Reconciliation State Review:* 20 hours.

*RDP Reconciliation Local Review:* 2 hours.

*Research Projects:* 3 hours.

*Burden Hours:* 174,710.

*Annual Response Notification:* 19,700.

*No Change Response:* 100,000.

*Telephone Follow-up:* 7,000.

*Packages with Changes:* 40,000.

*State Certification Review:* 490.

*State Certification Local Review:* 2,000.

*BQARP:* 400.

*RDP Reconciliation State Review:* 1,000.

*RDP Reconciliation Local Review:* 4,000.

*Research Projects:* 120.

*Needs and Uses:* The Census Bureau conducts the BAS to collect and maintain information about the inventory of legal boundaries and legal actions affecting the boundaries of counties and equivalent entities, incorporated places, minor civil divisions (MCDs), and federally recognized legal American Indian and Alaska Native areas. This information provides an accurate identification of geographic areas for the Census Bureau to use in conducting the Decennial and Economic Censuses and ongoing surveys, preparing population estimates, and supporting other statistical programs of the Census Bureau and the legislative programs of the Federal government.

Through the BAS, the Census Bureau asks each government to review materials for its jurisdiction to verify the correctness of the information portrayed. The Census Bureau requests that each government update their boundaries, supply information documenting each legal boundary change, and provide changes in the inventory of governments. The Census Bureau has a national implementation of the BAS, but each state's laws are reviewed for inclusion in the processing procedures. In addition, if it comes to the Census Bureau's attention that an area of non-tribal land is in dispute between two or more jurisdictions, the Census Bureau will not make annexations or boundary corrections until the parties come to a written agreement, or there is a documented final court decision regarding the matter and/or dispute. If there is a dispute over an area of tribal land, the Census Bureau will not make additions or boundary corrections until supporting documents are provided, or the U.S. Department of the Interior issues a comment. If necessary, the Census Bureau will request clarification regarding current boundaries, particularly if supporting documentation pre-dates 1990, from the U.S. Department of the Interior, Office of the Solicitor.

The BAS universe and mailing materials vary depending both upon the needs of the Census Bureau in fulfilling its censuses and household surveys and upon budget constraints.

Counties or equivalent entities, federally recognized American Indian reservations (AIRs), Off-Reservation Trust Lands (ORTLs), and Tribal Subdivisions are included in every survey.

In the years ending in 8, 9 and 0, the BAS includes all governmentally active counties and equivalent entities, incorporated places, legally defined MCDs, and legally defined federally recognized American Indian and Alaska Native areas (including the Alaska Native Regional Corporations). Each governmental entity surveyed will receive materials covering its jurisdiction and one or more forms. These three years coincide with the Census Bureau's preparation for the Decennial Census. There are fewer than 40,000 governments in the universe each year.

In all other years, the BAS reporting universe includes all legally defined federally recognized American Indian and Alaska Native areas, all governmental counties and equivalent entities, MCDs in the six New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), and those incorporated places that have a population of 2,500 or greater. The reporting universe is approximately 14,000 governments due to budget constraints at the Census Bureau. The Census Bureau only follows up on a subset of governments designated as the reporting universe.

In the years ending in 1 through 7, the Census Bureau may enter into agreements with individual states to modify the universe of MCDs and/or incorporated places to include additional entities that are known by that state to have had boundary changes, without regard to population size. Each year, the BAS will also include a single respondent request for municipio, barrio, barrio-pueblo, and subbarrio boundary and status information in Puerto Rico and Hawaiian Homeland boundary and status information in Hawaii.

In the years ending in 6 through 9, state participants in the RDP may request coordination between the BAS and RDP submissions for the Block Boundary Suggestion Project (BBSP) and Voting District Project (VTDP). The alignment of the BAS with the BBSP and VTDP will facilitate increased cooperation between state and local governments and provide the opportunity to align their effort with updates from state and local government officials participating in the BAS.

No other Federal agency collects these data, nor is there a standard collection of this information at the state level. BAS is a unique survey providing a standard result for use by federal, state, local, and tribal governments and by commercial, private, and public organizations.

The Census Bureau has developed and continues to use several methods to collect information on status and updates for legal boundaries. These methods are:

- State Certification
- Memorandum of Understanding (MOU)

- Consolidation Agreements
- Annual Response
- Paper BAS
- Digital BAS
- BQARP
- Research Projects

**State Certification**

Through the BAS State Certification program, the Census Bureau invites the Governor-appointed State Certifying Official (SCO) from each state to review the boundary and governmental unit information collected during the previous BAS cycle. The purpose of the State Certification program is to verify the accuracy and validate the BAS information with state governments for incorporated places received from the previous BAS cycle. The Census Bureau requests the SCOs review data files, including the attribute data, legal boundary changes, as well as the legal names and functional statuses of incorporated places and MCDs, and any new incorporations or disincorporations reported through the BAS. A SCO may request that the Census Bureau edit the attribute data, add missing records, or remove invalid records if their state government maintains an official record of all effective changes to legal boundaries and governmental units as mandated by state law. State Certification packages contain a letter to the Governor, a State Certifying Official Letter, a Discrepancy Letter, and a State Certification Respondent Guide.

**MOU**

In states with legislation requiring local governments to report all legal boundary updates to a state agency, state officials may enter into a MOU with the Census Bureau. States have the option to report to the Census Bureau the list of governments with known legal boundary changes and the Census Bureau will include in the BAS only those governments with known boundary changes or the state may report the legal boundary changes directly to the Census Bureau on behalf of the governments. The Census Bureau will not survey the local governments if the state reports for them. The Census Bureau will send a reminder email notification to the governments requesting them to report to the state contact, per MOU. The MOU, as agreed upon by the state and the Census Bureau, will outline the terms of the survey and reporting for governments.

**Consolidation Agreements**

Consolidation agreements allow state and county government officials, in states where there are no legislative requirements for local governments to report their legal updates to the state or county, the opportunity to reduce the response burden for their local governments. Under a consolidation agreement, a state or county responds to the BAS for the local governments that agree to allow the state or county to respond on their behalf. The Census Bureau sends the BAS materials to the state or county, as appropriate, and sends a reminder notification to the local government to report their updates to their BAS consolidator.

**Annual Response**

Annual Response involves an announcement email letter and a one-page form for the state and county governments that do not have a consolidation agreement. Through Annual Response, county, tribal, and local governments indicate whether they have boundary changes to report and provide a current contact person. The Census Bureau requests governments to reply online or through email. The Annual Response method reduces cost and respondent burden through savings on materials and effort. All governments receive this notification regardless of population size. The Census Bureau will conduct telephone follow-up only to governments in the reporting universe due to budget constraints.

If a government requests materials through Annual Response, they may choose to download digital materials or have the materials shipped as a traditional paper package or digital media types.

**Paper BAS**

For the traditional paper package, the respondent completes the BAS form and draws the boundary updates on the maps using pencils provided in the package. The package contains large format maps, printed forms and supplies to complete the survey.

The typical BAS package contains:

1. Introductory letter from the Director of the Census Bureau;
2. Appropriate BAS Form(s) that contains entity-specific identification information;
   a. BAS–1: Incorporated places and consolidated cities;
   b. BAS–2: Counties, parishes, and boroughs;
   c. BAS–3: MCDs;
   d. BAS–5: American Indian and Alaska Native Areas; and
   e. BAS–6: Consolidated BAS
3. BAS Respondent Guide;
4. Set of maps;
5. Return postage-paid envelope to submit boundary changes;
6. Postcard to notify the Census Bureau of no changes to the boundary; and
7. Supplies for updating paper maps.

**Digital BAS**

Digital BAS includes options to receive software and spatial data to make boundary updates or to make boundary updates electronically by submitting a digital file. A local contact from each government verifies the legal boundary, and then provides boundary changes and updated contact information. An official signs the materials, verifies the forms, and returns the information to the Census Bureau.

The typical Digital BAS package contains:

1. Introductory letter from the Director of the Census Bureau;
2. Appropriate BAS Form(s) that contains entity-specific identification information;
   a. BAS–1: Incorporated places and consolidated cities;
   b. BAS–2: Counties, parishes, and boroughs;
   c. BAS–3: MCDs;
   d. BAS–5: American Indian and Alaska Native Areas; and
   e. BAS–6: Consolidated BAS
3. CD or DVD and software CD for Geographic Update Partnership Software (GUPS); and
4. Postcard to notify the Census Bureau of no changes to the boundary.

The key dates for governments are as follows:

1. Annual Response emailed or mailed to the local contact in December of each year.
2. BAS package/materials shipped during the months of December, January, February, March, and April of each year.
3. Requests to change the method of participation (*i.e.,* paper to digital submission and vice versa) are due by April 15th of each year.
4. Responses for inclusion in the American Community Survey (ACS) and Population Estimates Program (PEP) are due by March 1st of each year, with an effective date of January 1st of the year in question or earlier.
5. Responses for inclusion in the following year's BAS materials are due by May 31st of each year and will include any annexation received from the previous or current year.
6. In year 2020, all legal documentation for inclusion in the 2020 Census must be effective as of January 1, 2020 or earlier. All legal boundary changes will be placed on hold and updated during the 2021 BAS if effective January 2, 2020 or later.

**BQARP**

To improve boundary quality in the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System, the Census Bureau is introducing BQARP to support the BAS program. BQARP is a project to assess, analyze, and improve the spatial quality of legal and administrative boundaries within MAF/TIGER. Ensuring quality boundaries is a critical component of the geographic preparations for the 2020 Census and the Census Bureau's ongoing Geographic Partnership Programs (GPPs) and surveys. In addition, the improvement of boundary quality is an essential element of the Census Bureau's commitment as the responsible agency for legal boundaries under the Office of Management and Budget (OMB) Circular A–16. The goal of BQARP is to establish a new, accurate baseline for boundaries within an entire state or county, which the BAS would then continue with the collection of annexations and deannexations on a transaction basis as they occur over time. The estimated work burden for participation is 25 hours per participant.

**Research Projects**

BAS continues to work to improve the survey based on feedback received from local governments. The Census Bureau plans to conduct two research projects during 2016. The first research project is for BAS form redesign for potential use for the 2017 BAS Forms. The second research project is to test an option for local governments to provide a list of addresses associated with an annexation to continue to improve data quality in MAF/TIGER. Participation is voluntary for these research projects. The estimated work burden for participation is 3 hours per participant.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, U.S.C., Section 6.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 18, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015–32374 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–905]**

### Polyester Staple Fiber From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the ''Department'') is rescinding the administrative review of the antidumping duty order on polyester staple fiber (''PSF'') from the People's Republic of China (the ''PRC'') for the period of review June 1, 2014, through May 31, 2015.

**DATES:** *Effective Date:* December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–2243.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 30, 2015, DAK Americas, LLC (''Petitioner'') submitted a request for administrative review of the antidumping duty order on PSF from the PRC for five companies.[1] No other party requested an administrative review. On August 3, 2015, the Department published the notice of initiation of an administrative review of the order for the period of review June 1, 2014, through May 31, 2015.[2] On September 8, 2015, Petitioner withdrew its requests for review for all five companies.[3]

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, Petitioner withdrew its requests for administrative reviews within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

**Assessment**

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of PSF from the PRC. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

**Notifications**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 9, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015–32462 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See* Petitioner's June 30, 2015 submission.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 45947 (August 3, 2015) (''*Initiation Notice*'').

[3] *See* Petitioner's September 8, 2015 submission.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818]**

### Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** *Effective:* December 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** George McMahon or Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1167 or (202) 482–7851, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 1, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2014, through June 30, 2015: Agritalia S.r.L. (Agritalia), Atar S.r.L. (Atar), Azienda Agricola Casina Rossa di De Laurentiis Nicola (Azienda), Corticella Molini e Pastifici S.p.A. (Corticella), Delverde Industrie Alimentari S.p.A. (Delverde), Domenico Paone fu Erasmo S.p.A. (Domenico), F. Divella S.p.A. (F. Divella), I Sapori dell'Arca S.r.l. (I Sapori), Industria Alimentare Colavita S.p.A. (Colavita), La Fabbrica della Pasta di Gragnano S.a.s. di Antonio Moccia (La Fabbrica), La Molisana SpA. (La Molisana), La Romagna S.r.l. (La Romagna), Ligouri Pastificio Dal 1820 (Ligouri), Molino e Pastificio Tomasello S.r.L. (Molino), P.A.P SNC DI Pazienza G.B. & C. (P.A.P), PAM S.p.A. (PAM), Pasta Lensi S.r.L. (Pasta Lensi), Pasta Zara S.p.A. (Pasta Zara), Pastificio Andalini S.p.A. (Andalini), Pastificio Bolognese of Angelo R. Dicuonzo (Bolognese), Pastificio Carmine Russo S.p.A. (Carmine), Pastificio DiMartino Gaetano & F. Ili S.r.L. (DiMartino), Pastificio Fabianelli S.p.A. (Fabianelli), Pastificio Felicetti S.r. L. (Felicetti), Pastificio Labor S.r.L. (Labor), Pastificio Riscossa F. Ili Mastromauro S.p.A. (AKA Pastificio Riscossa F. Ili. Mastromauro S.r.L.) (Riscossa), Poiatti S.p.A. (Poiatti), Premiato Pastificio Afreltra S.r.L. (Premiato), Rustichella d'Abruzzo S.p.A. (Rustichella), Ser.com.snc, and Vero Lucano S.r.l. (Vero Lucano).[2] On October 27, 2015, La Molisana timely withdrew its request for a review.[3] On October 30, 2015, Pasta Lensi timely withdrew its request for review.[4] On November 12, 2015, Andalini timely withdrew its request for review.[5] On December 1, 2015, Ritrovo, LLC (Ritrovo), an interested party in this review, timely withdrew its request for an administrative review of Azienda, Bolognese, I Sapori, La Romagna, Ser.com.snc, and Vero Lucano.[6]

#### Partial Rescission of the 2014–2015 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. Given that all the withdrawal requests cited above were timely, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Andalini, Azienda, Bolognese, I Sapori, La Molisana, La Romagna, Pasta Lensi, Ser.com.snc, and Vero Lucano. The instant review will continue with respect to Agritalia, Atar, Corticella, Delverde, Domenico, F. Divella, Colavita, La Fabbrica, Ligouri, Molino, P.A.P, PAM, Pasta Zara, Carmine, DiMartino, Fabianelli, Felicetti, Labor, Riscossa, Poiatti, Premiato, and Rustichella.

#### Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Andalini, Azienda, Bolognese, I Sapori, La Molisana, La Romagna, Pasta Lensi, Ser.com.snc, and Vero Lucano, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2014, through June 30, 2015, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

#### Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 16, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015–32472 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 37583 (July 1, 2015).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 53106 (September 2, 2015) (*Initiation Notice*).

[3] *See* Letter from La Molisana to the Department, ''Certain Pasta From Italy: A–475–818; Withdrawal of Request for Review,'' dated October 27, 2015.

[4] *See* Letter from Pasta Lensi to the Department, ''Pasta from Italy: Withdrawal of Request for Administrative Review,'' dated October 30, 2015.

[5] *See* Letter from Andalini to the Department, ''Certain Pasta From Italy: Withdrawal of Request for Administrative Review,'' dated November 12, 2015.

[6] *See* Letter from Ritrovo to the Department, ''Withdrawal of Request for Administrative Review: Certain Pasta from Italy,'' dated December 1, 2015.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD66**

### Takes of Marine Mammals Incidental to Specified Activities; Seabird Research Activities in Central California, 2015–2016

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of a revised incidental harassment authorization.

**SUMMARY:** We, NMFS, give notice that we have revised an Incidental Harassment Authorization (Authorization) issued to Point Blue Conservation Science (Point Blue) to take marine mammals, by harassment, incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue's current Authorization is effective until January 30, 2016, and authorizes the incidental harassment, by Level B harassment only, of approximately 9,871 California sea lions (*Zalophus californianus*). Current environmental conditions in the Pacific Ocean offshore California—which researchers have attributed to an impending El Nino event—have contributed to unprecedented numbers of California sea lions hauled out in areas where Point Blue conducts seabird surveys. As such, Point Blue requested a modification to their current Authorization to increase the number of authorized take for California sea lions to continue their research. Per the Marine Mammal Protection Act, we are revising the Authorization to Point Blue for the incidental harassment, by Level B harassment only, a total of 41,889 California sea lions.

**DATES:** The authorization is still effective January 31, 2015, through January 30, 2016.

**ADDRESSES:** To obtain an electronic copy of the revised Authorization, write to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

#### Summary of Request

On December 23, 2014, NMFS published a **Federal Register** notice of a proposed Authorization to Point Blue (79 FR 76975) and subsequently published a **Federal Register** notice of issuance of the Authorization on February 25, 2015 (80 FR 10066), effective from January 31, 2015, through January 30, 2016. To date, we have issued six one-year Authorizations to Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, for the conduct of the same activities from 2007 to 2015 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; and 80 FR 10066, February 25, 2015).

On September 22, 2015, NMFS received a request from Point Blue seeking to revise the Authorization issued on January 31, 2015 (80 FR 10066, February 25, 2015) to increase the number of authorized take of small numbers of California sea lions from approximately 9,871 to a total of 44,871 for the duration of the current Authorization which expires on January 30, 2016. Current environmental conditions in the Pacific Ocean offshore California—which researchers have attributed to an impending El Nino event—have contributed to unprecedented numbers of California sea lions hauled out in areas where Point Blue conducts seabird surveys. As such, Point Blue requested a modification to their current Authorization to increase the number of authorized take for California sea lions to continue their seabird research activities. This was the only requested change to the current Authorization.

On October 13, 2015, NMFS published a notice (80 FR 61376) requesting comments on the proposed revision. The **Federal Register** notice set forth only a proposed change in the numbers of take for California sea lions. There were no other changes to the current Authorization as described in the February 25, 2015, **Federal Register** notice of an issued Authorization (80 FR 10066): The specified activity; description of marine mammals in the area of the specified activity; potential effects on marine mammals and their habitat; mitigation and related monitoring used to implement mitigation; reporting; estimated take by incidental harassment for Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), or Steller sea lions (*Eumetopias jubatus*); negligible impact and small numbers analyses and determinations; impact on availability of affected species or stocks for subsistence uses and the period of effectiveness remain unchanged and are herein incorporated by reference.

#### Description of the Specified Activity

*Overview*

Point Blue will continue to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; and resupply a field station annually in central California (*i.e.,* Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in Sonoma County). The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations.

NMFS outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (79 FR 76975, December 23, 2014). Point Blue's activities and level of survey effort have not changed since the publication of the **Federal Register** notice announcing the issuance of the Authorization (80 FR 10066, February 25, 2015). For a more detailed description of the authorized action, we refer the reader to that notice of Authorization (80 FR 10066, February 25, 2015).

#### Need for Modification to the Authorization

The Authorization requires Point Blue to monitor for marine mammals in order to implement mitigation measures to effect the least practicable adverse impact on marine mammals. Monitoring activities consist of conducting and recording observations on pinnipeds within the vicinity of the research areas. The monitoring reports provide dates, location, species, and the researcher's activities. The reports will also include the behavioral state of marine mammals present, numbers of animals that moved greater than one meter, and numbers of pinnipeds that flushed into the water. Between January 31 through November 6, 2015, Point Blue recorded the following instances of Level B harassment for the following research areas: Southeast Farallon Island/West End Island (20,052); Ano Nuevo (723); and Point Reyes (30).

Point Blue reports that between January and March, 2015, California sea lion incidental take patterns were relatively normal at the South Farallon Islands/West End Island survey locations. However, during the summer

of 2015, warm water conditions along the California coast in summer resulted in more California sea lions hauling out in areas where Point Blue conducts its seabird research activities. Point Blue reported that throughout the summer months, sea lion numbers continued to grow, with greater numbers hauled out in areas where researchers have not normally recorded sea lion attendance. For example, since August 15, 2015 at the South Farallon Islands, Point Blue reported that thousands of sea lions hauled out in unusual locations high on the islands. During this period, Point Blue has restricted their activities as much as possible to still perform their monitoring duties while trying to minimize pinniped disturbance. Thus, NMFS has modified the current Authorization to increase the number of take by Level B harassment only for California sea lions to a total of 41,889 for the duration of the current Authorization which expires on January 30, 2016.

**Comments and Responses**

We published a notice of receipt of the proposed revised Authorization in the **Federal Register** on October 13, 2015 (80 FR 61376). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the revised Authorization, provided that the proposed modification includes only the increase in the number of authorized takes based on the number of sea lions that would be harassed incidental to the seabird research and resupply activities and not include takes associated with removing sea lions from critical infrastructure (including docks, landings, and piers) and access paths or human safety concerns which is included in the authorities available under sections 101(a)(4) or 109(h) of the MMPA.

NMFS agrees with the Commission's recommendation and the revised Authorization includes only those takes for California sea lions related to seabird research and resupply activities. Point Blue requested an increase of 35,000 takes based on rough preliminary observations. However, during the MMPA consultation process, Point Blue provided us with draft monitoring reports with more accurate estimates of California sea lions harassed incidental to seabird research activities from September 23, 2015 through November 6, 2015 (approximately 20,805 animals). We further analyzed those preliminary reports and projected that Point Blue could harass an additional 21,084 California sea lions for the remainder of the current authorization. Thus, the revised Authorization for a total of 41,899 takes for California sea lions accounts for an additional 32,018 takes versus the Point Blue's requested increase of 35,000 takes.

We base these estimates on the largest estimated number of California sea lions taken by day within four reporting periods between January 31, 2015 and November 6, 2015 multiplied by 84 days remaining within the current Authorization. The resulting take estimates are 20,664 California sea lions for Southeast Farallon Island (9,334 animals divided by 38 days then multiplied by 84 days); 336 California sea lions for Ano Nuevo Island (554 animals divided by 156 days then multiplied by 84 days); and 84 California sea lion for (10 animals divided by 38 days then multiplied by 84 days). Based on our final analyses, NMFS would authorize an total 41,889 takes for California sea lions which accounts for take already incurred and the potential for increased take continuing through January 2016.

The revised Authorization also directs Point Blue and its partners to conduct other activities related to preventing damage to critical infrastructure and private property and ensuring personal human safety from hauled out pinnipeds in accordance with sections 101(a)(4) or 109(h) of the MMPA.

**Findings**

*Marine Mammal Protection Act (MMPA)*—As required by the MMPA, for the original Authorization, NMFS determined that: (1) The required mitigation measures are sufficient to reduce the effects of the specified activities to the level of least practicable impact; (2) the authorized takes will have a negligible impact on the affected marine mammal species; (3) the authorized takes represent small numbers relative to the affected stock abundances; and (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

*Negligible Impact:* For reasons stated previously in the **Federal Register** notices for the proposed authorization (79 FR 76975, December 23, 2014) and the issued Authorization (80 FR 10066, February 25, 2015), NMFS anticipates that impacts to hauled-out California sea lions during Point Blue's activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, permanent abandonment of the haul out area, or stampeding, and therefore injury or mortality to occur.

With the exception of a proposed increase in the number of authorized takes for California sea lions, no other substantive changes have occurred in the interim. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Point Blue's survey activities will have a negligible impact on the affected marine mammal species or stocks.

*Small Numbers:* For reasons stated previously in the **Federal Register** notices for the proposed authorization (79 FR 76975, December 23, 2014) and the issued Authorization (80 FR 10066, February 25, 2015) NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. With the exception of an increase in authorized take for California sea lions, no other substantive changes have occurred in the interim. For California sea lions, the proposed increase in take is small relative to the population size. The revised incidental harassment number represents approximately 14 percent of the U.S. stock of California sea lion.

*National Environmental Policy Act (NEPA)*—In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from the issuance of a proposed Authorization to Point Blue for their seabird research activities. In January 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Point Blue's research activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). No substantive changes have occurred in the interim.

*Endangered Species Act (ESA)*—No marine mammal species listed under the ESA occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. No substantive changes have occurred in the interim.

**Revised Authorization**

As a result of these determinations, we have revised the Authorization

issued to Point Blue and its designees for the take of marine mammals incidental to their seabird research activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: December 18, 2015.

**Perry F. Gayaldo,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2015–32409 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE191**

### 2016 Annual Determination To Implement the Sea Turtle Observer Requirement

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2016, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2015 AD (see Table 1) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2019.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

**FOR FURTHER INFORMATION CONTACT:** Sara McNulty, Office of Protected Resources, 301–427–8402; Ellen Keane, Greater Atlantic Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Irene Kelly, Pacific Islands Region, 808–725–5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at *www.nmfs.noaa.gov/pr/species/turtles/regulations.htm* or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

#### Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine species listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta;* Northwest Atlantic distinct population segment), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green sea turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridley sea turtles on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline. On March 23, 2015, NMFS and the U.S. Fish and Wildlife Service (USFWS) found that the green sea turtle is composed of 11 distinct population segments (DPSs) that qualify as ''species'' for listing under the ESA. NMFS and USFWS proposed to remove the current range-wide listing and, in its place, list eight DPSs as threatened and three as endangered.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). The purpose of the sea turtle observer requirement and the AD is ultimately to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively, and to conserve sea turtles. Section 11 of the ESA provides for civil and criminal penalties for anyone who violates a regulation issued pursuant to the ESA, including regulations that implement the take prohibition, as well as for the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions for activities that are covered by an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn about sea turtle-fishery interactions, in order to implement management measures and prevent or minimize take, is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

Where observers are required, NMFS will pay the direct costs for vessels to

carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for a period of 5 years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; evaluate whether existing measures are minimizing or preventing takes; and develop ESA management measures that implement the prohibitions against take and that conserve sea turtles.

**2016 Annual Determination**

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, annually identifies fisheries for inclusion on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

NMFS is providing notification that the agency is not identifying additional fisheries to observe on the 2016 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of dedicated resources to implement new observer programs or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). The 14 fisheries identified on the 2015 AD (see Table 1) remain on the AD for a 5-year period and are therefore required to carry observers upon NMFS' request until December 31, 2019.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2015 ANNUAL DETERMINATION.

| Fishery | Years eligible to carry observers |
|---|---|
| **Trawl Fisheries** | |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | 2015–2019 |
| Gulf of Mexico mixed species fish trawl | 2015–2019 |
| **Gillnet Fisheries** | |
| California halibut, white seabass and other species set gillnet (>3.5 in mesh) | 2015–2019 |
| California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.) | 2015–2019 |
| Chesapeake Bay inshore gillnet | 2015–2019 |
| Long Island inshore gillnet | 2015–2019 |
| North Carolina inshore gillnet | 2015–2019 |
| Gulf of Mexico gillnet | 2015–2019 |
| **Trap/pot Fisheries** | |
| Atlantic blue crab trap/pot | 2015–2019 |
| Atlantic mixed species trap/pot | 2015–2019 |
| Northeast/Mid-Atlantic American lobster trap/pot | 2015–2019 |
| **Pound Net/Weir/Seine Fisheries** | |
| Mid-Atlantic haul/beach seine | 2015–2019 |
| Mid-Atlantic menhaden purse seine | 2015–2019 |
| Rhode Island floating trap | 2015–2019 |

Dated: December 21, 2015.

**Perry F. Gayaldo,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2015–32425 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE362**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, January 12, 2016, at 10 a.m.

**ADDRESSES:** *Meeting address:* The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01950; phone: (978) 777–2500; fax: (978) 750–7911.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Advisory Panel (AP) plans to review Amendment 8 to the Atlantic Herring Fishery Management Plan related to the Acceptable Biological Catch control rule, and the localized depletion in inshore waters. The panel will also discuss the potential for using

state port-side monitoring data to monitor the River herring/Shad catch caps. They will review options for the Atlantic herring fishery in the Omnibus Industry-Funded Monitoring Amendment. They will also discuss 5-year research priorities for Atlantic herring (2017–2022). The panel will also review a future action to consider revising the haddock catch cap accountability measure. They will also discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2015.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–32432 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**[Docket No.: PTO–P–2015–0079]**

### Extension of the Extended Missing Parts Pilot Program

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) implemented a pilot program (Extended Missing Parts Pilot Program) in which an applicant, under certain conditions, can request a 12-month time period to pay the search fee, the examination fee, any excess claim fees, and the surcharge (for the late submission of the search fee and the examination fee) in a nonprovisional application. The Extended Missing Parts Pilot Program benefits applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program benefits the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2016, to allow for the USPTO to seek public comment, via a subsequent notice to be published in the middle of 2016, on whether the Extended Missing Parts Program offers sufficient benefits to the patent community for it to be made permanent. The requirements of the program have not changed.

**DATES:** *Duration:* The Extended Missing Parts Pilot Program will run through December 31, 2016. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed on or before December 31, 2016. The USPTO may further extend the pilot program (with or without modifications) depending on the feedback received and the continued effectiveness of the pilot program.

**FOR FURTHER INFORMATION CONTACT:** Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov.*

**SUPPLEMENTARY INFORMATION:** On December 8, 2010, after considering written comments from the public, the USPTO changed the missing parts examination procedures in certain nonprovisional applications by implementing a pilot program (*i.e.,* Extended Missing Parts Pilot Program). *See Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44 (Jan. 4, 2011). The USPTO has previously announced extensions of the Extended Missing Parts Pilot Program through notices published in the **Federal Register**. *See Extension of the Extended Missing Parts Pilot Program,* 76 FR 78246 (Dec. 16, 2011), 1374 *Off. Gaz. Pat. Office* 113 (Jan. 10, 2012); *Extension of the Extended Missing Parts Pilot Program,* 78 FR 2256 (Jan. 10, 2013), 1387 *Off. Gaz. Pat. Office* 46 (Feb. 5, 2013); *Extension of Extended Missing Parts Pilot Program,* 79 FR 642 (Jan. 6, 2014), 1398 *Off. Gaz. Pat. Office* 197 (Jan. 28, 2014); *Extension of Extended Missing Parts Pilot Progam,* 80 FR 1624 (Jan. 13, 2015), 1412 *Off. Gaz. Pat. Office* 211 (Mar. 24, 2015). The program is currently set to expire on December 31, 2015.

Through this notice, the USPTO is further extending the Extended Missing Parts Pilot Program until December 31, 2016. The USPTO may further extend the Extended Missing Parts Pilot Program, or may discontinue the pilot program after December 31, 2016, depending on the results of the program. The requirements of the program, which have not been modified, are reiterated below. Applicants are strongly cautioned to review the pilot program requirements before making a request to participate in the Extended Missing Parts Pilot Program.

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within 12 months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement. Title II of the Patent Law Treaties Implementation Act of 2012 (PLTIA) amended the provisions of title 35, United States Code, including 35 U.S.C. 119(e), to implement the Patent Law Treaty (PLT). *See* Public Law 112–211, §§ 20–203, 126 Stat. 1527, 1533–37 (2012). In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that an applicant may file a petition under 37 CFR 1.78(b) to restore the benefit of a provisional application filed up to fourteen months earlier. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62368–69 (Oct. 21, 2013) (final rule). Any petition to restore the benefit of a provisional application must include the benefit claim, the petition fee, and a statement that the delay in filing the subsequent application was unintentional. This change was effective on December 18, 2013, and applies to any application filed before, on, or after December 18, 2013. However, if a nonprovisional application is filed

outside the 12 month period from the date on which the corresponding provisional application was filed, the nonprovisional application is not eligible for participation in the Extended Missing Parts Pilot Program, even though the applicant may be able to restore the benefit of the provisional application by submitting a petition under 37 CFR 1.78(b).

I. *Requirements:* In order for an applicant to be provided a 12-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) The applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/AIA/421, titled ''Certification and Request for Extended Missing Parts Pilot Program''; (2) the application must be an original (*i.e.,* not a Reissue) nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous 12 months, and the specific reference to the provisional application must be in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(3)); and (4) the applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, the applicant will need to satisfy filing date requirements and publication requirements. In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that an application (other than an application for a design patent) filed on or after December 18, 2013, is not required to include a claim to be entitled to a filing date. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62638 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. However, if an application is filed without any claims, the Office of Patent Application Processing will issue a notice giving the applicant a two-month (extendable) time period within which to submit at least one claim in order to avoid abandonment (*see* 37 CFR 1.53(f)). The Extended Missing Parts Pilot Program does not change this time period. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of 18 months from the earliest filing date for which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) the executed inventor's oath or declaration in compliance with 37 CFR 1.63 or an application data sheet containing the information specified in 37 CFR 1.63(b); (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any compact disc requirements to be satisfied and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, the applicant will need to satisfy the publication requirements within a two-month extendable time period.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/AIA/421. For utility patent applications, the applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of ''Certification and Request for Missing Parts Pilot'' for the certification and request on the EFS-Web screen. Form PTO/AIA/421 is available on the USPTO Web site at *http://www.uspto.gov/sites/default/files/forms/aia0421.pdf.* Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/patents-application-process/applying-online/about-efs-web.*

The utility application including the certification and request to participate in the pilot program may also be hand-carried to the USPTO or filed by mail, for example, by Priority Mail Express® in accordance with 37 CFR 1.10. However, applicants are advised that, effective November 15, 2011, as provided in the Leahy-Smith America Invents Act, a new additional fee of $400.00 for a non-small entity ($200.00 for a small entity) is due for any nonprovisional utility patent application that is not filed by EFS-Web. *See* Public Law 112–29, § 10(h), 125 Stat. 283, 319 (2011). This non-electronic filing fee is due on filing of the utility application or within the two-month (extendable) time period to reply to the Notice to File Missing Parts of Nonprovisional Application. Applicants will not be given the 12-month time period to pay the non-electronic filing fee. Therefore, utility applicants are strongly encouraged to file their utility applications via EFS-Web to avoid this additional fee.

For plant patent applications, the applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. *See Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

II. *Processing of Requests:* If the applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send the applicant a Notice to File Missing Parts of Nonprovisional Application that sets a 12-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The 12-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, *see Electronic Office Action,* 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and *http://www.uspto.gov/patents-application-process/checking-application-status/e-office-action-program.* After an applicant files a timely reply to the Notice to File Missing Parts within the 12-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

For a detailed discussion regarding treatment of applications that are not in condition for publication, processing of improper requests to participate in the program, and treatment of authorizations to charge fees, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76403–04 (Dec. 8, 2010), 1362

*Off. Gaz. Pat. Office* 44, 47–49 (Jan. 4, 2011).

III. *Important Reminders:* Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112(a) and is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In the rulemaking to implement the PLT and title II of the PLTIA, the Office provided that, in order to be accorded a filing date, a nonprovisional application (other than an application for a design patent) must include a specification with or without claims. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62369 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. Although a claim is not required in a nonprovisional application (other than an application for a design patent) for filing date purposes *and* the applicant may file an amendment adding additional claims as prescribed by 35 U.S.C. 112 and drawings as prescribed by 35 U.S.C. 113 later during prosecution, the applicant should consider the benefits of submitting a complete set of claims and any necessary drawings on filing of the nonprovisional application. This would reduce the likelihood that any claims and/or drawings added later during prosecution might be found to contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Accordingly, any foreign filings must, in most cases, still be made within 12 months of the filing date of the provisional application if the applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within 12 months of the earliest application for which rights are left outstanding in order to be entitled to priority.

For additional reminders, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76405 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 50 (Jan. 4, 2011).

Dated: December 18, 2015.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2015–32469 Filed 12–23–15; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Final Rule for Records of Commodity Interest and Related Cash or Forward Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') is announcing an opportunity for public comment on the proposed revision to the collection of certain information by the Commission. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission recently adopted a final rule that amends the Commission Regulation dealing with records of commodity interest and related cash or forward transactions (the ''Final Rule''). The Final Rule modifies some of the recordkeeping requirements that apply to certain participants in the markets regulated by the Commission. This notice solicits additional comments on the PRA implications of the amended recordkeeping requirements that are set forth in the Final Rule, including comments that address the burdens associated with the modified information collection requirements of the Final Rule.

**DATES:** Comments must be submitted on or before February 22, 2016.

**ADDRESSES:** You may submit comments, identified by ''OMB Control No. 3038–0090; Records of Commodity Interest and Related Cash or Forward Transactions Collection,'' by any of the following methods:

- The Commission's Web site, via its Comments Online process at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Katherine Driscoll, Associate Chief Counsel, (202) 418–5544, *kdriscoll@cftc.gov;* August A. Imholtz III, Special Counsel, (202) 418–5140, *aimholtz@cftc.gov;* or Lauren Bennett, Special Counsel, (202) 418–5290, *lbennett@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** The Final Rule amends Regulation 1.35(a). The collections of information related to Regulation 1.35(a) have been previously reviewed and approved by OMB in accordance with the PRA [1] and assigned OMB Control Number 3038–0090. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed revision to the collection of information listed below.

*Title:* Adaption of Regulations to Incorporate Swaps—Records of Transactions (OMB Control No. 3038–0090). This is a request for an extension

[1] 44 U.S.C. 3501 *et seq.*

and revision of a currently approved information collection.

*Abstract:* The Commission amended Regulation 1.35(a) to: (1) Exclude members of designated contract markets (''DCMs'') and members of swap execution facilities (''SEFs'') that are not registered or required to register with the Commission (''Unregistered Members'') from the requirement to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions; (2) exclude Unregistered Members from the requirement to maintain records in a particular form and manner; (3) exclude Unregistered Members from the requirement to retain text messages; (4) exclude commodity trading advisors (''CTAs'') from the oral recordkeeping requirement; and (5) provide that all records required to be kept under the regulation must be kept in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information; and clarify that all records, except records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward transactions, must be kept in a form and manner that allows for identification of a particular transaction.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed revision to the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Regulation 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

*Burden Statement:* In the Notice of Proposed Rulemaking, the Commission's preliminary estimate stated that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed amendments to Regulation 1.35(a).[3] The Commission subsequently determined, however, that the amendments to Regulation 1.35(a) likely will reduce the current information collection burdens on affected market participants under OMB control number 3038–0090.

**1. Exclusion of Unregistered Members From Requirement To Maintain Records of Pre-Trade Written Communications**

Pursuant to the prior version of Regulation 1.35(a), which was published in 2012, Unregistered Members were required to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions.[4] The Final Rule states that Unregistered Members are not required to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions. Therefore, their compliance costs, and the associated information collection burden, with respect to this particular aspect of the rule will be eliminated. The Commission estimates that this change to Regulation 1.35(a) will decrease the information collection burden under the rule by approximately one-half hour per week per entity. The Commission estimates based on select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

**2. Exclusion of Unregistered Members From Requirement To Maintain Records in a Particular Form and Manner**

Pursuant to the prior version of Regulation 1.35(a), which was published in 2012, Unregistered Members were required to comply with the form and manner requirements of the rule.[5] The Final Rule states that Unregistered Members are not required to keep their required records in a prescribed form and manner. Therefore, their compliance costs, and the associated information collection burden, with respect to this particular aspect of the rule will be eliminated. The Commission estimates that this change to Regulation 1.35(a) will decrease the information collection burden under the rule by approximately one-half hour per month per entity. The Commission estimates based on select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

**3. Exclusion of Unregistered Members From Requirement To Retain Text Messages**

The records that must be kept under Regulation 1.35 include text messages, as well as other forms of electronic records. The Final Rule amends Regulation 1.35(a) to provide that Unregistered Members are not required to maintain records of text messages.[6] The Final Rule defines ''text messages'' as written communications sent from one telephone number to one or more telephone numbers by short message service (''SMS'') or multimedia messaging service (''MMS''). It can be difficult or cumbersome to transfer SMS and MMS messages to computers, storage devices, or storage media, and to maintain and access the messages on an ongoing basis. Therefore, the Commission believes that eliminating this requirement for Unregistered Members will reduce their recordkeeping burden by eliminating the time required to periodically

[2] 17 CFR 145.9.

[3] *See* Records of Commodity Interest and Related Cash or Forward Transactions, 79 FR 68140, 68144 (Nov. 4, 2014).

[4] *See* Adaptation of Regulations to Incorporate Swaps—Records of Transactions, 77 FR 75523 (Dec. 21, 2012) (the ''2012 Rule'').

[5] *Id.*

[6] Although the 2012 Rule required Unregistered Members to keep text messages, Commission staff granted Unregistered Members no-action relief from this requirement in May 2014 (*see* CFTC Staff Letter No. 14–72).

transfer these messages to computers, storage devices, or storage media, as well as the time required to periodically confirm the transfer and retention of the messages. The Commission estimates that Unregistered Members would spend approximately one-half hour per month preserving and maintaining text messages in the manner described above. The Commission estimates based upon select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

**4. Exclusion of CTAs From Requirement To Record Oral Communications**

Pursuant to the Final Rule, CTAs will no longer be required to record oral communications.[7] In the 2012 Rule, the Commission added the requirement that certain types of firms, including CTAs that are members of a DCM or of a SEF, record all oral communications that lead to the execution of a transaction. Under the Final Rule, CTAs that are members of a DCM or of a SEF no longer have to comply with this requirement, and they therefore no longer have to administer a recording program and maintain a recording infrastructure. The Commission estimates that these CTAs would spend approximately one-half hour per week administering a recording program and maintaining recording infrastructure. The Commission estimates that there are approximately 1,175 CTAs that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.[8]

**5. Form and Manner Requirements, in General**

Pursuant to the Final Rule, all records required to be kept under Regulation 1.35(a) must be kept in a form and manner which permit prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information. In addition, the Final Rule also states that all records, except records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward transactions, must be kept in a form and manner that allows for identification of a particular transaction. These new requirements replace the former requirement in the previous version of the rule that required records be ''identifiable and searchable by transaction.'' The Commission views these revised form and manner requirements as a clarification of the prior requirements. Accordingly, the revised form and manner requirements do not increase or decrease the information collection burden for market participants that are subject to Regulation 1.35(a).

The Commission estimates the burden of this collection of information as follows:

*Respondents/Affected Entities:* Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, and Members of a DCM or of a SEF.

*Estimated number of respondents:* 6,000.

*Estimated total annual burden on respondents:* 319,707 hours.

*Frequency of collection:* Ongoing.

**Authority:** 44 U.S.C. 3501 *et seq.*)

Dated: December 18, 2015.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2015–32417 Filed 12–23–15; 8:45 am]

**BILLING CODE 6351–01–P**

[7] Pursuant to CFTC Staff Letter Nos. 14–60, 14–147 and 15–65, Commission staff granted no-action relief to CTAs from the requirement to record oral communications.

[8] As of November 2015, there were approximately 2,350 CTAs registered with the Commission. For the purposes of this analysis, the Commission is conservatively estimating that half of registered CTAs are members of a DCM or of a SEF.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2014–OS–0063]**

### 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 January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Pentagon Facilities Parking Program; DD Form 1199; OMB Control Number 0704–0395.

*Type of Request*: Reinstatement, with change, of a previous approved collection for which approval has expired.

*Number of Respondents:* 4,200.

*Responses per Respondent:* 1.

*Annual Responses:* 4,200.

*Average Burden per Response:* 5 minutes.

*Annual Burden Hours:* 350.

*Needs and Uses:* The information collection requirement is necessary to administer the Pentagon, Mark Center, and Suffolk Building Vehicle Parking Program where individuals are allocated parking spaces, and to ensure that unless authorized to do so, parking permit applicants do not also receive the DoD National Capital Region Public Transportation fare subsidy benefit.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Requires to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, 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: December 21, 2015.

**Aaron Siegel,**

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

[FR Doc. 2015–32518 Filed 12–23–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2015–OS–0139]**

### 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 January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Report on Voluntary Military Education Programs Advertising and Marketing; OMB Control Number 0704–XXXX.

*Type of Request:* Emergency.

*Number of Respondents:* 10.

*Responses per Respondent:* 1.

*Annual Responses:* 10.

*Average Burden per Response:* 24.

*Annual Burden Hours:* 240.

*Needs and Uses:* The report on Voluntary Military Education Programs—Advertising and Marketing was requested in the FY14 Consolidated Appropriations Joint Explanatory Statement for the FY14 National Defense Authorization Act, page 31. Specifically, the report requested an assessment of the Department's oversight, evaluation, and enforcement of the DoD MOU referencing the provisions enacted to eliminate aggressive marketing targeting of Service members and their spouses to include a voluntary reporting of institutional data on advertising and marketing budgets. The data collected will be used to respond to the Congressional request.

*Affected Public:* Business or other for-profit.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, 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: December 18, 2015.

**Aaron Siegel,**

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

[FR Doc. 2015–32350 Filed 12–23–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Notice of Availability of the Draft Environmental Impact Statement for the Proposed Upper Llagas Creek Project Flood Protection Project in Santa Clara County, California

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Draft Environmental Impact Statement (Draft EIS) has been completed and is available for review and comment.

**DATES:** In accordance with the National Environmental Policy Act (NEPA), we have filed the Draft EIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 45-day review period for this document. It is the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the Draft EIS. Comments on the Draft EIS must be submitted to the address below under Further Contact Information and must be received no later than 5 p.m. Pacific Standard Time, Monday, February 8, 2016.

*Scoping:* A Scoping Meeting was held in Morgan Hill, California on October 25th, 2012, to gather information for the preparation of the Draft EIS. Public notices will be posted in Santa Clara County libraries, and emailed and air-mailed to current stakeholder lists with notification of the public meetings and requesting input and comments on issues that should be addressed in the Draft EIS.

A public meeting for this Draft EIS will be held on Wednesday, January 20, 2016 from 6:30 to 8:00 p.m. at the Morgan Hill Community and Cultural Center, El Toro Room, 17000 Monterey Street, Morgan Hill, California 95037. The purpose of this public meeting is to provide the public the opportunity to comment, either orally or in writing, on the Draft EIS. Notification of the meeting will be announced following same format as the Scoping Meetings announcements.

**ADDRESSES:** The Draft EIS can be viewed online at: *http://www.spn.usace.army.mil/missions/regulatory/regulatoryoverview.aspx*

Copies of the Draft EIS are also available for review at the following libraries:

Santa Clara Valley Library District, Morgan Hill Library, 660 West Main Ave., Morgan Hill, CA 95037

Santa Clara Valley Library District, Gilroy Library, 350 W. Sixth Street, Gilroy, CA 95020

San Jose Public Library, King Library, 150 E. San Fernando St., San Jose, CA 95112

**FOR FURTHER INFORMATION CONTACT:** Ms. Tori White, Acting Chief, Regulatory Division, U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, 16th Floor, San Francisco, California 94103–1398, Telephone: 415–503–6768, Fax: 415–503–6795.

**SUPPLEMENTARY INFORMATION:** The Santa Clara Valley Water District (SCVWD) proposes to construct flood conveyance features and to deepen and widen Upper Llagas Creek in Santa Clara County, California. The action area identified in the Draft EIS includes 6.1 miles of the mainstem of Llagas, 2.8 miles along West Little Llagas Creek; and, 3.4 miles along a tributary of Llagas Creek, known as East Little Llagas Creek. An additional 1.6 miles of new channel would also be constructed along West Little Llagas Creek to Llagas Creek. Additionally, wetland creation and stream restoration also requires construction in waters of the US and includes filling an abandoned quarry

pit, Lake Silveira to create wetlands and reestablishing flows in 2000 linear of feet of Llagas Creek. Construction activities would include channel modifications (*e.g.* widening and deepening), installation/replacement grade control structures, constructing or replacing culverts, installing maintenance roads and access ramps, upgrading bridge crossings and construction of a diversion channel. As proposed, the project would result in approximately 44.82 acres of temporary and 3.81 acres of permanent impacts to waters of the United States. The SCVWD would need to obtain a Department of the Army permit pursuant to Section 404 of the Clean Water Act from the USACE. This Draft Environmental Impact Statement evaluates the environmental effects of 5 alternatives including the, the Applicant's Proposed Action (Tunnel Alternative), NRCS Alternative, Culvert/Channel Alternative, Reach 6 Bypass Alternative, and the no action alternative.

Dated: December 18, 2015.

**Tori White,**

*Acting Chief, Regulatory Division.*

[FR Doc. 2015–32458 Filed 12–23–15; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Chief Information Officer, Department of Education.

**ACTION:** Notice of altered and deleted systems of records under the Privacy Act of 1974.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice to amend the systems of records entitled ''Debarment and Suspension Proceedings under Executive Order (EO) 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulation (FAR)'' (18–03–01)(Debarment and Suspension Proceedings system) and ''Education's Central Automated Processing System (EDCAPS)'' (18–03–02). The Department deletes two systems of records entitled ''Receivables Management System'' (18–03–03) and the ''Travel Manager System'' (18–03–05) from its existing inventory of systems of records subject to the Privacy Act.

For the Debarment and Suspension Proceedings system, this notice updates the system location; the authority for maintenance of the system; the routine uses of records maintained in the system; the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system (specifically the retention and disposal of system records); the safeguards that protect the records in the system; and the system managers and addresses.

For the EDCAPS system, this notice updates the system location; the categories of individuals covered by the system; the categories of records in the system; the authority for maintenance of the system; purposes of the system; the routine uses of records maintained in the system; the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; and the system managers and addresses.

The Department identifies the system of records ''Receivables Management System'' (18–03–03), as published in the **Federal Register** on June 4, 1999 (64 FR 30106, 30116–18) to be deleted because the records on individuals who are covered by this system of records are maintained in the Department's EDCAPS system of records (18–04–04). The Department also identifies the system of records ''Travel Manager System'' (18–03–05), as published in the **Federal Register** on February 7, 2002 (67 FR 5908–10), to be deleted because the Department migrated to the General Services Administration's (GSA's) Contracted Travel Services Program on October 2, 2006, and consequently the Department's system has been replaced by the GSA's Government wide system of records notice entitled ''Contracted Travel Services Program'' (GSA/GOVT–4), as published in the **Federal Register** on June 3, 2009 (74 FR 26700–702).

**DATES:** Submit your comments on this notice of altered and deleted systems of records on or before January 25, 2016.

The Department filed a report describing the alterations to the Debarment and Suspension Proceedings and the EDCAPS systems of records with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on [DRS/OGC WILL INSERT DATE TRANSMITTAL LETTERS ARE SENT]. The alterations to the Debarment and Suspension Proceedings and EDCAPS systems of records will become effective at the later date of (1) The expiration of the 40-day period for OMB review on [DRS WILL INSERT DATE 40 DAYS AFTER THE DATE TRANSMITTAL LETTERS ARE SENT], unless OMB waives 10 days of the 40–day review period for compelling reasons shown by the Department; or (2) January 25, 2016, unless the altered Debarment and Suspension Proceedings or EDCAPS systems of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the Debarment and Suspension Proceedings system to Philip A. Maestri, Director, Risk Management Service, Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Ave. SW., Washington, DC 20202–5970. If you prefer to send comments by email, use the following address: *comments@ed.gov.*

You must include the term ''Debarment and Suspension Proceedings'' in the subject line of your email.

Address all comments about the EDCAPS system to Greg Robison, Director, Financial Systems Services, Office of the Chief Information Officer (OCIO), U.S. Department of Education, 550 12th St. SW., PCP, Room 9150, Washington, DC 20202–1100. If you prefer to send comments by email, use the following address: *comments@ed.gov.*

You must include the term ''EDCAPS'' in the subject line of your email.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays. To inspect the public comments, contact the appropriate persons listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. To schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** For Debarment and Suspension Proceedings, Philip A. Maestri, Director, Risk Management Service, Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Ave. SW., Washington, DC 20202–5970. Telephone: (202) 245–8278.

For EDCAPS, Greg Robison, Director, Financial Systems Services, OCIO, U.S. Department of Education, 550 12th St. SW., PCP, room 9150, Washington, DC 20202–1100. Telephone: (202) 245–7187.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The Privacy Act requires the Department to publish in the **Federal Register** this notice of altered and deleted systems of records (5 U.S.C. 552a(e)(4). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifying information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number (SSN). The information about each individual is called a ''record,'' and the system, whether manual or computer based, is called a ''system of records.''

Whenever the Department makes a significant change to an established system of records, the Privacy Act requires the Department to publish a notice of an altered system of records in the **Federal Register** and to prepare and send a report to the Chair of the Committee on Oversight and Government Reform of the House of Representatives, the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, OMB. These reports are intended to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

A change to a system of records is considered to be a significant change that must be reported whenever an agency expands the types or categories of information maintained, significantly expands the number, types, or categories of individuals about whom records are maintained, changes the purpose for which the information is used, changes the equipment configuration in a way that creates substantially greater access to the records, or adds a routine use disclosure to the system.

DEBARMENT AND SUSPENSION PROCEEDINGS SYSTEM (18–03–01)

Since the last publication of the Debarment and Suspension Proceedings system of records in the **Federal Register** on June 4, 1999 (64 FR 30106, 30112–114), we have identified a number of technical changes that are needed to update and accurately describe the current system of records. Under EO 12549, Debarment and Suspension, executive departments and agencies participate in a system for debarment and suspension from programs and activities involving Federal financial or non-financial assistance and benefits. Debarment or suspension of a participant in a program by one agency has a Governmentwide effect. This system of records facilitates the performance by the Department of this statutory duty because it contains documents relating to debarment and suspension proceedings, including: Written referrals; notices of suspensions and proposed debarments; respondents' responses to notices and other communications between the Department and respondents; court documents, including indictments, information, judgments of conviction, plea agreements, prosecutorial offers of evidence to be produced at trial, pre-sentencing reports and civil judgments; intra-agency and inter-agency communications regarding proposed or completed debarments or suspensions; and records of any interim or final decisions, requests, or orders made by a deciding debarring or suspending official (DSO) or fact-finding DSO pursuant to EO 12549, the Drug-Free Workplace Act (41 U.S.C. 8101–06), and the FAR, 48 CFR subpart 9.4.

This notice alters the system of records to update: (1) The system locations to reflect the Department's decisions to move the general, non-procurement debarment and suspension records to the Grants Policy and Procedures Team, Risk Management Service, Office of the Deputy Secretary, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100 and to add the Office of Hearings and Appeals, Office of Management, U.S. Department of Education, 490 E. L'Enfant Plaza SW., Suite 2100A, Washington, DC 20202–4616, as a location of debarment and suspension records maintained on principals of institutions of higher education, principals of lenders, and principals of guarantee agencies; (2) the authority for maintenance of the system by inserting the correct CFR references (2 CFR parts 180 and 3485—OMB Guidelines and the Department's Regulations on Debarment and Suspension (Nonprocurement)) and 34 CFR part 84—Department's Regulations on the Requirements for Drug-Free Workplace (Financial Assistance); (3) the routine uses of records maintained in the system by adding a routine use to clarify that disclosures may be made in the course of the Department's debarment or suspension proceedings or in anticipation of such proceedings to any business entity, organization, individual, or the legal representative thereof who is involved in such proceedings; (4) the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system, specifically by updating the paragraph on storage to include electronic records and a Web-based portal that are maintained by the Department's Office of Hearings and Appeals, Office of Management, and by adding the following text in the paragraph on the retention and disposal of system records: ''Records relating to debarment and suspension actions under EO 12549 are retained in accordance with Department of Education Records Disposition Schedule No. 215, 'Analysis and Inspection (A & I) Records' Item 4(c)). These records are retained for eight years from the end of the fiscal year in which the case is closed, and then they are destroyed. Records relating to all other debarment and suspension actions are currently unscheduled, pending approval of applicable records retention schedules by the National Archives and Records Administration (NARA). These records will not be destroyed until applicable NARA-approved records retention schedules are in effect''; (5) the safeguards for system to include safeguards that protect electronic records maintained by the Office of Hearings and Appeals and the Office of Management; and (6) the system managers and their addresses to reflect needed updates.

EDUCATION'S CENTRAL AUTOMATED PROCESSING SYSTEM (EDCAPS) (18–04–04)

Since the last publication of the EDCAPS system of records in the **Federal Register** on June 4, 1999 (64 FR 30106, 30114–16), a number of changes have been identified that are needed to update and accurately depict the current state of the system of records. The Department must maintain adequate and auditable financial and management records associated with the fiscal operations of the Department and other entities with contracting authority that use EDCAPS. The EDCAPS system of records supports the Department in this effort by: Facilitating the collecting, processing, maintaining, transmitting, and reporting of data about financial events; supporting financial planning

and budgeting activities; accumulating and reporting cost information; and supporting the preparation of financial statements.

The changes in the notice for EDCAPS are numerous.

First, we are revising the system numbering and system location to reflect the renumbering of the system from 18–03–02 to 18–04–04 and to reflect the change in the office in charge of managing the system from the Office of the Chief Financial Officer to the Office of the Chief Information Officer and the changes in the locations of the Department's buildings.

Second, we are updating the paragraph in the EDCAPS notice describing the categories of individuals covered by the system to include:

- Peer reviewers.
- Individuals providing goods to the Department.
- Persons billed by the Department for materials and services (such as for Freedom of Information Act requests).
- Persons ordered by a court of law to pay restitution to the Department.
- Individuals who have received funds through the Rehabilitation Services Administration Scholarship program and who have not provided evidence of fulfilling their obligations under that program.
- Current and former Department employees who received overpayments and the overpayments have not been waived by the Department.
- Individuals who were overpaid or inappropriately paid under grant programs administered by the Department other than title IV of the Higher Education Act of 1965, as amended.
- Individuals against whom the Department has claims for Federal funds.

We are making these additions because the records on individuals who are covered by the Receivables Management System are maintained in EDCAPS and because OCIO is keeping peer reviewer information in EDCAPS.

Third, we are updating the paragraph in the EDCAPS notice describing the categories of records in the system to include: telephone number, a Taxpayer Identification Number (TIN), the Data Universal Numbering System (DUNS) Number provided by Dun & Bradstreet, date of birth, email address, and banking information. Some of these additions are items that were accidentally omitted from the original system of records notice, while others are additional records that were not collected when the original notice was published.

Fourth, we are updating the authority for maintenance of the EDCAPS system to include section 415 of the Department of Education Organization Act (P.L. 96–88, 20 U.S.C. 3475); 31 U.S.C. 3321 (note); 31 U.S.C. 3512 (including the note) and 3515; 31 U.S.C. 7504; 31 U.S.C. 902(a); EO 9397 (8 FR 16095) as amended by EO 13478 (73 FR 70239), and 31 U.S.C. 7701 (TIN); Statements of Federal Financial Accounting Standards issued by the Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget; and 31 U.S.C. 3711–3720E. The original notice omitted these authorities. We are deleting the statutory citation to 44 U.S.C. 301 in the former notice because its inclusion was erroneous.

Fifth, we are expanding the purposes of the EDCAPS system to ''maintain financial and management records associated with the fiscal operations of the Department and other entities with contracting authority that use EDCAPS.'' The purposes have been updated as well to include investigating complaints, updating information, correcting errors and investigating fraud, preventing improper payments, carrying out the receivables management function and safeguarding public funds, preparing financial statements and other financial documents, and determining qualifications of individuals for selection as grant application peer reviewers.

We are also updating the purposes of the Financial Management Software System module to include a description of system capabilities to support these activities that did not exist when the original EDCAPS notice was published.

We are updating the Contracts and Purchasing Support System description to include a reference to a commercial software product used to provide the procurement functionality.

Finally, we are removing the description of the Recipient System since the Recipient System has been merged with the Grants Management System (G5), which was formally called Grants Administration and Payment System (GAPS).

Sixth, we are updating the routine uses of records maintained in the system to include a number of uses that are a combination of both standard routine uses that are included in most System of Record Notices across the Department, and unique routine uses that are needed for EDCAPS to function, and are relevant only to EDCAPS. These additions will permit the disclosure of records:

- To OMB for purposes of the Credit Reform Act, which was enacted to require agencies to provide a more realistic assessment of the cost of U.S. Government direct loans and loan guarantees;
- For employee grievance, complaint, disciplinary, or competency determination proceedings;
- To labor organizations for purposes of exclusive representation or to an arbitrator to resolve disputes under a negotiated grievance procedure;
- For research purposes when the Department determines that an individual or organization is qualified to carry out specific research concerning functions or purposes related to the system of records;
- To the U.S. Department of the Treasury or the Federal Reserve Bank to facilitate payments to payees of the Department or to prevent improper payments;
- To the U.S. Department of the Interior to facilitate payroll preparation;
- To private collection companies and Federal agencies to ensure the Department is able to meet its fiduciary responsibilities related to collecting monies legally owed to the Department, which were routine uses of the Receivables Management System (18–03–03); and
- To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in EDCAPS 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 EDCAPS or other systems or programs, and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist the Department in responding to the suspected or confirmed compromise and in preventing, minimizing, or remedying such harm.

Seventh, we are updating the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system to include storage of data in hard copy and a computer database. We are also updating the description of safeguards to include additional security measures, including monitoring by security personnel and the certification and accreditation of the system's security posture. Further, we are updating the retention and disposal policy to comply with the General Records Schedule approved by the National Archives and Records Administration.

Eighth, we are updating the description of the system manager and the address of the system manager to reflect that there is only a single system manager.

Finally, we are updating the record source categories to add Federal, State, and local government agencies as entities from which the Department may receive records.

RECEIVABLES MANAGEMENT SYSTEM (18–03–03)

The Department identifies the system of records ''Receivables Management System'' (18–03–03), as published in the **Federal Register** on June 4, 1999 (64 FR

30106, 30116–18), to be deleted because the records on individuals who are covered by this system of records are maintained in the Department's EDCAPS system of records (18–04–04).

TRAVEL MANAGER SYSTEM (18–03–05)

The Department also identifies the system of records ''Travel Manager System'' (18–03–05), as published in the **Federal Register** on February 7, 2002 (67 FR 5908–10), to be deleted, because the Department migrated to the General Services Administration's (GSA's) Contracted Travel Services Program on October 2, 2006, and consequently the Department's system has been replaced by the GSA's Governmentwide system of records notice entitled ''Contracted Travel Services Program'' (GSA/GOVT–4), as published in the **Federal Register** on June 3, 2009 (74 FR 26700–702).

*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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the 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 by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 14, 2015.

**Danny A. Harris,**

*Chief Information Officer, Office of the Chief Information Officer.*

For the reasons discussed in the preamble, the Chief Information Officer of the U.S. Department of Education (Department) deletes, amends, or alters the following systems of records:

**DELETED SYSTEMS:**

| SYSTEM NUMBER | SYSTEM NAME |
|---|---|
| 18–03–03 ..... | Receivables Management System |
| 18–03–05 ..... | Travel Manager System |

**AMENDED SYSTEM:**

18–03–01

**SYSTEM NAME:**

Debarment and Suspension Proceedings under Executive Order (EO) 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulation (FAR).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

For records regarding debarment and suspension actions under:

*Federal Acquisition Regulation, 48 Code of Federal Regulations (CFR), part 9, subpart 9.4—Debarment:* Office of the Chief Financial Officer, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

*EO 12549—Debarment and Suspension (General):* Grants Policy and Procedures Team, Risk Management Service, Office of the Deputy Secretary, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

*EO 12549—Debarment and Suspension (For certified public accountants (CPAs) or principals of a CPA firm):* Audit Services, Office of Inspector General, U.S. Department of Education, 100 Penn Square East, Philadelphia, PA 19107–3323.

*EO 12549—Debarment and Suspension (For principals of institutions of higher education, principals of lenders, or principals of guarantee agencies):* Administrative Actions and Appeals Division, Office of Federal Student Aid, U.S. Department of Education, 830 First Street NE., Washington, DC 20202–5353 and Office of Hearings and Appeals, Office of Management, U.S. Department of Education, 490 E. L'Enfant Plaza SW., Suite 2100A, Washington, DC 20202–4616.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system covers principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended under either EO 12549, the Drug-Free Workplace Act, title IV of the Higher Education Act of 1965, as amended (HEA), or the Federal Acquisition Regulation. For the purposes of EO 12549, and the Drug-Free Workplace Act, the term ''principal'' is defined in the Department's regulations at 2 CFR 3485.995 and includes an officer, director, owner, partner, or other person who is in a position to handle Federal funds, or influence or control those funds or occupies a professional or technical position capable of substantially influencing the development or outcome of an activity required to perform a covered transaction. For purposes of transactions made under title IV of the HEA, the term ''principal'' also includes a third-party servicer and any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant. A ''participant'' is defined in 2 CFR 180.980 as any person who submits a proposal for, or who enters into, a covered transaction, including an agent or representative of a participant. A ''covered transaction'' is a transaction described in 2 CFR part 180, subpart B, and the Department's regulations in 2 CFR 3485.220. This system of records covers contractors who are undergoing debarment or suspension proceedings or who have been debarred or suspended. Contractors covered by this system of records are individuals who meet the definition of ''contractor'' under 48 CFR 9.403, including individuals who directly or indirectly submit offers for or are awarded, or may reasonably be expected to submit offers for or be awarded, a government contract, or who conduct business, or may reasonably be expected to conduct business with the Department as an agent or representative of another contractor. Finally, this system covers individuals receiving grants or contracts subject to requirements under the Drug-Free Workplace Act who are undergoing debarment or suspension proceedings or who have been debarred or suspended.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records contains documents relating to debarment and suspension proceedings, including: Written referrals, notices of suspensions and proposed debarments, respondents' responses to notices and other communications between the Department and respondents, court documents, including indictments, information, judgments of conviction, plea agreements, prosecutorial offers of evidence to be produced at trial, pre-sentencing reports and civil judgments, intra-agency and inter-agency communications regarding proposed or completed debarments or suspensions, and records of any interim or final decisions, requests, or orders made by a deciding debarring or suspending official (DSO) or fact-finding DSO

pursuant to EO 12549, the Drug-Free Workplace Act, and the FAR, 48 CFR subpart 9.4.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

EO 12549, Debarment and Suspension (3 CFR 1986 Comp., p. 189); EO 12689 (3 CFR 1989 Comp., p. 235); the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, title II, section 2455, 108 Stat. 3327 (31 U.S.C. 6101 note); 2 CFR part 180—the Office of Management and Budget Guidelines and 2 CFR part 3485; Departmental Directive for Nonprocurement Debarment and Suspension, Administrative Communications System Directive ODS: 1–101 (Directive); 20 U.S.C. 1082, 1094, 1221e–3, and 3474; the Drug-Free Workplace Act of 1988, as amended (41 U.S.C. 8101–8106); 34 CFR part 84—Department's Regulations on the Requirements for Drug-Free Workplace (Financial Assistance); and the Federal Acquisition Regulation, 48 CFR subpart 9.4, Debarment, Suspension, and Ineligibility.

**PURPOSE(S):**

Information contained in this system of records is used to: (1) Protect the Federal Government from the actions of individuals that constitute grounds for debarment or suspension or both under the Department's debarment and suspension regulations, the Department's Drug-Free Workplace regulations, or the FAR; (2) make decisions regarding debarments and suspensions; and (3) ensure that participants and Federal agencies give effect to debarment or suspension decisions rendered by the Department.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made case by case or, if the Department has complied with the requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Litigation or Alternative Dispute Resolution (ADR) Disclosure.*

(a) In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice (DOJ) has agreed or has been requested to provide or arrange for representation for the employee;

(iv) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to DOJ or attorneys engaged by the DOJ is relevant and necessary to judicial or administrative litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR and is compatible with the purposes for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to judicial or administrative litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(2) *Disclosure to the General Services Administration.* The Department makes information contained in this system of records available to the General Services Administration for inclusion in the System for Award Management (SAM). SAM incorporates all records from the Excluded Parties List System (EPLS), the prior record-keeping system for suspension and debarment information. This list may be accessed via the Internet at *www.sam.gov/portal/public/SAM.*

(3) *Disclosure to the Public.* The Department provides information to the public about individuals who have been debarred or suspended by the Department to enforce debarment and suspension actions.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(5) *Freedom of Information Act or Privacy Act Advice Disclosure.* In the event the Department deems it prudent or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act or the Privacy Act, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice.

(6) *Contract Disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records as a routine use to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Research Disclosure.* Where an appropriate official of the Department determines that an individual or organization is qualified to carry out specific research related to the functions or purposes of this system of records, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out the research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(9) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in this system has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or by another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist the Department in responding to the suspected or confirmed compromise and in preventing, minimizing, or remedying such harm.

(10) *Disclosure in the Course of the Department's Debarment or Suspension Proceedings or in Anticipation of Such Proceedings.* The Department may disclose records to any business entity, organization, or individual who is involved in the Department's debarment or suspension proceedings or who is anticipated to be involved in such proceedings, or to the legal representative thereof.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are kept in file folders in locked file cabinets. Electronic records are kept in a computer database and on a Web-based portal maintained by the Department.

**RETRIEVABILITY:**

Records are indexed by the names of the individuals and by docket numbers.

**SAFEGUARDS:**

All physical access to the sites where this system of records are maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee badge. Paper files are kept in locked file cabinets. Immediate access to these records is restricted to authorized staff. The computer database maintained by the Office of Hearings and Appeals, Office of Management, is accessible only to authorized persons and is password-protected and utilizes security hardware and software. The Web-based portal that is operated by the Office of Hearings and Appeals, Office of Management, however, is accessible to anyone with access to the Internet.

Access to records in this system is only available to authorized users. Management approves all access, roles and responsibilities. Users outside of the internal functional team have no access to personally identifiable information. Strict access to production and reporting databases is enforced. Intrusion detection, user recertification, and vulnerability scans are performed on access and databases.

**RETENTION AND DISPOSAL:**

Records relating to debarment and suspension actions under EO 12549 are retained in accordance with Department of Education Records Disposition Schedule (ED/RDS) Part 16, Item 4(c). These records are retained for eight years from the end of the fiscal year in which the case is closed and then destroyed. Records relating to all other debarment and suspension actions are currently unscheduled, pending approval of applicable records retention schedules by the National Archives and Records Administration (NARA). These records will not be destroyed until applicable NARA-approved records retention schedules are in effect.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Senior Procurement Executive, Office of the Chief Financial Officer, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

Director, Risk Management Service, Office of the Deputy Secretary, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

Non-Federal Audit Director, Office of Inspector General, U.S. Department of Education, 100 Penn Square East, Philadelphia, PA 19107–3323.

Director, Administrative Actions and Appeals Division, Office of Federal Student Aid, U.S. Department of Education, 830 First Street NE., Washington, DC 20202–5353.

Director, Office of Hearings and Appeals, Office of Management, U.S. Department of Education, 490 E. L'Enfant Plaza SW., Suite 2100A, Washington, DC 20202–4616.

**NOTIFICATION PROCEDURE:**

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must contact the system manager. Requests for notification about an individual record must meet the requirements of the regulations in 34 CFR 5b.5.

**RECORD ACCESS PROCEDURES:**

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure. Requests for access to an individual's record must meet the requirements of the regulations in 34 CFR 5b.5. Consistent with 5 U.S.C. 552a(d)(5), the Department retains the discretion not to disclose records to an individual during the course of a debarment or suspension proceeding against the individual.

**CONTESTING RECORD PROCEDURES:**

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Sources for records in this system include: Department employees involved in the management of grants, contracts, and agreements; the investigative inspection and audit files maintained by the Department's Office of Inspector General; other organizations or persons that may have relevant information regarding participants and their principals; and participants, principals, contractors, or other individuals undergoing or who have undergone debarment and suspension proceedings.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**AMENDED SYSTEM:**

18–04–04

**SYSTEM NAME:**

Education's Central Automated Processing System (EDCAPS).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Electronic Data Records: Dell System's Plano Technology Center, 2300 West Plano Parkway, Plano, TX 75075–8427 and Dell System's Florence Technology Center, 7190 Industrial Road, Florence, KY 41022–2908 (contractor).

See the Appendix at the end of this notice for additional system locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by the system include employees of the Department of Education (Department),

consultants, contractors, grantees, advisory committee members, peer reviewers, and other individuals receiving funds from the Department for performing services for and providing goods to the Department.

Other categories of individuals covered by the system include:

- Persons billed by the Department for materials and services such as Freedom of Information Act requests and computer tapes of statistical data.
- Persons ordered by a court of law to pay restitution to the Department.
- Individuals who have received funds through the Rehabilitation Services Administration (RSA) Scholarship program and who have not provided evidence of fulfilling their obligations under that program.
- Current and former Department employees who received overpayments and the overpayments have not been waived by the Department.
- Individuals who were overpaid or inappropriately paid under grant programs administered by the Department other than Title IV of the Higher Education Act of 1965, as amended.
- Claims against individuals, including orders by a court or other authority to make restitution, for the misuse of Federal funds in connection with any program administered by the Department.

Student loan repayment records and records maintained by the Department's Office of Hearings and Appeals in either its debt management tracking system or on its Web-based system displaying final agency decisions are not covered under this notice.

Although EDCAPS contains information about institutions associated with individuals, the purposes for which the Department collects and maintains information under this system of records, and its usage of this information, pertains only to individuals protected under the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in this system contain the individual's name and address, telephone number, Taxpayer Identification Number (TIN), the Data Universal Numbering System (DUNS) number provided by Dun & Bradstreet, Social Security number (SSN), date of birth, email address, banking information, eligibility codes, detailed and summary obligation data, reports of expenditures, and grant management data, including application and close-out information. Documents maintained in the system include, but are not limited to, activity logs, copies of checks, contracts, court orders, letters of notice, promissory notes, telephone logs, peer reviewer resumes, and related correspondence.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for maintenance of the system includes section 415 of the Department of Education Organization Act (P.L. 96–88, 20 U.S.C. 3475); 31 U.S.C. 3321 (note); 31 U.S.C. 3512 (including the note) and 3515; 31 U.S.C. 7504; 31 U.S.C. 902(a); Executive Order (EO) 9397 (8 FR 16095), as amended by EO 13478 (73 FR 70239), and 31 U.S.C. 7701 (TIN); Statements of Federal Financial Accounting Standards issued by the Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget; 31 U.S.C. 3711–3720E.

**PURPOSE(S):**

The purpose of EDCAPS is to maintain financial and management records associated with the fiscal operations of the Department and other entities with contracting authority that use EDCAPS.

Records are used for, but not limited to, the following:

- Managing grant and contract awards.
- Making payments.
- Accounting for goods and services provided and received.
- Enforcing eligibility requirements and conditions in awards and U.S. law relating to transactions covered by this system.
- Defending the Department in actions relating to transactions covered by this system.
- Investigating complaints.
- Updating information.
- Correcting errors, investigating fraud, and preventing improper payments.
- Performing the receivables management function and safeguarding public funds.
- Preparing financial statements and other financial documents.
- Determining qualifications of individuals for selection as grant application peer reviewers.

The EDCAPS financial management system consists of a suite of applications including:

*Financial Management Software System (FMSS)*

The FMSS module of EDCAPS is the Department's official general ledger. It is the central piece of the Department's integrated financial management system. FMSS includes functionality for budget planning and execution, funds control, receipt management, administrative payment management, loan servicing, and internal and external reporting. FMSS interfaces with a variety of other EDCAPS systems such as the Grants Management System (G5), Contracts and Purchasing Support System (CPSS), and eTRAVEL. The Travel Management System (TMS) is covered under an existing General Services Administration (GSA) Governmentwide system of records notice entitled ''Contracted Travel Services Program'' (GSA/GOVT–4).

*Grants Management System (G5)*

The purpose of G5 is to administer grants and cooperative agreements and record decisions related to grants, from planning through closeout, including disbursing funds to grant recipients for most Department programs and recording non-financial administrative actions involving grants under those programs. G5 records individual payments in real time, and summary payment data is posted to FMSS in a nightly batching process. Payment information is retrievable in G5 by DUNS number as required under Office of Management and Budget (OMB) guidance to agencies. The name, mailing address, and other characteristic data related to Federal grants or institutional loans are also maintained.

*Contract and Purchasing Support System (CPSS)*

CPSS supports the contract pre- and post-award process and purchasing. It interfaces with FMSS at the detail level for fund control, general ledger, accounts payable, and accounts receivable. A commercial software package is used to provide CPSS functionality.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of Education may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the requirements of the Privacy Act, under a computer matching agreement.

(1) *Litigation or Alternative Dispute Resolution (ADR) Disclosure.*

(a) In the event that one of the parties listed below is involved in litigation or ADR proceedings, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where

the Department of Justice (DOJ) has agreed to or has been requested to represent the employee;

(iv) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice (DOJ).* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR and is compatible with the purposes for which the records were collected, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR, and is compatible with the purposes for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to judicial or administrative litigation or ADR, and is compatible with the purposes for which the records were collected, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(2) *Disclosure to OMB for Credit Reform Act (CRA) Purposes.* The Department may disclose individually identifiable information maintained in this system of records to OMB as needed to fulfill CRA requirements.

(3) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose records in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: a grievance, a complaint, or a disciplinary or competency determination proceeding of another agency of the Federal government.

(4) *Labor Organization Disclosure.* Records under this routine use may be disclosed to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(5) *Research Disclosure.* Where an appropriate official of the Department determines that an individual or organization is qualified to carry out specific research related to the functions or purposes of this system of records, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out the research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to these records.

(6) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether the FOIA or the Privacy Act requires the disclosure of records, disclosure may be made to DOJ or OMB for the purpose of obtaining advice.

(7) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records as a routine use to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(8) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(9) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(10) *Payment Disclosure.* The Department may disclose records to the U.S. Department of the Treasury or the Federal Reserve Bank as necessary to facilitate payments to Departmental payees against the Department's funds or to prevent improper payments.

(11) *Payroll Disclosure.* The Department may disclose records to the U.S. Department of the Interior for employee payroll preparation.

(12) *Disclosure for Receivables Management.* The Department may disclose records to credit agencies and Federal agencies to verify the identity and location of the debtor. The Department may also make disclosures to credit agencies, educational and financial institutions, and various Federal, State, or local agencies to enforce the terms of a loan where disclosure is required by Federal law. Finally, the Department may also make disclosures of records under this routine use to the U.S. Department of the Treasury and other Federal agencies for debt servicing and collection.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in EDCAPS has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of EDCAPS or other systems or programs (whether maintained by the Department or by another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist the Department in responding to the suspected or confirmed compromise and in preventing, minimizing, or remedying such harm.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, TIN, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to

which these disclosures may be made is defined in 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 maintained on hard copy, magnetic tapes, and computer servers.

**RETRIEVABILITY:**

Records are indexed by name, or other individual identifier, and TIN. The records are retrieved by a manual or computer search by indices.

**SAFEGUARDS:**

All physical access to the sites of the Department and the Department's contractor, where this system of records is maintained, are controlled and monitored by security personnel. Direct access to the computer system employed by the Department is restricted to authorized Department staff performing official duties. Authorized staff members are assigned passwords that must be used for access to computerized data. Also, an additional password is necessary to gain access to the system. The system-access password is changed frequently. The Department's information system's security posture has been certified and accredited in accordance with applicable Federal standards.

**RETENTION AND DISPOSAL:**

Records in EDCAPS are retained in accordance with Department of Education Records Disposition Schedule ED 254 (N1–441–11–001).

**SYSTEM MANAGER(S) AND ADDRESS:**

The EDCAPS manager is the Director, Financial Systems Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

**NOTIFICATION PROCEDURE:**

If an individual wishes to determine whether a record pertaining to the individual is in the system of records, he or she should contact the appropriate system manager. Requests by an individual for notification must meet the requirements in the regulations in 34 CFR 5b.5.

**RECORD ACCESS PROCEDURES:**

If an individual wishes to gain access to a record in this system, he or she should contact the appropriate system manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements in the regulations in 34 CFR 5b.5.

**CONTESTING RECORD PROCEDURES:**

If an individual wishes to change the content of a record pertaining to the individual that is contained in the system of records, he or she should contact the appropriate system manager with the information described in the notification procedure, identify the specific items requested to be changed, and provide a justification for such change. A request to amend a record must meet the requirements in the regulations in 34 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from electronic or paper versions of applications seeking Department contracts, grants, or loans at the time of application. Information is also obtained from Department program offices, employees, consultants, Federal, State, and local government agencies, and other entities performing services for the Department.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Appendix to 18–04–04

The Financial Management Software System, the Contracts and Purchasing Support System, and the Grants Management System (G5) are all maintained by the Financial Systems Services, Office of the Chief Information Officer, U.S. Department of Education, 550 12th St. SW., Washington, DC 20202–1100.

All locations of the U.S. Department of Education. For information about these locations see *http://www2.ed.gov/about/contacts/gen/index.html.*

[FR Doc. 2015–32501 Filed 12–23–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Captioned and Described Educational Media

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

*Overview Information:*

Educational Technology, Media, and Materials for Individuals with Disabilities—Captioned and Described Educational Media Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327N

Dates:

*Applications Available:* December 24, 2015.

*Deadline for Transmittal of Applications:* February 22, 2016.

*Deadline for Intergovernmental Review:* April 22, 2016.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to students with disabilities in a timely manner.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(c) and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1474(c) and 1481(d)).

*Absolute Priority:* For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Educational Technology, Media, and Materials for Individuals with Disabilities—Captioned and Described Educational Media.*

*Background:*

Section 674(c) of the IDEA requires, in part, that the Secretary of Education support video description, open captioning, and closed captioning that is appropriate for use in the classroom setting, of (a) television programs; (b) videos; and (c) other materials, including programs and materials associated with new and emerging technologies.

The need to support captioning and video description that is appropriate for use in the classroom setting continues to grow. The National Center for Educational Statistics reports that, in 2009, 69 percent of teachers and students used a computer in the classroom during instructional time (U.S. Department of Education, 2010). Students who were once banned from bringing cell phones and other devices to school are now encouraged to ''Bring Your Own Device'' (BYOD) (Atkeson,

2014; Chadband, 2012). Technologies (such as video streaming, digital video recording, digital image processing, and other forms of multimedia) are becoming a more integral part of instructional practice and are replacing older and less adaptable media sources, such as compact discs (CDs) and digital video discs (DVDs). In order to improve educational outcomes and ensure college- and career-readiness for children with hearing or vision loss, it is critical for them to access educational media by utilizing captioning and video description technologies.

Multimedia and other new and emerging technologies are generally not accessible to students who have hearing or vision impairments because only a small percentage of educational multimedia used in the classroom is captioned or described. Federal requirements for captioning and video description do not apply to many forms of media used specifically in the classroom, even with the expansion of these requirements included in the Twenty-First Century Communications and Video Accessibility Act of 2010. (See *www.fcc.gov/guides/21st-century-communications-and-video-accessibility-act-2010* for further information.)

The ongoing challenge of ensuring that educational materials in the classroom are accessible to students who have hearing or vision impairments extends to a variety of critical content areas, including science, technology, engineering, and mathematics (STEM) and Spanish language materials. STEM materials are often not in accessible formats, which creates a significant barrier to participation for eligible students who want to study in these critical areas. Likewise, our experience shows that few Spanish language materials are captioned or described, which likewise places unnecessary barriers between eligible students who speak Spanish and a great many instructional materials for the classroom.

In the past, Federal funds were used to purchase the rights to educational films and videos in order to caption and describe media and make it available to eligible users with disabilities. However, recently, the national broadcast television network program providers and Television Access grantees have made some accessible educational television programs available at no cost and available on-demand to children with disabilities (U.S. Department of Education, March 16, 2015). As a result, all media will be secured from program providers at no cost to the project. In exchange, the project will return captioned and described files to the program providers. This cost-saving partnership will ensure that additional Federal funds are available to caption and describe more media and that the media is made available to eligible users, on-demand, via computers and hand-held devices such as tablets and cell phones.

Captioning and description services funded under this priority are required to keep pace with advancements in new and emerging forms of media and technologies, address STEM content, and also address the needs of students who speak Spanish.

*Priority:*

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of an Accessible Learning Center (Center) that will oversee the selection, acquisition, captioning, video description, and distribution of educational media through a free loan service for eligible users. We define eligible users as students, including English learners, in early learning and kindergarten through grade 12 (K–12) classroom settings who have hearing or vision impairments and individuals, such as teachers, parents, and paraprofessionals, who are directly involved in these students' early learning or K–12 classroom instruction.

The Center will develop procedures to identify educational media that meet the educational needs of eligible users, including English learners, in early learning and K–12 classroom settings; make arrangements for the media to be captioned and described; and establish strategies for the free distribution to eligible users. Some of the activities and procedures must focus on selecting titles geared toward improving early learning outcomes for preschool users and using technologies, such as video streaming and other forms of multimedia, to reach eligible users in rural and high-need schools.

Media must be made available at no cost in Spanish for eligible users who are learning English and live in households where Spanish is the dominant language. Access to high-quality instructional media in the STEM academic subjects must be provided. The project must collaborate with the Television Access grantees and the national broadcast television network program providers to make accessible educational television programs available at no cost to the project and available on-demand to eligible users. The process of distribution through the loan service must include making the educational media available through restricted online access for eligible users who are accessing the media via public computers and hand-held devices such as tablets and cell phones.

To be considered for funding under this priority, the applicant must meet the application requirements contained in this priority. The project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

*Application Requirements.* An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

**Note:** The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.osepideasthatwork.org/logicModel/index.asp.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the Office of Special Education Programs (OSEP) project officer during each subsequent year of the project period.

(2) A three-day project directors' meeting in Washington, DC, during each year of the project period.

(3) A two-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(e) A line item in the proposed budget for an annual set-aside of five percent of the annual grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP project officer, the Center must reallocate any remaining funds from this annual set-aside

no later than the end of the third quarter of each budget period.

*Project Activities.* To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

(a) Develop and implement a plan for operating a free online media loan service distribution system to make it possible for eligible users to easily borrow media from the loan service or to secure restricted access, on-demand, to media via computers and hand-held devices such as tablets and cell phones;

(b) Establish and make available computerized registration and application procedures, accessible via the Internet, that will be used to register eligible users for media access, deliver the captioned and described media material, and track and record consumer feedback and usage information;

(c) Implement strategies and procedures for identifying and prioritizing educational media that are not currently readily accessible to students, but are appropriate for eligible users attending early learning programs and elementary and secondary schools, including English learners, that meet the educational needs of those students;

(d) Select media to closely match the educational needs of eligible users, taking into account the media most commonly used in school districts and early learning programs across the Nation;

(e) Implement a plan to recommend media to the OSEP Project Officer for review;

(f) Make arrangements with program producers and distributors for the Center to acquire (at no cost) the rights to caption, describe, and distribute selected media, including distribution in alternate formats, such as video streaming;

(g) Develop strategies and procedures for identifying, prioritizing, and securing the rights (at no cost) to previously captioned and described children's television programs that are appropriate for eligible users, including English learners, that meet the educational needs of those students and continue to make those programs available through this free loan service on-demand;

(h) For media that has been secured but not previously captioned or described, prepare quality captions and descriptions, taking into account the grade or developmental level of the material, as well as the age and vocabulary level of the likely target audience;

(i) Ensure that 25 percent of the materials to be captioned or described are materials in STEM fields;

(j) Ensure that 25 percent of the media acquired annually is captioned and described in Spanish at no cost for eligible users who are learning English and live in households where Spanish is the dominant language;

(k) Develop and implement quality control standards and procedures for media after it has been captioned and described;

(l) Provide captioned and described files to producers and distributors so that they are able to continue to make the media directly accessible to interested parties beyond the eligible users who will be served under this program;

(m) Provide free-of-charge disk copies of media, if requested by eligible users, in order to reach children with hearing or vision impairments in rural settings or in schools with limited broadband support;

(n) Identify and, as appropriate, utilize alternate delivery methods and vehicles for media access, as new and emerging technologies become available for classroom use;

(o) Prepare, update, and utilize an online catalog listing all captioned and described media available under this project as they become available;

(p) Maintain a Web site that meets government or industry-recognized standards for accessibility;

(q) Establish and maintain a stakeholder panel of at least seven members, which shall meet annually, and include video producers and distributors, captioning and description service providers, parents and families of students with hearing or vision loss, public and private school administrators, and other educational personnel. This panel must provide feedback to the project regarding the usefulness of program activities and services, taking into consideration the input from consumers, and review the Center's media acquisition, captioning, description, and distribution process in order to ensure maximum effectiveness of the project;

(r) Develop and maintain a comprehensive online searchable database containing information related to the availability of captioned and described educational media, information regarding the captioned and described media loan service, requirements governing the use of captioned and described media available from the loan service, and a list of captioning and description service providers. In addition, the project shall maintain a clearinghouse of information on the subject of captioning and description for use by consumers, agencies, corporations, businesses, schools, and other interested stakeholders;

(s) Develop strategies and use technologies for improving the Center's effectiveness by replacing out-of-date media with media containing more current information (where appropriate);

(t) Use and upgrade technologies to caption and describe selected media as newer technologies emerge;

(u) Select media that are intended to improve early learning outcomes for preschool children who are eligible users; and

(v) Develop and implement strategies to reach eligible users attending rural and high-need schools.

*Fourth and Fifth Years of the Project:*

In deciding whether to continue funding this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This intensive review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to an increased number of available accessible educational media for students with hearing or vision impairments.

*References:*

Atkeson, S. (2014). N.Y.C. Schools to Open Doors to Student Cellphones. Education Week, October 28, 2014. Retrieved from *http://www.edweek.org/ew/articles/2014/10/29/10cellphone.h34.html.*

Chadband, E. (2012). Should Schools Embrace ''Bring Your Own Device''? NEA Today, July 19, 2012. Retrieved from *http://NEAToday.org/2012/07/19/should-schools-embrace-bring-your-own-device/.*

U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics. (2010). *Teachers' Use of Educational Technology in U.S. Public Schools: 2009* (NCES 2010–040). Retrieved from *http://nces.ed.gov/fastfacts/display.asp?id=46.*

U.S. Department of Education. (2015, March 16). Video-on-Demand Children's TV Programming Now Accessible for Thousands of Students with Visual or Hearing Disabilities [Press release]. Retrieved from *www.ed.gov/news/press-releases/video-demand-children%E2%80%99s-tv-programming-now-accessible-thousands-students-visual-or-*

*hearing-disabilities.*

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1474 and 1481.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* The Administration has requested $28,047,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2016, of which we intend to use an estimated $2,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

*Maximum Award:* We will reject any application that proposes a budget exceeding $2,000,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months with an optional additional 24 months based on performance. Applications must include plans for both the 36-month award and the 24-month extension.

## III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs), including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Eligible Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants only to entities it has identified in an approved application.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding under this program must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327N.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirements do not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirements do apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section or if you apply standards other than those specified in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: December 24, 2015.

Deadline for Transmittal of Applications: February 22, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 22, 2016.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Captioned and Described Educational Media competition, CFDA number 84.327N, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Captioned and Described Educational Media competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327N).

**Please note the following:**

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through

Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., Room 5162, Potomac Center Plaza, Washington, DC 20202–2600. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the

application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327N), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327N), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the

Secretary establishes a data collection period.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities Program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, contribute to improving outcomes for children with disabilities, and generate evidence of validity and availability to appropriate populations. Projects funded under this competition are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

**VII. Agency Contact**

For Further Information Contact: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., Room 5162, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7434.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5037, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

*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 PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 21, 2015.

**Michael K. Yudin,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2015–32508 Filed 12–23–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2015–ICCD–0144]**

### Agency Information Collection Activities; Comment Request; Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs

**AGENCY:** Office of Postsecondary Education (OPE), 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 February 22, 2016.

**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–0144. 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 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Nofertary Fofana, 202–502–7533.

**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:* Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs.

*OMB Control Number:* 1840–0777.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local and Tribal Governments.

*Total Estimated Number of Annual Responses:* 127.

*Total Estimated Number of Annual Burden Hours:* 1,270.

*Abstract:* The Annual Performance Report for Partnership and State Projects for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) is a required report that grant recipients must submit annually. The purpose of this information collection is for accountability. The data is used to report on progress in meeting the performance objectives of GEAR UP, program implementation, and student outcomes. The data collected includes budget data on Federal funds and match contributions, demographic data, and data regarding services provided to students.

Dated: December 18, 2015.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2015–32337 Filed 12–23–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2015–ICCD–0120]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program General Forbearance Request

**AGENCY:** Federal Student Aid (FSA), 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 January 25, 2016.

**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–0120. 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 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

**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:* William D. Ford Federal Direct Loan Program General Forbearance Request.

*OMB Control Number:* 1845–0031.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 2,188,770.

*Total Estimated Number of Annual Burden Hours:* 175,102.

*Abstract:* The Department of Education is requesting a revision of the currently approved Direct Loan General Forbearance Request form information collection. We are revising the current Direct Loan form to include the FFEL and Perkins Loan programs making it easier for borrowers to request this action. The revised form includes formatting changes and wording enhancements for clarity.

Dated: December 21, 2015.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2015–32434 Filed 12–23–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### President's Council of Advisors on Science and Technology

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of Partially-Closed Meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** January 15, 2016, 8:30 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting will be held at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC in the Lecture Room.

**FOR FURTHER INFORMATION CONTACT:** Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Ms. Jennifer Michael at *jmichael@ostp.eop.gov,* (202) 395–2121. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of

science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

*Type of Meeting:* Open and Closed.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 15, 2016 from 8:30 a.m. to 12:00 p.m.

*Open Portion of Meeting:* During this open meeting, PCAST is scheduled to discuss its studies on technology and the future of cities as well as technology for aging Americans. They will also hear from speakers who will be remarking on forensics and from a presenter who will talk about the World Radio communication conference. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

*Closed Portion of the Meeting:* PCAST may hold a closed meeting of approximately one hour with the President on January 15, 2016, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

*Public Comments:* It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 15, 2016 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

*Oral Comments:* To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. Eastern Time on January 08, 2016. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

*Written Comments:* Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on January 11, 2016 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

*Meeting Accommodations:* Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on December 18, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015–32441 Filed 12–23–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Preferred Alternative for Certain Quantities of Plutonium Evaluated in the *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement*

**AGENCY:** National Nuclear Security Administration, U.S. Department of Energy.

**ACTION:** Notice of Preferred Alternative.

**SUMMARY:** The U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) is announcing its Preferred Alternative for the disposition of certain quantities of surplus plutonium evaluated in the *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (Final SPD Supplemental EIS) (DOE/EIS–0283–S2, April 2015). Among the potential actions considered in the Final SPD Supplemental EIS, DOE/NNSA analyzed the potential environmental impacts for the disposition of 13.1 metric tons (14.4 tons) of surplus plutonium for which a disposition path is not assigned, including 7.1 metric tons (7.8 tons) of plutonium from pits that were declared excess to national defense needs and 6 metric tons (6.6 tons) of surplus non-pit plutonium. With regard to the 6 metric tons (MT) of surplus non-pit plutonium, DOE/NNSA's Preferred Alternative is to prepare this plutonium for eventual disposal at the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico, a geologic repository for disposal of Transuranic (TRU) [1] waste generated by atomic energy defense activities. DOE/NNSA may issue a Record of Decision (ROD), containing its decision(s) for disposition of this quantity of material, no sooner than 30 days from the date of publication of this notice in the **Federal Register**.

**ADDRESSES:** A copy of the Final SPD Supplemental EIS may be obtained by contacting: Ms. Sachiko McAlhany, NEPA Document Manager, SPD Supplemental EIS at *spdsupplementaleis@leidos.com.* The Final SPD Supplemental EIS and its Notice of Availability can be viewed at *http://nnsa.energy.gov/nepa/spdsupplementaleis* or on the DOE NEPA Web site at *http://energy.gov/nepa/nepa-documents.*

**FOR FURTHER INFORMATION CONTACT:** For further information on the Final SPD Supplemental EIS, contact Ms. Sachiko McAlhany as listed in **ADDRESSES**. For general information regarding the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0103, Telephone 202–586–4600 or leave a message at 1–800–472–2756, Email: ask *NEPA@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

In the *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (DOE/EIS–0283–S2, April 2015), DOE/NNSA

[1] Transuranic (TRU) waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

analyzed the potential environmental impacts for the No Action Alternative and four action alternatives for disposition of 13.1 metric tons (MT) of surplus plutonium, of which the 6 MT of non-pit plutonium is a subset (Final SPD Supplemental EIS Summary, figure S–7). The four action alternatives that are applicable to the surplus non-pit plutonium are described in section S.9.2 of the Final SPD Supplemental EIS.

The scope of this notice pertains only to the 6 MT of surplus non-pit plutonium for which a disposition path is not assigned. DOE/NNSA has no Preferred Alternative, at this time, for other potential actions considered in the Final SPD Supplemental EIS. Specifically, DOE/NNSA has no Preferred Alternative for the disposition of the remaining 7.1 MT of surplus plutonium from pits, nor does it have a Preferred Alternative among the pathways analyzed for providing the capability to disassemble surplus pits and convert the plutonium from pits to a form suitable for disposition.

**Preferred Alternative for Non-Pit Plutonium**

DOE/NNSA's Preferred Alternative with regard to the disposition of 6 MT of surplus non-pit plutonium is to prepare this plutonium for eventual disposal at WIPP in Carlsbad, New Mexico, a geologic repository for disposal of TRU waste generated by atomic energy defense activities. This would allow the DOE/NNSA to continue progress on the disposition of surplus weapon usable plutonium in furtherance of the policies of the United States to ensure that surplus plutonium is never used in a nuclear weapon, and to remove surplus plutonium from the State of South Carolina. Surplus non-pit plutonium would be prepared and packaged at the Savannah River Site (SRS) using H-Canyon/HB-line and/or K-Area facilities to meet the WIPP waste acceptance criteria and all other applicable regulatory requirements and would be temporarily stored in E-Area at SRS until shipped. Shipments of this surplus plutonium to WIPP would not commence until WIPP is fully operational, and would be placed in the appropriate place in any queue of material to be shipped to WIPP.

DOE/NNSA may issue a ROD containing its plan for disposition of the 6 MT of surplus non-pit plutonium analyzed in Final SPD Supplemental EIS no sooner than 30 days from the date of publication of this notice in the **Federal Register**.

Issued at Washington, DC on December 18, 2015.

**Frank G. Klotz,**

*Administrator, National Nuclear Security Administration.*

[FR Doc. 2015–32440 Filed 12–23–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Swan Lake North Hydro LLCProject No. 13318–003; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Unconstructed major project.

b. Project No.: 13318–003.

c. Date filed: October 28, 2015.

d. *Applicant:* Swan Lake North Hydro LLC.

e. *Name of Project:* Swan Lake North Pumped Storage Hydroelectric Project.

f. *Location:* Approximately 11 miles northeast of the city of Klamath Falls, Klamath County, Oregon. The proposed project boundary would include about 730 acres of federal land managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Joe Eberhardt, EDF-Renewable Energy, 1000 SW Broadway Ave., Ste. 1800, Portland, OR 97205; phone: (503) 889–3838.

i. *FERC Contact:* Dianne Rodman, *Dianne.rodman@ferc.gov;* phone: (202) 502–6077.

j. Deadline for filing motions to intervene and protests: February 16, 2016.

The Commission strongly encourages electronic filing. Please file filing motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13318–003.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would be a closed-loop system using groundwater for initial fill and consist of the following new facilities: (1) A 7,972–foot-long earthen embankment forming a geomembrane-lined upper reservoir with a surface area of 64.21 acres and a storage capacity of 2,568 acre-feet at a maximum surface elevation of 6,135 feet above mean sea level (msl); (2) a 8,003-foot-long earthen embankment forming a geomembrane-lined lower reservoir with a surface area of 60.14 acres and a storage capacity of 3,206 acre-feet at a maximum surface elevation of 4,457 feet msl; (3) a 500-foot-long, rip-rap lined trapezoidal spillway built into the crest of each embankment; (4) a 0.5-percent slope perforated polyvinyl chloride tube of varying diameter and accompanying optical fiber drainage system designed to detect, collect, and monitor water leakage from the reservoirs; (5) a 25-inch-diameter bottom outlet with manual valve for gravitational dewatering of the lower reservoir; (6) an upper intake consisting of a bell mouth, 38.6-foot-wide by 29.8-foot-long inclined screen, head gate, and 13.8-foot-diameter foundational steel pipe; (7) a 36.5-foot-diameter, 9,655-foot-long steel high-pressure penstock from the upper reservoir to the powerhouse that is predominantly above ground with a 14-foot-long buried segment; (8) three 9.8-foot-diameter, 1,430-foot-long steel low-pressure penstocks from the lower reservoir to the powerhouse that are predominantly above ground with a 78-foot-long buried segment ; (9) a partially-buried powerhouse with three 131.1-megawatt (MW) reversible pump-turbine units with a total installed capacity of 393.3 MW; (10) a 32.8 mile, 230-kilovolt above-ground transmission line interconnecting to an existing non-project substation; (11) approximately 10.7 miles of improved project access road; (12) approximately 3.4 miles of new permanent project access road; (13) approximately 8.3 miles of temporary project access road; and (14) appurtenant facilities. The project would generate about 1,187 gigawatt-hours annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the

''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32405 Filed 12–23–15; 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:* ER11–4081–003.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2015–12–18 RAR Compliance Filing to be effective 10/1/2012.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5211.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER15–2101–003.

*Applicants:* Golden West Power Partners, LLC.

*Description:* Compliance filing: Notice of Change in Status of Golden West Power Partners, LLC to be effective 9/1/2015.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5120.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–565–000.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

*Description:* § 205(d) Rate Filing: 2015–12–18_SA 2878 ATXI–AIC Construction Agreement (Faraday Substation) to be effective 12/18/2015.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5118.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–566–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 767 1st Rev—NITSA with Basin Electric Power Cooperative to be effective 3/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5130.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–567–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 642 2nd Rev—NITSA with General Mills Operations to be effective 3/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5137.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–568–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: FMPA NITSA Amendment-OATT SA No. 148 to be effective 1/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5173.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–569–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 760 1st Rev—NITSA with Beartooth Electric Cooperative to be effective 3/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5186.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–570–000.

*Applicants:* Tucson Electric Power Company.

*Description:* Compliance filing: Order No. 784 Compliance Filing to be effective 2/17/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5194.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–571–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 312 8th Rev—NITSA with Southern Montana to be effective 3/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5195.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–572–000.

*Applicants:* UNS Electric, Inc.

*Description:* Compliance filing: Order No. 784 Compliance Filing to be effective 2/17/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5196.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–573–000.

*Applicants:* UniSource Energy Development Company.

*Description:* Compliance filing: Order No. 784 Compliance Filing to be effective 2/17/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5197.

*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–574–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 605 5th Rev—NITSA with Bonneville Power Administration to be effective 3/1/2016.

*Filed Date:* 12/18/15.

*Accession Number:* 20151218–5199.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–575–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 305 7th Rev—NITSA with Stillwater Mining Company to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5212.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–576–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 666 3rd Rev—NITSA with Suiza Dairy to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5214.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–577–000
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* § 205(d) Rate Filing: OATT Amendment and RS—Consolidated Method of Accounting to be effective 9/9/2010.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5218.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–578–000
*Applicants:* Duke Energy Florida, LLC.
*Description:* § 205(d) Rate Filing: RS—Consolidated Method of Accounting to be effective 1/1/2014.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5222.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER16–579–000.
*Applicants:* Duke Energy Progress, LLC.
*Description:* § 205(d) Rate Filing: RS—Consolidated Method of Accounting to be effective 4/29/2013.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5225.
*Comments Due:* 5 p.m. ET 1/8/16.

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: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32400 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Half-Day Closing

Pursuant to Executive Order of President Barack Obama, all executive departments and other agencies of the Federal government shall be closed for the last half of the scheduled workday on Thursday, December 24, 2015, the day before Christmas Day.

In accordance with section 385.2007 of the Commission's Rules, 18 CFR 385.2007, filings and documents due to be filed on Thursday, December 24, 2015, will be accepted as timely on the next official business day.

Dated: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32404 Filed 12–23–15; 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 rate filings:

*Docket Numbers:* ER10–1355–004.
*Applicants:* Southern California Edison Company.
*Description:* Market-Based Rate Triennial Filing for Southwest Region of Southern California Edison Company.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5277.
*Comments Due:* 5 p.m. ET 2/16/16.

*Docket Numbers:* ER13–1928–008.
*Applicants:* Duke Energy Carolinas, LLC, Duke Energy Progress, LLC.
*Description:* Compliance filing: Order No. 1000 Interregional SERTP MISO Filing to be effective 1/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5159.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER13–1930–007.
*Applicants:* Louisville Gas and Electric Company.
*Description:* Compliance filing: Order No. 1000 Interregional SERTP MISO Compliance to be effective 1/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5189.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER13–1940–008.
*Applicants:* Ohio Valley Electric Corporation.
*Description:* Compliance filing: Compliance Filing for SERTP and MISO M–2 to be effective 1/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5166.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER13–1941–007.
*Applicants:* Alabama Power Company.
*Description:* Compliance filing: Order No. 1000 Third Interregional Compliance Filing—SERTP-MISO Seam to be effective 1/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5191.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER14–2882–002.
*Applicants:* The Empire District Electric Company.
*Description:* Compliance filing: Compliance Filing Revising Protocols to be effective 4/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5150.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER15–356–004; ER15–357–004; ER12–2570–010; ER13–618–009.
*Applicants:* Allegheny Ridge Wind Farm, LLC, Aragonne Wind LLC, ArcLight Energy Marketing, LLC, Buena Vista Energy, LLC, Caprock Wind LLC, Chief Conemaugh Power, LLC, Chief Keystone Power, LLC, GSG, LLC, Kumeyaay Wind LLC, Mendota Hills, LLC, Panther Creek Power Operating, LLC, Westwood Generation, LLC.
*Description:* Supplement to November 25, 2015 Notice of Non-Material Change in Status of Chief Conemaugh Power, LLC, et. al.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5051.
*Comments Due:* 5 p.m. ET 1/8/16.

*Docket Numbers:* ER15–2510–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Report Filing: Wisconsin Electric Refund Report in ER15–2510 and ER15–2511 to be effective N/A.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5204.
*Comments Due:* 5 p.m. ET 1/7/16.

*Docket Numbers:* ER16–544–000.
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original Service Agreement No. 4316 (Z1–086 ISA); Cancellation of SA No. 3886 to be effective 11/18/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5152.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–545–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* § 205(d) Rate Filing: Amend. No. 3 to NVE ABAOA to be effective 12/18/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5190.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–546–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* § 205(d) Rate Filing: 2016 SDGE RS Update to Transmission Owner Tariff to be effective 1/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5192.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–547–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 31 14th Rev—NITSA with ConocoPhillips Company to be effective 3/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5195.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–548–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 32 6th Rev—NITSA with Colstrip Steam Electric Station to be effective 3/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5197.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–549–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 35 3rd Rev—NITSA with The Town of Philipsburg to be effective 3/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5198.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–550–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* § 205(d) Rate Filing: 2016 SDGE TRBAA TACBAA update to Transmission Owner Tariff Filing to be effective 1/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5199.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–551–000.
*Applicants:* ISO New England Inc.
*Description:* § 205(d) Rate Filing: Forward Capacity Market Retirement Reforms to be effective 2/16/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5200.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–552–000.
*Applicants:* Consumers Energy Company.
*Description:* § 205(d) Rate Filing: Notice of Succession to be effective 12/1/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5207.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–553–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* Baseline eTariff Filing: SDGE Merchant OM Agreement-Baseline Filing to be effective 12/17/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5228.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–554–000.
*Applicants:* Nevada Power Company.
*Description:* Initial rate filing: Rate Schedule No. 151 NPC with SDGandE RS 100 Concurrence to be effective 12/18/2015.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5229.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–555–000.
*Applicants:* Trans Bay Cable LLC.
*Description:* § 205(d) Rate Filing: TRBAA Filing to be effective 1/1/2016.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5232.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–556–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* Initial rate filing: SDGE Merchant OM Agreement to be effective 12/18/2015.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5000.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–557–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* Petition for Approval of Disposition of Proceeds of Penalty Assessments of California Independent System Operator Corporation.
*Filed Date:* 12/17/15.
*Accession Number:* 20151217–5271.
*Comments Due:* 5 p.m. ET 1/7/16.
*Docket Numbers:* ER16–558–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 243 9th Rev—NITSA with CHS Inc. to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5058.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–559–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 290 7th Rev—NITSA with Oldcastle Materials Cement Holdings to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5059.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–560–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 304 9th Rev—NITSA with Barretts Minerals to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5060.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–561–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revisions to OATT Schedule 9—CAPS Funding Proposal to be effective 3/1/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5064.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–562–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revised Service Agreement Nos. 4141 (ISA) and 4220 (CSA); Queue AA1–034 to be effective 11/18/2015.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5078.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–563–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: 2 GIAs and 2 Distribution Service Agreements, Coram Energy, LLC to be effective 12/6/2015.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5081.
*Comments Due:* 5 p.m. ET 1/8/16.
*Docket Numbers:* ER16–564–000.
*Applicants:* Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
*Description:* § 205(d) Rate Filing: 2015–12–18_SA 2877 ITC Midwest-SMMPA TIA to be effective 2/16/2016.
*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5106.
*Comments Due:* 5 p.m. ET 1/8/16.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH16–2–000.
*Applicants:* Starwood Energy Group Global, L.L.C.
*Description:* Starwood Energy Group Global, L.L.C. submits FERC 65–B Material Change in Facts of Waiver Notification.

*Filed Date:* 12/18/15.
*Accession Number:* 20151218–5038.
*Comments Due:* 5 p.m. ET 1/8/16.

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: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32399 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD16–3–000]**

### Notice of Availability of the Draft Guidance Manual for Environmental Report Preparation and Request for Comments

The staff of the Office of Energy Projects (OEP) has revised its *Guidance Manual for Environmental Report Preparation* (*Guidance Manual*), dated August 2002, to incorporate regulation changes and provide updated guidance on how to prepare resource reports and how interstate and liquefied natural gas (LNG) projects may demonstrate compliance with certain regulatory requirements. The staff is asking for public input and suggestions for modifications to the *Guidance Manual* from federal and state agencies, Native American tribes, environmental consultants, inspectors, the natural gas industry, construction contractors, and other interested parties with special expertise in regards to preparation of resource reports associated with natural gas projects. Please note that this comment period will close on January 19, 2016.

The OEP staff anticipates issuing our final updated version of the *Guidance Manual* in early 2016. We will consider all timely comments on the draft before issuing the final version.

The revised *Guidance Manual,* for which we are seeking comment, can be found in Docket Number AD16–3–000. The full text of the 2002 version of the *Guidance Manual* can be viewed on the Federal Energy Regulatory Commission (FERC or Commission) Web site at *http://www.ferc.gov/industries/gas/enviro/guidelines.asp* and can be used as a reference to see the changes made.

Applicable sections of the Code of Federal Regulations Title 18 are referenced or summarized throughout the *Guidance Manual.* We stress that OEP staff is *not* seeking comment on any existing regulations or contemplating any changes to regulations within the context of the *Guidance Manual.* The *Guidance Manual* is not the appropriate vehicle for changes to federal regulations. Comments pertaining to our regulations will not be considered as we develop the final *Guidance Manual.*

The *Guidance Manual* is divided into two volumes. Volume 1 relates to the preparation of resource reports for both interstate natural gas projects and Commission jurisdictional LNG facilities. Volume 2 is specific to LNG facilities and includes supplemental information needed to comply with: 18 CFR 380.12(h)(5) to demonstrate information reflected in *National Bureau of Standards Information Report* (NBSIR) 84–2833; 18 CFR 380.12(m) to demonstrate the potential hazard to the public from failure of facility components resulting from natural catastrophes; and 18 CFR 380.12(o) to demonstrate the proposed engineering design would be safe and reliable and would likely comply with the regulatory requirements in 49 CFR 193. Volume 2 is intended to replace a series of guidance documents that were previously developed and issued by staff to assist in the preparation and review of LNG applications. Specifically, Volume 2 is meant to replace *Draft Guidance on Resource Report 11 and 13* issued on December 15, 2005, *Draft Preferred Format Submittal Guidance* issued on April 12, 2006, and *Draft FERC Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities* issued on January 23, 2007. The previous versions of these documents should be considered obsolete.

Interested parties can help us determine the appropriate updates and improvements by providing comments or suggestions that focus on the specific sections of the *Guidance Manual* requiring clarification, updates to reflect current laws and regulations, or additional information that should be included in each resource report. The more specific your comments, the more useful they will be. A detailed explanation of the rationale underlying your suggested modifications and/or any references to scientific studies associated with your comments would greatly help us with this process.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the docket number (AD16–3–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making, select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

All of the information related to the proposed updates to the *Guidance Manual* and submitted comments can be found on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD16–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of

time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32398 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP15–77–000]**

## Tennessee Gas Pipeline Company, L.L.C.; Notice of Schedule for Environmental Review of the Broad Run Expansion Project

On January 30, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application in Docket No. CP15–77–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity to construct, operate, and maintain certain natural gas pipeline facilities, and authorization to abandon certain facilities, collectively known as the Broad Run Expansion Project (Project). The Project purpose is to provide an additional 200,000 dekatherms per day of firm incremental transportation service through construction of new compressor stations and replacement of compression facilities in West Virginia, Kentucky; and Tennessee.

On February 12, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its *Notice of Application* for the Project. The notice alerted agencies responsible for issuing federal authorizations of the requirement to complete necessary reviews and reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Environmental Assessment (EA) prepared by Commission staff. This *Notice of Schedule* identifies the Commission staff's planned schedule for the completion of the EA for the Project.

**Schedule for Environmental Review**

| | |
|---|---|
| Issuance of EA | March 11, 2016 |
| 90-day Federal Authorization Decision Deadline | June 9, 2016 |

If a schedule change becomes necessary, additional notice will be provided so the relevant agencies are kept informed of the Project's progress.

**Project Description**

Tennessee proposes to build four new compressor stations and add compression at two existing compressor stations. Tennessee also proposes to improve efficiency and reduce certain emissions by replacing older existing compression facilities on its system with newer compressor units.

The Project would include construction and operation of the following facilities:

- Two new compressor stations in Kanawha County, West Virginia, to be known as the Tyler Mountain Compressor Station (CS 118A) and the Rocky Fork Compressor Station (CS 119A);
- a new compressor station in Madison County, Kentucky, to be known as the Richmond Compressor Station (CS 875);
- a new compressor station in Davidson County, Tennessee, to be known as the Pinnacle Compressor Station (CS 563); and
- modifications (including abandonment and replacement of certain compression units, system components, and associated facilities) at the existing Clay City Compressor Station in Powell County, Kentucky (CS 106), and the existing Catlettsburg Compressor Station in Boyd County, Kentucky (CS 114).

**Background**

On May 1, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Broad Run Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to Tennessee's application and the NOI, the Commission received comments from many affected landowners, interested individuals and organizations, elected officials, and agencies. Commentors included U.S. Representative Andy Barr, Kentucky State Representative Terry Mills, U.S. Fish and Wildlife Service, Kentucky Department for Environmental Protection, Madison County Fiscal Court, Allegheny Defense Project, Concerned Citizens for a Safe Environment, Freshwater Accountability Project, Heartwood, Ohio Valley Environmental Coalition, Tennessee Valley Authority, ByFaith Farm LLC, and Walden's Puddle Wildlife Rehabilitation Center.

The primary issues raised by the commentors included concerns about potential impacts on organic farms and wildlife, including Walden's Puddle Wildlife Rehabilitation Center; air quality and noise impacts; public safety; and aspects of the FERC process.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time spent researching proceedings by automatically providing notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

The FERC's eLibrary system can also be used to search formal issuances and submittals from the public docket. To use, select the ''eLibrary'' link, select ''General Search'' from the eLibrary menu located at *www.ferc.gov/docs-filing/elibrary.asp,* enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP15–77), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*).

Dated: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32403 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP14–554–000; CP15–16–000; CP15–17–000]**

## Florida Southeast Connection, LLC; Transcontinental Gas Pipe Line Company, LLC; Sabal Trail Transmission, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Southeast Market Pipelines Project

The staff of the Federal Energy Regulatory Commission (FERC or

Commission) has prepared a final environmental impact statement (EIS) for the Hillabee Expansion, Sabal Trail, and Florida Southeast Connection (FSC) Projects as proposed by Transcontinental Gas Pipe Line Company, LLC (Transco), Sabal Trail Transmission, LLC (Sabal Trail), and Florida Southeast Connection, LLC (FSC), respectively, in the above-referenced dockets. These are separate, but connected, natural gas transmission pipeline projects collectively referred to as the Southeast Market Pipelines (SMP) Project. The applicants request authorization to construct and operate a total of about 686.0 miles of natural gas transmission pipeline and associated facilities, six new natural gas-fired compressor stations, and modify existing compressor stations in Alabama, Georgia, and Florida. The SMP Project would provide about 1.1 billion cubic feet per day of natural gas to meet growing demands by the electric generation, distribution, and end use markets in Florida and the southeast United States.

The final EIS assesses the potential environmental effects of the construction and operation of the SMP Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the SMP Project would have some adverse environmental impacts; however, these impacts would be reduced to less-than-significant levels with the implementation of the applicants' proposed mitigation and the additional measures recommended in the final EIS.

The U.S. Army Corps of Engineers (USACE) participated as a cooperating agency in the preparation of the final EIS. The USACE has jurisdiction by law or special expertise with respect to resources potentially affected by the proposals and participate in the NEPA analysis. The USACE may adopt and use the EIS as it has jurisdictional authority pursuant to section 404 of the Clean Water Act, which governs the discharge of dredged or fill material into waters of the United States; section 10 of the Rivers and Harbors Act, which regulates any work or structures that potentially affect the navigable capacity of navigable waters of the United States; and section 14 of the Rivers and Harbors Act which regulates the temporary occupation of water-related structures constructed by the United States. Although the cooperating agency provides input to the conclusions and recommendations presented in the final EIS, the agency will present its own conclusions and recommendations in its Record of Decision for the project.

The final EIS of the SMP Project addresses the potential environmental effects of the construction and operation of the following project facilities:

The Hillabee Expansion Project would include:

- Approximately 43.5 miles of new 42- and 48-inch-diameter natural gas pipeline loop [1] in Alabama;
- one new compressor station in Choctaw County, Alabama and modifications to three existing compressor stations in Dallas, Chilton, and Coosa Counties, Alabama; and
- installation of pig [2] launchers/receivers and mainline valves (MLVs).

The Sabal Trail Project would include:

- approximately 516.2 miles of new natural gas pipeline in Alabama, Georgia, and Florida, including:
  - 481.6 miles of 36-inch-diameter mainline pipeline in Alabama, Georgia, and Florida;
  - the 21.5-mile-long, 24-inch-diameter Citrus County Line in Florida; and
  - the 13.1-mile-long, 36-inch-diameter Hunters Creek Line in Florida;
- five new compressor stations in Tallapoosa County, Alabama; Dougherty County, Georgia; and Suwannee, Marion, and Osceola Counties, Florida;
- subsequent modifications to two of the new compressor stations in Dougherty County, Georgia and Suwannee County, Florida; and
- installation of pig launchers/receivers, MLVs, and meter and regulating stations.

The FSC Project would include:

- approximately 126.3 miles of new 30- and 36-inch-diameter natural gas pipeline in Florida; and
- installation of pig launchers/receivers, MLVs, and meter and regulating stations.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of the final EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the SMP Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP14–554, CP15–16, and CP15–17). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 18, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32402 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

[1] A loop is a segment of pipe that is installed adjacent to an existing pipeline and connected to it at both ends. A loop generally allows more gas to move through the system.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC16–5–000]**

### Commission Information Collection Activities; Consolidated Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collections and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or

FERC) is soliciting public comment on the requirements and burden of the FERC–714 (Annual Electric Balancing Authority Area and Planning Area Report) and FERC–730 (Report of Transmission Investment Activity) information collections.

**DATES:** Comments on the collections of information are due February 22, 2016.

**ADDRESSES:** You may submit comments (identified by Docket No. IC16–5–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

*Comments:* Comments are invited on: (1) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden[1] and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FERC–714, [Annual Electric Balancing Authority Area and Planning Area Report] [2]**

*OMB Control No.:* 1902–0140.

*Abstract:* The Commission uses the FERC–714 data to analyze power system operations. These analyses estimate the effect of changes in power system operations resulting from the installation of a new generating unit or plant, transmission facilities, energy transfers between systems, and/or new points of interconnections. The FERC–714 data assists in providing a broad picture of interconnected balancing authority area operations including comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer and winter generation peaks and system lambda. The Commission also uses the data to prepare status reports on the electric utility industry including a review of inter-balancing authority area bulk power trade information.

The Commission uses the collected data from planning areas to monitor forecasted demands by electric utilities with fundamental demand responsibilities and to develop hourly demand characteristics.

*Type of Respondent:* Electric utility balancing authorities and planning areas in the United States.

*Estimate of Annual Burden:* The Commission estimates the annual public reporting burden and cost[3] (rounded) for the information collection as follows:

FERC–714 (ANNUAL ELECTRIC BALANCING AUTHORITY AREA AND PLANNING AREA REPORT)

| Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden & cost per response [6] | Total annual burden hours & total annual cost | Cost per respondent ($) |
|---|---|---|---|---|---|
| (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) | (5) ÷ (1) |
| 177 | 1 | 177 | 87<br>$5,973 | 15,399<br>$1,057,295 | $5,973 |

**FERC–730, [Report of Transmission Investment Activity]**

*OMB Control No.:* 1902–0239.

*Abstract:* Pursuant to Section 219 [4] of the Federal Power Act, the Commission issued FERC Order No. 679,[5] Promoting Transmission Investment Through Pricing Reform. In Order No. 679 FERC amended its regulations in 18 CFR 35.35 to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities. The Commission intended the order to benefit consumers by ensuring reliability and to reduce the cost of delivered power by reducing transmission congestion. Order No. 679 also adopted an annual reporting requirement (FERC–730) for utilities that receive incentive rate treatment for

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The renewal request in this IC docket is for the current FERC–714, with no change to the reporting requirements. The FERC–714 is also part of the Forms Refresh effort (started in Docket No. AD15–11), which is a separate activity.

[3] The hourly cost (wages plus benefits), is based on the Bureau of Labor Statistics May 2014 National Industry-Specific Occupational Employment and Wage Estimates (at *http://www.bls.gov/oes/current/naics2_22.htm*). The average hourly cost (wages plus benefits) of $68.66/hour is the average of the following: (a) Management (Code 11–0000), $78.04/hr; (b)Computer and mathematical (Code 15–0000), $58.25/hr; (c) Electrical Engineers (Code 17–2071), $66.45/hr; (d) Economist (Code 19–3011), $73.04/hr; (e) Computer and Information Systems Managers (Code 11–3021),$94.55/hr; (f) Accountants and Auditors (Code 13–2011), $51.11/hr; (g) Transportation, Storage, and Distribution Managers (Code 11–3071), $73.65/hr; (h) Power Distributors and Dispatchers (Code 51–8012), $54.16/hr.

[4] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594, 315 and 1283 (2005).

[5] RM06–4–000 (issued July 20, 2006), published: 71 FR 43294

specific transmission projects. The FERC–730 provides annual data on transmission capital expenditures as well as project status detail. The Commission requires that filers specify which projects are currently receiving incentives in the project detail table and that they group together those facilities receiving the same incentive. Specifically, in accordance with the statute, public utilities with incentive rates must file:

• Actual transmission investment for the most recent calendar year, and projected, incremental investments for the next five calendar years (in dollar terms); and

• a project by project listing that specifies for each project the most up to date, expected completion date, percentage completion as of the date of filing, and reasons for delays for all current and projected investments over the next five calendar years. Projects with projected costs less than $20 million are excluded from this listing.

To ensure that Commission rules are successfully meeting the objectives of Section 219, the Commission collects industry data, projections and related information that detail the level of investment. FERC–730 information regarding projected investments as well as information about completed projects allows the Commission to monitor the success of the transmission pricing reforms and to determine the status of critical projects and reasons for delay.

*Type of Respondent:* Public utilities that have been granted incentives based rate treatment for specific transmission projects under the provisions of 18 CFR 35.35(h) must file the FERC–730.

*Estimate of Annual Burden:* The Commission estimates the annual public reporting burden for the information collection as:

FERC–730 (REPORT OF TRANSMISSION INVESTMENT ACTIVITY)

| Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden & cost per response [6] | Total annual burden hours & total annual cost | Cost per respondent ($) |
|---|---|---|---|---|---|
| (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) | (5) ÷ (1) |
| 63 | 1 | 63 | 30<br>$2,160 | 1,890<br>$136,080 | $2,160 |

Dated: December 16, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–32131 Filed 12–23–15; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9024–6]**

### 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 (EISs)*

Filed 12/14/2015 Through 12/18/2015 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. 20150358, Draft, USACE, FL,* Herbert Hoover Dike Dam Safety Modification, Comment Period Ends: 02/08/2016, Contact: Stacie Auvenshine 904–232–3694.

*EIS No. 20150359, Draft, USFS, OR,* Gap Landscape Restoration Project, Comment Period Ends: 02/08/2016, Contact: Gary Asbridge 541–416–6500.

*EIS No. 20150360, Final, FERC, FL,* Southeast Market Pipelines Project, Review Period Ends: 01/25/2016, Contact: John Peconom 202–502–6352.

*EIS No. 20150361, Draft Supplement, FTA, CA,* Transbay Transit Center Program, Comment Period Ends: 02/29/2016, Contact: Brenda Perez 415–744–2731.

*EIS No. 20150362, Final Supplement, FTA, CA,* Regional Connector Transit Corridor, Review Period Ends: 01/25/2016, Contact: Mary Nguyen 213–202–3960.

Dated: December 21, 2015.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2015–32418 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2015–0715; FRL–9939–33]**

### Agency Information Collection Activities; Proposed Renewal of Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Tolerance Petitions for Pesticides on Food/Feed Crops and New Food Use Inert Ingredients'' and identified by EPA ICR No. 0597.12 and OMB Control No. 2070–0024, represents the renewal of an existing ICR that is scheduled to expire on August, 31, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

**DATES:** Comments must be received on or before February 22, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0715, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or

delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

**FOR FURTHER INFORMATION CONTACT:** Amaris Johnson, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; email address: *johnson.amaris@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What information collection activity or ICR does this action apply to?

*Title:* Tolerance Petitions for Pesticides on Food/Feed Crops and New Food Use Inert Ingredients.

*ICR number:* EPA ICR No. 0597.12.

*OMB control number:* OMB Control No. 2070–0024.

*ICR status:* This ICR is currently scheduled to expire on August 31, 2016. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The use of pesticides to increase crop production often results in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, EPA sets limits on the nature and level of residues permitted pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). A pesticide may not be used on food or feed crops unless the Agency has established a tolerance (maximum residue limit) for the pesticide residues on that crop, or established an exemption from the requirement to have a tolerance.

Under the law, EPA is responsible for ensuring that the maximum residue levels likely to be found in or on food/feed are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, EPA must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. If the data are adequate for EPA to determine that there is a reasonable certainty that no harm will result from aggregate exposure, the Agency will establish the tolerance or grant an exemption from the requirement of a tolerance.

This ICR only applies to the information collection activities associated with the submission of a petition for a tolerance action. While EPA is authorized to set pesticide tolerances, the Food and Drug Administration (FDA) is responsible for their enforcement. Food or feed commodities found to contain pesticide residues in excess of established tolerances are considered adulterated, and are subject to seizure by FDA, and may result in civil penalties.

Trade secret or CBI is frequently submitted to the EPA in support of a tolerance petition because submissions usually include the manufacturing process, product formulation, and supporting data. When such information is provided to the Agency, the information is protected from disclosure under FIFRA Section 10. CBI data submitted to the EPA is handled strictly in accordance with the provisions of the ''FIFRA Confidential Business Information Security Manual.''

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,726 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/Affected Entities:* Entities potentially affected by this ICR are Pesticide manufacturers and IR–4.

*Estimated total number of potential respondents:* 165.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 285,128 hours.

*Estimated total annual costs:* $27,475,223.58. This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection request.

## III. Are there changes in the estimates from the last approval?

There is an increase of 48,328 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is a result of an increase from 137 to 165 in the estimated average number of tolerance petitions submitted annually, which resulted in a change to the annual burden hours for respondents from 236,800 in the previous renewal to 285,128 in the current renewal. There is no change in burden per tolerance petition; burden for respondents increased as a result of the estimated increase in the average number of petitions submitted annually. This change is an adjustment.

## IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: December 4, 2015.

**Jim Jones,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2015–32515 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9940–53–ORD; Docket ID No. EPA–HQ–ORD–2013–0357]**

### Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria

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

**ACTION:** Notice; extension of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a 30-day extension of the public comment period for the draft document titled, ''External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' (EPA/600/R–15/066). The original **Federal Register** notice announcement provides a 60-day public comment period and was published on November 24, 2015. The EPA subsequently received a request to extend this comment period. With the 30-day extension announced in this notice, the comment period ends on February 24, 2016. The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development as part of the review of the primary (health-based) National Ambient Air Quality Standards for sulfur dioxide.

**DATES:** The public comment period began on November 24, 2015, and ends on February 24, 2016. Comments must be received on or before February 24, 2016.

**ADDRESSES:** The ''External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' will be available primarily via the Internet on the EPA's Integrated Science Assessment for Sulfur Dioxide (Health Criteria) home page at *http://www2.epa.gov/isa/integrated-science-assessment-isa-sulfur-dioxide-health-criteria* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2013–0357. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' to facilitate processing of your request.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact Dr. Tom Long, NCEA; telephone: 919–541–1880; facsimile: 919–541–1818; or email: *long.tom@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by fax, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice announcing the release of the draft assessment document, published on November 24, 2015 (80 FR 73183).

For information on submitting comments to the docket, please contact the ORD Docket at the EPA's Headquarters Docket Center; telephone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

Dated: December 16, 2015.

**Mary A. Ross,**

*Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2015–32511 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R10–OAR–2015–0812; FRL–9940–60–Region 10]**

### Notice of Availability of Electronic Reporting; Federal Air Rules for Reservations Online Reporting System

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is notifying the public that electronic emissions reporting is now available for sources covered by the Federal Air Rules for Reservations (FARR). The FARR requires certain sources of air pollution on Indian Reservations in Idaho, Oregon, and Washington to register and report emissions to the EPA. Any person who owns or operates a source of air pollution with the potential to emit two or more tons per year of an air pollutant, with certain exceptions, must register annually and report those emissions. Registration and emissions reports are due within 90 days of commencing operations, and annually thereafter. The EPA created the FARR Online Reporting System (FORS) to help make registration and emissions reporting easier. The FORS, operated through the agency's Central Data Exchange (CDX), is CROMERR compliant, which means the electronic signature meets the EPA's regulatory electronic signature requirements.

**ADDRESSES:** Nancy Helm: Office of Air, Waste and Toxics, EPA Region 10, AWT–150, 1200 Sixth Ave., Suite 900, Seattle, WA 98101. 206–553–6908; or *helm.nancy@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy Helm: Office of Air, Waste and Toxics; 206–553–6908; or *helm.nancy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** As of January 15, 2016, air pollution sources covered by the FARR as provided in 40 CFR 49.138 may register and report emissions electronically.

*How to Access the System:* The FORS can be accessed at *https://cdx.epa.gov*. New users will need to register and select FORS as their program service. The EPA intends to provide training to affected entities on how to access, register and use the system.

*How to Get Help Using the System:* The EPA has provided the CDX user guide to each source currently registered under the FARR, and to tribal governments in Idaho, Oregon, and Washington. That guide is available at *http://yosemite.epa.gov/R10/tribal.nsf/programs/farr*. The CDX Help Desk is available for technical support-related questions between the hours of 8:00 a.m. and 6:00 p.m. (ET) at 1–888–890–1995 or *helpdesk@epacdx.net*.

*Confidential Business Information:* Regulated entities may assert a business confidentiality claim covering any portion of the submitted information as provided in 40 CFR part 2, subpart B. Information claimed as confidential should be submitted on compact disk or flash drive and mailed to the FARR Registration Coordinator, EPA Region 10, AWT–150, 1200 Sixth Ave., Suite 900, Seattle, WA 98101. Confidential treatment is automatically forfeited for information submitted through the FORS. Note that emissions data and information necessary to determine emissions is not entitled to confidential treatment. Failure to assert a claim in the manner described in 40 CFR part 2, subpart B, allows the submitted information to be released to the public without further notice. Information subject to a business confidentiality claim may be disclosed by the EPA only to the extent set forth in the above-cited regulations.

Dated: December 18, 2015.

**Janis Hastings,**

*Acting Director, Office of Air, Waste and Toxics.*

[FR Doc. 2015–32510 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2015–0713; FRL–9937–15]**

## Agency Information Collection Activities; Proposed Renewal of Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects''; identified by EPA ICR No. 2195.05 and OMB Control No. 2070–0169, represents the renewal of an existing ICR that is scheduled to expire on August 31, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

**DATES:** Comments must be received on or before February 22, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0713, by one of the following methods:

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

**FOR FURTHER INFORMATION CONTACT:** Ramé Cromwell, Field and External Affairs Division (7605P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9068; email address: *cromwell.rame@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

### II. What information collection activity or ICR does this action apply to?

*Title:* Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects.

*ICR number:* EPA ICR No. 2195.05.

*OMB control number:* OMB Control No. 2070–0169.

*ICR status:* This ICR is currently scheduled to expire on August 31, 2016. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). As revised in 2006 and 2013, EPA regulations at 40 CFR part 26 protect subjects of ''third-party'' human research (*i.e.,* research that is not conducted or supported by EPA).[1] In addition to other protections, the regulations require affected entities to submit information to EPA and an institutional review board (IRB) prior to initiating, and to EPA upon the completion of, certain studies that involve human research participants. The information collection activity consists of activity-driven reporting and recordkeeping requirements for those who intend to conduct research for submission to EPA under the pesticide laws. If such research involves intentional dosing of human subjects, these individuals (respondents) are required to submit study protocols to EPA and a cognizant local Human Subjects IRB before such research is initiated so that the scientific design and ethical standards that will be employed during the proposed study may be reviewed and approved. Also, respondents are required to submit information about the ethical conduct of completed research that involved human subjects when such research is submitted to EPA.

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,131 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/Affected Entities:* Any entity that submits protocols and study reports for environmental research involving human subjects under FIFRA and/or FFDCA.

*Estimated total number of potential respondents:* 5 annually for research involving intentional exposure of human subjects and 10 annually for all

[1] To access the revised regulation go to: *http://www.gpo.gov/fdsys/pkg/FR-2013-02-14/html/2013-03456.htm*

other submitted research with human subjects.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 10,595 hours for research involving intentional exposure of human subjects, and 120 hours for all other submitted research with human subjects.

*Estimated total annual costs:* $948,655. This includes $0 for capital investment or maintenance and operational costs.

**III. Changes in the Estimates**

There is a decrease of 4,238 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is due to a decrease in anticipated number of responses per year. This change is an adjustment.

**IV. What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: December 4, 2015.

**Jim Jones,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2015–32516 Filed 12–23–15; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Deletion of Agenda Items From December 17, 2015 Open Meeting

December 17, 2015.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Thursday, December 17, 2015, Open Meeting and previously listed in the Commission's Notice of December 10, 2015. These items have been adopted by the Commission.

| Item No. | Bureau | Subject |
|---|---|---|
| 2 | MEDIA | TITLE: Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations (MB Docket No. 03–185); Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268); Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Turner Requirement (ET Docket No. 14–175) .<br>SUMMARY: The Commission will consider a Third Report and Order that extends the deadline for LPTV and TV Translator Stations to Transition to Digital and adopts measures to mitigate the impact of incentive auction displacement. The Fourth Notice of Proposed Rulemaking seeks comment on channel sharing issues between certain stations. |

**Consent Agenda**

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

| | | |
|---|---|---|
| 1 | MEDIA | TITLE: Application of Hampton Roads Educational Telecommunications Association for a New Noncommercial Educational FM Station at Gloucester Point.<br>SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning a joint Application for Review challenging the grant of an application filed by Hampton Roads Educational Telecommunications Association for a new NCE FM station. |
| 2 | MEDIA | TITLE: Public Media of New England, Inc. Application for a New LPFM Station at Haverhill, Massachusetts.<br>SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Boston Radio Association seeking review of the grant of a construction permit for a new LPFM station to Public Media of New England, Inc. |
| 3 | MEDIA | TITLE: Cocoa Minority Educational Media Association, Application for a New LPFM Station at Cocoa, Florida.<br>SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Cocoa Minority Educational Media Association seeking review of CMEMA's dismissed application for a new LPFM station. |
| 4 | MEDIA | TITLE: California Association for Research and Education, Inc., Application for a New Noncommercial Educational FM Broadcast Station at Upton, KY, and Bethel Fellowship, Inc., Application for a New Noncommercial Educational FM Broadcast Station at Cecilia, Kentucky.<br>SUMMARY: The Commission will consider an Order on Reconsideration in which Bethel seeks reconsideration of a denial of its Application for Review seeking denial of CARE's noncommercial educational FM application. |

| | | |
|---|---|---|
| 5 | MEDIA | TITLE: Calvary Chapel of Honolulu, Inc., Application to Construct New Noncommercial Educational FM Stations at Honolulu, Hawaii, and Maka'ainana Broadcasting Company, Ltd., Application to Construct New Noncommercial Educational FM Stations at Kaneohe, Hawaii.<br>SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning Applications for Review filed by Maka'ainana Broadcasting Company, Ltd. regarding mutually exclusive applications to construct new noncommercial educational FM stations in Hawaii. |
| 6 | MEDIA | TITLE: John Edward Ostlund, Application for a Permit to Construct a new AM Station at Easton, California, and Hilo Broadcasting, LLC, Application for a Permit to Construct a New AM Station at Captain Cook, Hawaii.<br>SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Hilo Broadcasting, LLC regarding mutually exclusive AM station applications. |

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015–32461 Filed 12–23–15; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Task Force on Optimal Public Safety Answering Point Architecture

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons that the Federal Communications Commission's (FCC) Task Force on Optimal Public Safety Answering Point (PSAP) Architecture (Task Force) will hold its sixth meeting.

**DATES:** January 29, 2015.

**ADDRESSES:** Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Timothy May, Federal Communications Commission, Public Safety and Homeland Security Bureau, 202–418–1463, email: *timothy.may@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The meeting will be held on January 29, 2015, from 1:00 p.m. to 4:00 p.m. in the Commission Meeting Room of the FCC, Room TW–305, 445 12th Street SW., Washington, DC 20554. The Task Force is a Federal Advisory Committee that studies and reports findings and recommendations on PSAP structure, architecture, operations, and funding to promote greater efficiency of PSAP operations, security, and cost containment during the deployment of Next Generation 911 systems. On December 2, 2014, pursuant to the FACA, the Commission established the Task Force charter for a period of two years, through December 2, 2016. At this meeting, the Task Force will hear a presentation and consider a vote on a consolidated report and final set of recommendations, as incorporated from the reports and recommendations of the Task Force's three working groups; specifically, the reports and recommendations of Working Group 1—Cybersecurity: Optimal Approach for PSAPs and Working Group 2—Optimal 911 Service Architecture, which the Task Force approved for consideration on a procedural vote at the December 10, 2015 public meeting, and the report and recommendations of Working 3—Optimal Resource Allocation, which the Task Force approved for consideration on a procedural vote at the September 29, 2015 public meeting.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *https://www.fcc.gov/general/live*.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs at (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation requested. In addition, please include a way the FCC may contact you if it needs more information. Please allow at least five days' advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015–32373 Filed 12–23–15; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011830–010.

*Title:* Indamex Cross Space Charter, Sailing and Cooperative Working Agreement.

*Parties:* CMA CGM S.A.; Hapag-Lloyd AG; Nippon Yusen Kaisha; Orient Overseas Container Line Limited.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW.; Washington, DC 20036.

*Synopsis:* The amendment would revise the capacity of vessels to be deployed, and the vessel contributions of the parties.

*Agreement No.:* 012379.

*Title:* MOL/NMCC/WLS/LGL Space Charter Agreement.

*Parties:* Mitsui O.S.K. Lines, Ltd; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (U.S.A.), Inc.; Liberty Global Logistics.

*Filing Party:* Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

*Synopsis:* The agreement would authorize the parties to charter space to/from one another for the carriage of vehicles and other Ro/Ro cargo in the trade between the U.S. and all foreign countries.

*Agreement No.:* 012381.

*Title:* Walenius Wilhelmsen Logistics, AS/Liberty Global Logistics LLC Space Charter Agreement.

*Parties:* Wallenius Wilhelmsen Logistics, AS and Liberty Global Logistics LLC.

*Filing Party:* Brooke Shapiro, Esq: Winston& Strawn LLP; 200 Park Avenue; New York, NY; 10166.

*Synopsis:* The agreement would authorize the parties to charter space from one another in the trade between the U.S. and a foreign country.

By Order of the Federal Maritime Commission.

Dated: December 18, 2015.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2015–32322 Filed 12–23–15; 8:45 am]

**BILLING CODE 6731–AA–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

December 22, 2015.

**TIME AND DATE:** 10:00 a.m., Thursday, January 7, 2016.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Maxxim Rebuild Company, LLC,* Docket Nos. KENT 2013–566, et al. (Issues include whether the Judge erred in ruling that the facility is subject to the jurisdiction of the Mine Safety and Health Administration.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2015–32556 Filed 12–22–15; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Leslie M. Apple,* Rensselaer, New York; to acquire voting shares of Beach Community Bancshares, Inc., and thereby indirectly acquire voting shares of Beach Community Bank, both in Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, December 21, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–32437 Filed 12–23–15; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 2016.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Bank of the Ozarks, Inc.,* Little Rock, Arkansas; to merge with C1 Financial Inc., and thereby indirectly acquire C1 Bank, both in St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, December 21, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–32436 Filed 12–23–15; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

#### Proposed Projects

*Title:* ANA Project Outcomes Assessment Survey

*OMB No.:* 0970–0379

*Description:* The information collected by the Project Outcomes Assessment Survey is needed for two main reasons: (1) To collect crucial information required to report on the Administration for Native Americans' (ANA) established Government Performance and Results Act (GPRA) measures, and (2) to properly abide by ANA's congressionally-mandated statute (42 United States Code 2991 *et seq.*) found within the Native American Programs Act of 1974, as amended, which states that ANA will evaluate projects assisted through ANA grant dollars ''including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services.'' The information collected with this survey will fulfill ANA's statutory requirement and will also serve as an important planning and performance tool for ANA.

*Respondents:* Tribal Governments, Native American nonprofit organizations, and Tribal Colleges and Universities

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ANA Project Outcomes Assessment Survey | 85 | 1 | 6 | 510 |
| Estimated Total Annual Burden Hours: | | | | 510 |

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2015–32351 Filed 12–23–15; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–D–4386]**

### Deviation Reporting for Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry; Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Deviation Reporting for Human Cells, Tissues, and Cellular and Tissue-Based Products Regulated Solely Under Section 361 of the Public Health Service Act and 21 CFR part 1271; Draft Guidance for Industry.'' The draft guidance document provides certain establishments that manufacture non-reproductive human cells, tissues, and cellular and tissue-based products (HCT/Ps), regulated solely under the Public Health Service Act (PHS Act) and under FDA regulations, with recommendations and relevant examples for complying with the requirements to report HCT/P deviations.

**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 March 23, 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–4386 for ''Deviation Reporting for Human Cells, Tissues, and Cellular and Tissue-Based Products Regulated Solely Under Section 361 of the Public Health Service Act and 21 CFR part 1271; 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.

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. 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:** Tami Belouin, 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

FDA is announcing the availability of a draft document entitled ''Deviation Reporting for Human Cells, Tissues, and Cellular and Tissue Based Products Regulated Solely Under Section 361 of the Public Health Service Act and 21 CFR part 1271; Draft Guidance for Industry.'' The document provides certain establishments that manufacture HCT/Ps, regulated solely under section 361 of the PHS Act and the regulations under 21 CFR part 1271, with recommendations and relevant examples for complying with the requirements under 21 CFR 1271.350(b) to report HCT/P deviations. The examples provided in the draft guidance are intended to illustrate those HCT/P deviations that have been most frequently reported to FDA, CBER.

The draft guidance does not apply to reproductive HCT/Ps or to HCT/Ps regulated under 21 CFR part 1270 and recovered before May 25, 2005. The draft guidance does not apply to health professionals who implant, transplant, infuse, or transfer HCT/Ps into recipients. The draft guidance also does not apply to HCT/Ps that are regulated as drugs, devices, and/or biological products under section 351 of the PHS Act and/or the Federal Food, Drug, and Cosmetic Act, nor does it apply to investigational HCT/Ps subject to an investigational new drug application or an investigational device exemption.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Deviation Reporting for Human Cells, Tissues, and Cellular and Tissue Based Products Regulated Solely Under section 361 of the Public Health Service Act and 21 CFR part 1271. 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. Paperwork Reduction Act of 1995

This 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 21 CFR part 1271 have been approved under OMB control number 0910–0543.

## III. Other Issues for Consideration

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time.

## IV. 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.regulations.gov.*

Dated: December 18, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–32323 Filed 12–23–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Health Center Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of Class Deviation from Competition Requirements for the Health Center Program; Notice of Class Deviations from the Requirements for Extensions, Administrative Supplements, and for Announcing these Deviations in the **Federal Register** for the Health Center Program.

**SUMMARY:** In accordance with the Awarding Agency Grants Administration Manual (AAGAM) Chapter 1.03.103, the Bureau of Primary Health Care (BPHC) has been granted class deviations from the requirements for extensions contained in the AAGAM Chapter 2.04.104B–4A.I.a(5)(b) and the requirements for administrative supplements contained in AAGAM Chapter 2.04.104B–4A.4.b to provide additional grant funds during extended budget periods in excess of the allowed maximum. The deviations prevent interruptions in the provision of critical health care services for a funded service area until a new award can be made to an eligible Service Area Competition (SAC) applicant and to conduct an orderly phase-out of Health Center Program activities by the current award recipient. BPHC has also been granted a deviation that allows it to annually announce via the **Federal Register** the Health Center Program award recipients that received a low cost extension and/or administrative supplement under the above described deviations.

**SUPPLEMENTARY INFORMATION:** Intended Recipient of the Award: Health Center Program award recipients for service areas that are threatened with a lapse in services due to transitioning award recipients.

Amount of Non-Competitive Awards: Varies annually.

Period of Supplemental Funding: Awards made beginning in fiscal year 2016 and ongoing.

CFDA Number: 93.224

**Authority:** Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b, as amended).

Justification: Targeting the nation's neediest populations and geographic areas, the Health Center Program currently funds more than 1,300 health centers that operate approximately 9,000 service delivery sites in every state, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Basin. More than 23 million patients, including medically underserved and uninsured patients, received comprehensive, culturally competent, quality primary health care services through the Health Center Program award recipients.

Approximately one-third of current award recipients' service areas are scheduled to be competed each year via SACs. SACs are also held prior to a current grant's project period end date when (1) a grant is voluntarily relinquished or (2) a program noncompliance enforcement action taken by HRSA terminates the grant. If a SAC draws no fundable applications, BPHC may extend the current award recipient's budget period to conduct an orderly phase-out of Health Center Program activities and prepare for a new competition for the service area.

The amount of additional grant funds is calculated by pro-rating HRSA's existing annual funding commitment to the service area. The average Health Center Program grant amount is over $2 million. Approximately 6 months is required to announce and conduct a SAC. BPHC's extensions and administrative supplements are generally for a minimum of 90 days, which is at least 25 percent of the annual grant amount, thereby typically exceeding the allowed maximum. Through the deviations, award recipients receive consistent levels of funding to support uninterrupted primary health care services to the nation's most vulnerable populations and communities during service area award recipient transition.

**FOR FURTHER INFORMATION CONTACT:** Olivia Shockey, Expansion Division Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration at 301–443–9282 or *oshockey@hrsa.gov*.

Dated: December 17, 2015.

**James Macrae,**

*Acting Administrator.*

[FR Doc. 2015–32355 Filed 12–23–15; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2015, through November 30, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed

above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 18, 2015,

**James Macraem**

*Acting Administrator,*

**List of Petitions Filed**

1. Lori McNeal, Columbus, Ohio, Court of Federal Claims No: 15–1295V
2. Mary Lanciani, Sterling, Massachusetts, Court of Federal Claims No: 15–1296V
3. Nancy Burtis, Dresher, Pennsylvania, Court of Federal Claims No: 15–1298V
4. Felecia Brooks-Jones, Montgomery, Alabama, Court of Federal Claims No: 15–1299V
5. Jeffrey Prepejchal, Traverse City, Michigan, Court of Federal Claims No: 15–1302V
6. Jill Sadowsky, Chagrin Falls, Ohio, Court of Federal Claims No: 15–1303V
7. Juanita Messick, Oregon, Missouri, Court of Federal Claims No: 15–1305V
8. Giovanna Villaggio, Dallas, Texas, Court of Federal Claims No: 15–1306V
9. Christopher Harrelson, Washington, District of Columbia, Court of Federal Claims No: 15–1308V
10. Dale Pate, Chipley, Florida, Court of Federal Claims No: 15–1309V
11. Trevor Taylor, Ann Arbor, Michigan, Court of Federal Claims No: 15–1310V
12. Meghan Espinoza, Fort Worth, Texas, Court of Federal Claims No: 15–1311V
13. Alice Mulle, Savannah, Georgia, Court of Federal Claims No: 15–1312V
14. Paula Yeske, Chicago, Illinois, Court of Federal Claims No: 15–1313V
15. Jo-Ann Dodd, Elkview, West Virginia, Court of Federal Claims No: 15–1316V
16. Michael Mickas, Hickory Hills, Illinois, Court of Federal Claims No: 15–1317V
17. John Greeling, Jacksonville, Illinois, Court of Federal Claims No: 15–1318V
18. Jan Busiere, Bradenton, Florida, Court of Federal Claims No: 15–1319V
19. Esmeralda Morales, Plant City, Florida, Court of Federal Claims No: 15–1320V
20. Enos Wisniewski, Columbus, Ohio, Court of Federal Claims No: 15–1321V
21. Dana Riddle, Lucedale, Mississippi, Court of Federal Claims No: 15–1323V
22. David M. Reyburne, Richmond, Virginia, Court of Federal Claims No: 15–1325V
23. Marie E. Lemay, West Hartford, Connecticut, Court of Federal Claims No: 15–1326V
24. Lillian Rozanski, Chicago, Illinois, Court of Federal Claims No: 15–1327V
25. Karen Shock, Round Rock, Texas, Court of Federal Claims No: 15–1328V
26. Julie Rich, Champaign, Illinois, Court of Federal Claims No: 15–1329V
27. Richard Parker, Solomon's Island, Maryland, Court of Federal Claims No: 15–1331V
28. Andrew Fantini, Washington, District of Columbia, Court of Federal Claims No: 15–1332V
29. Marsha Dougherty, Logansport, Indiana, Court of Federal Claims No: 15–1333V
30. Sharyn Synnestvedt, Boulder, Colorado, Court of Federal Claims No: 15–1334V
31. Randall Rice, Lexington, Kentucky, Court of Federal Claims No: 15–1335V
32. Leonia Townsend, Hazel Crest, Illinois, Court of Federal Claims No: 15–1336V
33. Renee Lynn Pennington, Kansas City, Missouri, Court of Federal Claims No: 15–1337V
34. Jeff Weggen and Beth Qualls on behalf of S. W., Phoenix, Arizona, Court of Federal Claims No: 15–1338V
35. Kevin Finnegan, Ellicot City, Maryland, Court of Federal Claims No: 15–1340V
36. Sarah Stabenow, Beverly Hills, California, Court of Federal Claims No: 15–1341V
37. Simrat Suri, New Hyde Park, New York, Court of Federal Claims No: 15–1342V
38. James Jackson, Dacula, Georgia, Court of Federal Claims No: 15–1343V
39. Joan Witkowski, Amherst, Ohio, Court of Federal Claims No: 15–1345V
40. Amy Taylor on behalf of A. T., Cheyenne, Wyoming, Court of Federal Claims No: 15–1346V
41. Jeffrey Hunter, Ogden, Utah, Court of Federal Claims No: 15–1347V
42. Jeannie Onikama on behalf of I. O., Cheyenne, Wyoming, Court of Federal Claims No: 15–1348V
43. Mary Hammond, Johnston, Iowa, Court of Federal Claims No: 15–1350V
44. Gary D. Robinson, Dora, Alabama, Court of Federal Claims No: 15–1352V
45. David Wood, Westerly, Rhode Island, Court of Federal Claims No: 15–1354V
46. Devin Beck, Pittsburgh, Pennsylvania, Court of Federal Claims No: 15–1355V
47. Marsha Shoreman, Marlton, New Jersey, Court of Federal Claims No: 15–1355V
48. Priscilla Brierton, Fort Worth, Texas, Court of Federal Claims No: 15–1357V.
49. Carl Becker, Boca Raton, Florida, Court of Federal Claims No: 15–1358V
50. Michelle Leon, Oviedo, Florida, Court of Federal Claims No: 15–1360V
51. Merle Galper, Santa Monica, California, Court of Federal Claims No: 15–1361V
52. Angeline Howk, Glen Falls, New York, Court of Federal Claims No: 15–1362V
53. Arlene McFeely, Ocean Township, New Jersey, Court of Federal Claims No: 15–1367V
54. Erin Moore on behalf of P. C. S., San Francisco, California, Court of Federal Claims No: 15–1368V
55. Tom Crouch, Crownpoint, Indiana, Court of Federal Claims No: 15–1369V
56. Warran Fiske, Richmond, Virginia, Court of Federal Claims No: 15–1370V.
57. Michelle Handrow, Waupun, Wisconsin, Court of Federal Claims No: 15–1373V
58. Sandra Phillips, Washington, Pennsylvania, Court of Federal Claims No: 15–1374V
59. Diane Gail Strobel, Washington, District of Columbia, Court of Federal Claims No: 15–1375V
60. Naomi Yanagawa, Washington, New York, Court of Federal Claims No: 15–1376V
61. Tyler Jossart, Appleton, Wisconsin, Court of Federal Claims No: 15–1377V
62. Sharon Allen, Dallas, Texas, Court of Federal Claims No: 15–1378V
63. Barbara J. Smith, Norristown, Pennsylvania, Court of Federal Claims No: 15–1379V
64. Ansel Walters on behalf of Shakima Davis-Walters, Linwood, New Jersey, Court of Federal Claims No: 15–1380V
65. Janet Cakir on behalf of C A C, Raleigh, North Carolina, Court of Federal Claims No: 15–1383V
66. Donna Nawatny on behalf of David E Nawatny, Deceased, South Bend, Indiana, Court of Federal Claims No: 15–1384V
67. Valerie Robertson, Sewickley, Pennsylvania, Court of Federal Claims No: 15–1385V
68. Terri Davis, Sanford, North Carolina, Court of Federal Claims No: 15–1386V
69. Loralyn Webb on behalf of Chandler Blake Webb, Deceased, New York, New York, Court of Federal Claims No: 15–1387V,
70. Rita Dowaschinski, Jacksonville, Florida, Court of Federal Claims No: 15–1390V
71. Dawnita Noble, Linwood, New Jersey, Court of Federal Claims No: 15–1391V
72. Gail Boteler, Kenner, Louisiana, Court of Federal Claims No: 15–1392V
73. Angela R. Folkers, Urbandale, Iowa, Court of Federal Claims No: 15–1393V
74. Lora McMullen, Las Vegas, Nevada, Court of Federal Claims No: 15–1394V
75. Judith Semanisin, Phoenix, Arizona, Court of Federal Claims No: 15–1395V
76. Mirsa Joosten, Dallas, Texas, Court of Federal Claims No: 15–1396V
77. Susan Murphy, Middlebury, Connecticut, Court of Federal Claims No: 15–1398V
78. Deborah Vanderpool, Clinton, Washington, Court of Federal Claims No: 15–1400V
79. Robert Rowan, Newark, Delaware, Court of Federal Claims No: 15–1402V
80. Jeffrey Treadway, Mountain Home, Tennessee, Court of Federal Claims No: 15–1404V
81. Isabelle Cowans, Beverly Hills, California, Court of Federal Claims No: 15–1407V
82. Michael Ware, Buffalo, New York, Court of Federal Claims No: 15–1410V
83. Beverly A. Blakely, Oklahoma City, Oklahoma, Court of Federal Claims No: 15–1412V
84. Jeff Cardello, Phoenix, Arizona, Court of Federal Claims No: 15–1413V
85. Kimberly and David Tait on behalf of J T, Phoenix, Arizona, Court of Federal Claims No: 15–1414V
86. Kimberly Tait on behalf of D T, Phoenix, Arizona, Court of Federal Claims No: 15–1415V
87. Michael Bailey, Dublin, Ohio, Court of Federal Claims No: 15–1417V
88. Emanuel Woods, Los Angeles, California, Court of Federal Claims No: 15–1419V
89. Dennis D. Nelson, Laguna Hills,

California, Court of Federal Claims No: 15–1423V
90. Ron Shackleford, Dallas, Texas, Court of Federal Claims No: 15–1424V
91. Marcella Bennett, Johnson City, Tennessee, Court of Federal Claims No: 15–1426V
92. James Patterson, Greensboro, North Carolina 27401, Court of Federal Claims No: 15–1428V
93. Katherine Doherty, Austin, Texas, Court of Federal Claims No: 15–1429V
94. Lori Hillstead, Sarasota, Florida, Court of Federal Claims No: 15–1430V
95. Laurie J. Ferenc, North Tonawanda, New York, Court of Federal Claims No: 15–1431V
96. Robert T. Ferenc, North Tonawanda, New York, Court of Federal Claims No: 15–1432V
97. Dwan Petti and Anthony Petti on behalf of M. J. P. Vienna, Virginia, Court of Federal Claims Number: 15–1433V
98. Zoe Wright, Quilcene, Washington, Court of Federal Claims No: 15–1436V

[FR Doc. 2015–32371 Filed 12–23–15; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Loan Repayment Program for Repayment of Health Professions Educational Loans; Announcement Type: Initial.

CFDA Number: 93.164

*Key Dates:* January 15, 2016 first award cycle deadline date; August 19, 2016 last award cycle deadline date; September 9, 2016 last award cycle deadline date for supplemental loan repayment program funds; September 30, 2016 entry on duty deadline date.

**I. Funding Opportunity Description**

The Indian Health Service (IHS) estimated budget request for Fiscal Year (FY) 2016 includes $28,940,752 for the IHS Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service as defined in the IHS LRP policy clarifications at *http://www.ihs.gov/loanrepayment/documents/LRP_Policy_Updates.pdf* in Indian health programs.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by the Indian Health Care Improvement Act (IHCIA) Section 108, codified at 25 U.S.C. 1616a.

**II. Award Information**

The estimated amount available is approximately $19,755,896 to support approximately 437 competing awards averaging $45,208 per award for a two year contract. The estimated amount available is approximately $9,184,856 to support approximately 395 competing awards averaging $23,253 per award for a one year extension. One year contract extensions will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2016 program cycle will be expected to begin their service period no later than September 30, 2016.

**III. Eligibility Information**

*A. Eligible Applicants*

Pursuant to 25 U.S.C. 1616a(b), to be eligible to participate in the LRP, an individual must:

(1)(A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a State; and

(2)(A) Be eligible for, or hold an appointment as a commissioned officer in the Regular Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for service in the Regular Corps of the PHS; or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(3) Submit to the Secretary an application for a contract to the LRP. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy. The IHS LRP's ranking system gives high site scores to those sites that are most in need of specific health professions. Awards are given to the applications that match the highest priorities until funds are no longer available.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

25 U.S.C. 1616a authorizes the IHS LRP and provides in pertinent part as follows:

(a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the Loan Repayment Program) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

25 U.S.C. 1603(10) provides that:

''Health Profession'' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term ''Indian health program'' is defined in 25 U.S.C. 1616a(a)(2)(A), as follows:

(A) The term Indian health program means any health program or facility funded, in whole or in part, by the Service for the benefit of Indians and administered —

(i) Directly by the Service;

(ii) By any Indian Tribe or Tribal or Indian organization pursuant to a contract under —

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to Title V of this Act.

25 U.S.C. 1616a, authorizes the IHS to determine specific health professions for which IHS LRP contracts will be awarded. Annually, the Director, Division of Health Professions Support, sends a letter to the Director, Office of Clinical and Preventive Services, IHS Area Directors, Tribal health officials, and urban Indian health programs directors to request a list of positions for which there is a need or vacancy. The list of priority health professions that follows is based upon the needs of the IHS as well as upon the needs of American Indians and Alaska Natives.

(a) Medicine: Allopathic and Osteopathic.

(b) Nurse: Associate, B.S. and M.S. Degree.

(c) Clinical Psychology: Ph.D. and Psy.D.
(d) Counseling Psychology: Ph.D.
(e) Social Work: Licensed Clinical Social Worker or Licensed Master Social Worker; Masters and Doctorate level.
(f) Chemical Dependency/Addiction Counseling: Baccalaureate and Masters level.
(g) Counseling: Family Marriage Therapy Counselor LMFT, Licensed Professional Counselors: Masters level only.
(h) Dentistry: DDS and DMD.
(i) Dental Hygiene: Associate and B.S.
(j) Dental Assistant: Certified.
(k) Pharmacy: B.S., Pharm.D.
(l) Optometry: O.D.
(m) Physician Assistant: Certified.
(n) Advanced Practice Nurses: Nurse Practitioner, Certified Nurse Midwife, Doctor of Nursing, Registered Nurse Anesthetist (Priority consideration will be given to Registered Nurse Anesthetists.).
(o) Podiatry: D.P.M.
(p) Physical Rehabilitation Services: Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology: M.S. and D.P.T.
(q) Diagnostic Radiology Technology: Associate and B.S.
(r) Medical Laboratory Scientist, Medical Technology, Medical Laboratory Technician: Associate and B.S.
(s) Public Health Nutritionist/ Registered Dietitian.
(t) Engineering (Environmental): B.S. and M.S. (Engineers must provide environmental engineering services to be eligible.).
(u) Environmental Health (Sanitarian): B.S. and Masters level.
(v) Health Records: R.H.I.T. and R.H.I.A.
(w) Certified Professional Coder: AAPC or AHIMA.
(x) Respiratory Therapy.
(y) Ultrasonography.
(z) Chiropractors: Licensed.
(aa) Naturopathic Medicine: Licensed.
(bb) Acupuncturists: Licensed.

*B. Cost Sharing or Matching*

Not applicable.

*C. Other Requirements*

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2016. These priorities will remain in effect until superseded.

## IV. Application and Submission Information

*A. Content and Form of Application Submission*

Each applicant will be responsible for submitting a complete application. Go to *http://www.ihs.gov/loanrepayment* for more information on how to apply electronically. The application will be considered complete if the following documents are included:

- Employment Verification—Documentation of your employment with an Indian health program as applicable:
  - Commissioned Corps orders, Tribal employment documentation or offer letter, or Notification of Personnel Action (SF–50)—For current Federal employees.
- License to Practice—A photocopy of your current, non-temporary, full and unrestricted license to practice (issued by any state, Washington, DC or Puerto Rico).
- Loan Documentation—A copy of all current statements related to the loans submitted as part of the LRP application.
- If applicable, if you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide a certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) (Certification: Form BIA—4432 Category A—Members of Federally-Recognized Indian Tribes, Bands or Communities or Category D—Alaska Native).

*B. Submission Dates and Address*

Applications for the FY 2016 LRP will be accepted and evaluated monthly beginning January 15, 2016 and will continue to be accepted each month thereafter until all funds are exhausted for FY 2016. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month until August 19, 2016.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Received after the deadline date, but has a legible postmark dated on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing).

Applications submitted after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2016, will be notified in writing.

Application documents should be sent to: IHS Loan Repayment Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857.

*C. Intergovernmental Review*

This program is not subject to review under Executive Order 12372.

*D. Funding Restrictions*

Not applicable.

*E. Other Submission Requirements*

New applicants are responsible for using the online application. Applicants requesting a contract extension must do so in writing by January 1, 2016 to ensure the highest possibility of being funded a contract extension.

## V. Application Review Information

*A. Criteria*

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites may include the following:

(1) Historically critical shortages caused by frequent staff turnover;

(2) Current unmatched vacancies in a health profession discipline;

(3) Projected vacancies in a health profession discipline;

(4) Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal health organization or urban Indian organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(5) Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.

Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

*B. Review and Selection Process*

Loan repayment awards will be made only to those individuals serving at facilities which have a site score of 70 or above through March 1, 2016, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, will be selected.

(1) An applicant's length of current employment in the IHS, Tribal, or urban program.

(2) Availability for service earlier than other applicants (first come, first served).

(3) Date the individual's application was received.

*C. Anticipated Announcement and Award Dates*

Not applicable.

**VI. Award Administration Information**

*A. Award Notices*

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

*B. Administrative and National Policy Requirements*

Applicants may sign contractual agreements with the Secretary for two years. The IHS may repay all, or a portion, of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective. The effective date of the contract is calculated from the date it is signed by the Secretary or his/her delegate, or the IHS, Tribal, urban, or Buy Indian health center entry-on-duty date, whichever is more recent.

In addition to the loan payment, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

*C. Contract Extensions*

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts may receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal withholding.

**VII. Agency Contact**

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857, Telephone: 301/443–3396 [between 8:00 a.m. and 5:00 p.m. (Eastern Standard Time) Monday through Friday, except Federal holidays].

**VIII. Other Information**

IHS area offices and service units that are financially able are authorized to provide additional funding to make awards to applicants in the LRP, but not to exceed $35,000 a year plus tax assistance. All additional funding must be made in accordance with the priority system outlined below. Health professions given priority for selection above the $20,000 threshold are those identified as meeting the criteria in 25 U.S.C. 1616a(g)(2)(A) which provides that the Secretary shall consider the extent to which each such determination:

(i) Affects the ability of the Secretary to maximize the number of contracts that can be provided under the LRP from the amounts appropriated for such contracts;

(ii) Provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) Provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the LRP.

Contracts may be awarded to those who are available for service no later than September 30, 2016 and must be in compliance with any limits in the appropriation and 25 U.S.C. 1616a not to exceed the amount authorized in the IHS appropriation (up to $36,000,000 for FY 2016). In order to ensure compliance with the statutes, area offices or service units providing additional funding under this section are responsible for notifying the LRP of such payments before funding is offered to the LRP participant.

Should an IHS area office contribute to the LRP, those funds will be used for only those sites located in that area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that area.

Should an IHS service unit contribute to the LRP, those funds will be used for only those sites located in that service unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Whiteriver Service Unit identifies supplemental monies for nurses. The Whiteriver Service Unit consists of two facilities, namely the Whiteriver PHS Indian Hospital and the Cibecue Indian Health Center. The national ranking will be used for the Whiteriver PHS Indian Hospital (Score = 77) and the Cibecue Indian Health Center (Score = 89). With a score of 89, the Cibecue Indian Health Center would receive priority over the Whiteriver PHS Indian Hospital.

Dated: December 16, 2015.

**Robert G. McSwain,**

*Principal Deputy Director, Indian Health Service.*

[FR Doc. 2015–32354 Filed 12–23–15; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Indian Health Professions Preparatory, Indian Health Professions Pre-Graduate and Indian Health Professions Scholarship Programs; Announcement Type: Initial

CFDA Numbers: 93.971, 93.123, AND 93.972

**Key Dates**

Application Deadline: February 28, 2016, for continuing students
Application Deadline: March 28, 2016, for new students
Application Review: May 9–23, 2016
Continuation Award Notification Deadline: June 6, 2016
New Award Notification Deadline: July 5, 2016
Award Start Date: August 1, 2016
Acceptance/Decline of Awards Deadline: August 15, 2016

**I. Funding Opportunity Description**

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarship authorized by

Section 103 of the Indian Health Care Improvement Act, Public Law 94–437 (1976), as amended (IHCIA), codified at 25 U.S.C. 1613(b)(1).

- The Indian Health Professions Pre-graduate Scholarship authorized by Section 103 of the IHCIA, codified at 25 U.S.C. 1613(b)(2).
- The Indian Health Professions Scholarship authorized by Section 104 of the IHCIA, codified at 25 U.S.C. 1613a.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The scholarship award selections and funding are subject to availability of funds appropriated for the scholarship program.

**II. Award Information**

*Type of Award*

Scholarship.

*Estimated Funds Available*

An estimated $13.7 million will be available for fiscal year (FY) 2016 awards. The IHS Scholarship Program (IHSSP) anticipates, but cannot guarantee, due to possible funding changes, student scholarship selections from any or all of the approved disciplines in the Preparatory, Pre-graduate or Health Professions Scholarship Programs for the scholarship period 2016–2017. Due to the rising cost of education and the decreasing number of scholars who can be funded by the IHSSP, the IHSSP has changed the funding policy for Preparatory and Pre-graduate Scholarship awards and reallocated a greater percentage of its funding in an effort to increase the number of Health Professions Scholarships, and inherently the number of service-obligated scholars, to better meet the health care needs of the IHS and its Tribal and urban Indian health care system partners.

*Anticipated Number of Awards*

Approximately 80 awards will be made under the Health Professions Preparatory and Pre-graduate Scholarship Programs for Indians. The awards are for ten months in duration, with an additional two months for approved summer school requests, and will cover both tuition and fees and other related costs (ORC). The average award to a full-time student is approximately $31,919.52. An estimated 245 awards will be made under the Indian Health Professions Scholarship Program. The awards are for 12 months in duration and will cover both tuition and fees and ORC. The average award to a full-time student is approximately $48,004.00. In FY 2016, an estimated $10,034,760 is available for Health Professions awards, and an estimated $3,687,137 is available for Preparatory and Pre-graduate awards.

*Project Period*

The project period for the IHS Health Professions Preparatory Scholarship stipend support, tuition, fees and ORC is limited to two years for full-time students and the part-time equivalent of two years, not to exceed four years for part-time students. The project period for the Health Professions Pre-graduate Scholarship stipend support, tuition, fees and ORC is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students. The IHS Indian Health Professions Scholarship provides stipend support, tuition, fees, and ORC and is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students.

**III. Eligibility Information**

This is a limited competition announcement. New and continuation scholarship awards are limited to ''Indians'' as defined at 25 U.S.C. Section 1603(13). **Note:** The definition of ''Indians'' for Section 103 Preparatory and Pre-graduate scholarships is broader than the definition of ''Indians'' for the Section 104 Health Professions scholarship, as specified below. Continuation awards are non-competitive.

*1. Eligibility*

The Health Professions Preparatory Scholarship awards are made to American Indians (Federally recognized Tribal members, including those from Tribes terminated since 1940, first and second degree descendants of Federally recognized Tribal members, State recognized Tribal members and first and second degree descendants of State recognized Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum.

The Health Professions Pre-graduate Scholarship awards are made to American Indians (Federally recognized Tribal members, including those from Tribes terminated since 1940, first and second degree descendants of Tribal members, and State recognized Tribal members, first and second degree descendants of Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pre-graduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry, pre-optometry or pre-podiatry.

The Indian Health Professions Scholarship may be awarded only to an individual who is a member of a Federally recognized Indian Tribe, Eskimo, Aleut or other Alaska Native as provided by Section 1603(13) of the IHCIA. Membership in a Tribe recognized only by a State does not meet this statutory requirement. To receive an Indian Health Professions Scholarship, an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by Section 1603(10) of the IHCIA.

*2. Cost Sharing/Matching*

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

*3. Benefits From State, Local, Tribal and Other Federal Sources*

Awardees of the Health Professions Preparatory Scholarship, Health Professions Pre-graduate Scholarship, or Health Professions Scholarship, who accept outside funding from other scholarship, grant and fee waiver programs, will have these monies applied to their student account tuition and fees charges at the college or university they are attending, before the IHS Scholarship Program will pay any of the remaining balance, unless said outside scholarship, grant or fee waiver award letter specifically excludes use for tuition and fees. These outside funding sources must be reported on the student's invoicing documents submitted by the college or university they are attending. Student loans and Veterans Administration (VA)/G.I. Bill Benefits accepted by Health Professions Scholarship recipients will have no effect on the IHSSP payment made to their college or university.

**IV. Application Submission Information**

*1. Electronic Application System and Application Handbook Instructions and Forms*

Applicants must go online to *www.ihs.gov/scholarship/online_*

*application/index.cfm* to apply for an IHS scholarship and access the Application Handbook instructions and forms for submitting a properly completed application for review and funding consideration. Applicants are strongly encouraged to seek consultation from their Area Scholarship Coordinator (ASC) in preparing their scholarship application for award consideration. ASC's are listed on the IHS Web site at: *http://www.ihs.gov/scholarship/contact/areascholarshipcoordinators/*.

This information is listed below. Please review the following list to identify the appropriate IHS ASC for your State.

| IHS Area Office and States/Locality Served: | Scholarship Coordinator Address: |
|---|---|
| Great Plains Area IHS: Nebraska; Iowa; North Dakota; South Dakota | Ms. Kim Annis; IHS Area Scholarship Coordinator; Great Plains Area IHS; 115 4th Avenue SE; Aberdeen, SD 57401; Tel: (605) 226–7466. |
| Alaska Native Tribal Health Consortium: Alaska | Mr. Joshua Patton; Alaska IHS Area Scholarship Coordinator; Alaska Native Tribal Consortium; 4000 Ambassador Drive; Anchorage, AK 99508; Tel: (907) 729–1333; 1–800–684–8361 (toll free). |
| Albuquerque Area IHS: Colorado IHS Area Scholarship Coordinator; New Mexico Albuquerque Area IHS; 5300 Homestead Road, NE; Albuquerque, NM 87110; Tel: (505) 248–4713. | |
| Bemidji Area IHS: Illinois; Indiana, Michigan, Minnesota, Wisconsin | Mr. Tony Buckanaga; IHS Area Scholarship Coordinator; Bemidji Area IHS; 522 Minnesota Avenue NW; Room 115A; Bemidji, MN 56601; Tel: (218) 444–0486; 1–800–892–3079 (toll free). |
| Billings Area IHS: Montana; Wyoming | Mr. Delon Rock Above; Alternate: Ms. Bernice Hugs; Wyoming IHS Area Scholarship Coordinator; Billings Area IHS; Area Personnel Office; P.O. Box 36600; 2900 4th Avenue, North, Suite 400; Billings, MT 59107; Tel: (406) 247–7215. |
| California Area IHS: California | Ms. Mona Celli; IHS Area Scholarship Coordinator; California Area IHS; 650 Capitol Mall, Suite 7–100; Sacramento, CA 95814; Tel: (916) 930–3983 ext 311. |
| Nashville Area IHS: Alabama; Arkansas; Connecticut; Delaware; Florida; Georgia; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Mississippi; New Hampshire; New Jersey; New York; North Carolina; Ohio; Pennsylvania; Rhode Island; South Carolina; Tennessee; Vermont; Virginia; West Virginia; District of Columbia. | Mr. Tyler Harman; IHS Area Scholarship Coordinator; Nashville Area IHS; 711 Stewarts Ferry Pike; Nashville, TN 37214; Tel: (615) 467–1590. |
| Navajo Area IHS: Arizona; New Mexico; Utah | Ms. Aletha John; IHS Area Scholarship Coordinator; Navajo Area IHS; P.O. Box 9020; Window Rock, AZ 86515; Tel: (928) 871–1360. |
| Oklahoma City Area IHS: Kansas; Missouri; Oklahoma; Texas | Mr. Keith Bohanan; IHS Area Scholarship Coordinator; Oklahoma City Area IHS; Oklahoma 701 Market Drive; Oklahoma City, OK 73114; Tel: (405) 951–3789; 1–800–722–3357 (toll free). |
| Phoenix Area IHS: Arizona; Nevada; Utah | Ms. Trudy Begay; IHS Area Scholarship Coordinator; Phoenix Area IHS; Southwest Region Human Resources; Hopi Health Care Center; P.O. Box 4000; Polacca, Arizona 86042; Tel: (928) 737–6374. |
| Portland Area IHS: Idaho; Oregon; Washington | Ms. Heidi Hulsey; IHS Area Scholarship Coordinator; Portland Area IHS; 1414 NW Northrup Street, Suite 800; Portland, Oregon 97209; Tel: (503) 414–7745. |
| Tucson Area IHS: Arizona | Ms. Trudy Begay; (See Phoenix Area). |

*2. Content and Form Submission*

Each applicant will be responsible for entering their basic applicant account information online, in addition to submitting a completed, original signature hard copy and one copy set of application documents, in accordance with the IHS Scholarship Program Application Handbook instructions, to the: IHS Scholarship Program Branch Office, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857. Applicants must initiate an application through the online portal or the application will be considered incomplete. For more information on how to use the online portal, go to *www.ihs.gov/scholarship.* The portal will be open on December 18, 2015. The application will be considered complete if the following documents (original and one copy) are included:

- Completed and signed online Application Checklist.
- Completed, printed, and signed IHSSP online application form for new or continuation student.
- Current Letter of Acceptance from college/university or proof of application to a college/university or health professions program.
- One set of official transcripts for all colleges/universities attended (or high school transcripts or Certificate of Completion of Home School Program or General Education Diploma (GED) for applicants who have not taken college courses).
- Cumulative Grade Point Average (GPA): Calculated by the applicant.
- Applicant's Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) Certification: Form 4432-Category A or D, (whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, *i.e.,* Tribal enrollment card showing enrollment number; or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

**Note:** If you meet the criteria of Form 4432-Category B or C, you are eligible only for the Preparatory or Pre-graduate Scholarships, which have eligibility criteria as follows in Section B.

B. For Preparatory or Pre-graduate Scholarships, only: If you are a member

of a Tribe terminated since 1940 or a State recognized Tribe and first or second degree descendant, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or State recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the State in which the Tribe is located in accordance with the law of that State.

C. For Preparatory or Pre-graduate Scholarships, only: If you are not a Tribal member, but are a natural child or grandchild of a Tribal member you must submit: (1) Evidence of that fact, *e.g.,* your birth certificate and/or your parent's/grandparent's birth/death certificate showing the name of the Tribal member; and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

- Two Faculty/Employer Evaluations with original signature.
- Online narratives-reasons for requesting the scholarship.
- Delinquent Debt Form with original signature.
- Course Curriculum Verification with original signature.
- Curriculum for Major.

*3. Submission Dates*

Application Receipt Date: The online continuation application submission deadline for *continuation* applicants is Sunday, February 28, 2016. No supporting documents will be accepted after this date, except final Letters of Acceptance, which must be submitted no later than Friday, May 30, 2016.

Application Receipt Date: *New* applicants must print and sign their online application and checklist and submit it with their supporting documents by the postal deadline of Monday, March 28, 2016. No supporting documents will be accepted after this date, except final Letters of Acceptance, which must be submitted no later than Monday, May 30, 2016.

Applications and supporting documents (original and one copy) shall be considered as meeting the deadline if they are received by the IHSSP branch office, postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and the application will not be considered for funding.

New and continuation applicants may check the status of their application receipt and processing by logging into their online account at *https://www.ihs.gov/scholarship/online_application/index.cfm.* Applications received with postmarks after the announced deadline date will not be considered for funding.

*4. Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

*5. Funding Restrictions*

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of six hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with the authorizing statutes at 25 U.S.C. 1613 and 1613a and the regulations at 42 CFR part 136 Subpart J, Subdivisions J–3, J–4, and J–8 and this information will be published in all IHSSP Application and Student Handbooks as they pertain to the IHSSP.

*6. Other Submissions Requirements*

New and continuation applicants are responsible for using the online application system. See section 3. Submission Dates for application deadlines.

**V. Application Review Information**

*1. Criteria*

Applications will be reviewed and scored with the following criteria.

- Academic Performance (40 points)

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Preparatory, Pre-graduate and Health Professions applicants with a cumulative GPA below 2.0 are not eligible for award.

- Faculty/Employer Recommendations (30 points)

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

- Stated Reasons for Asking for the Scholarship and Stated Career Goals Related to the Needs of the IHS (30 points)

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health personnel needs.

The applicant's narrative will be judged on how well it is written and its content.

Applications for each health career category are reviewed and ranked separately.

- Applicants who are closest to graduation or completion of training are awarded first. For example, senior and junior applicants under the Health Professions Pre-graduate Scholarship receive funding before freshmen and sophomores.
- Priority Categories

The following is a list of health professions that will be considered for funding in each scholarship program in FY 2016.

○ Indian Health Professions Preparatory Scholarships

A. Pre-Clinical Psychology (Jr. and Sr. undergraduate years only).

B. Pre-Nursing.

C. Pre-Pharmacy.

D. Pre-Social Work (Jr. and Sr. preparing for an MS in social work).

○ Indian Health Professions Pre-graduate Scholarships

A. Pre-Dentistry.

B. Pre-Medicine.

C. Pre-Optometry.

D. Pre-Podiatry.

○ Indian Health Professions Scholarship

A. Chemical Dependency Counseling—Master's Degrees.

B. Clinical Psychology—Ph.D. or PsyD.

C. Coding Specialist—AAS degree.

D. Counseling Psychology—Ph.D.

E. Dentistry: DDS or DMD degrees.

F. Diagnostic Radiology Technology: AAS or BS.

G. Environmental Engineering: BS (Jr. and Sr. undergraduate years only).

H. Environmental Health/Sanitarian: BS (Jr. and Sr. undergraduate years only).

I. Health Records Administration: RHIT (AAS) and RHIA (BS).

J. Medical Technology: BS (Jr. and Sr. undergraduate years only).

K. Medicine: Allopathic and Osteopathic.

L. Nurse: Associate and Bachelor Degrees and advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Midwifery, Nurse Anesthetist, and Nurse Practitioner. (Priority consideration will be given to Registered Nurses employed by the IHS; in a program conducted under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) and its amendments; or in a program assisted under Title V of the IHCIA).

M. Optometry: OD.

N. Pharmacy: PharmD.

O. Physician Assistant: PA–C.

P. Physical Therapy: MS and DPT.

Q. Podiatry: DPM.

R. Public Health Nutritionist: MS.

S. Respiratory Therapy: BS Degree.

T. Social Work: Masters Level only (Direct Practice and Clinical concentrations).

U. Ultrasonography (Prerequisite: Diagnostic Radiology Technology degree/certificate).

*2. Review and Selection Process*

The applications will be reviewed and scored by the IHS Scholarship Program's Application Review Committee appointed by the IHS. Reviewers will not be allowed to review an application from their area or their own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provides the final ranking score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship health discipline by date of graduation and score. If several students have the same date of graduation and score within the same discipline, the computer will randomly sort the ranking list and will not sort by alphabetical name. Selections are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

**VI. Award Administration Information**

*1. Award Notices*

It is anticipated that recipients applying for extension of their scholarship funding will be notified in writing during the first week of June 2016 and new applicants will be notified in writing during the first week of July 2016. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reason(s) the application was not successful and provide the name of the IHS official to contact if more information is desired.

*2. Administrative and National Policy Requirements*

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of allied health professions eligible for consideration for the award of IHS Indian Health Professions Preparatory and Pre-graduate Scholarships and IHS Indian Health Professions Scholarships. Section 104(b)(1) of the IHCIA, 25 U.S.C. 1613a(b)(1), authorizes the IHS to determine the distribution of scholarships among the health professions.

Awards for the Indian Health Professions Scholarships will be made in accordance with the IHCIA, 25 U.S.C. 1613a and 42 CFR 136.330–136.334. Awardees shall incur a service obligation prescribed under the IHCIA, Section 1613a(b), which shall be met by service, through full-time clinical practice (as detailed on page 18 of the IHS Scholarship Program Service Commitment Handbook at *http://www.ihs.gov/scholarship/handbooks/service_commitment_handbook.pdf*):

(1) In the IHS;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) and its amendments;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; or

(4) In a private practice option of his or her profession if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary of Health and Human Services (Secretary) and (b) addresses the health care needs of a substantial number (75% of the total served) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the IHCIA Section 1613a(b)(3)(C), an awardee of an IHS Health Professions Scholarship may, at the election of the awardee, meet his/her service obligation prescribed under IHCIA Section 1613a(b) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the awardee is enrolled; or

(ii) Serves the Tribe in which the awardee is enrolled, if there is an open vacancy available in the discipline for which the awardee was funded under the IHS Health Professions Scholarship during the required 90-day placement period.

In summary, all awardees of the Indian Health Professions Scholarship are reminded that acceptance of this scholarship will result in a service obligation required by both statute and contract, which must be performed, through full-time clinical practice, at an approved service payback facility. The IHS Director (Director) reserves the right to make final decisions regarding assignment of scholarship recipients to fulfill their service obligation.

Moreover, the Director has the authority to make the final determination, designating a facility, whether managed and operated by IHS, or one of its Tribal or urban Indian partners, consistent with IHCIA, as approved for scholar obligated service payback.

*3. Reporting*

Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship awardee funded under the Indian Health Professions Scholarship Program of the IHCIA must maintain a 2.0 cumulative GPA, remain in good academic standing each semester/trimester/quarter, maintain full-time student status (institutional definition of ''minimum hours'' constituting full-time enrollment applies) or part-time student status (institutional definition of ''minimum and maximum'' hours constituting part-time enrollment applies) for the entire academic year, as indicated on the scholarship application submitted for that academic year. The Health Professions Scholarship awardee may not change his or her enrollment status between terms of enrollment during the same academic year. New recipients may not request a Leave of Absence during the first year of their funding. In addition to these requirements, a Health Professions Scholarship awardee must be enrolled in an approved/accredited school for a health professions degree.

An awardee of a scholarship under the IHS Health Professions Preparatory and Health Professions Pre-graduate Scholarship authority must maintain a minimum 2.0 cumulative GPA, remain in good standing each semester/trimester/quarter and be a full-time

student (institutional definition of ''minimum hours'' constituting full-time enrollment applies, typically 12 credit hours per semester) or a part-time student (institutional definition of ''minimum and maximum'' hours constituting part-time enrollment applies, typically 6–11 credit hours). The Preparatory and Pre-graduate awardee may not change from part-time status to full-time status or vice versa in the same academic year. New recipients may not request a Leave of Absence during the first year of their funding.

The following reports must be sent to the IHSSP at the identified time frame. Each scholarship awardee will have access to online Student and Service Commitment Handbooks and required program forms and instructions on when, how, and to whom these must be submitted, by logging into the IHSSP Web site at *www.ihs.gov/scholarship.* If a scholarship awardee fails to submit these forms and reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's and Initial Progress Report

Within thirty (30) days from the beginning of each semester/trimester/quarter, scholarship awardees must submit a Recipient's Initial Program Progress Report (Form IHS–856–8, found on the IHS Scholarship Program Web site at *http://www.ihs.gov/scholarship/programresources/studentforms/*).

B. Transcripts

Within thirty (30) days from the end of each academic period, *i.e.,* semester/trimester/quarter, or summer session, scholarship awardees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem

If at any time during the semester/trimester/quarter, scholarship awardees are advised to reduce the number of credit hours for which they are enrolled below the minimum of the 12 (or the number of hours considered by their school as full-time) for a full-time student or at least six hours for part-time students, or if they experience academic problems, they must submit this report (Form IHS–856–9, found on the IHS Scholarship Program Web site at *www.ihs.gov/scholarship*).

D. Change of Status

• Change of Academic Status

Scholarship awardees must immediately notify their Scholarship Program Analyst if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

• Change of Health Discipline

Scholarship awardees may not change from the approved IHSSP health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

• Change in Graduation Date

Any time that a change occurs in a scholarship awardee's expected graduation date, they must notify their Scholarship Program Analyst immediately in writing. Justification must be attached from the school advisor.

## VII. Agency Contacts

1. Questions on the application process may be directed to the appropriate IHS Area Scholarship Coordinator.

2. Questions on other programmatic matters may be addressed to: Chief, Scholarship Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857, Telephone: (301) 443–6197 (This is not a toll-free number).

3. Questions on payment information may be directed to: Mr. Craig Boswell, Grants Scholarship Coordinator, Division of Grants Management, Indian Health Service, 5600 Fishers Lane, Mail Stop: (07E57B), Rockville, Maryland 20857, Telephone: (301) 443–0243 (This is not a toll-free number).

## VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2020,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may download a copy of *Healthy People 2020* from *http://www.healthypeople.gov.*

Interested individuals are reminded that the list of eligible health and allied professions is effective for applicants for the 2016–2017 academic year. These priorities will remain in effect until superseded. Applicants who apply for health career categories not listed as priorities during the current scholarship cycle will not be considered for a scholarship award.

Dated: December 16, 2015.

**Robert G. McSwain,**

*Principal Deputy Director, Indian Health Service.*

[FR Doc. 2015–32352 Filed 12–23–15; 8:45 am]

BILLING CODE 4165–16–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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

*Name of Committee:* National Advisory Council for Complementary and Integrative Health.

*Date:* February 5, 2016.

*Closed:* Closed: 8:30 a.m. to 9:45 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Open:* 10:00 a.m. to 3:30 p.m.

*Agenda:* A report from the Institute Director and other staff.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Martin H. Goldrosen, Ph.D., Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a

government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 18, 2015.

**Michelle Trout,**

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

[FR Doc. 2015–32395 Filed 12–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

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

*Name of Committee:* Council of Councils.

*Open:* January 29, 2016.

*Time:* 8:15 a.m. to 12:00 p.m.

*Agenda:* Call to Order and Introductions; Announcements; NIH Update; Creation of Sexual and Gender Minority Research Office in DPCPSI; Precision Medicine Initiative—Council's Role in Overseeing the Cohort Advisory Panel; ORIP Strategic Plan Presentation and Discussion.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Closed:* January 29, 2016.

*Time:* 12:45 p.m. to 1:45 p.m.

*Agenda:* Review of grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Open:* January 29, 2016.

*Time:* 1:45 p.m. to 4:00 p.m.

*Agenda:* Common Fund Concepts (Parts 1 and 2) and Closing Remarks.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Franziska Grieder, DVM, Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 17, 2015.

**Carolyn Baum,**

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

[FR Doc. 2015–32396 Filed 12–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

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

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U. S. C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: National Outcomes Evaluation of the Garrett Lee Smith Suicide Prevention Program—Revision**

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is requesting clearance for the revision of data collection associated with the previously-approved cross-site evaluation of the Garrett Lee Smith (GLS) Youth Suicide Prevention and Early Intervention Program (GLS Suicide Prevention Program), now entitled National Outcomes Evaluation (NOE). The NOE is a proposed redesign of the currently-approved cross-site evaluation (OMB No. 0930–0286; Expiration, January 2017) that builds on prior published GLS evaluation proximal and distal training and aggregate findings from program activities (e. g., Condron et al., 2014; Walrath et al., 2015). As a result of the vast body of information collected and analyzed through the cross-site evaluation of the two GLS Suicide Prevention Programs components—the GLS State/Tribal Program and the GLS Campus Program—SAMHSA has identified areas for additional investigation and the types of inquiry needed to move the evaluation into its next phase.

The NOE aims to address the field's need for additional evidence on the impacts of the GLS Suicide Prevention Program in three areas: (1) Suicide prevention training effectiveness, (2) early identification and referral on subsequent care follow-up and adherence, and (3) suicide safer care practices within health care settings. The evaluation comprises three distinct, but interconnected core studies—Training, Continuity of Care (COC), and Suicide Safer Environment (SSE). The Training and SSE studies also have ''enhanced'' study components. Core study data align with required program

activities across the State/Tribal and Campus programs and provide continuity with and utility of data previously collected (implementation and proximal outcomes). Enhanced components use experimental and quasi-experimental methods (randomized controlled trial [RCT] and retrospective cohort study designs) to truly assess program impacts on distal outcomes (e. g., identifications and referrals, hospitalizations, and suicide attempts and deaths) without undue burden on grantees and youth. This outcome- and impact-focused design reflects SAMHSA's desire to assess the implementation, outcomes, and impacts of the GLS program.

The NOE builds on information collected through the four-stage cross-site evaluation approach (context, product, process, and impact) to further the field of suicide prevention and mental health promotion. Of notable importance, the design now accounts for differences in State/Tribal and Campus program grant funding cycles (i. e., 5-year State/Tribal and 3-year Campus programs), while also establishing continuity with and maximizing utility of data previously collected. Further, the evaluation meets the legislative requirements outlined in the GLSMA to inform performance and implementation of programs.

Eleven data collection activities compose the NOE—two new instruments, three previously-approved instruments, and six previously-approved and improved instruments. As GLS program foci differ by grantee type, some instruments will apply to either State/Tribal or Campus programs only. Of the 11 instruments, 2 will be administered with State/Tribal and Campus grantees (tailored to grantee type), 6 are specific to State/Tribal grantees, and 3 pertain only to Campus grantees.

*Instrument Removals*

Due to the fulfillment of data collection goals, six currently-approved instruments and their associated burden will be removed. The combined estimated annual burden for these instruments is 4,300 hours. These include the *State/Tribal* Training Utilization and Preservation Survey (TUP–S) Adolescent Version, Coalition Profile, and Coalition Survey, and the *Campus* Training Exit Survey (TES) Interview Forms, Life Skills Activities Follow-up Interview, and the Student Awareness Intercept Survey.

*Instrument Continuations*

Three instruments will be administered only in OMB Year 1 to finalize data collection for the current cross-site evaluation protocol. Each instrument was previously approved as part of the four-stage approach (OMB No. 0930–0286; Expiration, January 2017) and no changes are being made. These include the State/Tribal Referral Network Survey (RNS), TUP–S Campus Version, and Campus Short Message Service Survey (SMSS). Each instrument will be discontinued once the associated data collection requirement has been fulfilled.

*Instrument Revisions*

Six currently-approved instruments will be revised for the NOE. Each of the instruments, or an iteration thereof, has received approval through multiple cross-site evaluation packages cleared by OMB. As such, the information gathered has been, and will continue to be, crucial to this effort and to the field of suicide prevention and mental health promotion.

- Prevention Strategies Inventory (PSI): The PSI has been updated to enhance the utility and accuracy of the data collected. Changes capture different strategies implemented and products distributed by grantee programs, the population of focus for each strategy, total GLS budget expenditures, and the percent of funds allocated by the activity type.
- Training Activity Summary Page (TASP): New items on the TASP gather information about the use of behavioral rehearsal and/or role-play and resources provided at trainings—practices that have been found to improve retention of knowledge and skills posttraining. In addition, understanding how skills can be maintained over time with materials provided at trainings (*e.g.*, video reminders, wallet cards, online and phone applications) is an area suggested for further study (Cross et al., 2011).
- Training Utilization and Preservation Survey (TUP–S) 3 and 6-month follow up: The TUP–S has been improved to examine posttraining behaviors and utilization of skills by training participants—factors known to improve understanding of the comprehensive training process and the impact of training on identifications, referrals, and service use. The survey now requests information about training resources received, practice components, trainee participation in role play, and previous suicide prevention trainings attended; experience intervening with a suicidal individual (from QPR evaluation tool), intended use of the training, and referral behaviors; and previous contact and quality of relationships with youth. Broad items about training others, the use/intended use of skills, and barriers/facilitators have been removed. The consent-to-contact form has been modified to add brief items about the trainee and previous identifications/referrals. The TUP–S will be administered at 3 and 6 months post-training to a random sample of training participants via CATI (2000 ST TUP–S 3-mo/600 ST TUP–S 6-mo per year).
- Early Intervention, Referral, and Follow-up Individual Form (EIRF–I): The EIRF–I has been improved to gather initial follow-up information about youth identified as being at risk as a result of the State/Tribal GLS program (whether or not a service was received after referral). In addition, EIRF–I (1) data elements have been expanded to include screening practices, screening tools, and screening results of youth identified as at-risk for suicide; (2) response options have been expanded/refined (*i.e.*, setting/source of identification, mental health and non-mental health referral locations, and services received); (3) tribal-specific data elements have been added; and (4) sources of information used has been removed.
- EIRF Screening Form (EIRF–S): Data elements have been added to indicate whether State/Tribal screenings were performed at the individual- or group-level. New response options have been added under ''screening tool'' and ''false positive'' has been removed.
- Student Behavioral Health Form (SBHF): the SBHF (formerly entitled the MIS) has been expanded and renamed. The Campus form has been enhanced to include referral and follow-up procedure questions (rather than simply counts); numbers screened, identified at risk, receiving suicide-specific services, referred, and receiving follow-up; and age and gender breakdowns of suicide attempts and deaths. Student enrollment/retention items have been removed; these will be obtained through the Integrated Postsecondary Education Data System. The SBHF will require closer involvement with campus behavioral health/health providers to gather data on procedural questions and screenings, risk assessment, services, referrals, and follow-ups.

*Instrument Additions*

Four instruments will augment the evaluation—two are newly developed instruments and two represent new versions of existing instruments.

- TUP–S RCT (Baseline and 12-Month versions): the TUP–S RCT refers to versions administered as part of the Training Study RCT. The RCT collects TUP–S data at baseline (pre-training) and 3, 6, and 12 months after training.

Because the surveys are conducted at different times, each version refers the participant to a specific time period. All trainees from States/Tribes participating in the RCT and who consent to be contacted will be surveyed until the desired sample size of 1332 respondents is achieved. The consent-to-contact form will describe the RCT and the 4 assessment periods. The consent-to-contact form will describe the RCT and the 4 assessment periods.

■ Behavior Health Provider Survey (BHPS): the BHPS is a new State/Tribal data collection activity and the first to specifically target behavioral health providers partnering with GLS grantees. Data will include information about referrals for at-risk youth, SSE care practices implemented, and client outcomes (number of suicide attempts and deaths). A total of 1–10 respondents from each State/Tribal grantee's partnering behavioral health provider will participate annually.

The estimated response burden to collect this information associated with the redesigned National Outcomes Evaluation is as follows annualized over the requested 3-year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

| Type of respondent | Instrument | Number of respondents | Responses per respondent | Total number of responses | Burden per response (hours) | Annual burden (hours) |
|---|---|---|---|---|---|---|
| **State/Tribal Instruments** | | | | | | |
| Project Evaluator | PSI | 43 | 4 | 172 | 0. 750 | 129 |
| Project Evaluator | TASP | 43 | 4 | 172 | 0. 250 | 43 |
| Project Evaluator | EIRF–Individual Form | 43 | 4 | 172 | 0. 750 | 129 |
| Project Evaluator | EIRF Screening Form | 43 | 4 | 172 | 0. 750 | 129 |
| Provider Trainee | TUP–S Consent to Contact | 6,000 | 1 | 6000 | 0. 167 | 1000 |
| Provider Trainee | TUP–S 3 Month Version | 2,000 | 1 | 2000 | 0. 500 | 1000 |
| Provider Trainee | TUP–S 6 Month Version | 600 | 1 | 600 | 0. 417 | 250 |
| Provider Trainee | TUP–S RCT BL Version | 444 | 1 | 444 | 0. 417 | 185 |
| Provider Trainee | TUP–S RCT 3 Month Version. | 444 | 1 | 444 | 0. 500 | 222 |
| Provider Trainee | TUP–S RCT 6 Month Version. | 444 | 1 | 444 | 0. 417 | 185 |
| Provider Trainee | TUP–S RCT 12 Month Version. | 444 | 1 | 444 | 0. 417 | 185 |
| Provider Stakeholder | RNS | 26 | 1 | 26 | 0. 667 | 17 |
| Behavioral Health Provider | BHPS | 407 | 1 | 407 | 0. 750 | 305 |
| **Campus Instruments** | | | | | | |
| Project Evaluator | PSI | 56 | 4 | 224 | 0. 750 | 168 |
| Project Evaluator | TASP | 56 | 4 | 224 | 0. 250 | 56 |
| Project Evaluator | SBHF | 56 | 1 | 56 | 0. 667 | 37 |
| Student | TUP–S Campus Version | 167 | 1 | 167 | 0. 167 | 28 |
| Student | SMSS | 734 | 1 | 734 | 0. 083 | 61 |
| Total | | 12,050 | | 12,902 | | 4,129 |

* Rounded to the nearest whole number

Written comments and recommendations concerning the proposed information collection should be sent by January 25, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb. eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2015–32415 Filed 12–23–15; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[Docket No. USCBP–2015–0057]**

### Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC)

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

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

**SUMMARY:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on January 13, 2016, in New Orleans, LA. The meeting will be open to the public.

**DATES:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on Wednesday, January 13, 2016, from 1:00 p.m. to 4:00 p.m. CST. Please note that the meeting may close early if the committee has completed its business.

*Pre-Registration:* Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

For members of the public who plan to attend the meeting in person, please register either online at *https://*

*apps.cbp.gov/te_reg/index.asp?w=53;* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290 by 5:00 p.m. EST by January 11, 2016. You must register prior to the meeting in order to attend the meeting in person.

For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=54;* by 5:00 p.m. EST by January 11, 2016. Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=53;* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=54;* to cancel a webinar registration.

**ADDRESSES:** The meeting will be held at the U.S. Customs House, 423 Canal Street, Conference Room Number 316, New Orleans, LA 70130. Please allow time to go through the security check point before the meeting. There will be signage posted directing visitors to the location of the conference room.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than January 6, 2016, and must be identified by Docket No. USCBP–2015–0057, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

*Docket:* For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2015–0057. To submit a comment, see the link on the Regulations.gov Web site for ''How do I submit a comment?'' located on the right hand side of the main site page.

There will be multiple public comment periods held during the meeting on January 13, 2016. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac,* at the time of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. Appendix. The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

**Agenda**

The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will discuss the Trade Efficiency Survey and hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed on those topics:

1. The Trade Modernization Subcommittee will discuss the progress of the Centers of Excellence and Expertise Uniformity (''Centers'') Working Group. The subcommittee will provide an update on their review of the original COAC recommendations for Centers and what areas they have identified for Centers to develop uniform policies, processes and strategies, with consideration of an industry-focused and account-based approach. The subcommittee will also discuss the progress of the International Engagement and Trade Facilitation Working Group which is identifying examples of best practices in the U.S. and abroad that facilitate trade and could be applied globally. Additionally, the subcommittee will also discuss the formation of a Role of the Broker 2016 working group to provide updated recommendations for revising 19 CFR 111.

2. The Exports Subcommittee Manifest Working Group will discuss the upcoming Air Manifest Pilot and the refocusing/renewal of the Post Departure Filing Working Group (formally Option 4 workgroup).

3. The One U.S. Government Subcommittee will discuss progress of the Automated Commercial Environment (ACE) Single Window effort and the previous COAC recommendations related to this matter. The subcommittee will provide input on trade readiness and partner government agencies' readiness for the upcoming February 28, 2016, ACE implementation of the Single Window. There will also be an update from the North American Single Window Vision Working Group.

4. The Trade Enforcement and Revenue Collection Subcommittee will discuss the progress made on the Intellectual Property Rights Working Group and the Antidumping and Countervailing Duty Working Group, and outline the plans for the Bond Working Group.

5. The Global Supply Chain Subcommittee will review and discuss recommendations related to the Pipeline Working Group and also provide an update on pilot discussions with industry.

6. The Trusted Trader Subcommittee will report on the status of the Trusted Trader Pilot, the next steps for implementation, and the vision of an enhanced Trusted Trader concept that includes engagement with CBP to include relevant partner government agencies with a potential for international interoperability.

Meeting materials will be available by January 6, 2016, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

**Maria Luisa Boyce,**

*Senior Advisor for Private Sector Engagement, Office of Trade Relations.*

[FR Doc. 2015–32424 Filed 12–23–15; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0035]**

### Agency Information Collection Activities: Holders or Containers Which Enter the United States Duty Free

**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: Holders or Containers which enter the United States Duty Free. 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 February 22, 2016 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 (Public Law 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:* Holders or Containers which Enter the United States Duty Free

*OMB Number:* 1651–0035

*Abstract:* Item 9803.00.50 under the Harmonized Tariff Schedules of the United States (HTSUS), codified as 19 U.S.C. 1202, provides for the duty-free entry of substantial holders or containers of foreign manufacture if duty had been paid upon a previous importation pursuant to the provisions of 19 CFR 10.41b.

19 CFR 10.41 provides that substantial holders or containers are to have prescribed markings in clear and conspicuous letters of such a size that they will be easily discernable. Section 10.41b of the CBP regulations eliminates the need for an importer to file entry documents by instead requiring the marking of the containers or holders to indicate the HTSUS numbers that provide for duty free treatment of the containers or holders.

In order to comply with 19 CFR 10.41b, the owner of the holder or container is required to place the markings on a metal tag or plate containing the following information: 9801.00.10, HTSUS; the name of the owner; and the serial number assigned by the owner. In the case of serially numbered holders or containers of foreign manufacture for which free clearance under 9803.00.50 HTSUS is claimed, the owner must place markings containing the following information: 9803.00.50 HTSUS; the port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

*Current Action:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

*Type of Review:* Extension (with no change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 18.

*Estimated Number of Total Annual Responses:* 360.

*Estimated Total Annual Burden Hours:* 90.

Dated: December 16, 2015.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2015–32468 Filed 12–23–15; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Notice of Availability for Best Practices for Protecting Privacy, Civil Rights and Civil Liberties in Unmanned Aircraft Systems Programs

**AGENCY:** Office for Civil Rights and Civil Liberties, DHS; Privacy Office, DHS; and U.S. Customs and Border Protection, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Office for Civil Rights and Civil Liberties (CRCL), the Privacy Office (Privacy), and U.S. Customs and Border Protection (CBP) announce the availability of the following document: ''Best Practices for Protecting Privacy, Civil Rights & Civil Liberties in Unmanned Aircraft Systems Programs.'' DHS has made the best practices document available on the Internet at the following locations: *http://www.dhs.gov/security-intelligence-and-information-policy-section* and *http://www.dhs.gov/privacy-foia-reports.*

**FOR FURTHER INFORMATION CONTACT:** Mark Becker, Senior Policy Advisor, Office for Civil Rights and Civil Liberties, *mark.becker@hq.dhs.gov;* Scott Mathews, Senior Policy Advisor for Privacy, Privacy Office *scott.mathews@hq.dhs.gov;* or Stephen Boyer, Director of Marine Operations, Office of Air and Marine, U.S. Customs and Border Protection, *stephen.a.boyer@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The development of a new technology, significant improvement of a current technology, or the new application of an existing technology often results in concerns about the impact on individual privacy, civil rights, and civil liberties. The integration of government and commercial unmanned aircraft systems into the National Airspace System by 2015, as required by the *Federal Aviation Administration Modernization and Reform Act of 2012,* has prompted questions about how this might impact individual rights. In this regard, CRCL, Privacy, and CBP jointly established the

DHS *Unmanned Aircraft Systems Privacy, Civil Rights and Civil Liberties Working Group* in September 2012 to ''provide leadership to the homeland security enterprise by clarifying the privacy, civil rights, and civil liberties legal and policy issues surrounding government use of [Unmanned Aircraft Systems].'' The Working Group drafted the best practices.

DHS publishes these best practices to inform DHS and our local, state, and federal government partners and grantees interested in establishing unmanned aircraft programs grounded in policies and procedures that are respectful of privacy, civil rights, and civil liberties. These best practices are not prescriptive, but represent an optimal approach to sustaining privacy, civil rights, and civil liberties throughout the lifecycle of an unmanned aircraft systems program. Although the intended audience is DHS and other government agencies, the private sector may also find these practices instructive in creating or operating unmanned aircraft programs.

The best practices document is consistent with the February 15, 2015 Presidential Memorandum, *Promoting Economic Competitiveness while Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems.*

This best practices document was reviewed by the Office of Management and Budget pursuant to Executive Order 12866, *Regulatory Planning and Review.*

**Christina E. McDonald,**

*Associate General Counsel for Regulatory Affairs.*

[FR Doc. 2015–32410 Filed 12–23–15; 8:45 am]

**BILLING CODE 9110–9K–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5828–N–52]**

### 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 possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 17, 2015.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance, Office of Special Needs Assistance Programs.*

[FR Doc. 2015–32372 Filed 12–23–15; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[156A2100DD/AAKC001030/ A0A501010.999900 253G]**

### Amendment to the Notice of Availability of the Osage County Oil and Gas Draft Environmental Impact Statement for Management of Osage Nation Oil and Gas Resources, Osage County, Oklahoma

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Amendment to notice of availability.

**SUMMARY:** The Bureau of Indian Affairs Eastern Oklahoma Region has prepared a draft environmental impact statement for the management of oil and gas resources owned by the United States in trust for the Osage in Osage County, Oklahoma. This notice amends the notice of availability published in the **Federal Register** on Friday, November 6, 2015 (80 FR 68867), and extends the public comment period through January 15, 2016, to accommodate requests for more time.

**DATES:** Written comments must be received no later than January 15, 2016.

**ADDRESSES:** You may mail, email, hand deliver, or fax written comments to Ms. Jeannine Hale, BIA Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402–8002; fax (918) 781–4667; email: *osagecountyoilgaseis@bia.gov.* The DEIS will be available for review at 813 Grandview, Pawhuska, OK 74820. It is also available online at *http://www.bia.gov/WhoWeAre/RegionalOffices/EasternOklahoma/WeAre/Osage/OSAGEOilGasEIS.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeannine Hale, Division of Environmental and Cultural Resources, BIA Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402–8002, (918) 781–4660.

**SUPPLEMENTARY INFORMATION:** The proposed action for this EIS is to update and provide additional analysis on the impacts of the BIA lease and permit approval program to facilitate the development of oil and gas in Osage County in an efficient manner that prevents pollution.

*Directions for Submitting Comments:* Please include your name, return address, and the caption ''DEIS Comments, Osage County Oil and Gas EIS'' on the first page of your written comments.

*Public Comment Availability:* Written comments, including names and addresses of respondents, will be available for public review at the BIA, 813 Grandview, Pawhuska, Oklahoma, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published in accordance with Section 1503.1 of the Council on Environmental Quality regulations (40 CFR part 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and in accordance with the authority delegated to the Assistant Secretary—Indian Affairs in Part 209 of the Departmental Manual.

Dated: December 21, 2015.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2015–32505 Filed 12–23–15; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L19200000.AL0000.LRORB1518600.LLCAD06000.XXXL1109RM]**

### Notice of Temporary Closure on Public Lands in Riverside County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that identified public lands administered by the Palm Springs-South Coast Field Office, Bureau of Land Management (BLM), are temporarily closed to all public entry.

**DATES:** This closure will be in effect beginning on December 24, 2015 and will remain in effect for 2 years unless rescinded or modified before that by the authorized officer or designated Federal officer.

**FOR FURTHER INFORMATION CONTACT:** John R. Kalish, Field Manager, 1201 Bird Center Drive, Palm Springs, CA 92262, (760) 833–7100. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

**SUPPLEMENTARY INFORMATION:** This closure affects public lands north of the Bradshaw Trail, a county-maintained roadway in Riverside County, California, but does not include the roadway itself. The legal description of the affected public lands is:

**San Bernardino Meridian**

T.7S., R.12E.,
Sec. 36, lots 3, 4, 6, and 7.
T.8S., R.12E.,
Sec. 5, lots 6 through 10, 14, 15, 24, and 25.
T.7S., R.13E.,
Sec. 21, lots 1, 2, and 4.
T.7S., R.14E.,
Sec. 19, lots 8, 9, 12, and 13;
Sec. 25, lots 1, 2, 5 through 8, 11, 12, and 13;
Sec. 27, lots 1, 2, 4, 5, 7, 8, 10, and 11, S½N½SE½, and S½N½SW¼;
Sec. 29, lots 1, 2, 4, 5, 8 through 11, 13, 14, 17, and 18, NW¼SE¼NE¼, and S½SE¼NE¼;
Sec. 33, lots 2 and 4.
T.7S., R.15E.,
Sec. 33, lots 4, 5, 7, 8, 23, 24, and 26, NW¼SE¼NW¼, and W½NW¼SW¼NW¼NW¼.
T.8S., R.15E.,
Sec. 3, lots 1, 2, 5, 6, 9, 10, 12, and 13;
Sec. 11, lots 1, 2, and 3.

The area described aggregates 628.99 acres, more or less, in Riverside County, California.

The closure is necessary because of public health and safety risks caused by the potential for encounter with unexploded ordinance and other hazardous materials located on the lands. The approximately 628.99 acres of public lands were until recently part of the Chocolate Mountain Aerial Gunnery Range and were used as part of a live bombing and training facility. The Department of the Navy is in the process of developing a response action plan to clean the contaminated parcels. Once the parcels are successfully cleaned, the BLM will reopen the lands to the public. All motor vehicles must remain on routes designated as open to vehicular use. The lands are closed to all forms of public entry, including dispersed camping, or other recreational activities on the approximately 628.99 acres.

The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the Bureau of Land Management.

**Enforcement**

Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of California law.

**Authority:** 43 CFR 8364.1(c)

**Thomas Pogacnik,**

*Deputy State Director.*

[FR Doc. 2015–32560 Filed 12–23–15; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L19200000.AL0000.LRORB1518600.LLCAD06000.15X; CACA–044081]**

### Public Land Order No. 7846; Transfer of Administrative Jurisdiction, Chocolate Mountain Aerial Gunnery Range; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order transfers administrative jurisdiction of 501.43 acres of public lands from the Secretary of the Interior to the Secretary of Navy for the realignment of the Chocolate Mountain Aerial Gunnery Range boundary in Riverside County, California. This transfer of administrative jurisdiction is directed by the National Defense Authorization Act for Fiscal Year 2014.

**DATES:** *Effective Date:* December 25, 2015.

**FOR FURTHER INFORMATION CONTACT:** John R. Kalish, Bureau of Land Management, Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262, 760–833–7100. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to reach the above contact. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The National Defense Authorization Act for Fiscal Year 2014, Public Law 113–66, directs the realignment of the Chocolate Mountain Aerial Gunnery Range boundary to include the lands described in this order.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Public Law 113–66, 127 Stat. 1040, it is ordered as follows:

1. Subject to valid existing rights, the administrative jurisdiction of the following described public lands is hereby transferred from the Secretary of the Interior to the Secretary of the Navy for the realignment of the Chocolate Mountain Aerial Gunnery Range boundary:

**San Bernardino Meridian, California**

T.7S., R.12E.,
Sec. 34, lots 10 thru 12;
Sec. 35, lots 10 thru 13;
Sec. 36, lot 9.
T.7S., R.13E.,
Sec. 13, lots 6 and 8, and SE¼SE¼;
Sec. 14, lots 5, 6, and 8, and SE¼SE¼;
Sec. 22, lot 16;
Sec. 31, lots 7, 14, 17, 20, and 24.
T.7S., R.14E.,
Sec. 18, lots 4, 7, 10, 11, and 14;
Sec. 19, lots 7, 16, and 18;
Sec. 20, lots 5 and 9.
T.7S., R.15E.,
Sec. 30, lot 7.
T.8S., R.16E.,
Sec. 9, lots 3, 6, 9, and 12.

The area described aggregates 501.43 acres.

2. The lands described above are to be administered as part of the Chocolate Mountain Aerial Gunnery Range in

accordance with the provisions in Public Law 113–66.

Dated: December 21, 2015.

**Janice M. Schneider,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2015–32561 Filed 12–23–15; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L19200000.AL0000.LRORB1518600.LLCAD06000.15X; CACA–044081]**

### Notice of Intention To Relinquish Lands Withdrawn for Military Purposes; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Defense Authorization Act for Fiscal Year 2014, the Department of the Navy has submitted a Notice of Intention to Relinquish 1,958.49 acres of lands in Riverside County, California, withdrawn from the public domain by the California Desert Protection Act of 1994. The lands were withdrawn for military purposes on behalf of the Department of the Navy for the Chocolate Mountain Aerial Gunnery Range.

**DATES:** *Effective Date:* December 25, 2015.

**FOR FURTHER INFORMATION CONTACT:** John R. Kalish, Bureau of Land Management, Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262; 760–833–7100. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to reach the above contact. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Section 2966(a)(3) of the National Defense Authorization Act for Fiscal Year 2014, Title XXIX of Public Law 113–66 (127 Stat. 1040), requires the Secretary of the Navy to relinquish approximately 2,000 acres of public land withdrawn for military use that is located immediately north of the Bradshaw Trail in Riverside County, California. Pursuant to Section 2922(c) of Public Law 113–66, the Secretary of the Interior is required to publish the Navy's Notice of Intention to Relinquish the public lands withdrawn for military use under Title VIII of Public Law 103–433. In compliance with sections 2922(a) and 2966(a)(3) of Public Law 113–66, on December 8, 2015, the Department of the Navy submitted its Notice of Intention to Relinquish the following described lands:

**San Bernardino Meridian, California**

T.7S., R.12E.,
Sec. 34, lots 1 and 8.
T.8S., R.12E.,
Sec. 2, lot 1;
Sec. 4, lots 6, 7, and 10 thru 13;
Sec. 6, lots 3 thru 5, and 18 thru 23.
T.7S., R.13E.,
Sec. 22, lots 1, 2, 5 thru 8, 11, and 12;
Sec. 28, lots 4, 5, 8, and 9;
Sec. 32, lots 2 and 3.
T.7S., R.14E.,
Sec. 20, lots 7 and 8;
Sec. 26, lots 1, 2, 4, 5, 7, 8, 10, and 11;
Sec. 28, lots 1, 2, 4, 5, 7, 8, 10, and 11, N½SE¼, and N½SW¼.
T.7S., R.15E.,
Sec. 30, lots 8, 9, 11, 12, 14, 15, 17, and 18;
Sec. 32, lots 1 thru 4, 6, 7, 9, 10, 12, and 13;
Sec. 33, lots 11, 14, 15, 19, 20, and 25, S½SW¼NW¼NW¼, and E½NW¼SW¼NW¼NW¼;
Sec. 34, lots 1 thru 4, 6, and 7.
T.8S., R.15E.,
Sec. 2, lots 1 thru 6, 8 thru 12, 14, 15, and N½SE¼;
Sec. 12, lots 1, 2, 4, 5, 7, 8, 10, and 11.
T.8S., R.16E.,
Sec. 8, lots 1, 2, 4, 5, 7, 8, 10, 11, 13, 14, and SW¼NE¼;
Sec. 14, lots 1 and 2;
Sec. 24, lots 1 and 2.
T.8S., R.17E.,
Sec. 32, lots 1 thru 5, lots 7 thru 9, 11, and 12, and NW¼SW¼.
T.9S., R.17E.,
Sec. 6, lots 3 thru 6 and lots 9 thru 16.

The area described aggregates 1,958.49 acres.

Pursuant to Public Law 113–66, the Department of the Navy is required to decontaminate the public lands being relinquished and returned to the Department of the Interior to be managed by the Bureau of Land Management. The decontamination process has been initiated and the Bureau of Land Management continues to coordinate with the Department of the Navy. It has been determined that the lands may be contaminated with unfired 50 caliber and 20 mm rounds of ammunitions in addition to larger unexploded ordnance. The overall average density of munitions or munitions debris on site appears to be less than 1 pound per acre. The lands have been entered into the Military Munitions Response Program which will further assess risks to the public and identify mitigation measures—protective measures such as increased signage and public education warning of UXO dangers—that may be necessary. Restrictions on excavations may be put into place.

The determination concerning the contaminated state of the land may be found at the Marine Corp Air Station Yuma Environmental Department Web site at *http://www.mcasyuma environmental.com.* This document is posted under the Documents tab. The URL for the document is *http://www.mcasyumaenvironmental.com/docs/final_ecp_cmagr_outgrants_14_dec_2015_no_appendices.pdf.*

The withdrawal relinquishment notice will be processed in accordance with Public Law 113–66, Section 204 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1714), and the Bureau of Land Management regulations set forth in 43 CFR part 2370. Alternatives to the relinquishment may be considered as stated under Section 2922(d)(2) of Public Law 113–66.

Dated: December 21, 2015.

**Janice M. Schneider,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2015–32563 Filed 12–23–15; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–19864; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before November 21, 2015, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by January 8, 2016.

**ADDRESSES:** Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their

consideration were received by the National Park Service before November 21, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

**AMERICAN SAMOA**

**Eastern District**

Malaeloa Olo, 1.5 mi. N. of jct. of Malaeloa Rd. & AS 001, Malaeloa Itu'au, 15000949

**CALIFORNIA**

**San Francisco County**

San Francisco Art Institute, 800 Chestnut St., San Francisco, 15000950

**IOWA**

**Cedar County**

Hardacre Theater, (Movie Theaters of Iowa MPS) 112 E. 5th St., Tipton, 15000951

**Linn County**

Lisbon Methodist Church, 200 E. Market St., Lisbon, 15000952

**NEW YORK**

**Columbia County**

Tracy Memorial Village Hall Complex, 77 Main St., Chatham, 15000953

**Rensselaer County**

Patten, Jacob H., House, 254 4th Ave., Troy, 15000954

**NORTH CAROLINA**

**Columbus County**

Culbreth, Dr. Neil and Nancy Elizabeth, House, 251 Washington St., Whiteville, 15000955

**Craven County**

New Bern Historic District (Boundary Increase II), Bounded by Roundtree, Oak, W. F, W. A, N. Bern, Bern, Nunn & Cedar Sts., New Bern, 15000956

**Hertford County**

Mill Neck School, 123 Mill Neck Rd., Como, 15000957

**UTAH**

**Summit County**

Archie Creek Camp, (Tie Cutting Industry of the North Slope of the Uinta Mountains MPS) Address Restricted, South Jordan, 15000958

Park City High School, 1255 Park Ave., Park City, 15000959

**Utah County**

Barrett—Homer—Larsen Farmstead, (Orem, Utah MPS) 63 N. 400 West, Orem, 15000960

**VERMONT**

**Washington County**

Aldrich Public Library, 6 Washington St., Barre, 15000961

**VIRGINIA**

**Richmond Independent City**

Wicker Apartments, 3905–4213 Chamberlain Ave., 4210–4232 Old Brook Rd., Richmond (Independent City), 15000962

**Winchester Independent City**

Winchester Historic District (Boundary Increase III), Amherst, Boscawen, Gerrard, Pall Mall & Stewart Sts., Winchester (Independent City), 15000963

A request for removal has been received for the following resources:

**LOUISIANA**

**East Carroll Parish**

Buckmeadow Plantation House, NW. of Lake Providence off LA 2, Lake Providence, 83000503

**Natchitoches Parish**

Cloutier, Alexis, House, Main St., Cloutierville, 74000927

**Rapides Parish**

Rapides Opera House, 1125 3rd St., Alexandria, 81000298

**Authority:** 60.13 of 36 CFR part 60.

Dated: November 24, 2015.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2015–32375 Filed 12–23–15; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF INTERIOR

### National Park Service

**[NPS–WASO–NRSS–EQD–SSB–20006; PPWONRADE3, PPMRSNR1Y.NM0000]**

### Proposed Information Collection: National Park Service Centennial National Household Survey

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service) will ask the Office of Management and Budget (OMB) to approve an information collection (IC) concerning a national household survey that will be used to help determine the perceptions of the American public regarding the national park system. The collection will include no more than 40 cognitive interviews to refine survey questions and a final survey instrument based on the findings from those interviews. As required by 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 IC. 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.

**DATES:** To ensure that your comments on this IC are considered, we must receive them on or before February 22, 2016.

**ADDRESSES:** Direct all written comments on this IC to 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 1024–0254—National Household Survey in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Bret Meldrum, Chief, Social Science Program, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *bret_Meldrum@nps.gov* (email); and Steve Lawson, Senior Director, Public Plans Planning and Management, RSG, 55 Railroad Row, White River Junction, VT 05001 (mail); or *slawson@rsginc.com* (email).

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

On August 25, 2006—the 90th anniversary of the National Park Service (NPS)—Secretary of the Interior Dirk Kempthorne launched the National Park Centennial Initiative to prepare national parks for another century of conservation, preservation and enjoyment. Since then we have asked citizens, park partners, experts and other stakeholders what they envisioned for a second century of national parks. In celebration of our 100th anniversary in 2016, and to keep up with the initiative, we are proposing a national household survey to assess the quality of services available to the American public provided by the national parks. This survey will be used to assess the values and perceptions of both visitors and non-visitors needed to understand, sustain and enhance the relevancy of the national park system in an increasingly multicultural society.

We acknowledge that there are traditional in-park surveys of visitors at selected National Parks within the system each year; however, these park specific surveys cannot provide the

baseline information on a national level needed to capture the points of view of both visitors and non-visitors to national parks.

We will pre-test the survey questions by conducting cognitive interviews of no more than 40 people in order to test and refine the final survey instrument. This will be a nationwide telephone survey using a dual sampling frame to include random-digit dial (RDD) land line and cell phone numbers. The survey will also include five to seven questions that will be used to evaluate youth engagement. Parental consent will be required before interviewing children/teens between the ages of 12 to 17.

The information obtained from this collection will serve as a benchmark to describe the breadth of uses and patterns of involvement with agency offerings beyond traditional park visits that will extend into the next century.

**II. Data**

*OMB Number:* 1024–0254.

*Title:* National Park Service Centennial National Household Survey.

*Type of Request:* Reinstatement.

*Affected Public:* General public and individual households in the seven National Park Service administrative regions.

*Respondent Obligation:* Voluntary.

*Frequency of Collection:* One-time.

*Estimated Number of Annual Responses:* 3,540 (40 cognitive interviews and 3,500 completed telephone surveys).

*Annual Burden Hours:* 40 hours for cognitive interviews (10 minutes per interview) and 1,050 hours for telephone surveys (18 minutes per survey)—Total 1,090 hours.

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have not identified any ''non-hour cost'' burdens associated with this collection of information.

**III. Request for Comments**

We invite comments concerning this information collection on:

- The practical utility of the information being gathered;
- The accuracy 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.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be to do so.

Dated: December 18, 2015.

**Madonna L. Baucum,**

*Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2015–32420 Filed 12–23–15; 8:45 am]

**BILLING CODE 4310–EH–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1 SS08011000SX064A000156S180110; S2D2SS08011000SX064A00015X501520]**

### Notice of Proposed Information Collection; Request for Comments for 1029–0120

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request approval to continue the collection of information for one of its Technical Training Program forms: Nomination and Request for Payment. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1029–0120.

**DATES:** Comments on the proposed information collection activity must be received by February 22, 2016, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request, contact John Trelease, at (202) 208–2783 or by email.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for renewed approval. This collection is for the OSMRE Technical Training Nomination and Request for Payment Form (OSM–105). OSMRE will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title:* Nomination and Request for Payment Form for OSMRE Technical Training Courses.

*OMB Control Number:* 1029–0120.

*Summary:* The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSMRE's technical training mission, and to estimate costs to the training program.

*Bureau Form Numbers:* OSM–105.

*Frequency of Collection:* Once for each training course.

*Description of Respondents:* State and Tribal regulatory and reclamation employees and industry personnel.

*Total Annual Responses:* 944 responses.

*Total Annual Burden Hours:* 5 minutes per respondent, or 79 total hours.

*Obligation to Respond:* Required in order to obtain or retain benefits.

Dated: *December 21, 2015.*

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2015–32423 Filed 12–23–15; 8:45 am]

**BILLING CODE 4310–05–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–15–042]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission

**TIME AND DATE:** January 5, 2016 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public

**MATTERS TO BE CONSIDERED:** 1. Agendas for future meetings: none.

2. Minutes.

3. Ratification List.

4. Vote in Inv. Nos. 701–TA–468 and 731–TA–1166–1167 (Review) (Certain Magnesia Carbon Bricks from China and Mexico). The Commission is currently scheduled to complete and file its determinations and views of the Commission on January 15, 2016.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 21, 2015.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015–32554 Filed 12–22–15; 11:15 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–526–527 and 731–TA–1262–1263 (Final)]**

### Melamine From China and Trinidad and Tobago

#### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of melamine from China provided for in subheading 2933.61.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (''LTFV''), and that have been found by Commerce to be subsidized by the government of China.[2] The Commission further determines, pursuant to the Act, that an industry in the United States is not materially injured or threatened with material injury by reason of imports of melamine from Trinidad and Tobago, provided for in subheading 2933.61.00 of the Harmonized Tariff Schedule of the United States, that have been found by Commerce to be sold in the United States at LTFV, and to be subsidized by the government of Trinidad and Tobago.[3]

#### Background

The Commission, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective November 12, 2014, following receipt of a petition filed with the Commission and Commerce by Cornerstone Chemical Company, Waggaman, Louisiana. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of melamine from China and Trinidad and Tobago were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 24, 2015 (80 FR 44150). The hearing was held in Washington, DC, on November 3, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 18, 2015. The views of the Commission are contained in USITC Publication 4585 (December 2015), entitled *Melamine from China and Trinidad and Tobago: Investigation Nos. 701–TA–526–527 and 731–TA–1262–1263 (Final).*

By order of the Commission.

Issued: December 18, 2015.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015–32397 Filed 12–23–15; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative.

[3] All six Commissioners voted in the negative.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Registration: Alltech Associates, Inc.

**ACTION:** Notice of registration.

**SUMMARY:** Alltech Associates, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Alltech Associates, Inc. registration as an importer of those controlled substances.

**SUPPLEMENTARY INFORMATION:** By notice dated August 21, 2015, and published in the **Federal Register** on August 31, 2015, 80 FR 52509, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015 applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Alltech Associates, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010). | I |

| Controlled substance | Schedule |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Heroin (9200) | I |
| Meperidine (9230) | II |

The company plans to import these controlled substances for the manufacture of reference standards.

Dated: December 15, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015–32370 Filed 12–23–15; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Almac Clinical Services Incorp (ACSI)

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before January 25, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before January 25, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 1, 2015, Almac Clinical Services Incorp (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964 applied to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in dosage form, for clinical trial only. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: December 15, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015–32367 Filed 12–23–15; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Form ETA–9142A, H–2A Application for Temporary Employment Certification, and Appendix A (OMB Control Number 1205–0466), Revision

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data on the Form ETA–9142A, *H–2A Application for Temporary Employment Certification,* and *Appendix A* (OMB Control Number 1205–0466), which expire on March 31, 2016. A copy of the proposed information collection request can be obtained free of charge by contacting the office listed below in the addressee section of this notice.

The forms are used by employers in the H–2A temporary agricultural employment-based program to collect information that demonstrates compliance with program requirements.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before February 22, 2016.

**ADDRESSES:** Submit written comments to Brian Pasternak, National Director of Temporary Programs, Office of Foreign Labor Certification, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue, Box 12–200 NW., Washington, DC 20210; Telephone: (202) 513–7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–513–7495. Email: *ETA.OFLC.Forms@dol.gov* subject line: ETA–9141A. A copy of the proposed information collection request (ICR) can be obtained free of charge by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The information collection (IC) is required by sections 101(a)(15)(H)(ii)(a); 214(c); and 218 of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(a), 1184(c), and 1188) and 8 CFR 214.2(h). Before an employer may petition for any temporary foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The H–2A program enables employers to bring nonimmigrant foreign workers to the U.S. to perform agricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). For purposes of the H–2A program, the INA and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) temporarily for the purpose of performing certain unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers available to

perform such labor. (8 CFR 214.2(h)(5)(i)(A), (iii)(A).)

The information contained in the Form ETA–9142A is the basis for the Secretary's determination that no U.S. workers are available. The Form ETA–9142A, *H–2A Application for Temporary Employment Certification,* is used to collect information to permit the Department to meet its statutory responsibilities for administering the H–2A temporary labor certification program. The *Appendix A* lists all of the attestations required by employers in the H–2A program. The proposed amendment to the *Appendix A* will allow employers who file electronically to submit a copy of a signed *Appendix A* with their electronically filed Form ETA–9142A and, upon receipt of the original certified Form ETA–9142A, to complete the footer on the original *Appendix A* with the information contained on the approved application. Employers must retain the original *Appendix A* and file a copy of the signed *Appendix A,* together with the original certified Form ETA–9142A, with Department of Homeland Security's U.S. Citizenship and Immigration Services.

Lastly, the Department is proposing revisions to Appendix A to reflect the requirements of 20 CFR 655.200–235, which are the new regulatory requirements for H–2A employers who are in the sheep and goat herding and range production of livestock occupations.

**II. Review Focus**

DOL 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 submissions of responses.

**III. Current Actions**

*Type of Review:* Extension with revision.

*Title:* H–2A Foreign Labor Certification.

*OMB Number:* 1205–0466.

*Affected Public:* Farms, Private Sector–businesses or other for profits and not-for-profit institutions, Federal Government, and State, Local and Tribal Governments.

*Form(s):* Form ETA–9142A, *H–2A Application for Temporary Employment Certification,* and *Appendix A*.

*Total Annual Respondents:* 4,870.

*Annual Frequency:* On occasion.

*Total Annual Responses:* 160,773.

*Average Time per Response:* 20 Minutes.

*Estimated Total Annual Burden Hours:* 49,194

*Total Annual Burden Cost for Respondents:* $1,608,700.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number).

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2015–32380 Filed 12–23–15; 8:45 am]

**BILLING CODE 4510–FP–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities, Comment Request; Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning the proposed extension of Office of Management and Budget (OMB) approval for the Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor information collection request (ICR), as part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit written comments on or before February 22, 2016.

**ADDRESSES:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov* to request additional information, including requesting a copy of this ICR. Submit comments regarding this ICR, including suggestions for reducing the burden, by sending an email to *DOL_PRA_PUBLIC@dol.gov.* Comments may also be sent to Michel Smyth, Departmental Clearance Officer, U.S. Department of Labor, Office of the Chief Information Officer, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The DOL Iqbal Masih Award for the Elimination of Child Labor, presented by the Secretary of Labor, is intended to recognize exceptional efforts to reduce the worst forms of child labor. The Award was created in response to a Senate Committee mandate directing the Secretary of Labor to establish an annual non-monetary award recognizing extraordinary efforts by an individual, company, organization, or national government to reduce the worst forms of child labor. The DOL is proposing to extend this ICR to allow the public to nominate and provide critical information on proposed candidates for this award who have demonstrated extraordinary efforts to combat the worst forms of child labor.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1290–0007. The current approval is scheduled to expire on February 29, 2016; however, the DOL intends to seek continued approval for this collection of information for an additional three years.

The DOL, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before they are submitted to the OMB. This program helps to ensure requested data can be provided

in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above. Comments must be written to receive consideration, and they will be summarized and may be included in the request for OMB approval of the final ICR. The comments will become a matter of public record. To help ensure appropriate consideration, comments should mention OMB Control Number 1290–0007.

The DOL 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-Office of the Secretary.

*Type of Review:* Extension without change of a currently approved collection.

*Title of Collection:* Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor.

*OMB Control Number:* 1290–0007.

*Affected Public:* Private Sector—businesses or other for profits and not-for-profit institutions.

*Estimated Number of Respondents:* 50.

*Frequency:* Once.

*Total Estimated Annual Responses:* 50.

*Estimated Average Time per Response:* 10 hours.

*Estimated Total Annual Burden Hours:* 500 hours.

*Total Estimated Annual Other Cost Burden:* $0.

Dated: December 18, 2015.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2015–32336 Filed 12–23–15; 8:45 am]

**BILLING CODE 4510–28–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Placement Verification and Follow Up of Job Corps Participants

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training (ETA) sponsored information collection request (ICR) ''Placement Verification and Follow Up of Job Corps Participants'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** OMB will consider all written comments that agency receives on or before January 25, 2016.

**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=201507-1205-010* (this link will only become active on the day following publication of this notice) or by contacting Seleda Perryman by telephone at 202–693–4131, TTY 202–693–8064, (these are not toll-free numbers) or by email at *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 Seleda Perryman by telephone at 202–693–4131, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Placement Verification and Follow-up of Job Corps Participants information collection. The collection consists of three primary and two secondary data collection instruments used to collect follow-up data on individuals who are no longer actively participating in Job Corps. The instruments are comprised of modules that include questions designed to obtain the following information: Re-verification of initial job and/or school placements, employment and educational experiences, job search activities of those who are neither working nor in school, and information about former participants' satisfaction with services received. Workforce Investment Act (Pub. L. 107–210, Title I Subtitle C) authorizes, and the Workforce Innovation and Opportunity Act authorize this information collection.

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. DOL obtains OMB approval for this information collection under Control Number 1205–0426.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2015. DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 4, 2015 (80 FR 53578).

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 1205–0426. 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:* Placement Verification and Follow Up of Job Corps Participants.

*OMB Control Number:* 1205–0426.

*Affected Public:* Individuals or Households and Private Sector—businesses and not-for-profit institutions.

*Total Estimated Number of Respondents:* 48,300.

*Total Estimated Number of Responses:* 48,300.

*Total Estimated Annual Time Burden:* 10,240 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: December 18, 2015.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2015–32377 Filed 12–23–15; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Veterans' Employment and Training Service

### Fiscal Year (FY) 2016 Through FY 2017 Stand Down Grant Requests

**AGENCY:** Veterans' Employment and Training Service, U.S. Department of Labor.

**ACTION:** To amend the Stand Down **Federal Register** notice {FR Doc. 2014–00755}. This amendment extends funding for Stand Down events from fiscal years (FY) 2016 through FY 2017, contingent upon funding availability.

*Funding Opportunity No: 17.805*

**SUMMARY:** The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS) supports local Stand Down events that help homeless veterans attain meaningful civilian employment. Authority to support such events is in 38 U.S.C. Section 2021, which provides that the ''Secretary of Labor shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.'' A Stand Down is a local community event where homeless veterans are provided a wide variety of services and incentives to reintegrate into their community, such as housing opportunities, healthcare, and employment opportunities, Stand Down funding is provided in the form of non-competitive grants that are awarded on a first-come, first-served basis until available funding is exhausted.

VETS anticipates that approximately $600,000 will be available to award approximately 70 grants in each Federal FY covered by this solicitation. The Federal FY begins on October 1 and ends on September 30 of the next calendar year. Awards will be made for a maximum of $10,000 per multi-day event or $7,000 per one-day event.

VETS is now accepting applications for grant awards to fund Stand Down events in FY 2015. All applications for Stand Down grant funding must be submitted to the appropriate state Director for Veterans' Employment and Training (DVET). Applications will be accepted up to six (6) months prior to the event. Please allow up to 60 days to process your application. Address and contact information for each state DVET can be found at: *http://www.dol.gov/vets/aboutvets/contacts/map.htm.* Stand Down grant funding is awarded for a specific event on a specific date. Organizations planning Stand Down events must submit a new application each year to request funding and should not assume that the application will be approved.

Stand Down grant awards are contingent upon a Federal appropriation or a continuing resolution each Federal FY. Therefore, applications submitted after July 1 for events to be held after September 30 may be held for consideration contingent upon Federal funding availability during the upcoming FY. Grant applicants cannot obligate grant funding toward Stand Down expenses prior to receiving a Notice of Award from the Grant Officer; any such expenses will be disallowed.

**SUPPLEMENTARY INFORMATION:**

#### I. Funding Opportunity Description

*''Stand Down''* is a military term referring to an opportunity to achieve a brief respite from combat. Troops assemble in a base camp to receive new clothing, hot food, and a relative degree of safety before returning to the front. VETS wants to build on this approach for homeless civilian veterans to re-enter the labor force. Today, more than 160 organizations across the country partner with local businesses, government agencies, tribal governments, community and faith-based service providers to hold Stand Down events in local communities for homeless veterans and their families.

Each year, the Assistant Secretary for Veterans' Employment and Training awards Stand Down grants to assist with the reintegration of homeless veterans into the labor force through programs that enhance employment and training opportunities and promote self-sufficiency. Typically, services available at these events include: Temporary shelter, showers, haircuts, meals, clothing, hygiene care kits, medical examinations, immunizations, legal advice, state identification cards, veteran benefit information, training program information, employment services, and referral to other supportive services.

Stand Down funding is provided in the form of non-competitive grants that are awarded on a first-come, first-served basis until available funding is exhausted. For the purpose of a Stand Down grant award, applicants must describe a plan that clearly demonstrates how grant funding will only be used for homeless veterans. While both veterans and non-veterans may participate in Stand Down events, grant funding can only be used to purchase items including food and meals, for homeless veteran participants. The following minimum services *must* be available for homeless veteran participants during the Stand Down:

- Department of Veterans Affairs (VA)—benefits, medical and mental health services;
- Department of Labor (DOL)—State Workforce Agency (SWA) employment and training services to include

Disabled Veterans' Outreach Program (DVOP) specialist or other American Job Center (AJC) staff (see the following link to locate available resources in your area: *www.servicelocator.org);* and

- Referral services to secure immediate emergency housing.

**II. Allowable Costs**

Stand Down grant funds must be used to enhance employment and training opportunities or to promote the self-sufficiency of homeless veterans through paid work. Homeless veterans do not always have access to basic hygiene supplies necessary to maintain their health and confidence. Lack of shelter limits their ability to prepare for and present themselves at job interviews or be contacted for follow-up. Basic services such as showers, haircuts, attention to health concerns and other collaborative services provided at a Stand Down can give the homeless veteran greater confidence, improving their chances of securing and maintaining employment. Therefore, grant funds may be used to support Stand Down activities such as:

- The purchase of food, bottled water, clothing, sleeping bags, one-person tents, backpacks filled with non-perishable foods, hygiene care kits, and non-prescription reading glasses.
- Vouchers may be purchased for minor time-limited legal services, consumer credit counseling services, food, and gasoline gift cards for homeless veteran participants. The purchase of gift cards for food and/or gas must be restricted to cards that can only be used to purchase food or gas. Federal awards may not be used for the purchase of alcohol or tobacco products; see 2 CFR part 200.423. All grantees purchasing gift cards with grant funds will be required to state the measures they will use to comply with this regulation.
- The purchase of job search media such as employment guides or literature in hard copy or on portable storage media, etc.
- Special one-time costs for the duration of the Stand Down event such as rental of facilities and/or tents, electricity, equipment, portable toilets and communications or Internet access.
- The purchase of janitorial supplies, kitchen supplies, and advertising materials such as event posters. Care should be taken to minimize advertisement costs in order to maximize funding available to purchase items or provide services that immediately and positively impact the veteran in need. Applicants that request funding for advertisement expenses that appear to be unreasonable (*i.e.* over 20 percent of the total grant award) will be asked to reevaluate and reallocate those funds to ensure the homeless veteran participants benefit.
- The hiring of security personnel.
- The rental of transportation equipment (bus, van, car, taxi, etc.) to provide transportation of homeless veterans to and from the Stand Down event.
- The purchase or rental of other pertinent items and services for homeless veteran participants and their families as deemed appropriate by VETS, such as clothing, hygiene kits, diapers, etc.

Only expenses incurred during the time frame listed on the Notice of Award will be approved as allowable expenses. Any expenses incurred prior to or after the time frame listed on the Notice of Award will be disapproved.

**III. Funding Restrictions**

Stand Down grant funds may not be used to pay for administrative costs or administrative and/or programmatic staff. Stand Down grant funds may not be used to purchase clothing items for volunteers, pen sets, military and veteran type patches/medals, memento gifts for staff members, visitors, or volunteers (*e.g.* t-shirts, hats); or any other supplementary/replacement item(s) not approved by the DVET. Planned budget expenses must be fully itemized and applicants must provide details for every item in the Budget Narrative. Any planned expenses listed as ''other'' or ''miscellaneous'' must be clarified and itemized.

Stand Down grant funding cannot be used to pay for health care related expenses. All medical examinations, to include dental and optometry examinations, should be provided by the VA or a community provider. Purchases of prescription eye wear and dental work are considered medical care expenses and are not allowable. Applicants should explore all opportunities to secure health related services through the local VA Medical Center or VA Outpatient Clinic. Non-prescription reading glasses are considered an allowable expense.

VETS reserves the right to disapprove any proposed cost not consistent with the funding restrictions in this announcement.

**IV. Award Information**

The maximum amount that can be awarded to support a multiple day Stand Down event in a geographically specific area is $10,000 per applicant per fiscal year. If the event is held for one (1) day, the maximum amount that can be awarded is $7,000. Grants may be awarded to multiple organizations who conduct Stand Downs in the same general area so long as there is no commingling of federal funds. Multiple grants may be awarded to the same organization if the organization is conducting Stand Downs in different geographic areas. In this case, the applications are processed in the order received.

**V. Eligibility Information**

*1. Eligible Applicants*

The following organizations may apply for grants under this solicitation: State and local Workforce Investment Boards, Veterans Service Organizations, local public agencies, tribal governments, and non-profit organizations including community and faith-based organizations. Organizations registered with the Internal Revenue Service as 501(c)(4) organizations are not eligible to apply for this funding opportunity.

*2. Cost Sharing or Matching*

Cost sharing and matching funds are not required. However, VETS strongly encourages applicants to leverage other available resources to maximize the services and incentives provided to homeless veteran participants at Stand Down events.

*3. Other Eligibility Requirements*

A. As of July 2012, all applicants must register with the System for Award Management (SAM) before submitting an application. SAM is a Web-enabled government wide application that collects, validates, stores, and disseminates business information about the Federal government's trading partners in support of contract award, grants, and the electronic payment process. Step by step instructions for registering with SAM can be found at: *http://www.grants.gov/applicants/org_step2.jsp.* A grantee must maintain an active SAM registration with current information at all times during which it has an active Federal award or application under consideration. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. Failure to register in SAM before application submission will result in the application being found non-responsive. (Prior to July 2012, this functionality was handled by the Central Contractor Registry.)

B. All applicants for Federal funding are required to include a Dun and Bradstreet Number (DUNS) with their application. Applicants can obtain a DUNS number at: *http://www.dnb.com* or by phone at 1–866–705–5711.

**VI. Application Content**

To be considered responsive, all applications for Stand Down grant funding must include:

1. An original applicant memorandum requesting Stand Down funds *signed in blue ink.* The applicant letter must include a statement that the individual who signed the SF 424 is authorized to enter into an agreement with the USDOL.

2. Applicants must provide a Program Narrative that clearly states the need for the Stand Down and describes the event.

A. The narrative must detail the geographical area to be served and the estimated number of homeless veterans to be served. The narrative must also describe how during the event the number of homeless veterans and other participants will be tracked. It should also describe how provision of services and take-up rates will be tracked. Note: Grant recipients will be required to report these outputs during grant close-out.

B. The narrative must explain the role of the DVOP specialist or other AJC staff.

C. The narrative must describe the activities of the event. Please describe the basic or core activities made available during the event as described in section I. Basic or core services are: Department of Veterans Affairs (VA)—benefits, medical and mental health services; Department of Labor—State Workforce Agency employment and training services to include Disabled Veterans' Outreach Program (DVOP) specialist or other American Job Center staff, and referral services to secure immediate emergency housing. Please describe other activities and services made available during the event that cannot be classified as basic or core.

D. The narrative must include a timeline for completion of all Stand Down event activities. The timeline must clearly indicate critical dates in the planning, execution, and follow-up process. If applicable, the timeline will demonstrate the need to draw down awarded funding in advance of the event date with the purpose and date of the funding need.

E. The narrative must describe what challenges may arise during event planning and execution and what solutions would be utilized.

3. An original Standard Form (SF) 424, Application for Federal Assistance, (OMB No. 4040–0004) *signed in blue ink.* The SF–424 can be downloaded from *www.grants.gov* or at Appendix A as described in Section X below. NOTE: The Grant Officer will only accept the most current version of the SF 424.

4. A SF 424A, Budget Information—Non-Construction Programs (OMB No. 4040–0006). The SF–424A can be downloaded from *www.grants.gov* or at Appendix B as described in Section X below.

5. A Budget Narrative—A detailed description of each planned expenditure listed on the SF 424A. The description should describe or indicate the methodology used to determine the cost estimates such as price per quantity, if the item will be purchased or rented, and whether the items will be utilized by the homeless veteran participants, other homeless participants or assist the volunteer(s) at the event. VETS does not accept categories designated *only* as ''Other'' or ''Miscellaneous.'' Budget narratives must clearly itemize all expenditures. **Note:** The fair share calculation must be applied for expenditures shared among homeless veteran participants and non-homeless veteran participants. Please describe any funds leveraged for the event that will be provided by sources other than the grant. DOL funds may only be used for homeless veterans.

6. A copy of the SAM Registration active through date of event.

7. A minimum of four letters of support must be provided, and must include letters from:

A. the state or local AJC and/or DVOP specialist(s) stating they will provide Department of Labor-funded employment and training services at the Stand Down. These basic or core services are required in Section I.

B. the VA stating what benefits, medical and mental health services will be available at the event as required in Section I, and

C. the organization that will provide immediate emergency housing based on referrals from the Stand Down event as required in Section I.

D. different organizations such as the Department of Housing and Urban Development, the local Continuum of Care, Veteran Service Organizations, State and local government agencies, local businesses, and local non-profit organizations including community-based and faith-based organizations that will support the event.

8. If applicable, a copy of the Internal Revenue Service documentation indicating approval of non-profit status, for example: 501(c)(3), 501(c)(19).

9. Applicants have the option to use a consolidated Stand Down application that consolidates several of the documents above into one document (see Appendix C).

**VII. Award Administration Information**

Stand Down funding is a non-competitive grant awarded on a first-come, first-served basis until available funding is exhausted for the fiscal year. Funding is subject to approval by the Grant Officer and is dependent upon various factors such as urban, rural and geographic balance, the availability of funds, prior performance and proposals that are most advantageous to the government. If approved, the Grant Officer will notify the grantee through a Notice of Award. Under no circumstances will a Stand Down event be awarded funding after the event has taken place.

Upon award, grantees will receive a Personal Identification Number (PIN) and password for e-Grants, the Federal financial reporting system, from the Grant Officer. If a grantee does not receive a PIN and password for e-Grants, the grantee must notify the DVET immediately. Access to e-Grants is required in order to comply with Federal financial reporting requirements.

The grantee will also receive a financial form to complete in order for the USDOL Office of Financial Management Operations to set up an account in the Health and Human Services, Payment Management System (HHS/PMS). The grantee must submit the completed form as directed in order to electronically draw down awarded funding. The form should be returned via FedEx, UPS, or other non-U.S. Postal Service provider to avoid processing delays. Questions or problems relating to accessing funding or the electronic draw down process should be referred to the USDOL Office of Financial Management Operations at (202) 693–6903.

After setting up the account, the grantee will be able to draw down funds to reimburse approved expenses incurred after award and to cover approved expenses that will be paid within three (3) days of the draw down. Funds requested for draw down through the HHS/PMS are directly deposited into the designated account within 24 hours of the request. Funding will be made available for draw down no earlier than 120 days prior to the event date, or as identified in the timeline. The timeline must include the date the post-event report is due to the DVET (30 days following the end of the Federal fiscal quarter in which the Stand Down was

held) as explained in Section VIII below.

**VIII. Required Post-Event Activities and Reporting**

After receiving a grant award, the grantee must complete a Federal Financial Report (SF 425) no later than 30 days after the end of each Federal fiscal quarter (October 31, January 31, April 30 and July 31). Instructions for completing this requirement are provided in the HHS/PMS information packet and are also available at: *http://www.dpm.psc.gov/grant_recipient/ffr_info/ffr_info.aspx?explorer.event=true*.

All grant awarded funds must be drawn down by the grantee within 90 calendar days after the Stand Down. For example, if a Stand Down is held on July 12, 2014 (FY 2014), all funds should be drawn down within 90 days or by October 10, 2014 (FY 2015).

A final SF 425 is due no later than thirty (30) calendar days after the end of the Federal fiscal quarter in which all expended funds have been drawn down. For example, if a Stand Down is held on July 27 and the final drawdown of all expended funds occurs on September 15, the final FFR is due on October 30.

In addition to financial reporting, the grantee is required to submit a Stand Down After Action Report (a post-event report) to the DVET at the same time the final SF 425 is completed. Please refer to Appendix D.

Grantees that anticipate a delay in submitting any SF 425 report or the post-event report should immediately contact the appropriate DVET and provide a justification to request an extension. If VETS disapproves a particular expenditure, and the funds were already drawn down, the grantee will be notified in writing with an explanation for the disapproval and instructions to electronically return the funds to the HHS/PMS account within fifteen (15) calendar days of notification from VETS.

Any failure to comply with the guidance and reporting requirements set forth in the Stand Down Special Grant Provisions provided with the Grant Award letter will be taken into consideration in future funding award decisions by USDOL/VETS.

**IX. Agency Contacts**

Questions regarding this announcement should be directed to the DVET in your state. Contact information for each DVET is located in the VETS Staff Directory at the following Web page: *http://www.dol.gov/vets/aboutvets/contacts/map.htm*.

**X. Other Information**

*1. Acknowledgement of USDOL Funding*

A. Printed Materials/Intellectual Property: In all circumstances, the following must be displayed on printed materials prepared by the grantee while in receipt of USDOL grant funding: ''Preparation of this item was funded by the United States Department of Labor under Grant No. [Insert the appropriate grant number].'' All printed materials must also include the following notice: ''This workforce product was funded by a grant awarded by the U.S. Department of Labor's Veterans' Employment and Training Service. The product was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor and/or the Veterans' Employment and Training Service. The U.S. Department of Labor and/or the Veterans' Employment and Training Service makes no guarantees, warranties, or assurances of any kind, expressed or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes are permissible. All other uses require the prior authorization of the copyright owner.''

B. Public references to grant: When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project that will be financed with Federal money;
- The dollar amount of Federal financial assistance for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

C. Use of USDOL Logo: The Grant Officer must approve the use of the USDOL logo. In addition, once approval is given the following guidance is provided:

- The USDOL logo may be applied to USDOL-funded material prepared for distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the grantee permission to use the logo on the item.
- All documents must include the following notice: ''This documentation does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

*2. Information Collection*

OMB Information Collection No 1225–0086, Expires January 31, 2016. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average three (3) hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is voluntary, authority to support such events is in 38 U.S.C. 2021, which provides that the ''Secretary of Labor shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force''.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of Michel Smyth, Departmental Clearance Officer, 200 Constitution Avenue NW., Room N1301, Washington, DC 20210. Comments may also be emailed to *DOL_PRA_PUBLIC@dol.gov*.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted

in the respondent's application is *not* considered to be confidential.

Please do not send your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

Appendices

(Located on the VETS homepage at: *www.dol.gov/vets).* Follow the link for Stand Down Grants and Required Forms under Competitive Grants:

Appendix A: Application for Federal Assistance, SF–424
Appendix B: Budget Information, SF–424A
Appendix C: Consolidated Stand Down Application
Appendix D: Stand Down After Action Report

**Thomas Martin,**

*Grant Officer.*

[FR Doc. 2015–32406 Filed 12–23–15; 8:45 am]

**BILLING CODE 4510–79–P**

## LEGAL SERVICES CORPORATION

### Notice of Proposed Revisions to the Compliance Supplement for Audits of LSC Recipients for Fiscal Years Ending 12/31/15 and Thereafter

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed changes and request for comments; extension of comment period.

**SUMMARY:** The Legal Services Corporation Office of Inspector General (''LSC OIG'') issued a notice requesting comments on proposed changes to the Compliance Supplement for Audits of LSC Recipients in the **Federal Register** of December 4, 2015 [FR Doc. 2015–30643]. LSC OIG requested comments within 30 days of the date of publication, or by January 4, 2016. This notice extends the comment period to January 15, 2016.

**DATES:** Comments must be submitted by January 15, 2016.

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

- *Email: aramirez@oig.lsc.gov.*
- *Fax:* (202) 337–6616.
- *Mail:* Legal Services Corporation Office of Inspector General, 3333 K Street NW., Washington, DC 20007.

*Instructions:* All comments should be addressed to Anthony M. Ramirez, Office of the Inspector General, Legal Services Corporation. Include ''2015 Compliance Supplement'' as the heading or subject line for all comments submitted.

**FOR FURTHER INFORMATION CONTACT:** Anthony M. Ramirez, *aramirez@oig.lsc.gov,* (202) 295–1668.

**SUPPLEMENTARY INFORMATION:** LSC OIG is extending the public comment period stated in the **Federal Register** notice for this request for comments. 80 FR 75847, Dec. 4, 2015. In that notice, LSC OIG requested comments on proposed changes to the Compliance Supplement for Audits of LSC Recipients. LSC OIG has received a request for an extension of the comment period to allow interested parties and stakeholders additional time to develop their comments on the proposed changes. LSC OIG is therefore extending the comment period for 11 days, from January 4, 2016, to January 15, 2016.

Dated: December 21, 2015.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2015–32433 Filed 12–23–15; 8:45 am]

**BILLING CODE 7050–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 25, 2016. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

**APPLICATION DETAILS:**

1. *Applicant:* Permit Application: 2016–023, Sarah Eppley, Portland State University, Department of Biology, P.O. Box 751, Portland, OR 97207.

*Activity for Which Permit is Requested:* Sample collection, ASPA entry, and Import into the USA. Mosses are known ecosystem engineers in the Arctic tundra, while little is known about Antarctic mosses in organizing communities or shaping ecosystem processes, and how individual moss types influence Antarctic ecology. The applicants propose to collect moss and soil samples from ASPAs to investigate how warming will affect Antarctic moss terrestrial ecosystems. Moss and soil samples, up to 3 cm deep, will be collected using a metal 2 cubic centimeter coring device. Up to 180 samples total from each of 6 different moss species, up to 30 samples total from two other moss species, up to 30 samples of additional moss species, and up to 400 total soil samples will be collected. These samples will be imported back to the home university.

*Location:* ASPA 125, Fildes Peninsula, King George Island, including Zone 125c, Glacier Dome Belligshausen (Collins Glacier); ASPA 150, Ardley Island, Maxwell Bay, Antarctic Peninsula.

*Dates:* February 10 to June 30, 2016.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2015–32439 Filed 12–23–15; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under

the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

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**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

**APPLICATION DETAILS:**

1. *Applicant:* Permit Application: 2016–021, Charles D. Amsler, Jr., Department of Biology, University of Alabama at Birmingham, Birmingham, AL 35294–1170.

*Activity for Which Permit is Requested:* Sample collection and Import into the USA. The applicant plans to collect from the Palmer Station area approximately 20 brown marine algae, 20 green marine algae, 10 red marine algae, and 10 diatom marine algae. The applicant also plans to collect approximately 200 marine gastropods—50 each of four species: *Margarella antarctica, Pellilitorina pellita, Laevilacunaria antarctica,* and *Skenella umbilicata.* The applicant has filamentous Antarctic macroalgae and diatoms, previously isolated, in culture, but requires additional strains, particularly of filamentous green algal endophytes, for further study. The applicant seeks to understand the interactions of epiphytic and endophytic algae with larger macroalgae and with mesoherbivores such as amphipods and gastropods. The cultures will be maintained at the home university.

*Location:* Palmer Station, Anvers Island, Antarctic Peninsula.

*Dates:* March 1, 2016 to July 31, 2019.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2015–32438 Filed 12–23–15; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0286]**

## Operating Philosophy for Maintaining Occupational Radiation Exposures as Low as is Reasonably Achievable

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–8033, ''Operating Philosophy for Maintaining Occupational Radiation Exposures As Low as is Reasonably Achievable.'' This DG is proposed Revision 2 to Regulatory Guide (RG) 8.10 and describes methods and procedures that the staff of NRC considers acceptable for maintaining radiation exposures to employees and the public as low as is reasonably achievable (ALARA). This revision incorporates additional guidance from operating ALARA experience since the previous revision to RG 8.10 in 1975.

**DATES:** Submit comments by February 22, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specified subject):

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0286. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** Casper Sun, telephone: 301–415–1646, email: *Casper.Sun@nrc.gov,* and Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0286 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0286.
- 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 available in ADAMS), is provided the first time that a document is referenced. The DG is electronically available in ADAMS under Accession No. ML15203B410.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2015–0286 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission.

The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

**II. Discussion**

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Operating Philosophy for Maintaining Occupational Radiation Exposures As Low as is Reasonably Achievable,'' is temporarily identified by its task number, DG–8033. Draft guide-8033 is proposed Revision 2 of Regulatory Guide (RG) 8.10, dated September 1975.

The NRC issued RG 8.10 in 1975 to provide guidance on an acceptable program for maintaining radiation exposures to employees and the public as low as is reasonably achievable (ALARA). In 1991, the NRC promulgated amendments to Title 10 of the *Code of Federal Regulations* Part 20 (10 CFR part 20) regulations (56 FR 23360; May 21, 1991). The 1991 rulemaking included substantive amendments to the 10 CFR part 20 regulations as well as a renumbering of those regulations. As such, this revision (Revision 2) to the guide aligns with the regulatory structure of 10 CFR part 20 by updating the guide's cross-references to the current 10 CFR part 20 regulations. In addition, this revision includes additional guidance from operating ALARA experience since 1975.

**III. Backfitting and Issue Finality**

This draft guide, if finalized, would provide updated guidance on the methods acceptable to the NRC staff for complying with the NRC's regulations associated with ALARA. The draft guide would apply to current and future applicants for and holders of:

- (1) Licenses issued under 10 CFR part 70 to possess or use, at any site or contiguous sites subject to licensee control, a formula quantity of strategic special nuclear material, as defined in 10 CFR 70.4; (2) operating licenses for nuclear power reactors under 10 CFR part 50; and (3) approvals issued under subpart B, C, E, and F of 10 CFR part 52 (''protected applicants and licensees'').
- operating licenses for nuclear non-power reactors under 10 CFR part 50.
- general domestic licenses for byproduct material under 10 CFR part 31.
- specific domestic license to manufacture or transfer certain items containing byproduct material under 10 CFR part 32.
- specific domestic licenses of broad scope for byproduct material under 10 CFR part 33.
- licenses for industrial radiography under 10 CFR part 34.
- licenses for medical use of byproduct material under 10 CFR part 35.
- licenses for irradiators under 10 CFR part 36.
- licenses for well logging under 10 CFR part 39.
- licenses for source material under 10 CFR part 40.
- licenses for packaging and transportation of radioactive material under 10 CFR part 71.
- licenses for independent storage under 10 CFR part 72.

Holders of approvals under 10 CFR parts 31, 32, 33, 34, 35, 36, 39, 40, and 71 of the NRC's regulations and holders of nonpower reactor operating licenses under 10 CFR part 50 are not protected by backfitting or issue finality provisions.

Issuance of this DG in final form would not constitute backfitting under 10 CFR parts 50, 70, or 72 and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this DG, the NRC has no current intention to impose the DG, if finalized, on current holders of 10 CFR part 50 operating licenses, 10 CFR part 52, subpart B, C, E, or F approvals, 10 CFR part 70 licenses, or 10 CFR part 72 licenses.

The DG, if finalized, could be applied to applications for 10 CFR part 50 operating licenses; 10 CFR part 52, subpart B, C, E, or F approvals; licenses issued under 10 CFR part 70; or licenses issued under 10 CFR part 72. Such action would not constitute backfitting as defined in 10 CFR 50.109, 70.76, or 72.62 or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants are not within the scope of entities protected by 10 CFR 50.109, 70.76, or 72.62 or the relevant issue finality provisions in 10 CFR part 52.

Backfitting restrictions were not intended to apply to every NRC action that substantially changes settled expectations, and applicants have no reasonable expectation that future requirements may change, *see* 54 FR 15372 (April 18, 1989), at 15385–86. Although the issue finality provisions in 10 CFR part 52 are intended to provide regulatory stability and issue finality, the matters addressed in this regulatory guide (concerning certain ALARA requirements in 10 CFR part 20 and 10 CFR part 50 appendix I) are not within the scope of issues that may be resolved for design certification, design approval or a manufacturing license, and therefore are not subject to issue finality protections in 10 CFR part 52.

Dated at Rockville, Maryland, this 18th day of December, 2015.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2015–32414 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0278]**

## Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1324, ''Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors.'' This guidance is proposed Revison 1 of RG 1.219, which incorporates additional information on making changes to emergency plans by facilities that have permanently ceased operations.

**DATES:** Submit comments by February 22, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure

consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specified subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0278. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN 12H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Stephen F. LaVie, Office of Nuclear Security and Incident Response, telephone: 301–287–3741, email: *Steve.LaVie@nrc.gov:* and Anthony Markley, Office of Nuclear Regulatory Research, telephone: 301–415–3165, email: Anthony.Markley@nrc,gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2015–0278 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0278. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) 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 DG is electronically available in ADAMS under Accession No. ML15054A370.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2015–0278 in your comment submission.

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

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

## II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors,'' is temporarily identified by its task number, DG–1324. DG–1324 is proposed revision 1 of Regulatory Guide 1.219. The guide describes methods that the NRC staff considers acceptable to implement the requirements in Title 10, Section 50.54(q), of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities.'' Requirements in 10 CFR 50.54(q) relate to emergency preparedness and specifically to making changes to emergency response plans. Revision 0 of this guide was written focusing on operating nuclear power reactors.

This guide is being updated to provide clarification on how the guidance applies to emergency plan changes at facilities that have certified permanent cessation of operation pursuant to 10 CFR 50.82, ''Termination of License,'' or 10 CFR 52.110, ''Termination of License,'' as applicable.

In 2013, three nuclear power reactor licensees permanently ceased operations at their facilities. Some of these licensees changed their emergency plans assuming that the inherently lower risk of a radiological accident due to the cessation of operations and 10 CFR 50.59 change processes were sufficient to address changes to the emergency plan. However, 10 CFR 50.54(q) requires licensees to gain prior NRC approval of emergency plan changes that would no longer comply with one or more regulations or that would constitute a reduction in the plan effectivness. The licensee would need to request prior NRC approval through a license amendment request under 10 CFR 50.90, ''Application for Amendment of License, Construction Permit, or Early Site Permit,'' or request an exemption under 10 CFR 50.12, ''Specific Exemptions.''

This revision is being proposed to provide clarification on how the regulatory guidance applies to emergency plan changes at nuclear power plant facilities which have permanently shut down. Additionally, editorial changes have been made to reflect current format of the regulatory guide document series.

## III. Backfitting and Issue Finality

Issuance of this regulatory guide in final form would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' discussion in this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses. Moreover, explanations of the

process by which a licensee makes changes to its emergency plan, provided in response to misinterpretations of the NRC's regulations by licensees, do not constitute modifications of or additions to systems, structures, components, or design of a facility; or the procedures or organization required to design, construct or operate a facility within the meaning of 50.109(a)(1). Accordingly, the issuance of this regulatory guide would not constitute ''backfitting'' as defined in 50.109(a)(1) or otherwise be inconsistent with the applicable issue finality provisions in part 52.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of this regulatory guide. Such action would not constitute backfitting as defined in 50.109(a)(1) or otherwise be inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 18th day of December, 2015.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2015–32413 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–039; NRC–2008–0603]**

## Bell Bend, LLC; Combined License Application for Bell Bend Nuclear Power Plant

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in a response to an October 7, 2015, letter from Bell Bend, LLC, which requested an exemption from Final Safety Analysis Report (FSAR) updates included in their combined license (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to, or coincident with, the resumption of the COL application safety review or by December 31, 2016, whichever comes first.

**DATES:** The exemption is effective on December 31, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0603 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–2008–0603. 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:** Patricia Vokoun, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3470; email: *Patricia.Vokoun@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 10, 2008, Bell Bend, LLC (formerly known as PPL) submitted to the NRC a COL application for a single unit of AREVA NP's U.S. Evolutionary Power Reactor (EPR) (ADAMS Accession No. ML082890663) in accordance with the requirements of subpart C of part 52 of title 10 of the *Code of Federal Regulations* (CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be constructed and operated as Bell Bend Nuclear Power Plant (BBNPP), in Luzerne County, Pennsylvania. The NRC docketed the BBNPP COL application on December 19, 2008 (Docket Number 52–039). Additionally, the BBNPP COL application incorporates by reference AREVA NP's application for a standard design certification for the U.S. EPR. The NRC review of the AREVA NP application for design certification of the U.S. EPR has been suspended.

### II. Request/Action

The regulations at 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under 10 CFR part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's FSAR, which is part 2 of the COL application. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update of the FSAR included in the BBNPP COL application would be due by December 31, 2015.

On January 9, 2014, Bell Bend, LLC (formerly known as PPL) submitted a request to place the safety review of the BBNPP COL application on hold until further notice (ADAMS Accession No. ML14030A074). As a result of the safety review being placed on hold, no informational updates to the FSAR have occurred during this time. On October 7, 2015, Bell Bend, LLC requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the BBNPP COL application FSAR update in calendar year 2015 (ADAMS Accession No. ML15300A070).

The Bell Bend, LLC's requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow Bell Bend, LLC to submit the next FSAR update at a later date but no later than December 31, 2016. The current requirement to submit an FSAR update could not be changed, absent the exemption.

### III. Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule

or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)); or (2) the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to-date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. As requested by Bell Bend, LLC (formerly known as PPL) in the above referenced letter dated January 9, 2014, the NRC placed the safety review portion of the BBNPP COL application on hold until further notice. Therefore, updating the BBNPP FSAR would only cause undue hardship on Bell Bend, LLC, and the purpose of 10 CFR 50.71(e)(3)(iii) would still be achieved so long as the next update is submitted by December 31, 2016.

The requested exemption to defer submittal of the next update to the FSAR included in the BBNPP COL application would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii).

*Authorized by Law*

The exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow PPL to submit the next BBNPP COL application FSAR update on or before December 31, 2016. Per 10 CFR 50.12, the NRC staff has determined that granting Bell Bend, LLC the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; therefore, neither the probability, nor the consequences, of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

*Consistent With Common Defense and Security*

The requested exemption would allow Bell Bend, LLC to submit the next FSAR update on or before December 31, 2016. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)); or (2) the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation (10 CFR 50.12(a)(2)(v)).

As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR part 52, for which a license has not been granted. This one-time exemption will support the NRC staff's effective and efficient review of the BBNPP COL application, when resumed, as well as issuance of the NRC staff's safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

*Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR Chapter 1 (which includes 10 CFR 50.71(e)(3)(iii)) is an action that is a categorical exclusion, provided that:

(i) There is no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) There is no significant construction impact;

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

(vi) The requirements from which an exemption is sought involve:

(A) Recordkeeping requirements;

(B) Reporting requirements;

(C) Inspection or surveillance requirements;

(D) Equipment servicing or maintenance scheduling requirements;

(E) Education, training, experience, qualification, requalification or other employment suitability requirements;

(F) Safeguard plans, and materials control and accounting inventory scheduling requirements;

(G) Scheduling requirements;

(H) Surety, insurance or indemnity requirements; or

(I) Other requirements of an administrative, managerial, or organizational nature.

The requirements from which this exemption is sought involve only ''(B) Reporting requirements'' or ''(G) Scheduling requirements'' of those required by 10 CFR 51.22(c)(25)(vi).

The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met as follows:

I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

*Staff Analysis:* The criteria for determining if an exemption involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which only the environmental portion of the licensing review is currently underway. Therefore, there are no significant hazard considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

*Staff Analysis:* The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

*Staff Analysis:* Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

*Staff Analysis:* The proposed action involves only a schedule change which is administrative in nature. While the environmental portion of the application review is underway, the safety portion of the COL application review is on hold and no license will be issued prior to receipt of the aforementioned application's December 31, 2016, submittal of the revised FSAR; therefore, the proposed action does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

*Staff Analysis:* The proposed action involves only a schedule change which is administrative in nature and does not impact the probability or consequences of accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which this exemption is sought involve only ''(B) Reporting requirements'' or ''(G) Scheduling requirements.''

*Staff Analysis:* The exemption request involves requirements in both of these categories because it involves submitting an updated COL FSAR by December 31, 2016, and also relates to the schedule for submitting COL FSAR updates to the NRC.

## IV. Conclusion

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances exist under 10 CFR 50.12(a)(2)(ii). This one-time exemption will support the NRC staff's effective and efficient review of the COL application, when resumed, as well as issuance of the NRC staff's safety evaluation report. Therefore, the NRC hereby grants Bell Bend, LLC a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the BBNPP COL application to allow submittal of the next FSAR update on or before December 31, 2016.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of December 2015.

For the Nuclear Regulatory Commission.

**Frank Akstulewicz,**

*Director, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2015–32512 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0207]**

## Spent Fuel Transportation Package Response to the MacArthur Maze Fire Scenario

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG/CR; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG/CR, NUREG/CR–7206, ''Spent Fuel Transportation Package Response to the MacArthur Maze Fire Scenario.'' This report presents analyses that were performed to examine the hypothetical effects on a spent fuel transportation package from conditions during the MacArthur Maze accident in 2007. The analyses undertaken include FDS fire modeling, physical examination of material samples, ANSYS and COBRA–SFS code thermal modeling of a GA–4 package, ANSYS and LS–DYNA structural and thermal-structural modeling of the roadway and package, and fuel performance modeling using the FRAPTRAN–1.4, FRAPCON–3.4, and DATING codes. The estimated release from the hypothetical scenario is below the prescribed limit for safety.

**DATES:** Submit comments by February 22, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0207. 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.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** Joseph Borowsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission Washington, DC 20555–0001; telephone: 301–415–7407; email: *Joseph.Borowsky@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0207 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0207.
- *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 draft NUREG/CR, ''Spent Fuel Transportation Package Response to the MacArthur Maze Fire Scenario'' is available in ADAMS under Accession No. ML15350A213.

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

*B. Submitting Comments*

Please include Docket ID NRC–2015–0207 in your comment submission.

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

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

**II. Discussion**

The NRC is issuing draft NUREG/CR ''Spent Fuel Transportation Package Response to the MacArthur Maze Fire Scenario.'' This report presents analyses that were performed to examine the hypothetical effects on a spent fuel transportation package from conditions during the MacArthur Maze accident in 2007. The analyses undertaken include FDS fire modeling, physical examination of material samples, ANSYS and COBRA–SFS code thermal modeling of a GA–4 package, ANSYS and LS–DYNA structural and thermal-structural modeling of the roadway and package, and fuel performance modeling using the FRAPTRAN–1.4, FRAPCON–3.4, and DATING codes. The estimated release from the hypothetical scenario is below the prescribed limit for safety.

The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG/CR–7206, ''Spent Fuel Transportation Package Response to the MacArthur Maze Fire Scenario''. Any comments received will be considered in the final version or subsequent revisions of the draft NUREG/CR.

Dated at Rockville, Maryland, this 17th day of December, 2015.

For the Nuclear Regulatory Commission.

**Christian Araguas,**

*Chief, Containment, Structural, and Thermal Branch, Division of Spent Fuel Management, Office of Nuclear Materials Safety and Safeguards.*

[FR Doc. 2015–32514 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0285]**

## Containment Shell or Liner Moisture Barrier Inspection

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory issue summary; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS) to reiterate the NRC staff's position in regard to American Society of Mechanical Engineers (ASME) code-required inservice inspection requirements for moisture barriers. The NRC's regulations require, in part, that licensees implement the inservice inspection program for pressure retaining components and their integral attachments of metal containments and metallic liners of concrete containments in accordance with the ASME Code. If a material prevents moisture from contacting inaccessible areas of the containment shell or liner, especially if the material is being relied upon in lieu of augmented examinations of a susceptible location, the material must be inspected as a moisture barrier. The applicable ASME Code sections require licensees to inspect 100 percent of accessible moisture barriers during each inspection period.

**DATES:** Submit comments by January 25, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0285. 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.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** Bryce Lehman, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1626, email: *Bryce.Lehman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0285 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0285.

• *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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. This RIS is available under ADAMS Accession Number ML15208A522.

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

*B. Submitting Comments*

Please include Docket ID NRC–2015–0285 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://*

*www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

**II. Background**

The NRC issues RISs to communicate with stakeholders on a broad range of regulatory matters. This may include communicating staff technical positions on matters that have not been communicated to or are not broadly understood by the nuclear industry. The NRC staff has developed draft RIS 20YY–XX, ''Containment Shell or Liner Moisture Barrier Inspection,'' to reiterate NRC expectations for these inspections. The NRC staff has identified several instances in which containment shell or liner moisture barrier materials were not properly inspected in accordance with ASME Code Section XI, Table IWE–2500–1, Item E1.30. Note 4 (Note 3 in editions before 2013) for Item E1.30 under the ''Parts Examined'' column states, ''Examination shall include moisture barrier materials intended to prevent intrusion of moisture against inaccessible areas of the pressure retaining metal containment shell or liner at concrete to metal interfaces and at metal to metal interfaces which are not seal welded. Containment moisture barrier materials include caulking, flashing, and other sealants used for this application.'' Examples of inadequate inspections have included licensees not identifying sealant materials at metal-to-metal interfaces as moisture barriers because they are not specifically depicted in Figure IWE–2500–1, and licensees not inspecting installed moisture barrier materials per Item E1.30 because the material was not included in the original design or was not identified as a ''moisture barrier'' in the design documents.

The NRC staff expects licensees to inspect 100 percent of accessible moisture barriers during each inspection period, in accordance with Table IWE–2500–1, Item E1.30, as required by § 50.55a of title 10 of the *Code of Federal Regulations* (10 CFR). Items within the scope of E1.30 inspections shall be identified based on the function of the item as described in the Table IWE–2500 1 note. As noted previously, Figure IWE 2500 1 represents one typical moisture barrier geometry; however, it is not comprehensive. If a material prevents moisture from contacting inaccessible areas of the containment shell or liner, especially if the material is being relied upon in lieu of augmented examinations of a susceptible location per IWE–1241, the material shall be inspected as a moisture barrier, as also described in Information Notice 2014–07 (ADAMS Accession No. ML14070A114). Furthermore, if the Item E1.11 and Item E1.30 inspections are addressed in the same procedures, the inspection scope and acceptance criteria should identify the different surfaces. Items E1.11 and E1.30 address different materials with different geometries and acceptance criteria.

Proposed Action

The NRC is requesting public comments on the draft RIS. The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 17th day of December, 2015.

For the Nuclear Regulatory Commission.
/RA/

**James T. Keene,**

*Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–32338 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0208]**

## Spent Fuel Transportation Package Response to the Newhall Pass Fire Scenario

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG/CR; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG/CR, NUREG/CR–7207, ''Spent Fuel Transportation Package Response to the Newhall Pass Fire Scenario.'' This report presents analyses that were performed to examine the hypothetical effects on a spent fuel transportation package from conditions during the Newhall Pass accident in 2007. The analyses undertaken include FDS fire modeling, physical examination of material samples, ANSYS and COBRA–SFS code thermal modeling of a GA–4 package, and fuel performance modeling using the FRAPTRAN–1.4, FRAPCON–3.4, and DATING codes. The estimated release from the hypothetical scenario is below the prescribed limit for safety.

**DATES:** Submit comments by February 22, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0208. 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.

• Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** Joseph Borowsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission Washington, DC 20555–0001; telephone: 301–415–7507; email: *Joseph.Borowsky@nrc.gov;*

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0208 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0208.

• *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 draft NUREG/CR, ''Spent Fuel Transportation Package Response to the Newhall Pass Fire Scenario'' is available in ADAMS under Accession No. ML15351A152.

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

*B. Submitting Comments*

Please include Docket ID NRC–2015–0208 in your comment submission.

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

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

**II. Discussion**

The NRC is issuing draft NUREG/CR ''Spent Fuel Transportation Package Response to the Newhall Pass Fire Scenario.'' This report presents analyses that were performed to examine the hypothetical effects on a spent fuel transportation package from conditions during the Newhall Pass accident in 2007. The analyses undertaken include FDS fire modeling, physical examination of material samples, and fuel performance modeling using the FRAPTRAN–1.4, FRAPCON–3.4, and DATING codes. The estimated release from the hypothetical scenario is below the prescribed limit for safety.

The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG/CR–7207, ''Spent Fuel Transportation Package Response to the Newhall Pass Fire Scenario''. Any comments received will be considered in the final version or subsequent revisions of the draft NUREG/CR.

Dated at Rockville, Maryland, this 17th day of December, 2015.

For the Nuclear Regulatory Commission.

**Christian Araguas,**

*Chief, Containment, Structural, and Thermal Branch, Division of Spent Fuel Management, Office of Nuclear Materials Safety and Safeguards.*

[FR Doc. 2015–32513 Filed 12–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0001]**

### Sunshine Act Meeting Notice

**DATE:** Week of December 21, 2015.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**Week of December 21, 2015**

*Wednesday, December 23, 2015*

10:30 a.m. Affirmation Session (Public Meeting) (Tentative)

(a) *Aerotest Operations, Inc.*— Application for Indirect License Transfer (Tentative)

(b) *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 2), Motion to Reopen and Propose New Contention Regarding Continued Storage (Tentative)

* * * * *

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.*

* * * * *

**Additional Information**

By a vote of 4–0 on December 22, 2015, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that both items in the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on December 23, 2015.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* 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: December 22, 2015.

**Glenn Ellmers,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2015–32635 Filed 12–22–15; 4:15 pm]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76687; File No. SR–Phlx–2015–85]**

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Sections (e) Through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists

December 18, 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 December 16, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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 delete sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated ''Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization'' and Rule 1023, Specialist's Transactions with Listed Company.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to adopt a principles-based approach to prohibit the misuse of material non-public information by specialists by deleting Sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated ''Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization,'' and Rule 1023, Specialist's Transactions with Listed Company (collectively, the ''Specialist Restrictions''). In doing so, the Exchange would harmonize its rules governing Phlx members [5] and member organizations [6] generally, and Phlx specialists in particular, relating to protecting against the misuse of material, non-public information. The Exchange believes that the Specialist Restrictions are no longer necessary because all specialists are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Phlx Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information, which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange. Additionally, there is no separate regulatory purpose served by having separate rules for specialists. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. This is a competitive filing that is based on a proposal recently submitted by NYSE MKT LLC (''NYSE MKT'') and approved by the Commission.[7]

A ''specialist'' is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020 and 1080.02. Quoting obligations of other market makers known as Registered Options Traders (''ROTs'') are also set forth in Rule 1014.[8] That rule sets forth the main difference between specialists and ROTs, namely that specialists have a heightened quoting obligation as compared to ROTs. In addition to a heightened quoting obligation pursuant to Rule 1014, specialists are eligible to receive a greater allocation of participation rights under certain circumstances.

Importantly, all ROTs and specialists have access to the same information in the Exchange's order book. Moreover, neither ROTs nor specialists have agency obligations on the Exchange's order book. As such, the distinctions between specialists and ROTs are their quoting requirements set forth in Rule 1014.

Notwithstanding that specialists have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how specialists may operate. Currently, Phlx Rule 1023 restricts specialists and various affiliates from effecting certain transactions with a company in options of which the specialist is registered.[9] Rule 1020(e) limits the ability of specialists' affiliates to purchase or sell options in which the specialist is registered for any account in which the affiliate is interested.[10] Rule 1020(f)

[5] Phlx Rule 1(n) defines ''Member'' as a permit holder which has not been terminated in accordance with the By-Laws and Rules of the Exchange.

[6] Phlx Rule 1(o) defines ''Member Organization'' as a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6–4 of the By-Laws.

[7] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR–NYSEMKT–2015–23). *See also* Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26).

[8] A Registered Option Trader (''ROT'') is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. ROTs include Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''), as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with an Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQTO, which may also be referred to as a Remote Market Making Organization (''RMO''), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

[9] Specifically, Rule 1023 provides that no specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which options of such company the specialist is registered, except for business transactions in goods and services on terms generally available to the public. It further provides that no specialist, his member organization or corporate subsidiary of such organization shall accept an order for the purchase or sale of any option in which he is registered as a specialist directly (i) from the company issuing such stock or (ii) from any officer, director or 10% stockholder of that company.

[10] Specifically, Rule 1020(e) provides that no member (other than a specialist acting pursuant to paragraphs 1020(c) or (d)), limited partner, officer, employee, approved person or party approved, who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any option in which such specialist is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such specialist is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution for an Options Exchange Official; and (iii) executed by the specialist in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant

provides an exemption from the restrictions imposed by Rules 1023 and 1020(e), but only if the Exchange has approved procedures restricting the flow of material non-public corporate or market information between the specialist's affiliate and the specialist member organization and any member, officer or employee associated therewith. The procedures are required to comply with the ''Guidelines for Exemptive Relief under Rule 1020 for Approved Persons or Member Organizations Affiliated with a Specialist Member Organization'' (the ''Guidelines''), which are referred to in, and set forth following, Rule 1020(f).

Proposed Rule Change

The Exchange believes that the Specialist Restrictions, including the Guidelines and the Exchange approval requirement, are no longer necessary and proposes to delete them. The Exchange believes that Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of the Misuse of Material Nonpublic Information, Commentary .02 governing the misuse of material, non-public information, provides for an appropriate, principles-based approach to prevent the market abuses the Specialist Restrictions are designed to address. Specifically, Rule 761, Commentary .02 requires every member or member organization to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member's business, to prevent the misuse of material non-public information by such member or persons associated with such member in violation of the Securities Exchange Act of 1934 and the rules thereunder and the Exchange's own rules. For purposes of Rule 761, Commentary .02, misuse of material non-public information means:

(a) Trading in any securities issued by a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that corporation, Portfolio Depository Receipt, Index Fund Share, trust issued receipts, currency trust shares, trust or similar entity;

(b) trading in an underlying security or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning imminent transactions in the above; and

(c) disclosing to another person any material nonpublic information involving a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities whose shares are publicly traded or an imminent transaction in an underlying security or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, for the purpose of facilitating the possible misuse of such material nonpublic information.

Because members and member organizations are already subject to the requirements of Rule 761, Commentary .02, the Exchange does not believe it necessary to separately require specific limitations on specialists. Deleting the Specialist Restrictions including the Guidelines and its requirements for specific procedures would provide specialists flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how members and member organizations on the Exchange currently operate and consistent with Exchange Rule 761, Commentary .02.

As noted above, specialists are distinguished under Exchange rules from ROTs in that specialists have heightened quoting obligations and differing participation entitlements. However, none of these heightened obligations or different entitlements provides different or greater access to non-public information than any other member or member organization on the Exchange. Accordingly, because specialists do not have any trading advantages at the Exchange due to their market role, the Exchange believes they should be subject to the same rules as other members and member organizations regarding the protection against the misuse of material non-public information, which in this case is existing Exchange Rule 761, Commentary .02.[11]

The Exchange is not proposing to change what is considered to be material, non-public information that an affiliated brokerage business of a specialist could share with such specialist. In that regard, the proposed rule change will not permit affiliates of a specialist to have access to any non-public order or quote information of the specialist, including hidden or undisplayed size or price information of such orders or quotes. Affiliates of specialists would only have access to orders and quotes that are publicly available to all market participants. Members do not expect to receive any additional order or quote information as a result of this proposed rule change. The Exchange does not believe that there will be any material change to member information barriers as a result of the removal of the Exchange pre-approval requirement. The Exchange has rules prohibiting members from disadvantaging their customers or other market participants by improperly capitalizing on the member's access to or receipt of material, non-public information.[12]

Further, the Exchange does not believe there will be any material change to specialist information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to specialist information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because specialists do not have agency responsibilities to orders in the book, or time and place information advantages because of their market role.

to Rule 1020(e) shall be given priority over, or parity with, any order represented in the market at the same price.

[11] The Exchange notes that by deleting the Specialist Restrictions, the Exchange would no longer require specific information barriers for specialists or require pre-approval of any information barriers that a specialist would erect for purposes of protecting against the misuse of material non-public information. However, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

[12] For example, Rule 748 requires each member or member organization to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures must reasonably be expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange., [sic] Additionally, Rule 1064 provides that no member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

The Exchange notes that its proposed principles-based approach to protecting against the misuse of material non-public information for all its members and member organizations is consistent with recently filed and approved rule changes for NYSE MKT, NYSE Arca Equities, Inc. (''NYSE Arca''), BATS Exchange, Inc. (''BATS''), and New York Stock Exchange LLC (''NYSE'') governing cash equity market makers on those respective exchanges.[13] Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material non-public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring members to establish and maintain systems to supervise the activities of members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.

The Exchange believes that a principles-based rule applicable to members of options markets would be equally effective in protecting against the misuse of material non-public information.[14] Indeed, Exchange Rule 761, Commentary .02 is currently applicable to specialists and already requires policies and procedures reasonably designed to protect against the misuse of material non-public information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS and NYSE rules governing cash equity market makers. The Exchange believes Exchange Rule 761, Commentary .02 provides appropriate protection against the misuse of material non-public information by specialists such that there is no further need for prescriptive information barrier requirements as set forth in the Specialist Restrictions.

The Exchange notes that even with this proposed rule change, pursuant to Exchange Rule 761, Commentary .02 a specialist would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including Section 15(g) of the Act,[15] and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Rule 761, Commentary .02 already requires that a member or member organization consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange believes that the proposed reliance on principles-based Rule 761, Commentary .02 would ensure that a specialist would be required to protect against the misuse of any material non-public information. As noted above, Rule 761, Commentary .02 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a specialist from the rest of the firm would provide specialists with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a member or member organization to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a specialist structures its operations.

The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which members and member organizations are subject—Rule 761, Commentary .02—and harmonizes the rules governing members and member organizations. Moreover, specialists would continue to be subject to federal and Exchange requirements for protecting material non-public order information.[18] The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange's approach to protecting against the misuse of material non-public information and no longer subject specialists to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to specialists are narrowly tailored to their roles because specialists do not have access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and

[13] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR–NYSEArca–2009–78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (''Arca Approval Order''); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR–BATS–2010–003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (''BATS Approval Order''); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), [sic] SR–NYSE–2014–12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (''NYSE Approval Order'').

[14] International Securities Exchange, Inc. (''ISE'') and BOX Options Exchange LLC (''BOX'') have recently taken a similar approach. *See* Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810, Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26). *See also* Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers, Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR–BOX–2015–31).

[15] 15 U.S.C. 78o(g).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] See 15 U.S.C. 78o(g) and Exchange Rule 761, Commentary .02.

practices and to promote just and equitable principles of trade because existing rules make clear to members and member organizations the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, specialists would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information. Additionally, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange.

The Exchange notes that the proposed rule change would still require that specialists maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of specialist information barriers, any specialist written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, members and member organizations will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, a member or member organization's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to specialists, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission. The Exchange believes that the proposal will enhance competition by allowing specialists to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon specialists.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for members and member organizations which currently exists as a result of disparate rule treatment between options and equities markets regarding how to protect against the misuse of material non-public information. For those members and member organizations that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information. The Exchange believes it would remove a burden on competition to enable members and member organizations to similarly apply a principles-based approach to protecting against the misuse of material non-public information in the options space as ISE has recently done. To this end, the Exchange notes that Exchange Rule 761, Commentary .02 still requires a specialist to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material non-public information. However, with this proposed rule change, a member or member organization that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

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–PHLX–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–PHLX–2015–85. This file

[19] 15 U.S.C. 78s(b)(3)(a)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PHLX–2015–85 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32383 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76693; File No. SR–BX–2015–079]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees and Rebates Related to BX Price Improvement Auction (PRISM)

December 18, 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 December 11, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV, Section 2, entitled ''BX Options Market—Fees and Rebates,'' which governs pricing for BX members using the BX Options Market (''BX Options''). The Exchange proposes to adopt new subsection (5) to add fees and rebates for BX Price Improvement Auction (''PRISM''), which is a mechanism for price improvement on BX Options (''Price Improvement Mechanism'').

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

The Exchange proposes to amend its Chapter XV, Section 2 to adopt new subsection (5) to add fees and rebates for PRISM.

Effective on or about November 16, 2015, BX Options is introducing PRISM, which is codified in BX Chapter VI, Section 9 (also known as the ''PRISM Rule'').[3] PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a 'stop price' and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction,[4] the duration of which will be set at 200 milliseconds.[5] PRISM includes auto-match functionality in which a Participant (an ''Initiating Participant'') may electronically submit for execution an order it represents as agent on behalf of customer,[6] broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant to Chapter VI, Section 9.[7] The PRISM Rule describes the circumstances under which an Initiating Participant may initiate an Auction. A PRISM Order that is for a Non-Customer (account of a broker-dealer or any other person or entity that is not a Public Customer) is always required to improve the same side of the BX BBO even if there is no resting limit order on the book. PRISM Orders that do not comply with the requirements set forth in the PRISM Rule are not eligible to initiate an Auction and will be immediately cancelled. Also, PRISM Orders submitted at or before the opening of trading are not eligible to initiate an Auction and will be rejected. PRISM Orders submitted during the final two seconds of the trading session in the

[21] 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 Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (approval order) (''PRISM Approval''); and 75827 (September 3, 2015), 80 FR 54601 (September 10, 2015) (SR–BX–2015–032) (''PRISM Filing''). In the PRISM Approval the Exchange noted that it will file a rule change separately with the Commission to remove Price Improving and Post-Only Order types from its Rules. The Exchange will not commence offering BX PRISM until such time as it has an effective and operative rule in place from the Commission to remove Price Improving and Post-Only Orders and removes the ability to submit Price Improving and Post-Only Orders into the auction. In the event the Exchange determines to amend its order types to allow the entry of non-displayed order types, *e.g.* Price Improving or Post-Only Orders, the Exchange will file a proposed rule change pursuant to Section 19(b)(2) with the Commission to seek approval for such rule change. *See also* Options Technical Update #2015–6.

[4] PRISM Auction eligibility requirements and the early conclusion of the PRISM Auction are, with certain other PRISM features, subject to a pilot program scheduled to expire July 18, 2016. *See* BX Chapter VI, Section 9.

[5] Other exchanges that have price improvement auctions have developed different durations. *See, e.g.,* CBOE Rule 6.74A(b)(1)(C) (CBOE's AIM auction has a duration of one second); and BOX Rule 7150(f)(1) (BOX's PIP auction has a duration of one hundred milliseconds, commencing on the dissemination of the PIP broadcast).

[6] The term ''Customer'' is defined below for purposes of this fee proposal.

[7] BX PRISM will only conduct an auction for simple (non-complex) Orders.

affected series are not eligible to initiate an Auction and will be immediately cancelled. Finally, an Initiating Order may not be a solicited order for the account of any BX Options Market Maker assigned in the affected series.[8]

The Exchange believes that the PRISM Auction will be beneficial to market participants, and in particular will encourage BX Market Makers [9] to quote at the National Best Bid or Offer (''NBBO'') with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BX. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM Auction up to the size of their quote, a BX Market Maker will be encouraged to quote with additional size outside of the PRISM Auction at the best and most aggressive prices. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX's market quality. BX believes that PRISM will encourage BX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process.[10]

This proposal establishes the fee and rebate structure for PRISM (per contract), in particular two new fees and one new rebate. These would apply to Customers,[11] BX Options Market Makers,[12] and Non-Customers:

Change 1. The Exchange proposes to establish fees for Submitted PRISM Order [13] (Agency Order and Contra-Side Order).

Change 2. The Exchange proposes to establish fees for Responded to PRISM Auction [14] (Penny Classes [15] and non-Penny Classes).

Change 3. The Exchange proposes to establish rebates for PRISM Order Traded With PRISM Response.[16]

Each specific change is described in detail below.

Change 1—Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order the Exchange is proposing to establish fees for Agency Order (per contract), and fees for Contra-Side Order (per contract). Currently, the Exchange has no such fees.

The fees for Submitted PRISM Order will range from $0.00 to $0.30 for Agency Order. The fees for Submitted PRISM Order will range from $0.00 to $0.05 for Contra-Side Order. Specifically, for Submitted PRISM Order proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be no fee ($0.00) for Agency Order and no fee ($0.00) for Contra-Side Order. Subsection (5) will state that for BX Options Market Maker there will be a $0.30 fee for Agency Order and a $0.05 fee for Contra-Side Order. Subsection (5) will state that for Non-Customer there will be a $0.30 fee for Agency Order and a $0.05 fee for Contra-Side Order.

Change 2—Fees for Responded to PRISM Auction: Penny Classes and Non-Penny Classes

For Responded to PRISM Auction the Exchange is proposing to establish fees for Penny Classes (per contract), and fees for non-Penny Classes (per contract). Currently, the Exchange has no such fees.

The fees for Responded to PRISM Auction will be $0.49 (per executed contract) for Penny Classes. The fees for Responded to PRISM Auction will be $0.94 (per executed contract) for non-Penny Classes. Specifically, for Responded to PRISM Auction proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a $0.49 fee for Penny Classes and a $0.94 fee for non-Penny Classes. Subsection (5) will state that for BX Options Market Maker there will be a $0.49 fee for Penny Classes and a $0.94 fee for non-Penny Classes. Subsection (5) will state that for Non-Customer there will be a $0.49 fee for Penny Classes and a $0.94 fee for non-Penny Classes.

Change 3—Rebates for PRISM Order Traded With PRISM Response: Penny Classes and Non-Penny Classes

For PRISM Order Traded with PRISM Response the Exchange is proposing to establish rebates for Penny Classes (per contract), and rebates for non-Penny Classes (per contract). Currently, the Exchange has no such rebates. These rebates would be applied in conjunction with the Agency Order fees that the Submitted PRISM Order is assessed.

The rebates for PRISM Order Traded with PRISM Response will range from $0.00 to $0.35 for Penny Classes. The rebates for PRISM Order Traded with PRISM Response will range from $0.00 to $0.70 for non-Penny Classes. Only Customers will get rebates. Specifically, for PRISM Order Traded with PRISM Response proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a $0.35 rebate for Penny Classes and a $0.70 rebate for non-Penny Classes. Subsection (5) will state that for BX Options Market Maker and for Non-Customer there will be no rebate ($0.00) for Penny Classes and no rebate ($0.00) for non-Penny Classes.

BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order Traded with PRISM Response. Moreover, the Agency Order fee for Submitted PRISM Order, which is discussed in Change 1 above, will be applicable to any contract(s) for which a rebate is provided (whether $0.00 or otherwise in the fees and rebates schedule) [17] for PRISM Order Traded with PRISM Response.

Example 1

A Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Customer Agency Order is assessed a fee of $0.00 and given a rebate of $0.35 for a total

[8] *See* BX Chapter VI, Section 9(i)(C) through (G).

[9] BX Options Market Makers may also be referred to as ''Market Makers''. The term ''BX Options Market Maker'' means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[10] For purposes of brevity, the Exchange does not endeavor to describe all the nuances of PRISM within this fee proposal. Additional detail regarding PRISM can be found in PRISM Approval, PRISM Filing, and PRISM FAQs at *http://nasdaqtrader.com/content/productsservices/trading/PRISMFAQs.pdf.*

[11] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[12] BX Options Market Makers may also be referred to as ''Market Makers''. The term ''BX Options Market Maker'' or (''M'') means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[13] This relates to a market participant submitting an order into the PRISM Auction.

[14] This relates to a market participant responding to a PRISM Auction.

[15] Penny Classes are options listed pursuant to the Penny Pilot, which was established in June 2012 and extended in 2015. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[16] This relates to a market participant submitting a PRISM Order pursuant to a PRISM Auction and the PRISM Order trading with (or being ''contra to'') PRISM Response. The rebate discussed is similar to the Miami International Securities Exchange (''MIAX'') PRIME break-up rebate. MIAX PRIME is, as discussed, similar in in nature to PRISM.

[17] Also known as fee and rebate schedule.

rebate of $0.35 (fee $0.00 + rebate $0.35). The market participant that Responded to PRISM Auction will be assessed a fee of $0.49.

Example 2

A Non-Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Non-Customer Agency Order is assessed a fee of $0.30 and given a rebate of $0.00 for a total fee of $0.30 (fee $0.30 + rebate $0.00). The market participant that Responded to PRISM Auction will be assessed a fee of $0.49.

As proposed, Chapter XV, Section 2 subsection (5) will read as follows:

(5) Fees and rebates for BX Price Improvement Auction (''PRISM'')

FEES AND REBATES (PER CONTACT)

| Type of market participants | Submitted PRISM order fee | | Responded to PRISM auction fee | | PRISM order traded with PRISM response rebate | |
|---|---|---|---|---|---|---|
| | Agency order | Contra-side order | Penny classes | Non-penny classes | Penny classes | Non-penny classes |
| Customer | $0.00 | $0.00 | $0.49 | $0.94 | $0.35 | $0.70 |
| BX Options Market Maker | 0.30 | 0.05 | 0.49 | 0.94 | 0.00 | 0.00 |
| Non-Customer | 0.30 | 0.05 | 0.49 | 0.94 | 0.00 | 0.00 |

BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order Traded with PRISM Response. The Agency Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided (whether $0.00 or otherwise in this fees and rebates schedule) for PRISM Order Traded with PRISM Response.

The Exchange is adopting these fees and rebates at this time because it believes that they will allow the Exchange to recoup some of the costs associated with PRISM, which promotes price improvement to the benefit of market participants, while also incentivizing the use of PRISM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20] Likewise, in *NetCoalition* v. *NYSE Arca, Inc.*[21] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[22] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [23]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [24] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal establishes fees and rebates regarding PRISM, which promotes price improvement to the benefit of market participants. The Exchange believes that PRISM will encourage market participants, and in particular BX Market Makers, to compete vigorously to provide the opportunity for price improvement in a competitive auction process. The Exchange believes that its proposal will allow the Exchange to recoup costs associated with PRISM while also incentivizing its use.

Change 1—Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order, establishing that there will be no fee for Customer for Agency Order, while establishing a $0.30 fee per contract for BX Options Market Maker for Agency Order and a $0.30 fee per contract for Non-Customer for Agency Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. For Submitted PRISM Order, establishing no Customer fee, while establishing a $0.05 fee per contract for BX Options Market Maker for Contra-Side Order and a $0.05 fee per contract fee for Non-Customer for Contra-Side Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services.

Assessing Customers a lesser fee for Agency Order and for Contra-Side Order (in both cases $0.00) is reasonable because of the desirability of Customer activity. The proposed new fees and rebates for PRISM schedule is set up to encourage greater Customer trade volume to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[21] *NetCoalition* v. *NYSE Arca, Inc.* 615 F.3d 525 (D.C. Cir. 2010).

[22] *See NetCoalition,* at 534.

[23] *Id.* at 537.

[24] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and has been, commonly practiced in the options markets.[25] The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[26] Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.[27] Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.[28] As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.[29] The Exchange believes that the differentiation is reasonable and notes that unlike others (*e.g.* Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[30]

For Submitted PRISM Order, establishing no fee for Customer (Agency Order and Contra-Side Order) and a fee for BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all similarly situated participants. Moreover, all similarly situated Submitted PRISM Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, fees for Submitted Prism Order are equitable and not unfairly discriminatory because, while each market participant (Customer, BX Options Market Maker, non-Customer) is assessed a fee the Customer fee is lowest because an increase in Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads.

Change 2—Fees for Responded to PRISM Auction: Penny Classes and Non-Penny Classes

For Responded to PRISM Auction, establishing that there will be a $0.49 fee per contract for Customer for Agency Order, and the same fee for BX Options Market Maker and for Non-Customer for Agency Order, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and has been, commonly practiced in the options markets.[31] The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[32] Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.[33] Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.[34] As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

For Responded to PRISM Auction, establishing that there will be a $0.94 fee per contract for Customer for Contra-Side Order, and the same fee for BX Options Market Maker and for Non-Customer for Contra-Side Order, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and has been, commonly practiced in the options markets.[35] The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[36] Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.[37] Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.[38] As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other

[25] *See, e.g.,* MIAX Fee Schedule, NYSE Arca Fee Schedule, Nasdaq Options Market (''NOM'') Fee Schedule.

[26] *See* MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR–MIAX–2015–45) (notice of filing and immediate effectiveness regarding MIAX PRIME). *See also, e.g.,* NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

[27] *Id.*

[28] *Id.*

[29] *See, e.g.,* NOM Chapter XV, Section 2 and BX Chapter XV, Section 2. *See also* MIAX Fee Schedule.

[30] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''.

[31] *See* MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

[32] *See* MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR–MIAX–2015–45) (notice of filing and immediate effectiveness regarding MIAX PRIME). *See also, e.g.,* NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

[33] *Id.*

[34] *Id.*

[35] *See* MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

[36] *See* MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR–MIAX–2015–45) (notice of filing and immediate effectiveness regarding MIAX PRIME). *See also, e.g.,* NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

[37] *Id.*

[38] *Id.*

exchanges employing similar fee structures for price improvement mechanisms.

For Responded to PRISM Auction, establishing a fee for Customer, BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all similarly situated participants. Moreover, all similarly situated Submitted PRISM Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

Change 3—Rebates for PRISM Order Traded With PRISM Response: Penny Classes and Non-Penny Classes

For PRISM Order Traded with PRISM Response, establishing that there will be no rebate for BX Options Market Maker and Non-Customer for Penny Classes, while establishing a $0.35 rebate per contract for Customer for Penny Classes and a $0.70 rebate per contract for Customer for non-Penny Pilot Classes, is reasonable because it encourages the desired Customer behavior. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services.[39]

Offering a rebate only for Customer ($0.35 or $0.70) is reasonable because of the significance of Customer activity. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and has been, commonly practiced in the options markets.[40] The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[41] Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.[42] Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.[43] As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

For PRISM Order Traded with PRISM Response, establishing a rebate for Customer (Penny Classes and non-Penny Classes) and no rebate for BX Market Maker and Non-Customer (Penny Classes and non-Penny Classes) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to pay such rebate will apply the same to all similarly situated participants. The Exchange is adopting the proposed fees and rebates at this time because it believes that the associated revenue will allow it to continue and enhance PRISM, which is beneficial to market participants. Moreover, all similarly situated PRISM Order Traded with PRISM Response are subject to the same proposed rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, rebates for PRISM Order Traded with PRISM Response are equitable and not unfairly discriminatory because, while only Customer, can earn a rebate, Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads.

The rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.[44] The Exchange believes that the differentiation is reasonable and notes that unlike others (*e.g.* Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[45]

In sum the Exchange believes that the proposed fee and rebate structure is designed to attract Customer liquidity, which benefits all market participants by providing more trading opportunities. This attracts BX Market Makers and an increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the Exchange believes that assessing market participants other than Customers a higher effective rate for certain PRISM Order transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of system resources than that of Customers, and thus, generates greater ongoing operational costs. The proposed fees and rebates will allow it to continue and enhance PRISM, which is beneficial to market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to establish fees and rebates for PRISM will impose any burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive

[39] As noted, such rebate would be applied in conjunction with any Agency Order fee that the Submitted PRISM Order is assessed.

[40] *See* MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

[41] *See* MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR–MIAX–2015–45) (notice of filing and immediate effectiveness regarding MIAX PRIME). *See also, e.g.,* NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

[42] *Id.*

[43] *Id.*

[44] *See, e.g.,* NOM Chapter XV, Section 2 and BX Chapter XV, Section 2.

[45] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''.

with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply establishing rebates and fees in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed and credits available to member firms in respect of PRISM do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain PRISM, which has the potential to result in more efficient, price improved executions to the benefit of market participants.

The Exchange believes that the proposed change would increase both inter-market and intra-market competition by incentivizing members to direct their orders, and particularly Customer orders, to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts market makers. To the extent that there is a differentiation between proposed fees assessed and rebates offered to Customers as opposed other market participants, the Exchange believes that this is appropriate because the fees and rebate should incentivize members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded on the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed fees and rebates for participation in the PRISM Auction are not going to have an impact on intra-market competition based on the total cost for participants to transact as respondents to the Auction as compared to the cost for participants to engage in non-Auction electronic transactions on the Exchange. As noted above, the Exchange believes that the proposed pricing for the PRISM Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms, and the Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the Auction justify and offset the transaction costs associated with Auction. To the extent that there is a difference between non-PRISM transactions and PRISM transactions, the Exchange does not believe this difference will cause participants to refrain from submitting or responding to PRISM. In addition, the Exchange does not believe that the proposed transaction fees and credits burden competition by creating a disparity of transaction fees between the PRISM Order and the transaction fees a responder pays would result in certain participants being unable to compete with the contra side order. The Exchange expects to see robust competition within the PRISM Auction. As discussed, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

*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**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[46] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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–2015–079 on the subject line.*

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–079. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–079 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32389 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

[47] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76696; File No. SR–ICEEU–2015–020]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to ICC End-of-Day Price Discovery Policy

December 18, 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 December 3, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule changes is to revise the ICE Clear Europe End-of-Day Price Discovery Policy (the ''Price Discovery Policy'') to accommodate industry changes regarding the reduction of the frequency for which Single Name (''SN'') Credit Default Swap (''CDS'') contracts roll to the new on-the-run-contract.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

ICE Clear Europe proposes revising its Price Discovery Policy to accommodate industry change regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run-contract. The changes affect the labeling convention for cleared SN CDS contracts for price reporting purposes, but will not alter the terms of the contracts or the range of tenors of SN CDS contracts currently cleared by ICE Clear Europe.

ICE Clear Europe believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions cleared by ICE Clear Europe. The proposed revisions are described in detail as follows.

As part of ICE Clear Europe's end-of-day price discovery process, ICE Clear Europe Clearing Members are required to submit end-of-day prices for specific instruments related to their open interest at ICE Clear Europe, in accordance with Rule 503(g) and the ICE Clear Europe Procedures. These end-of-day price submissions are used by ICE Clear Europe in its calculation of settlement prices.

ICE Clear Europe refers to a group of SN instruments with the same risk sub-factor and coupon as a ''curve.'' Each point, or tenor, along the curve is labeled with a tenor name. Currently for SN instruments, the market convention is to describe tenors based on the period remaining until the scheduled termination date of the contract. Under this convention, the nearest-to-expiring contract is referred to as the 0M tenor, the next nearest to expiring is referred to as the three month (3M) tenor, and so on (with scheduled termination dates spaced at 3 month intervals), up to ten years (10Y). ICE Clear Europe supports the clearing of all 41 SN tenors from 0M to 10Y. As such, ICE Clear Europe also calculates settlement prices for the 41 SN tenors on the curve. However, ICE Clear Europe defines a subset of the 41 tenors as ''benchmark-tenors'', which are tenors for which Clearing Members provide submissions in the end-of-day price discovery process. The nine benchmark tenors are 0M, 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y, and 10Y, which correspond to so-called ''on-the-run'' contracts.

Currently, as a matter of CDS market practice, the on-the-run contract for a particular tenor is the contract expiring

on the next following quarterly International Money Market (''IMM'') dates (*i.e.,* March 20, June 20, September 20, and December 20) for the relevant year. For example, the SN CDS contract expiring December 20, 2020 will be considered the five-year on-the-run contract until December 20, 2015, from which time the contract expiring March 20, 2021 will be viewed as the 5Y on-the-run contract, until the next quarterly roll date, etc. Accordingly, market participants seeking to maintain exposure at a particular CDS tenor will typically ''roll'' SN CDS contracts into the new on-the-run contract (*i.e.,* terminate positions in the old on-the-run contract and establish positions in the new on-the-run contract) on a quarterly basis on the IMM dates. To account for this practice, at each quarterly roll date, ICE Clear Europe re-labels the 41 SN tenors to reflect the rolling and expiration of contracts.

The CDS industry has proposed reducing the frequency at which SN CDS contracts roll to the new on-the-run contract. Specifically, the CDS industry has proposed moving from quarterly roll dates to semi-annual roll dates for SN CDS contracts. Under the revised approach, market participants are expected to roll SN CDS contracts only on the March 20 and September 20 IMM dates, and the on-the-run contracts will be determined based on the next following June 20 and December 20 expiration dates. As a result, a particular contract tenor will generally remain the on-the-run contract for six months, rather than three.

ICE Clear Europe proposes changes to its Price Discovery Policy to accommodate the change in roll frequency for on-the-run contracts. Under the revised policy, ICE Clear Europe will re-label scheduled termination dates with benchmark tenor names every six months, on the March 20 and September 20 IMM dates for CDS contracts (*i.e.,* the on-the-run roll dates). The re-labeling is based on the remaining time to maturity that will apply to a given scheduled termination date on the next quarterly IMM date (*i.e.* the next December 20 or June 20 standard maturity date). Upon the semi-annual re-labeling, the nearest to maturity contract is referred to as the 0M tenor, and the tenor label for each longer-date contract is based on that contract's time to maturity relative to the scheduled termination date labeled as the 0M tenor.

The new nine benchmark tenors will be the 0/3M, 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y and 10Y, which correspond to the on-the-run contracts for those tenors. Eight of the nine benchmark tenors remain constant and refer to individual scheduled termination dates that are fixed for the six-month periods between semi-annual re-labeling, specifically the 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y, and 10Y. However, the 0M tenor matures three months after a semi-annual labeling, and ICE Clear Europe defines the first (shortest-dated) benchmark tenor as the 0M tenor from a semi-annual re-labeling until the maturity of that tenor, and defines the first benchmark tenor as the 3M tenor from the maturity of the 0M tenor through the next semi-annual re-labeling. The label 0/3M tenor refers to this re-mapping of the first benchmark tenor to different IMM dates on a quarterly basis. Throughout the policy, references to the 0M SN tenor have been updated to 0/3M to reflect this change.

Consistent with the approach being taken throughout the CDS market, the changes to accommodate the change in SN roll frequency will take effect with the December 20, 2015 roll.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, including Section 17(A)(b)(3)(F).[6] ICE Clear Europe's end of day price discovery process allows ICE Clear Europe to determine reliable, market-driven prices for the CDS instruments it clears, which are in turn necessary to facilitate accurate daily settlement in such instruments. The proposed revisions to the Price Discovery Policy will accommodate industry changes regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run contract, and in particular will enable ICE Clear Europe to continue to perform its end of day price discovery process in an effective manner in light of such industry changes. As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F) [7] of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are designed to accommodate industry changes regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run-contract, and will apply uniformly across all market participants. ICE Clear Europe is not changing the products or tenors of SN CDS offered, and does not believe that the amendments will adversely affect access to clearing or the cost of clearing for Clearing Members or other market participants. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule changes have become effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(4)(i) [9] thereunder. The amendments principally effect a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule changes, the Commission summarily may temporarily suspend such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(i).

in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2015–020 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–020. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings*.

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–ICEEU–2015–020 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32390 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76697; File No. SR–Phlx–2015–106]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Trading Halts

December 18, 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 December 9, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to delete obsolete rule language and amend outdated references relating to Exchange Rule 1047, Trading Rotations, Halts and Suspensions.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to update the Exchange's rules by ensuring the rules accurately reflect how trading halts occur on the Exchange's fully electronic trading system, the Phlx XL II system (''System'').[4] Rule 1047 is now outdated in certain ways and lacks specificity in certain ways. Primarily, as explained below, the rule does not accurately reflect under what circumstances the halt will automatically be imposed by the System versus manually declared by an official. The Exchange proposes to delete obsolete rule language and amend outdated references in order to remove confusion that may result from having outdated rules in the Exchange's rulebook and ensure that the rulebook accurately reflects member obligations. Furthermore, the Exchange is reorganizing the rule to flow in a more logical fashion. In addition, the Exchange proposes to harmonize certain language in Rule 1047 with comparable rules of its affiliates, as described in further detail below.[5]

First, the Exchange proposes to delete the existing text of paragraph (a) under Rule 1047 which governs opening and closing trading rotations. Paragraph (a) is obsolete because the Exchange no longer relies on manual trading rotations to open and close trading on the Exchange.[6] A trading rotation, as described in current Rule 1047.01, is a series of very brief time periods during each of which bids, offers and transactions in only a single, specified

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to re-title the rule ''Trading Halts.''

[4] In May 2009, the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange is proposing to define the term ''System'' in proposed subparagraph (b)(iii); previously, only the term ''Trading System'' was used and defined in current subparagraph (a)(iv).

[5] *See* Nasdaq Options Market (''NOM'') Chapter V, Section 3 and BX Options Chapter V, Section 3.

[6] The exception is in the event an automated opening cannot occur or a closing rotation is deemed necessary, in which case the procedures in the Commentaries to Rule 1047 would be employed pursuant to the authority in current Rule 1047(c), which is proposed to become Rule 1047(b), Manual Rotations.

option contract can be made.[7] The Exchange's opening process that replaced trading rotations is set forth in Rule 1017.[8] Thus far, the Exchange maintained references to rotations for two reasons. The Phlx XL II System was phased-in over a period of time such that the Exchange's rules needed to reflect both the existing manual processes as well as the ''new'' systems; [9] the rules no longer need to do so. Secondly, the term ''trading rotation'' is still sometimes used to cover automated openings, including on other options exchanges; nevertheless, the Exchange believes it is clearer, at this time, not to use that term. In any event, option series on the Exchange open in an automated fashion pursuant to Rule 1017. In addition, the Exchange now simply stops trading in an option rather than relying on a closing rotation,[10] as currently provided for in paragraph (a), which is a manual process conducted by the specialist.[11] Accordingly, current paragraph (a) is being updated. The Exchange believes that it is clearer to eliminate the reference to rotations from paragraph (a).

Additionally, the Exchange proposes to adopt as new paragraph (a) a provision to reflect the fact that the System automatically halts trading in an option on the Exchange in certain situations. Specifically, an automated halt occurs following a halt or suspension of trading of the underlying security [12] in the primary market,[13] a regulatory halt on the primary market,[14] a delayed opening of the underlying security because of unusual circumstances,[15] or a trading pause on the primary market.[16] With respect to a halt on the primary market and delayed openings, Rule 1047(b)(i) and (ii) currently permit a halt, but because the Exchange currently halts automatically, the Exchange is now updating its rule to reflect such automatic halt.[17] None of these reasons for a halt are new.

Existing Rule 1047(e) refers to the ''primary listing market,'' which is not defined in Exchange rules, while the rest of Rule 1047 uses the term ''primary market.'' Rule 1000(b)(31) currently provides that the term ''primary market'' in respect of an underlying stock or Exchange-Traded Fund Share means the principal market in which the underlying stock or Exchange-Traded Fund Share is traded. The Exchange believes that this is not clear and proposes to change this definition such that the term ''primary market'' means, in the case of securities listed on The Nasdaq Stock Market, the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape Association Plan. This is the same definition that is used in NOM and BX rules.[18]

New paragraph (b) will address manual halts by Options Exchange Officials (rather than automatic halts by the System).[19] Specifically, trading on the Exchange in any options shall be halted [20] whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are that: An occurrence of an act of God or other event outside the Exchange's control; [21] technical failure or failures of the Exchange's current automated trading system or any other Exchange quotation, transaction reporting, execution, order routing or other systems for trading options, including, but not limited to, the failure of or a part of the central processing system, a number of member or member organization trading applications, or the electrical power supply to the system itself or any related system; [22] or other unusual conditions or circumstances are present.[23] The Exchange is proposing to delete the language in existing Rule 1047(a)(iii) regarding issuer announcements, because the Exchange believes that issuer announcements are handled by the listing exchange for the underlying security, not the options market. If the listing market were to halt an underlying security, the options market would halt based on proposed Rule 1047(a).

Paragraph (b) will also reflect the fact that an Options Exchange Official retains the authority to delay the opening, halt and reopen after a halt to open where the underlying security has not opened or current quotations are unavailable for any foreign currency, and to conduct a closing rotation on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the trading day prior to expiration where the underlying security did not open or was halted, whenever such action is deemed necessary in the interests of maintaining a fair and orderly market in such class or series of options and to protect investors. This is currently in Rule 1047(c). The Exchange is labelling this paragraph with the title ''Manual Authority'' to retain the ability of Options Exchange Officials to perform these duties in the unlikely event that it becomes necessary.

[7] Specialists used to always conduct manual trading rotations pursuant to the following existing language: Taking each option in which he is assigned in turn, the specialist should first open the one or more series of such options having the nearest expiration, then proceed to a series of options having the next most distant expiration, and so forth, until all series have been opened. The specialist shall determine which type of option should open first (*i.e.,* put or call options), and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions. Reverse and modified rotations could all be conducted. *See* current Rule 1017.01(a) and (b). All rotations have been replaced with an automated opening process. *See supra* note 4. A manual rotation may occur but is unlikely. *See supra* note 6.

[8] *See supra* note 4.

[9] This is why the Exchange added to Rule 1047 the language that an automated opening conducted pursuant to Rule 1017 is considered a ''trading rotation.''

[10] In deleting existing paragraph (a), a reference to trading rotations ''at the close of trading on the last trading day with respect to expiring equity option contracts'' is also being deleted. Any such rotation would be manual pursuant to existing Rule 1047.01(c). The Exchange also proposes to add introductory language to the Commentaries to make it clearer that such Commentaries cover manual rotations by specifically stating that in the event the System is not available, a manual trading rotation may be held on the opening and close of trading.

[11] The System automatically turns off trading at the close, rather than relying on a manual process.

[12] This rule currently uses both the terms ''underlying security'' and ''underlying stock or Exchange-Traded Fund Share.'' Separately, the Exchange intends to harmonize that throughout its rules. For purposes of this filing, the terms are interchangeable.

[13] This is currently in paragraph (b)(i).

[14] This provision is currently in Commentary .01(e) and expressly references an automated trading halt. It is being deleted from the commentary.

[15] This is currently in paragraph (b)(ii).

[16] This provision is not new; it is currently in paragraph (e) and is being relocated to new paragraph (a).

[17] The similar provisions on NOM and BX will be updated to reflect the difference between automated and manual halts.

[18] *See* NOM Chapter I, Section 1(a)(47) and BX Options Chapter I, Section 1(a)(48).

[19] The comparable NOM and BX rules reference regulatory personnel more generally as ''Regulation'' while the Phlx rule is more specific by referring to ''Options Exchange Officials.'' *See e.g.,* NOM Chapter V, Section 3(a). *See also* Phlx Rule 1(w).

[20] The Exchange is deleting the words ''or suspended'' because that term does not normally apply to options trading but rather to trading in the underlying security. *See e.g.,* current Rule 1047(a)(i), which provides that trading in the underlying stock or Exchange-Traded Fund Share has been halted *or suspended* in the primary market. *See also* NOM Chapter V, Section 3(a)(i).

[21] This is the only new provision, and it is based on NOM Chapter V, Section 3(a)(iii).

[22] This is in existing Rule 1047(a)(iv). The Exchange is proposing to define the term ''System'' here, which is the same as Trading System, for use throughout the Rule.

[23] This is in existing Rule 1047(a)(v).

The Exchange proposes to adopt new paragraph (c) to reflect more specifically what happens when an option is halted. It will provide that in the event the Exchange halts trading pursuant to paragraphs (a) or (b), all trading in the affected option shall be halted. The Exchange shall disseminate through its trading facilities and over OPRA a symbol with respect to such option indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.[24] Furthermore, no member or member organization or person associated with a member or member organization shall effect a trade on the Exchange in any option in which trading has been halted under the provisions of this Rule during the time in which the halt remains in effect. This is also based on the provisions of NOM and BX.[25] The Exchange believes that the new language proposed in Rule 1047(c) is helpful and explanatory for participants.

The Exchange proposes to delete existing Rule 1047(d), which provides that in the event that trading is halted in the underlying security on the primary market for such security, the specialist may halt trading in the option overlying such security, subject to the approval of an Options Exchange Official within five minutes of the halt in trading in the option. Paragraph (d) is made redundant as a result of adopting paragraph (a) to address automated halts, and is obsolete because it refers to specialists. Specialists cannot halt an option. The type of control that specialists used to have over halts no longer exists; once the System became more automated,[26] there became no physical method for specialists to activate a halt.

The Exchange proposes to delete current paragraph (e) because the fact that trading in an option will be halted whenever trading in the underlying security has been paused is now covered by new paragraph (a)(i). In addition, the language in Rule 1047(e)(i) is now covered in new paragraph (g) in a more streamlined form. Rule 1047(e)(ii), which provides that the Exchange will maintain existing orders on the book, accept orders, and process cancels, is now in new paragraph (f), as explained further below.

The Exchange also proposes to renumber current paragraph (f) as paragraph (d) to improve the flow of the rule and align the paragraph numbers with those of NOM and BX.[27] The Exchange also proposes to amend subparagraph (f)(ii) in order to update an outdated reference to the Phlx XL system and use the general term ''System'' instead, as explained above.

The Exchange is proposing to renumber current paragraph (g) as new paragraph (e) without any substantive change to track the comparable provisions on NOM and BX.[28]

The Exchange proposes to adopt new paragraph (f) to provide that when a halt occurs, existing quotes will be cancelled; during a halt, the Exchange will maintain existing orders on the book (but not existing quotes), accept orders and quotes, and process cancels.[29] This provision is not new; it is currently in paragraph (e) and is being relocated to new paragraph (f), although it is also being modified to add reference to accepting new quotes (not just orders) for better clarity and understanding.

The Exchange proposes to adopt new paragraph (g) to govern the resumption of trading after a halt. Specifically, trading in an option that has been the subject of a halt shall be resumed: (A) In the case of a manual halt, upon the determination by an Options Exchange Official that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading; or (B) in the case of an automatic trading halt, the conditions which led to the halt are no longer present, and, in either case, in no circumstances will trading be resumed before the Exchange has received notification that the underlying stock or Exchange-Traded Fund Share has resumed trading on at least one exchange. If, however, trading has not been resumed on the primary market for the underlying security after ten minutes have passed since the underlying security was paused by the primary market, trading in such options contracts may be resumed by the Exchange if the underlying security has resumed trading on at least one exchange.[30] This provision is modelled on the rules of NOM and BX.[31] This provision also specifies that options trading resumes pursuant to Rule 1017, which outlines the automated opening process.[32]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[33] in general, and furthers the objectives of Section 6(b)(5) of the Act[34] in particular, in that it 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest, by deleting outdated or obsolete provisions and generally providing clarity to the rules. The proposal should result in a more accurate and understandable rule book. The amendments should make clear that the Exchange now simply ceases trading in an option rather than relying on a closing rotation, meaning the option stops trading without a manual process.[35] The proposal also deletes the obligation of the specialist to halt trading, because specialists cannot halt trading. These changes should promote just and equitable principles of trade by updating the rule to delete outdated and potentially confusing terms.

Furthermore, the Exchange is amending the rule to reflect that certain halts occur automatically while others are determined by specified Exchange staff, Options Exchange Officials. The Exchange believes it is more accurate to reflect that sometimes Exchange staff employ discretion in determining whether to halt (new paragraph (b)) and sometimes the System automatically

[24] This is new language that is the same as NOM and BX rules, except it reflects the new automated halt process and thus is not tied to Exchange staff halting an option. *See* NOM Chapter V, Section 3(b), and BX Options Chapter V, Section 3(b).

[25] *See* NOM Chapter V, Section 3(c), and BX Options Chapter V, Section 3(c). Due to the differing terms that apply to membership and participation on each exchange, the NOM and BX Options rules refer to ''Options Participants'' while the Phlx rules refer to ''members and member organizations.''

[26] *See supra* note 4.

[27] *See* NOM Chapter V, Section 3(d), and BX Options Chapter V, Section 3(d).

[28] *See* NOM Chapter V, Section 3(e), and BX Options Chapter V, Section 3(e).

[29] *See also* NOM Chapter V, Section 3(a)(vi)(B), which is located within the provision that governs halts due to a pause in the trading of the underlying security only; NOM and BX intend to correct it to make clear that it applies to all halts.

[30] Rule 1047(b)(iv) currently contains a similar provision, except that the current rule contains an ''and'' and thus requires both conditions to be met to resume trading, and there is no specific reference to the resumption of trading of the underlying on at least one exchange. Presumably, the resumption of trading in the underlying on one exchange is an example of a condition that led to the options halt no longer being present, but the proposed language is more specific and thus clearer. The resumption of trading after a trading pause is currently in Rule 1047(e)(i).

[31] *See* NOM Chapter V, Section 4, and BX Options Chapter V, Section 4. The Exchange believes that this provision containing an ''or'' is more appropriate because it is more flexible in terms of permitting a resumption of trading.

[32] This is based on NOM Chapter V, Section 5.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] *See supra* note 11.

halts (new paragraph (a)), which should both promote just and equitable principles of trade by tailoring the halt processes for options to the particular situations triggering a halt, consistent with the maintenance of fair and orderly markets. This restructuring and resulting renumbering should make the rule clearer. The Exchange believes that the situations listed in new paragraph (a) appropriately result in an automatic halt rather than relying on an Options Exchange Official, because those situations are objective and do not require the discretion or expertise of an Options Exchange Official. Accordingly, the Exchange believes automatic halts are appropriate and consistent with the Act.

In addition, the Exchange believes that the proposal to amend the definition of primary market is consistent with promoting just and equitable principles of trade. It is based on a more precise definition, tied to the market where the underlying security is listed, which is commonly understood to be the meaning of the term.

The Exchange believes that the proposed language regarding manual halts due to an occurrence of an act of God or other event outside the Exchange's control should promote just and equitable principles of trade by providing for a manual halt in serious, unanticipated circumstances. The Exchange also believes that the new language in paragraph (c) should promote just and equitable principles of trade by indicating when a halt has occurred and making clear that no trading is permitted during a halt. Furthermore, the Exchange believes that the language in new paragraph (f) that the Exchange will maintain existing orders on the book (but not existing quotes), accept orders and quotes and process cancels should promote just and equitable principles of trade by making it clear to market participants what occurs during a halt. Similarly, the proposed language in new paragraph (g) regarding the resumption of trading after a halt should promote just and equitable principles of trade by stating with specificity the conditions under which trading resumes.

Overall, the proposal is intended to help members understand how trading halts operate, which should also promote just and equitable principles of trade, consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal raises neither intra-market nor inter-market competition issues because it merely deletes obsolete provisions and adds specificity.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[36] and subparagraph (f)(6) of Rule 19b-4 thereunder.[37]

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–Phlx–2015–106 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–106, and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32391 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

[36] 15 U.S.C. 78s(b)(3)(a)(iii).

[37] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[38] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76689; File No. SR–BYX–2015–50]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to ALLB Routing and Other Fees for Use of BATS Y-Exchange, Inc.

December 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c) (''Fee Schedule'') to adopt fees for the recently adopted ALLB routing strategy. The Exchange also proposes to amend the Fee Codes and Associated Fees table of the Fee Schedule to indicate the amount of the fees and rebates as five decimal points, rather than four decimal points, by adding a zero to the end of each fee and rebate.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.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 parts of such statements.

*A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for,the Proposed Rule Change*

1. Purpose

ALLB Routing Fees

The Exchange proposes to adopt fees for the ALLB routing strategy. In sum, ALLB is a routing option under which the order checks the System [6] for available shares and is then sent to the BATS Exchange, Inc. (''BZX''), EDGA Exchange, Inc. (''EDGA''), and the EDGX Exchange, Inc. (''EDGX'' collectively with the Exchange, BZX, and EDGA, the ''BGM Affiliated Exchanges'').[7] Specifically, an order subject to the ALLB routing option would execute first against liquidity on the BATS Book.[8] Any remainder would then be routed to BZX, EDGA, and/or EDGX in accordance with the System routing table.[9]

The Exchange now proposes to adopt three new fee codes, AA, AX, and AZ and related fees for the ALLB routing strategy. These fee codes would enable the Exchange to pass through the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, would be charged for routing orders to BZX, EDGA, and EDGX.[10] Each of the proposed fee codes are described as follows:

- *Fee Code AA.* Order routed to EDGA using the ALLB routing strategy would yield fee code AA and receive a rebate of $0.00200 per share in securities priced at or above $1.00. Under proposed footnote 11, orders yielding fee code AA in securities priced below $1.00 would be charged no fee nor would they receive a rebate.
- *Fee Code AX.* Order routed to EDGX using the ALLB routing strategy would yield fee code AY and be charged a fee of $0.00290 per share in securities priced at or above $1.00. Under proposed footnote 12, orders yielding fee code AX in securities priced below $1.00 would be charged a fee of 0.30% of the transaction's dollar value.
- *Fee Code AZ.* Order routed to BZX using the ALLB routing strategy would yield fee code AZ and be charged a fee of $0.00300 per share in securities priced at or above $1.00. Under proposed footnote 13, orders yielding fee code AZ in securities priced below $1.00 would be charged a fee of 0.30% of the transaction's dollar value.

BATS Trading will pass through the above rates to the Exchange and the Exchange, in turn, will pass through that exact rate to its Members. The proposed rates would enable the Exchange to equitably allocate its costs among all Members utilizing the ALLB routing strategy.

Fee Codes and Associated Fees Table

The Exchange also proposes to amend the Fee Codes and Associated Fees table to indicate the amount of the fees and rebates as five decimal points, rather than four decimal points, by adding a zero to the end of each fee and rebate, to reflect the order pricing format on the Exchange's Web site.[11] The Exchange notes that none of these changes amend any fee or rebate, nor do they alter the manner in which it assesses fees or calculates rebates.

Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule on January 4, 2016, but the proposed fee codes and their associated rates will not be available until January 8, 2016, the date upon which it announced to Members that it would implement the ALLB routing strategy.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[6] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa).

[7] *See* Exchange Rule 11.13(b)(3)(M). *See also* Securities Exchange Act Release No. 76457 (November 17, 2015), 80 FR 73026 (November 23, 2015) (SR–BYX–2015–46)

[8] The term ''BATS Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.13(b)(3).

[10] Orders using the ALLB routing option that execute on the Exchange would be subject to the Exchange's standard fees and rebates, unless the Member achieves a volume tiered reduced fee or enhanced rebate.

[11] The Exchange notes that fee code D already indicates its related fee as five decimal points.

[12] *See* BATS Announces ALLB Routing Option, *available at http://cdn.batstrading.com/resources/*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposed rates represent an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BZX, EDGA, and EDGX through BATS Trading. The Exchange believes that its proposed pass through the [sic] rate for orders that yield fee codes AA, AX or AZ is equitable and reasonable because it accounts for rate [sic] that BATS Trading would be subject to for orders it routes and are executed on BZX, EDGA, and EDGX. In addition, the proposal allows the Exchange to pass-through to its Members the rate for orders that are routed to BZX, EDGA, and EDGX using the ALLB routing strategy. Furthermore, the Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the changes to the Fee Codes and Associated Fees table of the Fee Schedule are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees and calculates rebates. The Exchange notes that none of the proposed changes are designed to amend any fee, nor alter the manner in which it assesses fees or calculates rebates. These changes to the Fee Schedule are intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*release_notes/2015/BATS-ALL-BATS-Routing-Strategy-Release-Schedule-Updated.pdf*. The Exchange notes that the fee schedule's date was amended to January 4, 2016 in file no. SR–BYX–2015–51 (December 8, 2015).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through the rates that BATS Trading would be subject to for orders routing to BZX, EDGA, and EDGX using the ALLB routing strategy to Members would increase intermarket competition because it offers customers an alternative means to route orders to those venues. In addition, the proposed pricing would not provide any advantage to Users when routing to BZX, EDGA, and EDGX as compared to other methods of routing or connectivity available to Users by the Exchange because the proposed rates are identical to what the Member would be subject to if it routed to those venues directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that the changes to the Fee Codes and Associated Fees table of the Fee Schedule would not affect intermarket nor intramarket competition because none of these changes are designed to amend any fee or alter the manner in which the Exchange assesses fees or calculates rebates. These changes are intended to provide greater clarity to Members with regard to how the Exchange access fees and calculates rebates.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**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) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 No. SR–BYX–2015–50 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2015–50. 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 will also be available for

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

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 No. SR–BYX–2015–50 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32385 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76686; File No. SR–OCC–2015–018]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Concerning the Adoption of a Charter of a New Committee of The Options Clearing Corporation's Board of Directors, the Technology Committee

December 18, 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 December 8, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC concerns the adoption of a Charter for a new committee of OCC's Board of Directors (''Board''), the Technology Committee (''TC''). Additionally, OCC is proposing to add a description of the TC to its By-Laws.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

This proposed rule change concerns the adoption of the TC Charter and the addition of a description of the TC into Article III, Section 9 of OCC's By-Laws. The Board formed the TC in order to enhance the Board's understanding and oversight of key technology, information security, and cyber-security risk issues at OCC. Consistent with OCC's other Board-level committee charters, the TC Charter sets forth: (i) The purpose, functions, and responsibilities of the TC and (ii) the composition and organization of the TC.

Purpose and Responsibilities of the TC

As set forth in the TC Charter, the TC would be responsible for: (i) Overseeing major information technology (''IT'') related strategies, projects, and technology architecture decisions; (ii) monitoring whether OCC's IT programs effectively support OCC's business objectives and strategies; (iii) monitoring OCC's IT risk management efforts as well as the security of OCC's information systems and physical security of information system assets; and (iv) conferring with OCC's senior IT management team and informing the Board on IT related matters.

Further, and with respect to the TC Charter's role in the oversight of OCC's IT strategy and projects, the TC Charter provides that the TC would be specifically tasked with: (i) Evaluating OCC's IT strategy, including the financial, tactical, and strategic benefits of IT projects and technology architecture initiatives; (ii) critically reviewing IT projects and technology architecture decisions, including review of the process related to approval of capital expenditures as they relate to IT projects; and (iii) making recommendations to the Board with respect to IT related projects and investments that require Board approval. In addition, the TC Charter requires that the TC: (i) Monitor the quality and effectiveness of OCC's IT and physical security, including periodically reviewing and appraising OCC's disaster recovery capabilities and crisis management plans; (ii) in coordination and cooperation with the Audit Committee of the Board, monitor the quality and effectiveness of OCC's IT systems and processes that relate to or affect OCC's internal controls and assess OCC's management of IT related compliance risks; (iii) report to the Board and the Audit Committee about IT risks and controls; and (iv) serve in an advisory role with respect to IT decisions at OCC. In connection with carrying out its responsibilities, the TC would also, in general, inform and make recommendations to the Board and other Board level committees with respect to IT related matters.

Administrative and Procedural Elements of the TC

The TC Charter would provide that the TC be comprised of three or more directors, and meet at least four times per year.[3] The TC would function in a manner similar to the other Board-level Committees in that it would have the ability to hire specialists and meet in executive session as well as be required to report to the Board on an annual basis. The TC would also have to annually confirm to the Board that its responsibilities, as set forth in the TC Charter, have been carried out and evaluate its and its members' performance on a regular basis.

2. Statutory Basis

OCC's governance arrangements, which include, but are not limited to, the proposed TC Charter promote the effectiveness of OCC's [sic] Board's oversight on OCC's business and operational processes. OCC believes that adoption of the TC Charter would enhance the effectiveness of the Board's oversight on OCC's business and operational processes, and specifically technology related processes such as disaster recovery and crisis management plans as well as IT systems that relate to internal controls and compliance risks, as described above, through a dedicated Board-level committee responsible for oversight of such processes. As a result of the proposed rule change, it is more likely that OCC's technology processes work as expected, including those processes tied to the clearance and settlement of securities transactions, and therefore the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act.[4] Furthermore, OCC believes the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Members of the TC would not need to be technology experts.

[4] 15 U.S.C. 78q–1(b)(3)(F).

proposed rule change contributes to OCC's objective to have governance arrangements that are clear and transparent that: (i) fulfill the public interest requirements, (ii) support the objectives of OCC's owners and participants; and, (iii) promote the effectiveness of OCC's risk management procedures, consistent with Rule 17Ad–22(d)(8), as the TC Charter further delineates governance responsibilities for Board-level committees, because the TC Charter is made available to the public on OCC's Web site and the TC Charter provides for a dedicated Board-level committee that would reduce IT related risk at OCC.[5] Finally, the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.[6] OCC's adoption of the TC Charter would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because it relates to the governance structure of OCC, which affects all users, and does not relate directly to any particular service or particular use of OCC's facilities.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**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–OCC–2015–018 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2015–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at: *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_15_018.pdf.* 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–OCC–2015–018 and should be submitted on or before January 14,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32382 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 17 CFR 240.17Ad–22(d)(8).

[6] 15 U.S.C. 78q–1(b)(3)(I).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Rule 17g–4; SEC File No. 270–566, OMB Control No. 3235–0627.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–4 (17 CFR 240.17g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The Credit Rating Agency Reform Act of 2006 added a new section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations,'' [1] to the Exchange Act. Pursuant to the authority granted under section 15E of the Exchange Act, the Commission adopted Rule 17g–4, which requires that a nationally recognized statistical rating organization (''NRSRO'') establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information, including policies and procedures reasonably designed to prevent: (a) The inappropriate dissemination of material nonpublic information obtained in connection with the performance of credit rating services; (b) a person within the NRSRO from trading on material nonpublic information; and (c)

[1] 15 U.S.C. 78o–7.

the inappropriate dissemination of a pending credit rating action.[2]

There are 10 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the policies and procedures required by Rule 17g–4. Based on staff experience, an NRSRO is estimated to spend an average of approximately 10 hours per year reviewing its policies and procedures regarding material nonpublic information and updating them (if necessary), resulting in an average industry-wide annual hour burden of approximately 100 hours.[3]

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission 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.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 18, 2015.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32392 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

[2] *See* 17 CFR 240.17g–4; Release No. 34–55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007); Release No. 34–55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

[3] 10 currently registered NRSROs × 10 hours = 100 hours.

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Bravo Resource Partners, Ltd., First Potash Corp., HIP Energy Corporation, Musgrove Minerals Corp., and Starcore International Ventures Ltd. (a/k/a Starcore International Mines Ltd.); Order of Suspension of Trading

December 22, 2015.

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Bravo Resource Partners, Ltd. (''BRPNF'') (CIK No. 1116137), a Yukon corporation located in Englewood, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended October 31, 2011. On April 22, 2015, Corporation Finance sent a delinquency letter to BRPNF requesting compliance with its periodic filing requirements but BRPNF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of BRPNF was quoted on OTC Link, had two market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of First Potash Corp. (''SALTF'') (CIK No. 1490078), a British Columbia corporation located in Tucson, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–F for the period ended February 29, 2012. On April 28, 2015, Corporation Finance sent a delinquency letter to SALTF requesting compliance with its periodic filing requirements but SALTF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common shares of SALTF were quoted on OTC Link, had four market makers, and were eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of HIP Energy Corporation (''HIPCF'') (CIK No. 1123839), a British Columbia corporation located in West Vancouver, BC, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–F for the period ended November 30, 2011. On April 15, 2014, Corporation Finance sent a delinquency letter to HIPCF requesting compliance with its periodic filing requirements but HIPCF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common shares of HIPCF were quoted on OTC Link, had four market makers, and were eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Musgrove Minerals Corp. (''MGSGF'') (CIK No. 1396368), a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–F for the period ended November 30, 2007. On April 28, 2015, Corporation Finance sent a delinquency letter to MGSGF requesting compliance with its periodic filing requirements but MGSGF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common shares of MGSGF were quoted on OTC Link, had four market makers, and were eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Starcore International Ventures Ltd. (a/k/a Starcore International Mines Ltd.) (''SHVLF'') (CIK No. 1301713), a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with

the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–FR–12G on August 31, 2004. On February 19, 2015, Corporation Finance sent a delinquency letter to SHVLF requesting compliance with its periodic filing requirements but SHVLF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common shares of SHVLF were quoted on OTC Link, had seven market makers, and were eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 22, 2015, through 11:59 p.m. EST on January 6, 2016.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2015–32576 Filed 12–22–15; 4:15 pm]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76691; File No. SR–MIAX–2015–71]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the Securities Trader and Securities Trader Principal Registration Categories and To Establish the Series 57 Examination as the Appropriate Qualification Examination for Securities Traders

December 18, 2015.

Pursuant to the provisions of 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 December 8, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, of which Items I and II were prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MIAX Rule 203, Qualification and Registration of Members and Associated Persons, MIAX Rule 1302, Registration of Representatives, and MIAX Rule 1304, Continuing Education for Registered Persons, to establish the Securities Trader and Securities Trader Principal registration categories, to establish the Series 57 examination as the appropriate qualification examination for Securities Traders replacing the Series 56 examination, and to establish S101 as the appropriate continuing education program for Securities Traders replacing the S501, from and after January 4, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

The Exchange proposes to amend its rules to establish the Securities Trader and Securities Trader Principal registration categories, to establish the Series 57 examination as the appropriate qualification examination for Securities Traders and retire the Series 56 examination for Proprietary Traders, and to establish S101 as the appropriate continuing education program for Securities Traders and retire the S501 continuing education program for Proprietary Traders, from and after January 4, 2016. The Exchange also proposes to amend its rules to provide for Web-based delivery of the continuing education regulatory element for registered persons. This filing is, in all material respects, based upon SR–FINRA–2015–017 and SR–FINRA–2015–015, which were recently approved by the Commission.[3]

The Exchange proposes to amend MIAX Rule 203, Qualification and Registration of Members and Associated Persons, to add the registration categories of Securities Trader and Securities Trader Principal. The Exchange also proposes to amend MIAX Rule 1302, Registration of Representatives, to replace the Proprietary Traders qualification examination (Series 56) with the Securities Trader qualification examination (Series 57) and to amend MIAX Rule 1304, Continuing Education for Registered Persons, to specify the S101 Regulatory Element Continuing Education Program as the Continuing Education (''CE'') requirement for Securities Traders replacing the S501. The Exchange further proposes to amend Rule 1304 to provide for Web-based delivery of the CE Regulatory Element set forth in that rule and to amend MIAX Rule 203 to make other minor non-substantive revisions.

Securities Trader Registration Category

Under the Exchange's registration rules relating to securities trading activity, Members that are individuals and associated persons of Members must register with the Exchange in an appropriate category of registration.[4] Such persons must register with the Exchange through the Central Registration Depository system operated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (approving SR–FINRA–2015–017) and Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (approving SR–FINRA–2015–015) collectively referred herein as the ''FINRA Amendments''. According to the approval orders, the Financial Industry Regulatory Authority's (''FINRA'') expected effective date for the FINRA Amendments is January 4, 2016.

[4] Members that are individuals and associated persons of Members engaged or to be engaged in the securities business of a Member shall be registered with the Exchange in the category of registration appropriate to the function to be performed in a form and manner prescribed by the Exchange. Before the registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass a qualification examination appropriate to the category of registration in a form and manner prescribed by the Exchange and submit any required registration and examination fees. *See* Exchange Rule 203(a).

by FINRA (the ''Web CRD'') under MIAX in the category of registration appropriate to the function to be performed.[5] Currently, under MIAX Rule 1302(e), a person engaged solely in proprietary trading on the Exchange is required to register with the Exchange and be qualified by passing the Proprietary Traders qualification examination (Series 56), however, MIAX Rule 1302(e) also allows a person engaged in proprietary trading on the Exchange to pass the General Securities Registered Representative Examination (Series 7) and maintain a Series 7 registration without being required to pass the Proprietary Traders qualification examination (Series 56).

In consultation with FINRA and other exchanges, the Exchange proposes to establish a new Securities Trader registration category by adopting a new Rule 203(d) applicable to persons engaged solely in proprietary trading on the Exchange. Such persons would be required to register with the Exchange as Securities Traders and be qualified by passing the new Securities Trader qualification examination (Series 57) being implemented by FINRA. Specifically, Rule 203(d)(1) would require Members that are individuals and associated persons of Members to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities (other than any person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the Member). Subparagraph (d)(2) would require an applicant to become qualified as a Securities Trader under Rule 1302(e) as proposed to be amended before registering in the new Securities Trader category. Subparagraph (d)(3) would also provide that a person registered as a Securities Trader would not be qualified to function in any other registration category, unless he or she is also separately qualified and registered in such other registration category.

Rule 1302(e) as proposed to be amended would require that a person engaged solely in proprietary trading on the Exchange pass the new Series 57 qualification examination for Securities Traders being implemented by FINRA. Rule 1302(e) would also allow a person engaged in proprietary trading on the Exchange to be grandfathered as a Securities Trader without having to take the Securities Trader qualification examination (Series 57), if such person has passed the General Securities Registered Representative Examination (Series 7) and maintains a Series 7 registration or has passed the Proprietary Traders qualification examination (Series 56) and maintains a Proprietary Trader registration as of January 4, 2016, provided that no more than two years have passed between the date that the person last registered as a Proprietary Trader and the date such person registers as a Securities Trader in the Web CRD. Following January 4, 2016, all new candidates for Securities Trader registration must pass the Series 57 examination. They will not be permitted to pass the Series 7 in order to register as Securities Traders. The Series 7 requirement will continue to apply to candidates for General Securities Representative registration, but will not qualify candidates to register as Securities Traders.

A person registered as a Proprietary Trader in Web CRD system on January 4, 2016 will be grandfathered as a Securities Trader without having to take any additional examinations and without having to take any other actions. In addition, individuals who were registered as a Proprietary Trader in the Web CRD system prior to January 4, 2016 will be eligible to register as Securities Traders without having to take any additional examinations, provided that no more than two years have passed between the date they were last registered as a Proprietary Trader and the date they register as a Securities Trader.

Persons registered in the new Securities Trader category would be subject to the continuing education requirements of Rule 1304. The S501 Proprietary Trader CE Program is currently specified as the CE Regulatory Element applicable for registrants registered as Proprietary Traders by passing the Series 56 qualification examination. The S101 Regulatory Element CE Program is the CE Regulatory Element that applies to persons with a Series 7 registration, including those registered as Proprietary Traders by passing the Series 7 qualification examination. MIAX Rule 1304(a) as proposed to be amended would specify the S101 Regulatory Element CE Program as the appropriate CE Regulatory Element applicable to Securities Traders. The rule would leave in place the Proprietary Trader CE Program through January 4, 2016, the phase out date for the registration category of Proprietary Trader. From and after January 4, 2016, the S101 would become the appropriate CE Regulatory Element applicable to individuals maintaining a Series 7 or a Series 57. The S101 CE Regulatory Element content is being updated by FINRA to provide for a more comprehensive, complete and customized CE approach covering key aspects of a particular registered person's registration.

Securities Trader Principal Registration Category

In consultation with FINRA and other exchanges, the Exchange further proposes to establish a new Securities Trader Principal registration category by adopting a new Rule 203(c) applicable to persons responsible for the supervision of persons engaged in proprietary trading on the Exchange. Persons responsible for the supervision of persons engaged in proprietary trading on the Exchange would be required to register with the Exchange as Securities Trader Principals. The proposed rule change should allow MIAX to more easily track principals with supervisory responsibility over specific securities trading activities. Securities Trader Principals would be required to qualify by first registering as a Securities Trader under Rule 1302(e), and passing the new Securities Trader qualification examination (Series 57) being implemented by FINRA as well as passing the General Securities Principal qualification examination (Series 24). Specifically, Rule 203(c)(1) would require Members that are individuals and associated persons of Members within the definition of Options Principal in Rule 100 and who will have supervisory responsibility over the securities trading activities described in Rule 203(d) (*i.e.,* the activities engaged in by Securities Traders) to become qualified and registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person shall become qualified and registered as a Securities Trader under Rule 1302(e) and pass the General Securities Principal qualification examination (Series 24).

A person who is qualified and registered as a Securities Trader Principal under the proposed rule would only have supervisory responsibility over the securities trading activities specified in Rule 203(d), unless such person were separately qualified and registered in another appropriate principal registration

[5] *See* Exchange Rule 203, Interpretation and Policy .01.

category, such as the General Securities Principal registration category. Subparagraph (c)(2) would make clear that a registered General Securities Principal would not be qualified to supervise the securities trading activities described in Rule 203(d), unless such person also qualified and registered as a Securities Trader under Rule 1302(e) by passing the Securities Trader qualification examination and registering as a Securities Trader Principal.

A person registered as a Proprietary Trader Principal in the Web CRD system on January 4, 2016 will be eligible to register as a Securities Trader Principal without having to take any additional examinations. An individual who was registered as a Proprietary Trader Principal in the Web CRD system prior to the effective date of the proposed rule change will also be eligible to register as a Securities Trader Principal without having to take any additional examinations, provided that no more than two years have passed between the date they were last registered as an Options Principal and the date they register as a Securities Trader Principal. Members, however, will be required to affirmatively register persons transitioning to the proposed registration category as Securities Trader Principals on or after January 4, 2016.

Delivery of the Regulatory Element

In consultation with FINRA and other exchanges, the Exchange further proposes to provide for Web-based delivery of the CE Regulatory for registered persons. As proposed to be amended, MIAX Rule 1304 would specify in a new subparagraph (a)(4) that the CE Regulatory Element set forth in the rule will be administered through Web-based delivery or such other technological manner and format as specified by the Exchange from and after January 4, 2016. Most registered persons currently complete the Regulatory Element in a test center and the remainder do so in-firm. Given the advances in Web-based technology, the Exchange believes that there is diminishing utility in the test center and in-firm CE delivery methods. The Exchange notes that the Web-based format will include safeguards to authenticate the identity of the CE candidate. Moreover, according to FINRA, registered persons have raised concerns with the current test center delivery method because of the travel involved, the limited time currently available to complete a Regulatory Element session and the use of rigorous security measures at test centers, which are appropriate for taking qualification examinations, but onerous for a CE program.[6] Also, according to FINRA, the test center is expensive to operate.[7]

Other Clarifying Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive clarifying changes to Rule 203: (i) Re-letter the paragraphs following new Rules 203(c) and (d), (ii) remove the word ''Exam'' in the parenthetical in subparagraph (e) for consistency with other references to examinations in MIAX's rulebook, (iii) add a colon at the end of the subparagraph (f), and (iv) correct the reference to the Securities Exchange Act of 1934, as the ''Act'' to the defined term of ''Exchange Act'' in subparagraph (f)(1). These clarifying changes would make the rule more concise, clear and understandable, and eliminate the potential for confusion.

Within 30 days of filing the proposed rule change, the Exchange will issue a Regulatory Circular announcing the operative date of the rule change, which will not be sooner than January 4, 2016.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it 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 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.

The Exchange further believes its proposed rule change is consistent with Section 6(c) of the Act[10] in general, and in particular, furthers the objectives of Section 6(c)(3) of the Act,[11] which authorizes the Exchange to prescribe standards of training, experience and competence for Members and persons associated with the Members. The Exchange believes that the requirements of the Securities Trader and Securities Trader Principal registration categories, the new Securities Trader qualification examination and continuing education requirement, as well as Web-based delivery of the continuing education requirement, should help ensure that proprietary traders and the principals who supervise proprietary traders and proprietary trading are, and will continue to be, properly trained and qualified to perform their functions which should protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Implementation of the proposed changes to MIAX registration rules in coordination with the FINRA Amendments does not present any competitive issues, but rather is designed to provide less burdensome and more efficient regulatory compliance for Members and enhance the ability of the Exchange to fairly and efficiently regulate Members, which will further enhance competition. Additionally, the proposed rule change should not affect intra-market competition because all similarly situated representatives and principals will be required to complete the same qualification examinations and maintain the same registrations. Finally, the proposed rule change does not impose any additional examination burdens on persons who are already registered. There is no obligation to take the proposed new Series 57 examination in order to continue in their present duties, so the proposed rule change is not expected to disadvantage current registered persons relative to new entrants in this regard.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A)

[6] *See supra* note 3.

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c).

[11] 15 U.S.C. 78f(c)(3).

of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. The Exchange has requested that the Commission waive the thirty-day operative delay so that the proposal may become operative as of January 4, 2016. The Exchange states that waiving the thirty-day delay would enable it to implement the Securities Trader and Securities Trader Principal registration categories, and their respective examination and continuing education requirements, at the same time as FINRA and the other national securities exchanges. The Commission believes that waiving the thirty day delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the thirty-day operative delay and designates the proposal operative as of January 4, 2016.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR-MIAX–2015–71 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–MIAX–2015–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–71 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76688; File No. SR–BATS–2015–114]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to ALLB Routing and Other Fees for Use of BATS Exchange, Inc.

December 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) (''Fee Schedule'') to adopt fees for the recently adopted ALLB routing strategy. The Exchange also proposes to amend the Fee Codes and Associated Fees table of the Fee Schedule to indicate the amount of the fees and rebates as five decimal points, rather than four decimal points, by adding a zero to the end of each fee and rebate.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

ALLB Routing Fees

The Exchange proposes to adopt fees for the ALLB routing strategy. In sum, ALLB is a routing option under which the order checks the System [6] for available shares and is then sent to the BATS Y-Exchange, Inc. (''BYX''), EDGA Exchange, Inc. (''EDGA''), and the EDGX Exchange, Inc. (''EDGX'' collectively with the Exchange, BYX, and EDGA, the ''BGM Affiliated Exchanges'').[7] Specifically, an order subject to the ALLB routing option would execute first against liquidity on the BATS Book.[8] Any remainder would then be routed to BYX, EDGA, and/or EDGX in accordance with the System routing table.[9]

The Exchange now proposes to adopt three new fee codes, AA, AX, and AY and related fees for the ALLB routing strategy. These fee codes would enable the Exchange to pass through the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, would be charged for routing orders to BYX, EDGA, and EDGX.[10] Each of the proposed fee codes are described as follows:

• *Fee Code AA.* Order routed to EDGA using the ALLB routing strategy would yield fee code AA and receive a rebate of $0.00200 per share in securities priced at or above $1.00. Under proposed footnote 15, orders yielding fee code AA in securities priced below $1.00 would be charged no fee nor would they receive a rebate.

• *Fee Code AX.* Order routed to EDGX using the ALLB routing strategy would yield fee code AY and be charged a fee of $0.00290 per share in securities priced at or above $1.00. Under proposed footnote 16, orders yielding fee code AX in securities priced below $1.00 would be charged a fee of 0.30% of the transaction's dollar value.

• *Fee Code AY.* Order routed to BYX using the ALLB routing strategy would yield fee code AY and receive a rebate of $0.00150 per share in securities priced at or above $1.00. Under proposed footnote 17, orders yielding fee code AY in securities priced below $1.00 would be charged a fee of 0.10% of the transaction's dollar value.

BATS Trading will pass through the above rates to the Exchange and the Exchange, in turn, will pass through that exact rate to its Members. The proposed rates would enable the Exchange to equitably allocate its costs among all Members utilizing the ALLB routing strategy.

Fee Codes and Associated Fees Table

The Exchange also proposes to amend the Fee Codes and Associated Fees table to indicate the amount of the fees and rebates as five decimal points, rather than four decimal points, by adding a zero to the end of each fee and rebate, to reflect the order pricing format on the Exchange's Web site.[11] The Exchange notes that none of these changes amend any fee or rebate, nor do they alter the manner in which it assesses fees or calculates rebates.

Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule on January 4, 2016, but the proposed fee codes and their associated rates will not be available until January 8, 2016, the date upon which it announced to Members that it would implement the ALLB routing strategy.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposed rates represent an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BYX, EDGA, and EDGX through BATS Trading. The Exchange believes that its proposed pass through rate for orders that yield fee codes AA, AX or AY is equitable and reasonable because it accounts for the rate that BATS Trading would be subject to for orders it routes and are executed on BYX, EDGA, and EDGX. In addition, the proposal allows the Exchange to pass-through to its Members the rate for orders that are routed to BYX, EDGA, and EDGX using the ALLB routing strategy. Furthermore, the Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the changes to the Fee Codes and Associated Fees table of the Fee Schedule are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees and calculates rebates. The Exchange notes that none of the proposed changes are designed to amend any fee, nor alter the manner in which it assesses fees or calculates rebates. These changes to the Fee Schedule are intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through the rates that BATS Trading

[6] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa).

[7] *See* Exchange Rule 11.13(b)(3)(O). *See also* Securities Exchange Act Release No. 76455 (November 17, 2015), 80 FR 73009 (November 23, 2015) (SR–BATS–2015–97).

[8] The term ''BATS Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.13(b)(3).

[10] Orders using the ALLB routing option that execute on the Exchange would be subject to the Exchange's standard fees and rebates, unless the Member achieves a volume tiered reduced fee or enhanced rebate.

[11] The Exchange notes that fee code D already indicates its related fee as five decimal points.

[12] *See* BATS Announces ALLB Routing Option, *available at http://cdn.batstrading.com/resources/release_notes/2015/BATS-ALL-BATS-Routing-Strategy-Release-Schedule-Updated.pdf.* The Exchange notes that the Fee Schedule's date was amended to January 4, 2016 in file no. SR–BATS–2015–115 (December 8, 2015).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

would be subject to for orders routing to BYX, EDGA, and EDGX using the ALLB routing strategy to Members would increase intermarket competition because it offers customers an alternative means to route orders to those venues. In addition, the proposed pricing would not provide any advantage to Users when routing to BYX, EDGA, and EDGX as compared to other methods of routing or connectivity available to Users by the Exchange because the proposed rates are identical to what the Member would be subject to if it routed to those venues directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange believes that the changes to the Fee Codes and Associated Fees table of the Fee Schedule would not affect intermarket nor intramarket competition because none of these changes are designed to amend any fee or alter the manner in which the Exchange assesses fees or calculates rebates. These changes are intended to provide greater clarity to Members with regard to how the Exchange access fees and calculates rebates.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

## 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) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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 No. SR–BATS–2015–114 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2015–114. 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 will also 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 No. SR–BATS–2015–114 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32384 Filed 12–23–15; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76690; File No. SR–NYSEARCA–2015–121]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 1.1(s) To Provide for Price Collar Thresholds for Trading Halt Auctions

December 18, 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 December 7, 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 and II 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 amend Rule 1.1(s) to provide for price collar thresholds for Trading Halt Auctions. 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 proposes to amend Rule 1.1(s) to provide for price collar

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

thresholds for Trading Halt Auctions.[4] The Exchange conducts Trading Halt Auctions under Rule 7.35(f).

The Exchange proposes to amend Rule 1.1(s) to respond to market events on August 24, 2015, by adopting price collar thresholds for Trading Halt Auctions. On August 24, 2015, the market experienced extreme trading volatility, which resulted in a significantly higher number of trading pauses under the Plan to Address Extraordinary Market Volatility (the ''Plan'') than the average trading day. Because of the volume of trading interest that the Exchange received during these trading pauses, the Exchange reopened trading following those pauses with Trading Halt Auctions. On that day, the Exchange applied price collar thresholds for Trading Halt Auctions that were 5% for securities with a consolidated last sale price of $25.00 or less, 2% for securities with a consolidated last sale price greater than $25.00 but less than or equal to $50.00, and 1% for securities with a consolidated last sale price greater than $50.00.[5]

The Exchange believes that these parameters were too narrow. The Exchange also believes, however, that it is appropriate to have protections in place for Trading Halt Auctions to assure that a reopening trade will not deviate significantly from prior prices, even taking into consideration natural price movements for a security. The Exchange will therefore be conducting an analysis to identify what changes, if any, would be appropriate to balance allowances for natural price movement in a Trading Halt Auction, while at the same time avoiding significant price deviations that would not be in line with the fair value of securities listed on the Exchange, which are all Exchange Traded Products (''ETP''). Following this analysis, the Exchange will propose to make the price collar thresholds proposed herein permanent or propose other or additional changes to the re-opening auction process.

Pending such analysis, the Exchange proposes to amend Rule 1.1(s) on an interim basis to add to the rule price collar thresholds for Trading Halt Auctions that would be based on the thresholds for determining whether an execution is clearly erroneous. The Exchange proposes that this proposed rule change will sunset six months after the operative date of this rule change.

For such interim measure, the Exchange proposes new Rule 1.1(s)(B) to specify that when the Trading Halt Auction Price is established by NYSE Arca Equities Rule 7.35(f)(4)(A), the Limit Orders eligible for determining the Indicative Match Price would be limited by specified price collar thresholds. As further proposed, the specified percentage for the price collar thresholds for Trading Halt Auctions would be 10% for securities with a consolidated last sale price of $25.00 or less, 5% for securities with a consolidated last sale price greater than $25.00 but less than or equal to $50.00, and 3% for securities with a consolidated last sale price greater than $50.00. These proposed percentages are based on the corresponding ''numerical guideline'' percentages set forth in paragraph (c)(1) of Rule 7.10 (Clearly Erroneous Executions) for the Core Trading Session.[6]

The Exchange believes that by adopting price collar thresholds for Trading Halt Auctions based on the clearly erroneous execution guidelines, the Exchange would be widening the thresholds from their current percentages, thereby ending the use of the current overly-narrow price collar thresholds. The Exchange further believes that using temporary price collar thresholds tied to the clearly erroneous execution guidelines is appropriate because an auction trade is subject to these guidelines for purposes of determining whether such execution is clearly erroneous. In addition, the Exchange's proposed rule change is similar to how BATS Exchange, Inc. (''BATS'') prices its Halt Auctions for ETPs. Like BATS, the Exchange is the primary listing market only for ETPs and would, therefore only have Trading Halt Auctions for ETPs. BATS Rule 11.23(d)(2)(C) provides that BATS executes orders in ETPs in a Halt auction at a price level within a ''Collar Price Range'' that maximizes the number of shares executed in the auction. Similar to the Exchange's proposal, BATS uses Collar Price Ranges that are based on the numerical guidelines set forth in the market-wide clearly erroneous execution rules.[7] The Exchange's proposal differs from BATS's pricing mechanism because the Exchange would use the consolidated last sale price as the reference price, rather than the midpoint of a ''Valid NBBO.'' The Exchange believes that using the consolidated last sale price tracks the market-wide clearly erroneous execution rules, which similarly use the consolidated last sale price for determining whether an execution is clearly erroneous.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it 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 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.

The Exchange believes that the proposed amendment to add Rule 1.1(s)(B) would remove impediments to and perfect the mechanism of a fair and orderly market because it would provide for price collar thresholds that are wider than the current thresholds used by the Exchange, but yet are based on an existing standard for assessing whether an auction trade is clearly erroneous. In particular, the proposed rule change responds to market events of August 24, 2015 by aligning the price collar thresholds applicable to Trading Halt Auctions with the clearly erroneous execution guidelines. The Exchange

[4] Rule 1.1(s) defines the Indicative Match Price for the Opening Auction, the Market Order Auction, the Closing Auction, and the Trading Halt Auction. Rule 1.1(s)(A) further provides that when the Market Order Auction Price or Closing Auction Price is established by NYSE Arca Equities Rule 7.35(c)(3)(A)(1) or 7.35(e)(3), the Limit Orders eligible for determining the Indicative Match Price shall be limited by the price collar thresholds established by the Corporation. The rule further provides that the Corporation shall set and modify such thresholds from time to time upon prior notice to ETP Holders.

[5] The price collar thresholds were last modified on April 13, 2015 and September 8, 2015. *See* NYSE Arca Trader Update, ''NYSE Arca Equities Enhancements to Auction Collars,'' dated April 10, 2015, and NYSE Arca Trader Update, ''NYSE Arca Equities Enhancements to Auction Collars,'' dated September 4, 2015, available here: *https://www.nyse.com/trader-update/history* and here: *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Trader_Update_Auction_Collars_Sept_2015.pdf.*

[6] As set forth in Rule 7.10(c)(1), for securities priced between $0.00 and $25.00, the numerical guideline is 10%, for securities priced between $25.01 and $50.00, the numerical guideline is 5%, and for securities priced greater than $50.00, the numerical guideline is 3%.

[7] As set forth in BATS Rule 11.23(a)(6), the Collar Price Range is 10% for securities with a Collar Midpoint of $25.00 or less, 5% for securities with a Collar Midpoint is [sic] greater than $25.00 but less than or equal to $50.00, and 3% for securities with a Collar Midpoint greater than $50.00. BATS Rule 11.23(a)(6) defines the Collar Midpoint as the Volume Based Tie Breaker, which is defined in BATS Rule 11.23(a)(23) as the midpoint of the NBBO if it is a Valid NBBO, with a Valid NBBO being less than the Maximum Percentage away from both the NBB and the NBO.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

believes the proposed price collar thresholds, which would be based on the numerical guidelines set forth in Rule 7.10(c)(1), would also remove impediments to and perfect the mechanism of a fair and orderly market and protect investors and the public interest because they would reduce the potential for a Trading Halt Auction to be a clearly erroneous execution. To this end, the Exchange's proposal is similar to how BATS prices its Halt Auctions, which are also subject to collar price ranges that are based on the numerical guidelines for clearly erroneous executions. The Exchange further believes that using the last consolidated sale price as the reference price for the Trading Halt Auction price collar thresholds would remove impediments to and perfect the mechanism of a fair and orderly market because determinations of whether an execution is clearly erroneous are also based on price movements away from the consolidated last sale prices.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to provide for a price protection mechanism to prevent Trading Halt Auctions from occurring at prices that could be a clearly erroneous execution.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–121 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–121. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–2015–121 and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32386 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76692; File No. SR–BX–2015–081]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates and Tiers Related to BX Options

December 18, 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 December 11, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Options Pricing at Chapter XV Section 2, entitled ''BX Options Market—Fees and Rebates,'' which governs pricing for BX members using the BX Options Market (''BX Options''). The Exchange proposes to modify certain fees and rebates (per executed contract) and to adopt tiers applicable to fees and rebates (each a ''Tier'' and together the ''Tiers'').

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

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) regarding certain fees and rebates [3] (known as ''fees and rebates'') and to adopt Tiers applicable to certain fees and rebates. The proposed modified fees and rebates (per executed contract) and new Tiers would apply to Customers,[4] BX Options Market Makers,[5] and Non-Customers.[6] One proposed new Tier schedule, consisting of three Tiers, would apply to Penny Pilot Options; and one proposed new Tier schedule, consisting of three Tiers, would apply to Non-Penny Pilot Options.[7]

Currently, Chapter XV, Section 2 subsection (1) reads as follows:

Sec. 2 BX Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market

FEES AND REBATES

[Per executed contract]

| | Customer | BX Options Market Maker | Non-Customer [1] |
|---|---|---|---|
| Penny Pilot Options: | | | |
| Rebate to Add Liquidity | [2] $0.00 | [2] $0.10 | N/A |
| Fee to Add Liquidity | [3] 0.39 | [3] 0.39 | $0.45 |
| Rebate to Remove Liquidity | 0.34 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.46 | 0.46 |
| Non-Penny Pilot Options: | | | |
| Fee to Add Liquidity | [5] 0.25/$0.85 | [5] 0.50/$0.85 | 0.88 |
| Rebate to Remove Liquidity | 0.70 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.89 | 0.89 |

[1] A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.
[2] The Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.
[3] The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.
[4] Reserved
[5] The higher Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

The Exchange proposes modifications to its fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options as follows: [8]

Change 1. For Penny Pilot Options, the Exchange proposes to modify fees and rebates to add Tiers for: (1) Customer Rebates to Add Liquidity; (2) Customer Fees to Add Liquidity; (3) Customer Rebates to Remove Liquidity; and (4) BX Options Market Maker Fees to Remove Liquidity.

Change 2. For Non-Penny Pilot Options, the Exchange proposes to modify fees and rebates to add Tiers for: (1) Customer Rebates to Add Liquidity; (2) Customer Fees to Add Liquidity; (3) Customer Rebates to Remove Liquidity; (4) BX Options Marker Maker Fees to Remove Liquidity. The Exchange also proposes to increase the Fee to Add Liquidity for BX Options Market Maker and for Non-Customer.

Each specific change is described in detail below.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add Tiers

For Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker.[9] Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer,[10] Fee to Add Liquidity for Customer,[11] and Rebate to Remove

[3] Fees and rebates are per executed contract. Chapter XV, Section 2(1).

[4] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV.

[5] BX Options Market Makers may also be referred to as ''Market Makers''. The term ''BX Options Market Maker'' or (''M'') means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[6] Note 1 to Chapter XV, Section 2 states: ''[1]A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.''

[7] The Penny Pilot was established in June 2012 and extended in 2015. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[8] The greatest volume options traded on the Exchange and in the options market are Penny Pilot Options, and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

[9] The Non-Customer Penny Pilot Options pricing will remain unchanged.

[10] The addition of Tiers to Rebate to Add Liquidity for Customer replaces the current fee [sic] ($0.00) and reference to note 2 which are removed. Note 2 will continue to apply to Rebate to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer. Today, Customers do not receive a Rebate to Add Liquidity.

[11] The addition of Tiers to Fee to Add Liquidity for Customer replaces the current fee ($0.39) and reference to note 3 which are removed. Note 3 will continue to apply to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer.

Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to Remove Liquidity for BX Options Market Maker.[12] The three new Tiers, described below, together make up the ''Penny Pilot Options Tier Schedule''.

Proposed Tier 1 (''Penny Pilot Tier 1'') will be where a BX Participant (''Participant'') executes less than 0.05% of total industry customer equity and exchange traded fund (''ETF'') option average daily volume (''ADV'') contracts per month. Proposed Penny Pilot Tier 1 will range from $0.00 rebate to $0.46 fee:

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.00 (no rebate will be paid);
—the Fee to Add Liquidity when Customer trading with Customer will be $0.39;''[13]
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.00;
—the Fee to Remove Liquidity when BX Market Maker trading with Customer will be $0.39; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.46.[14]

Proposed Tier 2 (''Penny Pilot Tier 2'') will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Penny Pilot Tier 2 will range from $0.10 rebate to $0.46 fee:

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.10;
—the Fee to Add Liquidity when Customer trading with Customer will be $0.39;
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.25;
—the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.39; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.46.

Proposed Tier 3 (''Penny Pilot Tier 3'') will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Penny Pilot Tier 3 will range from $0.20 rebate to $0.46 fee:

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.20;
—the Fee to Add Liquidity when Customer trading with Customer will be $0.39;
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.35;
—the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.30; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.46.

Change 2—Non-Penny Pilot Options: Modify Fees and Rebates To Add Tiers, Increase Fee To Add Liquidity

For Non-Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer, BX Options Market Maker, and Non-Customer. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer,[15] Fee to Add Liquidity for Customer,[16] and Rebate to Remove Liquidity for Customer.[17] The Exchange is proposing to add Tiers for Fee to Remove Liquidity for BX Market Maker.[18] The three new Tiers, described below, together make up the ''Non-Penny Pilot Options Tier Schedule''. The Exchange is also proposing a modest ten cent increase to the Fee to Add Liquidity for BX Options Market Maker from $0.50/$0.85 to $0.50/$0.95,[19] and for Non-Customer from $0.88 to $0.98.

Proposed Tier 1 (''Non-Penny Pilot Tier 1'') will be where Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. Proposed Non-Penny Pilot Tier 1 will range from $0.00 rebate to $0.89 fee:

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.00 (no rebate will be paid);
—the Fee to Add Liquidity when Customer trading with Customer will be $0.85; [20]
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80;
—the Fee to Remove Liquidity when BX Market Maker trading with Customer will be $0.89; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89.[21]

Proposed Tier 2 (''Non-Penny Pilot Tier 2'') will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Non-Penny Pilot Tier 2 will range from $0.10 rebate to $0.89 fee:

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.10;
—the Fee to Add Liquidity when Customer trading with Customer will be $0.85;
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80;
—the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.89; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89.

Proposed Tier 3 (''Non-Penny Pilot Tier 3'') will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Non-Penny Pilot Tier 3 will range from $0.20 rebate to $0.89 fee:

[12] The addition of tiers to the Fee to Remove Liquidity for the BX Options Market Maker replaces the current per contract fee of 0.46.

[13] For Penny Pilot Options, this $0.39 Fee to Add Liquidity when Customer trading with Customer is the same in all three Tiers.

[14] For Penny Pilot Options, this $0.46 Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be the same in all Tiers.

[15] The addition of Rebate to Add Liquidity of the Non-Penny Pilot Options part of the fees and rebates schedule is so that the Non-Penny and Penny parts of the schedule both have Rebate to Add Liquidity. The addition of Tiers to Rebate to Add Liquidity in the Non-Penny category applies to Customer only.

[16] The addition of Tiers to Fee to Add Liquidity for Customer replaces the current fee ($0.25/$0.85) and reference to note 5 which are taken out. Note 5 will continue to apply to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer. The Exchange notes that for Fee to Add Liquidity for Customer the Exchange is replacing a fee ($0.25/$0.85) with Tiers that include Fee to Add Liquidity as well as Rebate to Add Liquidity.

[17] The addition of Tiers to Rebate to Remove Liquidity for Customer replaces the current fee [sic] ($0.70) and reference to it is taken out.

[18] The addition of Tiers to Fee to Remove Liquidity for BX Options Market Maker replaces the current fee ($0.89) and reference to it is taken out.

[19] Per note 5 as modified, the higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

[20] For Non-Penny Pilot Options, this $0.85 Fee to Add Liquidity when Customer trading with Customer is the same in all three Tiers.

[21] For Non-Penny Pilot Options, this $0.89 Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be the same in all Tiers.

—the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.20;
—the Fee to Add Liquidity when Customer trading with Customer will be $0.85;
—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80;
—the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.60; and
—the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89.

As proposed, Chapter XV, Section 2 subsection (1) will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market

FEES AND REBATES

[Per executed contract]

| | Customer | BX Options Market Maker | Non-Customer [1] |
|---|---|---|---|
| Penny Pilot Options: | | | |
| Rebate to Add Liquidity | # | [2] $0.10 | N/A |
| Fee to Add Liquidity | # | [3] 0.39 | $0.45 |
| Rebate to Remove Liquidity | # | N/A | N/A |
| Fee to Remove Liquidity | N/A | # | 0.46 |
| Non-Penny Pilot Options: | | | |
| Rebate to Add Liquidity | * | N/A | N/A |
| Fee to Add Liquidity | * | [5] 0.50/$0.95 | 0.98 |
| Rebate to Remove Liquidity | * | N/A | N/A |
| Fee to Remove Liquidity | N/A | * | 0.89 |

[1] A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.
[2] The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.
[3] The Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.
[4] Reserved.
[5] The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

# PENNY PILOT OPTIONS TIER SCHEDULE

| | Rebate to add liquidity | Fee to add liquidity | Rebate to remove liquidity | Fee to remove liquidity | Fee to remove liquidity |
|---|---|---|---|---|---|
| When | Customer | Customer | Customer | BX Options Market Maker. | BX Options Market Maker. |
| Trading with | Non-Customer or BX Options Market Maker. | Customer | Non-Customer, BX Options Market Maker, or Customer. | Customer | Non-Customer or BX Options Market Maker. |
| Tier 1: | | | | | |
| Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. | $0.00 | $0.39 | $0.00 | $0.39 | $0.46. |
| Tier 2: | | | | | |
| Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. | $0.10 | $0.39 | $0.25 | $0.39 | $0.46. |
| Tier 3: | | | | | |
| Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. | $0.20 | $0.39 | $0.35 | $0.30 | $0.46. |

# PENNY PILOT OPTIONS TIER SCHEDULE
* NON-PENNY PILOT OPTIONS TIER SCHEDULE

| | Rebate to add liquidity | Fee to add liquidity | Rebate to remove liquidity | Fee to remove liquidity | Fee to remove liquidity |
|---|---|---|---|---|---|
| When | Customer | Customer | Customer | BX Options Market Maker. | BX Options Market Maker. |

# Penny Pilot Options Tier Schedule—Continued
* Non-Penny Pilot Options Tier Schedule

| | Rebate to add liquidity | Fee to add liquidity | Rebate to remove liquidity | Fee to remove liquidity | Fee to remove liquidity |
|---|---|---|---|---|---|
| Trading with | Non-Customer or BX Options Market Maker. | Customer | Non-Customer, BX Options Market Maker, or Customer. | Customer | Non-Customer or BX Options Market Maker. |
| Tier 1: | | | | | |
| Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. | $0.00 | $0.85 | $0.80 | $0.89 | $0.89. |
| Tier 2: | | | | | |
| Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. | $0.10 | $0.85 | $0.80 | $0.89 | $0.89. |
| Tier 3: | | | | | |
| Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. | $0.20 | $0.85 | $0.80 | $0.60 | $0.89. |

The Exchange is adopting these fees and rebates at this time because it believes that they will provide incentives for execution of contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[22] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[23] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24] Likewise, in *NetCoalition* v. *NYSE Arca, Inc.,* 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[25] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [26]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [27] Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Modify Fees and Rebates

For Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to Remove Liquidity for BX Market Maker. The three new Tiers make up the Penny Pilot Options Tier Schedule.

In particular, proposed Penny Pilot Tier 1 will be where a Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month, and will range from $0.00 rebate to $0.46 fee.[28] Proposed Penny Pilot Tier 2 will

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(4) and (5).

[24] Exchange Act Release No. 34–51808 (June 9, 2005) (''Regulation NMS Adopting Release'').

[25] *See NetCoalition,* 615 F.3d at 534.

[26] *Id.* at 537.

[27] *NetCoalition I,* 615 F.3d at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

[28] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.00; the Fee to Add Liquidity when Customer trading with Customer will be $0.39 (same across all tiers); the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.00; the Fee to Remove Liquidity when BX Market Maker trading with Customer will be $0.39; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer

be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month, and will range from $0.10 rebate to $0.46 fee.[29] Proposed Penny Pilot Tier 3 will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month, and will range from $0.20 rebate to $0.46 fee.[30]

In adding the new Tiers in the Penny Pilot Options Tier Schedule, the current pricing will be replaced with the proposed Tier Schedule and is no longer used. Tiers replace the current rebate ($0.00) in Rebate to Add Liquidity for Customer (no rebate is offered today), and reference to note 2 is removed.[31] Tiers replace the current fee ($0.39) to Fee to Add Liquidity for Customer and reference to note 3 is removed and will not apply with this proposal.[32] Certain references in Notes 2 and 3 to Customer are removed, and as such the notes no longer make sense for Rebate to Add Liquidity and for Customer Fee to Add Liquidity for Customer.[33] The Exchange is also substituting the current fee ($0.46) to Fee to Remove Liquidity for BX Options Market Maker by putting it in the tier schedule. Deleting the rebates and fees from the fees and rebates structure for Penny Pilot Options is reasonable where they have been replaced by the new Tiers structure to incentivize Participants to send order flow to the Exchange.

The Exchange believes that the proposed Tiers in the Penny Pilot Options Tier Schedule are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.[34] In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Add Liquidity, Fee to Add Liquidity, and Rebate to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Establishing Penny Pilot Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer, and Penny Pilot Tiers for Fee to Remove Liquidity for BX Options Market Maker is reasonable. It encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[35] The proposed Tiers in the Penny Pilot Options Tier Schedule, which have been discussed at length, clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange.

The Penny Pilot Tiers are reasonable in that they are set up to incentivize Participants to direct liquidity to the Exchange. That is, as Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, the Penny Pilot Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker is higher ($0.20) that [sic] the Penny Pilot Tier 1 Rebate to Add Liquidity ($0.00), which offer [sic] no rebate today. The Penny Pilot Tiers are set up in a similar progressive manner for Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer. And, the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is lesser for Tier 3 ($0.30) than for Tier 1 ($0.39).[36]

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes, which includes the new Tiers, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Penny Pilot Tiers 1, 2, and 3 will apply uniformly to all similarly situated Participants. BX Options Market Makers would be assessed a Fee to Remove Liquidity according to the Penny Pilot Tiers, and Customers would earn a Rebate to Add Liquidity and a Rebate to Remove Liquidity according to the same Tiers per the Penny Pilot Options Tier Schedule .

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that unlike others (*e.g.* Non-Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[37]

The Exchange believes that by making the proposed Penny Pilot Options changes, it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

or BX Options Market Maker will be $0.46 (same across all Tiers).

[29] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.10; the Fee to Add Liquidity when Customer trading with Customer will be $0.39; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.25; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.39; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.46.

[30] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.20; the Fee to Add Liquidity when Customer trading with Customer will be $0.39; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.35; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.30; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.46.

[31] The rule text of note 2 is amended to reflect the removal of certain references to Customer.

[32] The rule text of note 3 is amended to reflect the removal of certain references to Customer.

[33] Notes 2 and 3 continue to apply, to Rebate to Add Liquidity for BX Options Market Maker and to Fee to Add Liquidity for BX Options Market Maker, respectively, but without deleted references to Customer.

[34] *See, e.g.,* the MIAX fee schedule at *http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf* and the BOX fee schedule at *http://boxexchange.com/assets/BOX_Fee_Schedule1.pdf.*

[35] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (''NOM''), NASDAQ OMX PHLX LLC (''Phlx''), and Chicago Board Options Exchange (''CBOE'').

[36] The remaining categories of Fee to Add Liquidity when Customer trading with Customer and Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker reflect the same fee in each Penny Pilot Tier, whether 1, 2, or 3 ($0.39 and $0.46, respectively).

[37] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''.

Change 2—Non-Penny Pilot Options: Modify Fees and Rebates

For Non-Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer,[38] and Rebate to Remove Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to Remove Liquidity for BX Market Maker. The three new Tiers make up the Non-Penny Pilot Options Tier Schedule.

In particular, proposed Non-Penny Pilot Tier 1 will be where Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month, and will range from $0.00 rebate to $0.89 fee.[39] The Proposed Non-Penny Pilot Tier 2 will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month, and will range from $0.10 rebate to $0.89 fee.[40] Proposed Non-Penny Pilot Tier 3 will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month, and will range from $0.20 rebate to $0.89 fee.[41]

In adding the new Tiers in the Non-Penny Pilot Options Tier Schedule, the current pricing will be replaced with the proposed Tier Schedule and is no longer used. Tiers replace the current fee ($0.25/$0.85) to Fee to Add Liquidity for Customer[42] and reference to note 5 is removed.[43] Certain references in note 5 to Customer are removed as they are no longer needed.[44] Tiers replace the current Rebate to Remove Liquidity for Customer and the current rebate ($0.70) is removed. Tiers replace the current Fee to Remove Liquidity for BX Options Market Maker and the current fee ($0.89) is removed. Deleting the rebates and fees from the fees and rebates structure for Non-Penny Pilot Options is reasonable where they have been replaced by the new Tiers structure to incentivize Participants bringing flow to the Exchange. The Exchange is also reasonably increasing by ten cents (to $0.95) the Fee to Add Liquidity for BX Options Market Maker when the BX Options market maker is contra to a Customer, and increasing by ten cents (to $0.98) the Fee to Add Liquidity for Non-Customer.

The Exchange believes that the proposed Tiers in the Non-Penny Pilot Options Tier Schedule are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to and competitive with what is offered by other exchanges.[45] In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Add Liquidity, Fee to Add Liquidity, and Rebate to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Establishing Non-Penny Pilot Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer, and Non-Penny Pilot Tiers for Fee to Remove Liquidity for BX Options Market Maker is reasonable. It encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[46] The proposed Tiers in the Non-Penny Pilot Options Tier Schedule, which have been discussed at length, clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting flow to the Exchange.

The Non-Penny Pilot Tiers are reasonable in that they are set up to incentivize Participants to direct liquidity to the Exchange. That is, as Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, the Non-Penny Pilot Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker is, similarly to the equivalent Penny Pilot Tier category, higher ($0.20) that [sic] the Non-Penny Pilot Tier 1 Rebate to Add Liquidity ($0.00). The Non-Penny Pilot Tiers are set up in a similar progressive manner for Fee to Remove Liquidity when BX Options Market Maker trading with Customer being assessed a lesser fee for Tier 3 ($0.60) than for Tier 1 ($0.89).[47]

For Non-Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes, which includes the new Tiers, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Non-Penny Pilot Tiers 1, 2, and 3 will apply similarly to all similarly situated Participants. BX Options Market Makers would be assessed a Fee to Remove Liquidity according to the Non-Penny Pilot Tiers, and Customers would earn a Rebate to Add Liquidity and a Rebate

[38] The addition of Rebate to Add Liquidity of the Non-Penny Pilot Options part of the fees and rebates schedule is so that the Non-Penny and Penny parts of the schedule both have Rebate to Add Liquidity. The addition of Tiers to Rebate to Add Liquidity in the Non-Penny category applies to Customer only.

[39] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.00 ; the Fee to Add Liquidity when Customer trading with Customer will be $0.85 (same across all Tiers); the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80; the Fee to Remove Liquidity when BX Market Maker trading with Customer will be $0.89; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89 (same across all Tiers).

[40] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.10; the Fee to Add Liquidity when Customer trading with Customer will be $0.85; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.89; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89.

[41] The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be $0.20; the Fee to Add Liquidity when Customer trading with Customer will be $0.85; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be $0.80; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.60; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be $0.89.

[42] The Exchange notes that for Fee to Add Liquidity for Customer the Exchange is replacing a fee ($0.25/$0.85) with Tiers that include Fee to Add Liquidity as well as Rebate to Add Liquidity.

[43] The rule text of note 5 is amended to reflect the removal of certain references to Customer.

[44] Note 5 continues to apply, however, to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer.

[45] *See, e.g.,* the MIAX fee schedule at *http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf* and the BOX fee schedule at *http://boxexchange.com/assets/BOX_Fee_Schedule1.pdf.*

[46] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NOM, Phlx, and CBOE.

[47] The remaining categories of Fee to Add Liquidity when Customer trading with Customer, Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer, and Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker reflect the same rates in each Non-Penny Pilot Tier, whether 1, 2, or 3 ($0.85, $0.80, and $0.89, respectively).

to Remove Liquidity and be assessed a Fee to Add Liquidity according to the same Tiers per the Non-Penny Pilot Options Tier Schedule.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that unlike others (*e.g.* Non-Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[48]

The Exchange believes that by making the proposed Non-Penny Pilot Options changes, it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its Penny Pilot Options and Non-Penny Pilot Options fees and rebates and to establish Tiers for such fees and rebates will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and establishing Tiers for Penny Pilot Options and Non-Penny Pilot Options in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (*e.g.,* Customer, BX Options Market Maker, Non-Customer) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, unlike others (*e.g.* Non-Customers) each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.[49]

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing Tiers for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

*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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[50] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

[48] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''.

[49] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 2.

[50] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–081 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–2015–081. 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–2015–081, and should be submitted on or before January 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

*Robert W. Errett,*

*Deputy Secretary.*

[FR Doc. 2015–32388 Filed 12–23–15; 8:45 am]

**BILLING CODE 8011–01–P**

[51] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## Bioject Medical Technologies, Inc., Black Castle Developments Holdings, Inc. (n/k/a ingXabo Corporation), Catalyst Resource Group, Inc., SSI International, Ltd., Strike Axe, Inc., and Viper Powersports, Inc.; Order of Suspension of Trading

December 22, 2015.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of Bioject Medical Technologies, Inc. (''BJCT [1]'') (CIK No. 810084), an Oregon corporation located in Tigard, Oregon with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2011. On April 28, 2015, the Commission's Division of Corporation Finance (''Corporation Finance'') sent a delinquency letter to BJCT requesting compliance with its periodic filing requirements but BJCT did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of BJCT was quoted on OTC Link operated by OTC Markets Group Inc. (formerly ''Pink Sheets'') (''OTC Link''), had ten market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Black Castle Developments Holdings, Inc. (n/k/a ingXabo Corporation) (''BCDH'') (CIK No. 1072971), a Nevada corporation located in Fresno, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–12G on April 16, 2012. On February 19, 2015, Corporation Finance sent a delinquency letter to BCDH requesting compliance with its periodic filing requirements but BCDH did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of BCDH was quoted on OTC Link, had seven market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Catalyst Resource Group, Inc. (''CATA'') (CIK No. 106311), a Florida corporation located in Huntington Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2012. On February 19, 2015, Corporation Finance sent a delinquency letter to CATA requesting compliance with its periodic filing requirements but CATA did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of CATA was quoted on OTC Link, had seven market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of SSI International, Ltd. (''SSIT'') (CIK No. 1455982), a revoked Nevada corporation located in Reno, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended October 31, 2011. On February 19, 2015, Corporation Finance sent a delinquency letter to SSIT requesting compliance with its periodic filing requirements but SSIT did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of SSIT was quoted on OTC Link, had three market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

[1] The short form of each issuer's name is also its stock symbol.

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Strike Axe, Inc. (''SKAX'') (CIK No. 1438945), a void Delaware corporation located in Lombard, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended August 31, 2012. On April 28, 2015, Corporation Finance sent a delinquency letter to SKAX requesting compliance with its periodic filing requirements but SKAX did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of SKAX was quoted on OTC Link, had four market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Viper Powersports, Inc. (''VPWI'') (CIK No. 1337213), a defaulted Nevada corporation located in Auburn, Alabama with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended December 31, 2012. On April 22, 2015, Corporation Finance sent a delinquency letter to VPWI requesting compliance with its periodic filing requirements but VPWI did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of December 9, 2015, the common stock of VPWI was quoted on OTC Link, had eight market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 22, 2015, through 11:59 p.m. EST on January 6, 2016.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2015–32575 Filed 12–22–15; 4:15 pm]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

### Notice of Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration (''SBA'') under Section 309 of the Small Business Investment Act of 1958, as amended, and Section 107.1900 of the Small Business Administration Rules and Regulations, SBA by this notice declares null and void the license to function as a small business investment company under the Small Business Investment Company License No. 08/08–0150 issued to North Dakota SBIC, L.P.

United States Small Business Administration.

Dated: December 17, 2015.

**Mark Walsh,**

*Associate Administrator, Office of Investment and Innovation.*

[FR Doc. 2015–32465 Filed 12–23–15; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.38 percent for the January–March quarter of FY 2016.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Linda T. Reilly,**

*Acting Director, Office of Financial Assistance.*

[FR Doc. 2015–32464 Filed 12–23–15; 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 January 25, 2016.

**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:** Prior to Small Business Administration (SBA) approval of subsequent loan disbursement, disaster loan borrowers are required to submit information to demonstrate that they used loan proceeds for authorized purposes only and to make certain certification regarding current financial condition and previously reported compensation paid in connection with the loan.

*Title:* Borrower's Progress Certification.

*Description of Respondents:* Disaster loan Borrowers.

*Form Number:* 1366.

*Estimated Annual Responses:* 13,850.

*Estimated Annual Hour Burden:* 6,925.

**Curtis B. Rich,**

*Management Analyst.*

[FR Doc. 2015–32466 Filed 12–23–15; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Delegation of Authority 257–1]**

### Re-Delegation of Immunity From Judicial Seizure Authorities

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs, including by Delegation of Authority No. 236–3 (August 28, 2000), and to the extent permitted by law, I hereby delegate to the Deputy Assistant Secretary for Policy, Educational and Cultural Affairs, the functions in 22 U.S.C. 2459, providing for immunity from judicial seizure for cultural objects imported into the United States for temporary exhibition.

Notwithstanding this re-delegation, the Secretary, the Deputy Secretaries, the Under Secretary for Public Diplomacy and Public Affairs, the Assistant Secretary of State for Educational and Cultural Affairs, the Principal Deputy Assistant Secretary for Educational and Cultural Affairs, and the Deputy Assistant Secretary for Professional and Cultural Exchanges may at any time exercise the functions delegated herein.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: December 11, 2015.

**Evan Ryan,**

*Assistant Secretary of State for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 2015–32502 Filed 12–23–15; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Delegation of Authority No. 236–6]**

### Re-Delegation of Authority Section 102 of the Mutual Educational and Cultural Exchange Act of 1961, As Amended

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs, including by Delegation of Authority No 236–3 (August 28, 2000), and to the extent permitted by law, I hereby re-delegate to the Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, the functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452) relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges.

Notwithstanding this re-delegation, the Secretary, the Deputy Secretaries, the Under Secretary for Public Diplomacy and Public Affairs, the Assistant Secretary for Educational and Cultural Affairs, and the Principal Deputy Assistant Secretary for Educational and Cultural Affairs may at any time exercise the function delegated herein.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time. Delegation of Authority 236–4 remains in effect until revoked.

This Delegation of Authority shall expire on January 5, 2016.

This Delegation shall be published in the **Federal Register**.

Dated: December 11, 2015.

**Evan Ryan,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 2015–32486 Filed 12–23–15; 8:45 am]

**BILLING CODE 4710–05–P**

## TENNESSEE VALLEY AUTHORITY

### Meeting of the Regional Energy Resource Council

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of meeting.

**SUMMARY:** The TVA Regional Energy Resource Council (RERC) will hold a meeting on Wednesday, January 20 and Thursday, January 21, 2016, regarding regional energy related issues in the Tennessee Valley.

The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Welcome and Introductions
2. Update of RERC First Term Key Advice
3. Public Comments
4. TVA's Integrated Resource Plan Direction, Indicators, and Evolving Market Place
5. Overview of Coal Combustion Residuals and Draft Environmental Impact Statement
6. Council Discussion and Advice

The RERC will hear opinions and views of citizens by providing a public comment session starting at 3:30 p.m. CST on Wednesday, January 20. Persons wishing to speak are requested to register at the door by 3:15 p.m. CST on Wednesday, January 20 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Energy Resource Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–9D, Knoxville, Tennessee 37902.

**DATES:** The meeting will be held on Wednesday, January 20, 2016, from 10:00 a.m. to 4: 30 p.m. and Thursday, January 21, 2016, from 12:30 p.m. to 3:45 p.m. CST.

**ADDRESSES:** The meeting will be held at the Sheraton Memphis Downtown Hotel, 250 North Main Street, Memphis, TN 38103, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

**FOR FURTHER INFORMATION CONTACT:** Beth Keel, 400 West Summit Hill Drive, WT–9D, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: December 17, 2015.

**Joseph J. Hoagland,**

*Vice President, Stakeholder Relations, Tennessee Valley Authority.*

[FR Doc. 2015–32421 Filed 12–23–15; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Lake Murray State Park Airport at Ardmore, Oklahoma

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of request to release airport.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of Lake Murray State Park Airport at Lake Murray State Park in Ardmore, Oklahoma.

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

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Glenn A. Boles, Federal Aviation Administration, Southwest Region, Airports Division, Manager—Arkansas/Oklahoma Airports Development Office, ASW–630, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Franklin, Federal Aviation Administration, Arkansas/Oklahoma

Airports Development Office, ASW–630J, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

The request to release this airport may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release Lake Murray State Park Airport at Lake Murray State Park in Ardmore, Oklahoma, from all federal obligations for the purposes of closing this airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).

The following is a brief overview of the request:

The Oklahoma Department of Tourism and the Oklahoma Aeronautics Commission (co-sponsors) requested the release of the airport which consists of 61.53 acres, paved runway (2,500 feet × 48 feet), connecting taxiway (160 feet × 35 feet) and apron (300 feet × 115 feet). The land was acquired by the State of Oklahoma for use as the Lake Murray State Park through an appropriation of state funds to the Planning and Resources Board in the 1930's. The airport was constructed in 1963 with an FAA Grant in the amount of $45,823.76. The airport has very low demand with only 50 operations for the 12 months ending Sept 20, 2013, has no based aircraft, and has been designated as 'unclassified' by the FAA ASSET report. There are four other NPIAS airports within a 25 mile radius which better meet aviation needs of this area. Lake Murray State Park Airport's pavements are in fair condition; however, within the next five years, the runway will need to be reconstructed with an estimated cost to rehabilitate and improve to FAA standards of $1,083,000. The State has concluded this is not a prudent expenditure and that these limited funds would be better invested in other public use airports in Oklahoma. As the airport owners, the Oklahoma Department of Tourism and the Oklahoma Aeronautics Commission (OAC) have requested a full release of their airport obligations. If released, the airport property will return to being part of Lake Murray State Park, and the property will be allowed to become part of the natural grassland. The OAC plans to invest state funds equal to or in excess of the sum of the amount of the four AIP grants received ($183,999.00) and the appraised value for the land ($136,896) in NPIAS Airports in the Oklahoma Airport System during the federal fiscal year 2016.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas on October 27, 2015.

**Ignacio Flores,**

*Manager, Airports Division, Southwest Region.*

[FR Doc. 2015–32459 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1999–6156; FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–0017; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 120 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before January 25, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–6156; FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–0017; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Exemption Decision**

This notice addresses 120 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 120 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following group(s) of drivers will receive renewed exemptions effective in the month of January and are discussed below.

As of January 3, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 41 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 54948; 65 FR 159; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 69432; 68 FR 69434; 70 FR 53412; 70 FR 57353; 70 FR 72689; 70 FR 74102; 71 FR 32183; 71 FR 41310; 71 FR 644; 72 FR 180; 72 FR 8417; 72 FR 9397; 72 FR 36099; 72 FR 39879; 72 FR 52419; 72 FR 62897; 72 FR 71995; 73 FR 60398; 74 FR 8302; 74 FR 34394; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 60021; 74 FR 65847; 75 FR 25917; 75 FR 39727; 76 FR 12216; 76 FR 34135; 76 FR 49528; 76 FR 53708; 76 FR 54530; 76 FR 55465; 76 FR 61143; 76 FR 64169; 76 FR 64171; 76 FR 67246; 76 FR 70210; 76 FR 70212; 76 FR 75942; 76 FR 75943; 76 FR 79760; 78 FR 24798; 78 FR 34143; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 67460; 78 FR 76395; 78 FR 76705; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477):

Terry L. Baker (KY)
Woodrow E. Bohley (MO)
Jason W. Bowers (OR)
Scott Brady (FL)
Kenneth E. Bross (MO)
Junior Chavarria (NM)
William Chisley (MD)
Walter F. Crean, III (CT)
Terry D. Elliott (TN)
Ronnie J. Fieck (WI)
Frederick E. Foster (VA)
Gerald W. Fox (PA)
Raymond L. Herman (NY)
Wesley V. Holland (NC)
Darryl H. Johnson (WV)
Carol Kelly (IN)
Martin D. Keough (NY)
Richard H. Kind (WA)
Eric L. Kinner (NY)
Volga Kirkwood (MO)
Richard L. Loeffelholz (WI)
Stanley B. Marshall (GA)
Herman C. Mash (NC)
James McCleary (OH)
Humberto Mendoza (TX)
Marvin L. Motes (FL)
Gerald L. Pagan (NC)
Daniel F. Perez (CA)
Robert G. Rascicot (FL)
Michael J. Robinson (WV)
Glen M. Schulz (IA)
Levi A. Shetler (OH)
Herbert W. Smith (WV)
Juan E. Sotero (FL)
James A. Spell (MD)
Timothy R. Steckman (IL)
Paul D. Stoddard (NY)
Harry J. Stoever, Jr. (NJ)
Eric Taniguchi (HI)
Benny R. Toothman (PA)
Stephen H. Ward (MO)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–1999–6156; FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169. Their exemptions are effective as of January 3, 2016 and will expire on January 3, 2018.

As of January 5, 2016 and in accordance with 49 U.S.C. 31136(e) and 31315, the following 3 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (76 FR 70213; 77 FR 541; 78 FR 74223):

Michael P. Eisenreich (MN)
John T. Thor (MN)
George G. Ulferts, Jr. (IA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0298. Their exemptions are effective as of January 5, 2016 and will expire on January 5, 2018.

As of January 8, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (72 FR 67340; 73 FR 1395; 74 FR 65845; 76 FR 78728; 78 FR 76704):

Richard D. Becotte (NH)
Wayne A. Burnett (NC)
Boleslaw Makowski (WI)
Charles M. Moore (TX)
Gary T. Murray (GA)
Anthony D. Ovitt (VT)
Martin Postma (IL)
Steven S. Reinsvold (WI)
George E. Todd (WV)
Bradley A. Weiser (OH)

The drivers were included in one of the following dockets: Docket No. FMCSA–2007–0017. Their exemptions are effective as of January 8, 2016 and will expire on January 8, 2018.

As of January 9, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Juan R. Andrade (TX), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 64271; 79 FR 2748).

The driver was included in the following docket: Docket No. FMCSA–2013–0167. The exemption is effective as of January 9, 2016 and will expire on January 9, 2018.

As of January 15, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 15 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 64271; 79 FR 2748):

Ronald C. Ashley (GA)
Miguel A. Calderon (CA)
Terry L. Cliffe (IL)
Andrew S. Durward (IL)
James P. Fitzgerald (MA)
Louis E. Henry, Jr. (KY)
Adam S. Larson (CO)
Sally A. Leavitt (NV)
Glenn H. Lewis (OH)
Leonardo Lopez (NE)
Larry P. Magrath (MN)
Richard J. Pauxtis (OR)
Johnny L. Powell (MD)
Roy A. Whitaker (TX)
Sammy D. Wynn (GA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0167. Their exemptions are effective as of January 15, 2016 and will expire on January 15, 2018.

As of January 24, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (76 FR 64164; 76 FR 70213; 76 FR 73769; 77 FR 541; 77 FR 3547; 79 FR 2247):

Adam O. Carson (MS)
Marion J. Coleman, Jr. (KY)
Lex A. Fabrizio (UT)
Mark A. Ferris (IA)
Roger W. Hammack (AL)
Herman Martinez (NM)
Gilford J. Whittle (GA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299. Their exemptions are effective as of January 24, 2016 and will expire on January 24, 2018.

As of January 27, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (65 FR 66286; 66 FR 13825; 68 FR 10300; 68 FR 37197; 68 FR 52811; 68 FR 61860; 70 FR 41811; 70 FR 48797; 70 FR 48798; 70 FR 48799; 70 FR 48800; 70 FR 48801; 70 FR 57353; 70 FR 61165; 70 FR 71884; 70 FR 72689; 71 FR 4632; 72 FR 52422; 72 FR 58359; 72 FR 62897; 73 FR 1395; 73 FR 5259; 74 FR 60021; 74 FR 64124; 74 FR 65845; 75 FR 1451; 77 FR 545; 78 FR 78475):

Arthur L. Bousema (CA)
Norman E. Braden (CO)
Matthew W. Daggs (MO)
Donald R. Date, Jr. (MD)
Gordon R. Fritz (WI)
Ronald K. Fultz (KY)
John E. Kimmet, Jr. (WA)
Robert C. Leathers (MO)
Jason L. Light (ID)
Kenneth R. Murphy (WA)
Michael J. Richard (LA)
Robert E. Sanders (PA)
Robert A. Sherry (PA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2000–7918; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727. Their exemptions are effective as of January 27, 2016 and will expire on January 27, 2018.

As of January 28, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (74 FR 60022; 75 FR 4623; 77 FR 543; 78 FR 76707):

James J. Coffield (NM)
Roy E. Crayne (WA)
James A. Dubay (MI)
Donald E. Halvorson (NM)
Roger D. Kool (IA)
Phillip J.C. Locke (CO)
Brian T. Nelson (MN)
Christopher M. Rivera (NM)
Robert E. Whitney (IL)

The drivers were included in one of the following dockets: Docket No. FMCSA–2009–0303. Their exemptions are effective as of January 28, 2016 and will expire on January 28, 2018.

As of January 29, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 21 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 67454; 79 FR 4803):

Calvin J. Barbour (NY)
Martin D. Bellcour (WI)
Walter A. Breeze (OH)
Donald G. Carstensen (IA)
Jamie D. Daniels (IA)
Mark A. Farnsley (IN)
Michael L. Fiamingo (PA)
Kenric J. Fields (DE)
Randall Hjelmtveit (MN)
Randy G. Kinney (IL)
Hector Marquez (TX)
Dennis R. Martinez (NM)
Fred A. Miller, Jr. (CA)
Joseph K. Parley (WI)
Robert L. Pearson (GA)
Ryan R. Ross (SC)
Troy M. Ruhlman (PA)
Hershel D. Volentine (LA)
Gary D. Vollertsen (CO)
David R. Webb, Jr. (IL)
Wesley A. Willis (NJ)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0170. Their exemptions are effective as of January 29, 2016 and will expire on January 29, 2018.

Each of the 120 applicants listed in the groups above has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 25, 2016.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 120 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications.

The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

**Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1999–6156; FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–0017; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

**Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1999–6156; FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–0017; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: December 17, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–32362 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2016

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of program change.

**SUMMARY:** The FMCSA announces, pursuant to 49 CFR 382.305, that it is reducing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL) from the current rate of 50 percent of the average number of driver positions to 25 percent of the average number of driver positions, effective in calendar year 2016. The FMCSA Administrator has the discretion to decrease the minimum annual random testing percentage rate based on the reported positive random test rate for the entire motor carrier industry. Based on the controlled substances random test data in FMCSA's Management Information System (MIS) for calendar years 2011, 2012, and 2013, the positive rate for controlled substances random testing fell below the 1.0 percent threshold for 3 consecutive calendar years. As a result, the Agency will lower the controlled substances minimum annual percentage rate for random controlled substances testing to 25 percent of the average number of driver positions. In accordance with 49 CFR 382.305(e)(2) if, in the future, the reported positive rate for any calendar year is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

**DATES:** Effective January 1, 2016, the minimum annual percentage rate for random controlled substances testing, for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL), will be 25 percent.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Juan Moya, Drug and Alcohol Program Manager, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–4844 or *fmcsadrugandalcohol@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule titled, ''Controlled Substances and Alcohol Use and Testing,'' published August 17, 2001, (66 FR 43097), established the process by which the Agency determines whether the minimum annual percentage rate for random controlled substances testing should be increased or decreased. The final rule included a provision indicating that the decision on whether to increase or decrease the percentage rate would be based upon the motor carrier industry's overall positive random controlled substance test rate, as reported by motor carrier employers to FMCSA, pursuant to 49 CFR 382.403. Under this performance-based system, the testing rate was initially set at 50 percent. The FMCSA Administrator may, at his or her discretion, lower the minimum annual random controlled substances testing

percentage rate to 25 percent when the industry-wide random controlled substances positive rate is less than 1.0 percent for two consecutive calendar years. 49 CFR 382.305(g). The new annual random testing percentage rate would then apply starting January 1 of the following calendar year. 49 CFR 382.305(f).

In accordance with 49 CFR 382.403, each calendar year FMCSA requires motor carriers selected for the survey to submit their DOT drug and alcohol testing program results. Selected motor carriers are responsible for ensuring the completeness, accuracy, and timeliness of the data submitted. The survey requires motor carriers to provide information to the Agency on the number of random tests conducted and the corresponding positive rates.

For the 2013 survey, notices were sent out to 3,251 randomly selected motor carriers primarily via email and U.S. mail for those motor carriers with invalid or no email addresses. Of these forms, 2,236 were completed and returned to FMCSA, resulting in usable data from 1,654 carriers comprising of 497,270 CDL drivers based on the motor carriers' survey responses. Respondents providing non-usable data represent entities that are out of business, exempt, have no testing program in place, or belong to consortia that did not test any drivers for the carrier during 2013.

The estimated positive random controlled substance test rate in 2013 is 0.7 percent. The 95-percent confidence interval for this estimate ranges from 0.6–0.8 percent. In other words, if the survey were to be replicated, it would be expected that the confidence interval derived from each replication would contain the true usage rate in 95 out of 100 surveys. For 2011 and 2012, the estimated positive usage rate for drugs was estimated to be 0.9 percent and 0.6 percent, respectively.

For calendar year 2015, in order to ensure reliability of the data, the FMCSA Administrator made the decision to maintain the annual testing percentage rate at 50 percent and sought additional information related to drivers' positive test rates. Following a third consecutive calendar year of data reporting the positive rate below 1.0 percent FMCSA announces that the random controlled substances annual percentage testing rate will change from 50 percent to 25 percent. The new minimum annual percentage rate for random drug testing will be effective January 1, 2016. This change reflects the sustained low positive test rate and will result in an estimated $50 million in annual savings to motor carriers by requiring that fewer drivers be tested.

In accordance with 49 CFR 382.305(e)(2) if, in the future, the reported positive rate for any calendar year is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

**Minimum Annual Percentage Rates for Random Controlled Substances Testing for 2016**

Effective January 1, 2016, the minimum annual percentage rate for random controlled substances testing is 25 percent of the average number of driver positions. The minimum annual percentage rate for random alcohol testing will remain at 10 percent.

Issued on: December 17, 2015.

**T.F. Scott Darling, III,**

*Acting Administrator.*

[FR Doc. 2015–32364 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. 2015–0124]**

### Potential Benefits and Feasibility of Voluntary Compliance; Public Listening Sessions

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening sessions.

**SUMMARY:** The FMCSA announces that it will hold two public listening sessions, on January 12 and 31, 2016, to solicit information on the potential benefits and feasibility of voluntary compliance and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations. The recently enacted Fixing America's Surface Transportation (FAST) Act mandates that the FMCSA Administrator allow recognition for a motor carrier that installs advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs and other standards for use by motor carriers to receive recognition, including credit or an improved Safety Measurement System (SMS) percentile. FMCSA is soliciting comment to develop a process for identifying and reviewing these opportunities to provide credit to those carriers and drivers who go above and beyond the regulatory requirements. The listening sessions are intended to provide interested parties with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments will be transcribed and placed in the docket referenced above for FMCSA's consideration. The entire proceedings of both meetings will be webcast.

**DATES:** The listening sessions will be held on Tuesday, January 12, 2016, from 9:30 a.m. to 11:30 a.m. and 2:30 p.m. to 4:30 p.m., Local Time, and on Sunday, January 31, 2016, from 2:00 p.m. to 4:00 p.m., Local Time. If all interested parties have had the opportunity to comment, the sessions may conclude early.

**ADDRESSES:** The January 12 listening session will be held at the Kentucky International Convention Center, Room 108, 221 Fourth St., Louisville, KY 40202. The January 31 session will be held at the Georgia World Congress Center, Building C, 285 Andrew Young International Blvd. NW., Atlanta, GA. In addition to attending the session in person, the Agency offers several ways to provide comments, as enumerated below.

*Internet Address for Live Webcast.* FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at *www.fmcsa.dot.gov* in advance of the listening session.

You may submit comments identified by Docket Number FMCSA–2015–0124 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received, without change, to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you would like acknowledgment that the Agency received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or by telephone at 202–366–2551.

If you need sign language interpretation or any other accessibility accommodation, please contact Ms. Watson by Monday, January 4, 2016, to allow us to arrange for such services. FMCSA cannot guarantee that interpreter services requested on short notice will be provided.

**SUPPLEMENTARY INFORMATION:**

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2015–0124, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may draft a notice of proposed rulemaking based on your comments and other information and analysis.

*Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*. Insert the docket number, FMCSA–2015–0124, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

*Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

## I. Background

The trucking and bus industries and the U.S. Department of Transportation have invested in the research, development, and testing of strategies and technologies to reduce truck and bus crashes. In September 2014, the Commercial Vehicle Safety Alliance (CVSA) submitted a request to FMCSA to consider initiating a pilot program to investigate the benefits and feasibility of a voluntary compliance program. Citing research that has been underway for several years, the Agency established an Alternative Compliance team in December 2014, the goal of which was to analyze the concept and gather data to support how it might be developed and implemented.

On March 30–31, 2015, the Agency's Motor Carrier Safety Advisory Committee (MCSAC) deliberated on the potential benefits and feasibility of a voluntary compliance program and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond FMCSA's regulations. The MCSAC completed its deliberations during its June 15–16, 2015, meeting and subsequently submitted its final report on Task 15–1 to the Agency on September 21, 2015. A copy of the report is posted at the MCSAC's Web site, *http://mcsac.fmcsa.dot.gov/meeting.htm*.

On April 23, 2015 (80 FR 22770), the Agency published a notice requesting responses to specific questions and any supporting data the Agency should consider in the potential development of a Beyond Compliance program.[1] The notice indicated that Beyond Compliance would include voluntary programs implemented by motor carriers that exceed regulatory requirements and improve the safety of commercial motor vehicles and drivers operating on the Nations' roadways by reducing the number and severity of crashes. Beyond Compliance would not result in regulatory relief.

Section 5222 of the recently enacted the Fixing America's Surface Transportation Act (Pub. L. 114–94, Dec. 4, 2015, 129 Stat. 1312) (FAST) mandates that the FMCSA Administrator allow recognition for a motor carrier that installs advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs and other standards for use by motor carriers to receive recognition, including credit or an improved SMS percentile. This provision requires the Administrator, after providing notice and comment, to develop a process for identifying and reviewing these opportunities to provide credit to those carriers and drivers who go above and beyond the regulatory requirements.

The January 12, 2016, session will be held at the American Bus Association's (ABA) Marketplace conference in Louisville, Kentucky. The January 31, 2016, session will be held at the United Motorcoach Association (UMA) Expo 2016 conference in Atlanta, Georgia.

All comments will be transcribed and placed in the docket referenced above for FMCSA's consideration. The entire proceedings of both meetings will be webcast.

## II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers should try to limit their remarks to 3–5 minutes. No preregistration is required. Attendees may submit material to the FMCSA staff at the session for inclusion in the pubic

[1] See *https://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/201509463.pdf* or *https://www.fmcsa.dot.gov/regulations/notices/201509463.*

docket referenced at the beginning of this notice.

FMCSA would like to know the views of the public on the concept, with any data or analysis to support it, with regard to 3 basic areas:

(1) What voluntary technologies or safety program best practices would be appropriate for beyond compliance; (2) what type of incentives would encourage motor carriers to invest in technologies and best practices programs; and (3) how FMCSA would verify that the voluntary technologies or safety programs are being implemented.

FMCSA will docket the transcripts of the webcast and a separate transcription of each listening session will be prepared by an official court reporter.

Dated: December 18, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–32358 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2005–20383]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 28, 2015, the Maine Eastern Railroad (MERR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2005–20383.

This request is for relief from the mechanical locking requirements found in 49 CFR 236.312, *Movable bridge, interlocking of signal appliances with bridge devices,* on the Carlton Bridge at Bath, ME, Milepost 30.0 on the Rockland Branch. Specifically, MERR requests permission to detect displacement of the bridge-locking members when displaced more than 2 inches from their proper position, instead of the existing 1-inch requirement.

MERR states that it was granted relief from the 1-inch locking requirement in 2005 in Docket Number FRA–2005–20383, but allowed that waiver to expire in 2010. MERR notes that it is not possible to maintain the 1-inch span lock retraction limit in cold-temperature extremes. These conditions will cause the movable span-locking members to move within the fixed span positions enough to cause a noncompliance of the 1-inch requirement. The contraction of the steel affects the moveable span's west-end span lock adjustment, which requires a maintainer to travel to the bridge piers to seasonally adjust both west-end span lock circuit controller boxes to a setting of 2 inches to compensate for the contraction. Later in the season, the settings must be returned to 1 inch. This often places the maintainer at a safety risk due to icy conditions. The span lock members extend approximately 13 inches in length into the fixed portions when the movable span is locked with the fixed span.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 8, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety. Chief Safety Officer.*

[FR Doc. 2015–32450 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2015–0130]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 25, 2015, BNSF Railway (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 213, Track Safety Standards. FRA assigned the petition Docket Number FRA–2015–0130.

Pursuant to 49 CFR 213.113(a), BNSF requests a waiver from the accepted practice of stop/start rail testing to deploy nonstop continuous test rail flaw inspection to begin November 1, 2015, and to be in effect for 3 years.

The test process would occur on the main tracks of the following subdivisions: Panhandle, Hereford, Clovis, Gallup, Seligman, Fort Scott, Thayer North, Thayer South, Birmingham, Amory, Cuba, River, Cherokee, and Afton.

BNSF will gradually deploy the process over time as they measure the results and prioritize the areas expected to benefit the most from this alternative method. BNSF will notify FRA when implementing on a specific subdivision. Multiple data acquisition and/or field verification vehicles may be used as required to accomplish the desired testing production rates.

Currently, the BNSF subdivisions proposed for nonstop testing are required by 49 CFR 213.237, *Inspection*

*of rail,* to be tested every 60 to 365 days. BNSF is proposing to test these subdivisions every 30–45 days.

The nonstop continuous tests will be conducted with self-propelled ultrasonic rail flaw detection vehicles capable of data acquisition speeds up to 30 mph. Upon completion of each daily run, the acquired data will be analyzed offline by technical experts with specific analysis tools proven to be effective on a worldwide basis for over 10 years, including the most recent several years of experience in the United States. The analysis process will provide the categorization and prioritization of suspect locations to be verified in the field.

Field verification will be conducted by qualified and certified rail test professionals with validation equipment based on global positioning system location and known track features identified within the flaw detection electronic record. All verifications will occur within 72 hours from completion of the data acquisition test run. Remedial actions will be applied based on the regulations set for in 49 CFR 213.113, *Defective rails,* for confirmed rail defect locations.

BNSF believes nonstop continuous rail testing will provide the capability to reduce service failure and derailment risk through implementation of advanced technologies and processes that enable BNSF to more completely and frequently conduct the inspection for their rail network.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2015–0130) and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 25, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32453 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2015–0127]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 3, 2015, General Electric Transportation (GE) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, Railroad Locomotive Safety Standards. FRA assigned the petition Docket Number FRA–2015–0127.

GE has requested a waiver of compliance from the requirement of 49 CFR 229.129(b)(1), that each locomotive (or a sampling of similar locomotives) be tested for compliance with the sound level requirements given in 49 CFR 229.129(a)(1) prior to entering service, for 31 new ET44AC Locomotives to be delivered to CSX Transportation (CSX) and numbered CSX 3375 to CSX 3405. The locomotives will be manufactured in Erie, PA, and delivered to purchasers from January through March 2016, when weather conditions will likely preclude successful testing in accordance with 49 CFR 229.129(c)(6). GE requests that the deadline for completing the horn testing on these locomotives be extended until September 30, 2016. In support of this petition, GE has submitted data showing that horns on the previous 2015 model ET44AC locomotives were compliant with both high and low sound level requirements, with some margin above the minimum and below the maximum. GE also submitted illustrations demonstrating that the horn location has not been altered and that the only concern is changes in the component of the horn noise affected by reflectance off the roof and roof discontinuities on the 2016 model locomotives. Changes are generally less than 2 inches.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 25, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32452 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2015–0131]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 22, 2015, Keolis Commuter Services (Keolis), contract operator of the Massachusetts Bay Transportation Authority's (MBTX) commuter rail system, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238, Passenger Equipment Safety Standards. FRA assigned the petition Docket Number FRA–2015–0131.

Keolis seeks a temporary waiver of compliance from the requirements of 49 CFR 238.115(b)(2) regarding passenger car emergency lighting until October 31, 2016. Keolis is seeking this temporary relief because 70 percent of its rolling stock fleet (233 of 332 coaches encompassing series: 200, 300, 500, 600, 700, 1500, 1600, and 1700), ordered prior to September 8, 2000, and placed into service prior to September 9, 2002, will not meet the emergency lighting requirement deadline of December 31, 2015. Keolis justifies the need for this deadline because of the delay in finding qualified vendors and adding the required labor forces to successfully complete this installation. MBTX rolling stock fleet was not in compliance with all applicable safety standards. The extra time sought in this petition will allow Keolis to finish its ongoing program (58 coaches have been upgraded to date) so that 70 percent of this rolling stock is in compliance.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 8, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32454 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2015–0132]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 22, 2015, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238, Passenger Equipment Safety Standards. FRA assigned the petition docket number FRA–2015–0132.

Metra seeks a 6-month waiver of compliance from the requirements of 49 CFR 238.115(b)(1)–(2) regarding passenger car emergency lighting (until June 30, 2016). Metra is seeking this temporary relief because 70 percent of its passenger rolling stock fleet of 544 coaches, which were ordered prior to September 8, 2000, and placed into service prior to September 9, 2002, will not meet the emergency lighting requirement deadline of December 31, 2015. Metra justifies the need for this deadline extension because of ongoing funding and technical difficulties. The extra time sought in this petition will allow Metra to retrofit 70 percent of its passenger rolling stock fleet to meet the requirements.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140,

Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 8, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32455 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2000–7275]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 17, 2014, Pennsylvania Northeast Regional Railroad Authority (PNRRA) and Delaware-Lackawanna Railroad (DL) have jointly petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations. FRA assigned the petition Docket Number FRA–2000–7275.

PNRRA provides an historic trolley excursion in conjunction with the Lackawanna County Electric City Trolley Station and Museum (Trolley Museum). DL has operated and dispatched this historic trolley since the start of service in April 2001. The purpose of this historic trolley excursion is to expand the historical interpretation provided by the Trolley Museum by offering a tourist excursion using vintage trolley cars, and is not in any way an urban transit operation. Beginning at the Steamtown Passenger Depot, this trolley car excursion operates via PNRRA's Brady Line within the National Park Service's Steamtown Yard, and thence along the historic Laurel Line past the Scranton Iron Furnaces and Roaring Brook, to a station stop at the Historic Trolley Maintenance Building, a distance of just under 5 miles. Because of the connection to the general railroad system over the shared track portion, current trolley operations will continue to use the successful FRA-approved temporal separation procedure that guarantees exclusive use of this shared trackage during its exclusive excursion/passenger period.

The route of the historic trolley excursion has undergone several extensions since its original 1-mile run in 2001. One mile was added in 2002 and 3 miles were added in May 2004. In June 2006, a 1,870-foot extension brought the route into its new terminus at the station platform on Track 1 outside the Historic Trolley Maintenance Building.

PNRRA seeks an extension of its waiver of compliance from several parts of 49 CFR (first granted by FRA in 2001, extended in 2006 and 2011) for continued operation of its historic trolley car excursion that shares trackage with the general railroad system. This request is consistent with the requirements set forth in the ''*Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,''* 65 FR 42529 (July 10, 2000); see also the ''*Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems.''* 65 FR 42626 (July 10, 2000).

Based on the foregoing, PNRRA is again seeking an extension of the terms and conditions of its current waiver of compliance from several regulatory sections. Specifically, PNRRA seeks relief from the following: 49 CFR part 221—Rear-End Marking Device—Passenger, Commuter and Freight Trains; 49 CFR part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses; 49 CFR 229.129—*Locomotive horn;* 49 CFR part 231—Railroad Safety Appliance Standards; 49 CFR part 239—Passenger Train Emergency Preparedness; and 49 CFR part 240—Qualification and Certification of Locomotive Engineers.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate Docket Number (*e.g.,* Waiver Petition Docket Number FRA–2000–7275) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 8, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32449 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0081]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 13, 2015, the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for a Special Approval of certain industry standards in accordance with the Federal railroad safety regulations contained at 49 CFR 231.33, *Procedure for special approval of existing industry safety appliance standards,* and 49 CFR 231.35, *Procedure for modification of an approved industry safety appliance standard for new railcar construction.* FRA assigned the petition Docket Number FRA–2013–0081.

AAR, on behalf of itself and its member railroads, submitted a petition for Special Approval of existing industry safety appliance standards contained in 49 CFR part 231, Railroad Safety Appliance Standards, and minor edits to AAR Standard S–2044 appendices that have been previously approved by FRA. AAR is requesting approval of the standards and specifications delineated in AAR Standard S–2044, Appendices D1, Safety Appliances for Flatcars with Full Decks; F3, Safety Appliances for Cars with Recessed Car Body Ends; and H1, Safety Appliances for Enclosed Vehicle-Carrying Cars and Vehicle-Carrying Superstructures Applied to Flatcars. AAR Standard S–2044 and its appendices have been developed to serve as requirements for safety appliance arrangements. The revised standard and its appendices are to be applied to new railroad freight cars if approved by FRA.

AAR Standard S–2044 was established by the AAR Safety Appliance Task Force (Task Force), which was created by AAR's Equipment Engineering Committee (EEC) to develop industry standards for safety appliance arrangements on modern railcar types not explicitly covered by 49 CFR part 231. The Task Force consists of representatives from Class I railroads, labor unions, car builders, private car owners, and shippers, along with ergonomics experts and government representatives from FRA and Transport Canada, who participate as nonvoting members. The Task Force drafted a base safety appliance standard for all car types, plus industry safety appliance standards for specific car types. These industry standards have been adopted by AAR's Engineering Equipment Committee and, with FRA's approval, will serve as the core criteria for safety appliance arrangements on railcars that are more specialized in design. With its petition, AAR included a deviation table for Appendix D1 that shows where the AAR standard differs from the regulatory text in 49 CFR part 231 and provides the rationale for any deviations, along with analysis showing that the AAR Standard S–2044 provides an equal or greater level of safety in each instance. In addition, the table describes the ergonomic suitability of many of the proposed arrangements in normal use, as the standards were developed by the Task Force to incorporate ergonomic design principles.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 8, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2015–32451 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number USCG–2013–0363]**

### Deepwater Port License Application: Liberty Natural Gas LLC, Port Ambrose Deepwater Port; Withdrawal of Application and Termination of Federal Application Review Process

**AGENCY:** Maritime Administration, U.S. Department of Transportation.

**ACTION:** Notice of termination of Federal review.

**SUMMARY:** The Maritime Administration (MARAD) announces the termination of the Liberty Natural Gas LLC (Liberty) Port Ambrose Deepwater Port License Application and all related Federal processing activities required by applicable provisions of the Deepwater Port Act of 1974, as amended (Act).

On September 28, 2015, Liberty submitted to MARAD and the U.S. Coast Guard (USCG) an application under the Act for a license and all Federal authorizations required to own, construct, and operate a deepwater port for the importation of liquefied natural gas (LNG) into the United States. The deepwater port, known as Port Ambrose, was proposed to be located in the offshore waters of New York and New Jersey, in the New York Bight. On June 14, 2013, MARAD and USCG deemed the application complete, designated New York and New Jersey as adjacent coastal states (ACS) and commenced the Federal application review process required under the Act. This process also included a comprehensive environmental assessment, public meetings and coordination of the application review process with relevant Federal and State agencies.

Upon completion of the environmental review process required by the National Environmental Policy Act (NEPA) and the final public licensing hearings, Governor Andrew M. Cuomo of the State of New York, notified the Maritime Administration, by letter dated November 12, 2015, of his disapproval of the Liberty Port Ambrose deepwater port project. Governor Cuomo's disapproval was issued in accordance with the provisions outlined in 33 U.S.C. Section 1508(c)(8) which state, the Secretary (or Maritime Administrator by delegated authority) may issue a deepwater port license only if the Governor of the ACS approves or is presumed to approve, issuance of the license. In light of Governor Cuomo's disapproval of the application, Liberty notified MARAD, by letter dated November 18, 2015, of its withdrawal of the Port Ambrose license application from the Federal review process. As a consequence of Liberty's withdrawal of its application, the Federal application review process and all related Federal processing activities were terminated on November 18, 2015. This **Federal Register** Notice shall serve as official announcement to the public that the Federal review and processing of the Liberty Port Ambrose deepwater port license application is terminated.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, telephone 202–366–0926, email: *Yvette.Fields@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On September 28, 2012, Liberty submitted to MARAD and USCG an application for a license and all Federal authorizations required to own, construct, and operate a natural gas import deepwater port known as Port Ambrose. Specifically, the Port Ambrose license application proposed construction and operation of an offshore natural gas deepwater port facility that would have been located 16.1 nautical miles southeast of Jones Beach, New York, 24.9 nautical miles east of Long Branch, New Jersey, and 27.1 nautical miles from the entrance to New York Harbor in a water depth of approximately 103 feet.

As required under the Act, MARAD and USCG, acting as co-lead agencies, commenced a formal review of the Port Ambrose deepwater port license application. The review included an application completeness determination, development of a comprehensive Environmental Impact Statement (EIS) as required by NEPA, in-depth review of the financial capacity of the applicant to construct, operate and decommission the proposed deepwater port and assessment of the applicant's ability to meet all other license criteria of the Act. The initial Port Ambrose deepwater port Notice of Application (NOA) was published in the **Federal Register** on June 14, 2013 (78 FR 36014). The NOA announced completeness of MARAD's and USCG's initial review of the application and commencement of the formal application review process. Thereafter, the required Notice of Intent to prepare an EIS and conduct public scoping meetings was published in the **Federal Register** on June 24, 2013 (78 FR 37878). The required public scoping meetings were held in Long Beach, New York on July 9, 2013, and in Edison, New Jersey on July 10, 2013. Additionally, an NOA of the Draft EIS (DEIS) was published in the **Federal Register** on December 16, 2014 (79 FR 74808), and subsequent public meetings seeking public comments on the DEIS were held in Jamaica, New York on January 7, 2015, and in Eatontown, New Jersey on January 8, 2015. On October 16, 2015, an NOA of the Final EIS and Notice of Final Public Licensing Hearings was published in the **Federal Register** (80 FR 62596). The final hearings were held on November 2, 2015 and November 3, 2015 in Long Beach, New York, and on November 4, 2015 and November 5, 2015 in Eatontown, New Jersey.

Upon conclusion of the final public licensing hearings and completion of consistency reviews by the relevant state agencies, New York Governor Andrew M. Cuomo, by letter dated November 12, 2015, advised MARAD of his disapproval of Liberty's Port Ambrose deepwater port license application. Governor Cuomo disapproved the application in accordance with his authority as an ACS Governor, as provided under Section 1508(b)(1) of the Act. Governor Cuomo's disapproval was based on concerns related to his assessment of the proposed project's inherent security risks, impacts of extreme weather events, disruption of commercial navigation and fishing activities, and the potential interference with currently pending renewable energy projects proposed for the State of New York.

On November 18, 2015, in light of Governor Cuomo's disapproval of the Port Ambrose license application, Liberty notified MARAD of its withdrawal of the application from the Federal review process. As a consequence of the withdrawal of the application, the Federal review process was terminated on November 18, 2015. This public notice serves as an official announcement of the termination of the Liberty Natural Gas Port Ambrose deepwater port license application and all other related Federal processing activities.

Further, as a result of the termination of the application and related processing activities, no Record of Decision (ROD) will be issued by MARAD for the Liberty Port Ambrose license application. It should be noted, however, that all project related information compiled and assessed during the application review will be incorporated into the final administrative record for the Liberty Port Ambrose deepwater license application.

Additional information regarding the Liberty Port Ambrose deepwater port license application, comments, supporting information and other

associated documentation are available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2013–0363.

(**Authority:** 49 CFR 1.93)

* * *

Dated: December 18, 2015.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2015–32348 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. USCG–2015–0472]**

### Deepwater Port License Application: Delfin LNG LLC, Delfin LNG Deepwater Port

**AGENCY:** Maritime Administration, U.S. Department of Transportation.

**ACTION:** Notice of Receipt of Amended Application; Request for Comments.

**SUMMARY:** The Maritime Administration (MARAD), in cooperation with the U.S. Coast Guard (USCG), announces the receipt and availability of the amended deepwater port license application submitted by Delfin LNG LLC (Delfin LNG) on November 19, 2015 (amended application). The purpose of this **Federal Register** Notice is to explain the changes between the original application and the amended application and seek public comments regarding the amended application. Please note, MARAD and USCG have determined that this **Federal Register** Notice is sufficient for satisfying National Environmental Policy Act (NEPA) requirements for public scoping and seeking public comment on an agency action. As such, no public scoping meetings are planned to be held for the Delfin LNG amended application.

A *Notice of Application* that summarized the original Delfin LNG license application was published in the **Federal Register** on July 16, 2015 (80 FR 42162). A Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meetings was published in the **Federal Register** on Wednesday, July 29, 2015 (80 FR 45270). This Notice incorporates the aforementioned Notices by reference and highlights changes to the proposed Delfin LNG project made since the original application was deemed complete.

The proposed Delfin LNG deepwater port incorporates onshore components, which are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). These facilities are described in the section of this notice titled ''FERC Application.''

**FOR FURTHER INFORMATION CONTACT:** Mr. Roddy Bachman, USCG, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil,* or Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, MARAD, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* For questions regarding viewing the Federal docket, call Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

We request public comments on the amended application for the proposed deepwater port. You can submit comments directly to the Docket Operations Facility during the public comment period from publication date of this Notice until Tuesday, January 19, 2016. We will consider all comments and materials received during the public comment period. Public comment submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. Please include the docket number (USCG–2015–0472) and your name and address on any correspondence.

Submit comments or material using only one of the following methods:

- Online: Go to *www.regulations.gov* and search docket number ''USCG–2015–0472.'' Follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- Hand Delivery or Courier: Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202–493–2251.

While not required, it is preferred that comments be submitted electronically, which facilitates use of computer software to sort, organize and search the comments. If you submit your comments electronically, it is not necessary to also submit a hard copy.

#### Background

On May 8, 2015, as supplemented on June 19, 2015, MARAD and USCG received an application from Delfin LNG for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the export of natural gas. On Thursday, July 16, 2015, a *Notice of Application* was published in the **Federal Register** (80 FR 42162) advising the public of the completed original application. Louisiana and Texas were designated as adjacent coastal States (ACS) for the original application.

Two public scoping meetings were held in connection with the original Delfin LNG application. The first public scoping meeting was held in Lake Charles, Louisiana on August 18, 2015, and the second public scoping meeting was held in Beaumont, Texas on August 19, 2015. After the public scoping meetings concluded, Delfin LNG advised MARAD and USCG of its intent to amend the original application.

In anticipation of the amended application, MARAD and USCG issued a regulatory ''stop-clock'' letter to Delfin LNG on September 18, 2015. That letter commenced a regulatory ''stop-clock,'' effective September 18, 2015, which would remain in effect until MARAD and USCG received the amended application and determined it contained sufficient information to continue the Federal review process. On November 19, 2015, Delfin LNG submitted its amended application to MARAD and USCG.

Working in coordination with participating Federal and State agencies, we will commence processing the amended application and complete a Draft EIS which analyzes reasonable alternatives to, and the direct, indirect and cumulative environmental impacts of, the proposed action. When the Draft EIS is complete and ready for public review, a *Notice of Availability* will be published in the **Federal Register**. The *Notice of Availability* will provide for a public comment period that includes public meetings in Louisiana and Texas. The amended application is currently available for public review at the Federal docket Web site: *www.regulations.gov* under docket number USCG–2015–0472.

#### Summary of the Amended Application

The specific project changes from the original Delfin LNG application are: 1) the liquefaction capacity of the four proposed FLNGVs that would service the proposed Delfin deepwater port is increased from a base design capacity of two million metric tons per annum

(MMtpa) each (approximately 97 billion standard cubic feet per year [Bscf/y]) to three MMtpa each (approximately 146 Bscf/y), and 2) construction of new-build FLNGV hulls instead of converting existing tank vessels. In sum, the four FLNGVs will be designed to have the capability to produce approximately 12.0 MMtpa of LNG for export (approximately 585 Bscf/y), and as much as 13.2 MMtpa in the optimized design case, (approximately 657.5 Bscf/y). Each FLNGV would have a total LNG storage capacity of 210,000 cubic meters ($m^3$), an increase from the original application's 165,000 $m^3$.

The amended application also provides for increased natural gas compression horsepower requirements at the onshore facility. These are described in the section of this **Federal Register** Notice entitled ''FERC Application.''

Other fundamental aspects of the proposed Delfin LNG project remain unchanged, including Port Delfin's location nearly 40 nautical miles offshore of Louisiana, the reuse and repurpose of two existing offshore pipelines, installation of new pipeline laterals leading to each tower yoke mooring system (TYMS), construction of a pipeline bypass around an existing platform at WC 167, and use of air cooling technology for the natural gas liquefaction process.

**FERC Application**

On May 8, 2015, Delfin LNG filed its original application with FERC requesting authorizations pursuant to the Natural Gas Act and 18 CFR part 157 for the onshore components of the proposed deepwater port terminal including authorization to use the existing pipeline infrastructure, which includes leasing a segment of pipeline from HIOS extending from the terminus of the UTOS pipeline offshore. On May 20, 2015, FERC issued its *Notice of Application* for the onshore components of Delfin LNG's deepwater port project in Docket No. CP15–490–000. This Notice was published in the **Federal Register** on May 27, 2015 (80 FR 30226). Delfin LNG stated in its application that High Island Offshore System, LLC (HIOS) would submit a separate application with FERC seeking authorization to abandon by lease its facilities to Delfin LNG. FERC, however, advised Delfin LNG that it would not begin processing Delfin LNG's application until such time that MARAD and USCG deemed Delfin LNG's deepwater port license application complete and HIOS submitted an abandonment application with FERC. On June 29, 2015, MARAD and USCG accepted the documentation and deemed the original Delfin application complete.

On November 19, 2015, HIOS filed an application (FERC Docket No. CP16–20–000) to abandon certain offshore facilities in the Gulf of Mexico, including its 66-mile-long mainline, an offshore platform, and related facilities (''HIOS Repurposed Facilities''). Also, on November 19, 2015, Delfin LNG filed an amended application in FERC Docket No. CP15–490–001 to use the HIOS Repurposed Facilities and to revise the onshore component of its deepwater port project. On December 1, 2015, FERC issued a *Notice of Application* for Delfin LNG's amendment, which was published in the **Federal Register** on December 7, 2015 (80 FR 76003).

The amended FERC application specifically discusses the onshore facility and adjustments to the onshore operations that would involve reactivating approximately 1.1 miles of the existing UTOS pipeline; the addition of four new onshore compressors totaling 120,000 horsepower of new compression; activation of associated metering and regulation facilities; the installation of new supply header pipelines (which would consist of 0.25 miles of new 42-inch-diameter pipeline to connect the former UTOS line to the new meter station) and 0.6 miles of new twin 30-inch-diameter pipelines between Transco Station 44 and the new compressor station site. The original FERC application consisted of three new onshore compressors totaling 74,000 horsepower.

Additional information regarding the details of Delfin LNG's original and amended application to the FERC is on file and open to public inspection. Project filings may be viewed on the web at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (*i.e.,* CP15–490) in the docket number field to access project information. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

**Privacy Act**

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to *www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Security Notice, as well as the User Notice, that is available on the *www.regulations.gov* Web site and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions in person at the Docket Operations Facility or electronically on the *www.regulations.gov* Web site.

(**Authority:** 33 U.S.C. 1501, *et seq.,* 49 CFR 1.93(h)).

Dated: December 18, 2015.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2015–32349 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket ID PHMSA–2015–0213]**

### Pipeline Safety: Random Drug Testing Rate; Contractor Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

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

**ACTION:** Notice of Calendar Year 2016 Minimum Annual Percentage Rate for Random Drug Testing; Reminder for Operators to Report Contractor Management Information System (MIS) Data; and Reminder of Method for Operators to Obtain User Name and Password for Electronic Reporting.

**SUMMARY:** PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2016. Operators are reminded that drug and alcohol testing information must be submitted for contractors performing or ready to perform covered functions. For calendar year 2015 reporting, PHMSA will not attempt to mail the ''user name'' and ''password'' for the Drug and Alcohol Management Information System (DAMIS) to operators, but will make the user name and password available in the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*).

**DATES:** Effective January 1, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Blaine Keener, Director of Safety Data Systems and Analysis, by telephone at 202–366–0970 or by email at *blaine.keener@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Notice of Calendar Year 2016 Minimum Annual Percentage Rate for Random Drug Testing**

Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must randomly select and test a percentage of covered employees for prohibited drug use. Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of MIS reports required by § 199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In calendar year 2014, the random drug test positive rate was less than one percent. Therefore, the *PHMSA minimum annual random drug testing selection rate will remain at 25 percent for calendar year 2016.*

**Reminder for Operators To Report Contractor MIS Data**

On January 19, 2010, PHMSA published an Advisory Bulletin (75 FR 2926) implementing the annual collection of contractor MIS drug and alcohol testing data. An operator's report to PHMSA is not considered complete until an MIS report is submitted for each contractor that performed covered functions as defined in 49 CFR part § 199.3.

**Reminder of Method for Operators To Obtain User Name and Password for Electronic Reporting**

In previous years, PHMSA attempted to mail the DAMIS user name and password to operator staff with responsibility for submitting DAMIS reports. Based on the number of phone calls to PHMSA each year requesting this information, the mailing process has not been effective. Pipeline operators have been submitting reports required by Parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) since 2011. Each company with an Office of Pipeline Safety issued Operator Identification Number should employ staff with access to the PHMSA Portal.

The user name and password required for an operator to access DAMIS and enter calendar year 2015 data will be available to all staff with access to the PHMSA Portal in late December 2015. When the DAMIS user name and password is available in the Portal, all registered users will receive an email to that effect. Operator staff with responsibility for submitting DAMIS reports should coordinate with registered Portal users to obtain the DAMIS user name and password. Registered Portal users for an operator typically include the U.S. Department of Transportation Compliance Officer and staff or consultants with responsibility for submitting annual and incident reports on PHMSA F 7000- and 7100-series forms.

For operators that have failed to register staff in the PHMSA Portal for Part 191 and 195 reporting purposes, operator staff responsible for submitting DAMIS reports can register in the Portal by following the instructions at: *http://opsweb.phmsa.dot.gov/portal_message/PHMSA_Portal_Registration.pdf .*

Pursuant to §§ 199.119(a) and 199.229(a), operators with 50 or more covered employees, including both operator and contractor staff, are required to submit DAMIS reports annually. Operators with less than 50 total covered employees are required to report only upon written request from PHMSA. If an operator has submitted a calendar year 2013 or later DAMIS report with less than 50 total covered employees, the PHMSA Portal message may state that no calendar year 2015 DAMIS report is required. Some of these operators may have grown to more than 50 covered employees during calendar year 2015. The Portal message will include instructions for how these operators can obtain a calendar year 2015 DAMIS user name and password.

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 18, 2015, under authority delegated in 49 CFR Part 1.97.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2015–32359 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2015–0210]**

### Pipeline Safety: Request for Special Permit

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of a special permit request we have received from a pipeline operator, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on this request, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the request and determine whether to grant or deny a special permit.

**DATES:** Submit any comments regarding this special permit request by January 25, 2016.

**ADDRESSES:** Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

**Note:** Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*General:* Kay McIver by telephone at 202–366–0113, or email at *kay.mciver@dot.gov.*

*Technical:* Max Kieba by telephone at 202–493–0595, or email at *max.kieba@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA has received a request for a special permit from a pipeline operator seeking relief from compliance with certain

pipeline safety regulations. The request includes a technical analysis provided by the operator. The request has been filed at *www.Regulations.gov* and assigned docket number PHMSA–2015–0210. We invite interested persons to participate by reviewing this special permit request and draft environmental assessment docketed at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on this special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit request:

| Docket No. | Requester | Regulation(s) | Nature of special permit |
|---|---|---|---|
| PHMSA–2015–0210 | Hess Corporation | 49 CFR 195.100; 112; 200; 202; 204; 206; 248; 260; 300; and 304. | To authorize Hess North Dakota Pipelines, LLC (“Hess”) to commission and operate two sections totaling approximately 14.5 miles of 6-inch crude oil intrastate gathering pipelines made of material other than steel in Mountrail County, North Dakota at a maximum operating pressure (MOP) of 1,050 pounds per square inch. The pipelines are manufactured by FlexSteel Pipeline Technologies of Houston, Texas. The two sections are affiliated with projects Hess refers to as EN Johnson Phase 2 and the EN VP&R. The Special Permit request seeks to waive compliance from certain Federal regulations found in 49 CFR 195. |

**Authority:** 49 U.S.C. 60118(c)(1) and 49 CFR 1.97.

Issued in Washington, DC on December 21, 2015, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2015–32487 Filed 12–23–15; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities; Proposed Information Collection; Comment Request; Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and Federal agencies to take this opportunity to comment on a new information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting PRA-related comment concerning a new information collection titled, ‘‘Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization’’ (draft guidance).

**DATES:** You should submit written comments by February 22, 2016.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–NEW, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649–5490, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

*Title:* Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization.

*OMB Control No.:* 1557–NEW.

*Type of Review:* Regular.

*Abstract:* Under the draft guidance, national banks and federal savings associations wishing to establish a program for originating owner-occupied residential mortgage loans that exceed supervisory loan-to-value (SLTV) limits in communities targeted for revitalization should have policies and procedures approved by their Board of Directors (Board) that address the loan portfolio management, underwriting, and other relevant considerations for such loans. The draft guidance would

advise that banks also should notify the appropriate OCC supervisory office in writing at least 30 days prior to originating residential loans pursuant to a Board-approved program or implementing any substantive change to a previously submitted program and provide a copy of the Board-approved policies and procedures to the OCC supervisory office.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 20.

*Estimated Burden per Respondent for the First Year:* Drafting Policies–200 hours; Documentation–10 hours per quarter (*i.e.,* 40 hours); Reporting–10 hours.

*Total Estimated Annual Burden:* 5,000 hours.

*Frequency of Response:* On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the information collection. 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

*Draft Guidance:* The text of the draft guidance [1] is as follows:

**Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization**

**Summary**

The Office of the Comptroller of the Currency (OCC) supports efforts by national banks and federal savings associations (collectively, banks) to assist in the revitalization, stabilization, or redevelopment (referred to in this bulletin individually and collectively as revitalization) of distressed communities through prudent residential mortgage lending. The OCC recognizes that banks and other parties have expressed concern that depressed housing values in certain distressed communities in the United States inhibit mortgage lending in these communities. One way in which banks can support revitalization efforts in distressed communities is by offering mortgage products for purchasing, or purchasing and rehabilitating, one- to four-unit residential properties where the loan amount may exceed supervisory loan-to-value (SLTV) limits. This bulletin provides guidance for managing risks associated with originating certain residential mortgage loans that exceed SLTV limits.

**Note for Community Banks**

This guidance applies to all OCC-supervised banks wishing to establish a program for originating owner-occupied residential mortgage loans that exceed SLTV limits in communities targeted for revitalization.

**Highlights**

This bulletin provides guidance regarding the

- Circumstances under which banks may establish programs to originate certain owner-occupied residential mortgage loans that exceed SLTV limits.
- OCC's supervisory considerations regarding such programs.

As described in this bulletin, the OCC will actively monitor and evaluate the programs established by banks, including the performance of owner-occupied residential mortgage loans that exceed the SLTV limits. At least annually, the OCC will assess whether the programs are contributing to the revitalization of targeted communities and whether the banks are adequately controlling the risks associated with such higher loan-to-value (LTV) lending.

**Background**

Some U.S. communities continue to confront lagging home values. Financing difficulties caused by depressed housing markets are particularly pronounced in communities that were significantly affected by the financial crisis and housing market decline.

As these communities work to stabilize home ownership and home values, the rehabilitation of abandoned or distressed housing stock is an important component of broader efforts to strengthen communities. Local governments, government-affiliated entities, community-based organizations, financial institutions, and others have developed creative solutions for some of these challenges. These solutions include strategies for acquiring and rehabilitating properties in communities targeted for revitalization. Community groups, financial institutions, non-profit organizations, and state and local entities, including land banks, are working together to develop and implement innovative residential mortgage financing to bring needed lending to economically distressed areas. The efforts include providing second-lien loans to finance rehabilitation costs, interest-rate discounts, and down payment and closing cost assistance. The Federal Housing Administration, Fannie Mae, and Freddie Mac all currently offer rehabilitation financing.[2]

In addition to participating in these and other third-party efforts, banks have expressed a desire to participate in revitalization efforts of distressed communities by offering their own loan products. The value of the collateral in a distressed community, however, can present challenges to banks' residential lending in part because of current SLTV limits. Distressed sales, including short sales and foreclosures, often negatively affect home values in these communities. Further, in communities with minimal sales activity, finding comparable property sales becomes challenging when appraisals or evaluations are required. Buyers of distressed properties can have particular difficulty securing adequate financing to cover the often substantial renovation costs required to make the properties habitable.

The OCC recognizes that supporting long-term community revitalization may necessitate responsible innovative lending strategies. One way in which banks can support revitalization efforts is through prudent lending within established exceptions to the SLTV limits for residential loans. Existing regulations and guidelines recognize that it may be appropriate, in individual cases, for banks to make loans in excess of the SLTV limits, based on support provided by other credit factors.[3] The regulations and guidelines also

[1] The OCC plans to issue this guidance in the form of a bulletin directed to national banks and federal savings associations.

[2] Programs include the Federal Housing Administration's Limited 203(k) Rehabilitation Mortgage Insurance Program, Fannie Mae HomeStyle Renovation, and Freddie Mac Construction Conversion and Renovation Mortgages.

[3] For national banks, refer to 12 CFR 34, ''Real Estate Lending and Appraisals,'' appendix A to subpart D, ''Interagency Guidelines for Real Estate Lending Policies.'' For federal savings associations, refer to 12 CFR 160.101, ''Real estate lending standards,'' appendix to 12 CFR 160.101, ''Interagency Guidelines for Real Estate Lending Policies.''

recognize that banks may make prudent underwriting exceptions for creditworthy borrowers whose needs do not fit within the banks' general lending policies, including SLTV limits, on a loan-by-loan basis under certain conditions.[4] These conditions include that the aggregate amount of all loans in excess of SLTV limits should not exceed 100 percent of total capital, that the boards of directors establish standards for reviewing and approving exception loans, and that written justification setting forth relevant credit factors accompany all approvals of exception loans.[5] Credit factors for these purposes may include the borrower's capacity to adequately service the debt, the borrower's overall creditworthiness, and the level of funds invested in the property.[6]

The OCC believes that banks can offer residential mortgage loans in communities targeted for revitalization in a manner consistent with safe and sound lending practices. As described later in section I of this bulletin, such loans may include eligible loans in eligible communities originated in accordance with a board-approved program (referred to as a program in this bulletin). Important elements of any program are the bank's policies and procedures for complying with the ability-to-repay standard of Regulation Z [7] and the bank's separate underwriting standards and approval processes for residential mortgage loans that exceed SLTV limits.

Lending under such a program may be in the best interest of the bank, individual borrowers, and the community. Additionally, the bank may receive Community Reinvestment Act consideration for SLTV exception loans depending on the specifics of the program. SLTV exception lending is not, however, without risk. The OCC will actively monitor and evaluate how a bank's program manages the risks, particularly to the bank and its borrowers, and the effect the program has on the community targeted by the bank's program. At least annually, the OCC also will evaluate the overall impact of programs offered by all banks in communities targeted for revitalization.

## I. Program Criteria

### *A. Eligible Loan*

An eligible loan should be a permanent mortgage for the purchase of, or purchase and rehabilitation of, an owner-occupied residential property located in an eligible community. An eligible loan also should have an original loan balance of $200,000 or less and be originated under a program developed pursuant to this bulletin.

The OCC recognizes that eligible loans will have an LTV ratio equal to or exceeding 90 percent without mortgage insurance or readily marketable, or other acceptable, collateral.

This bulletin does not apply to home equity loans, lines of credit, or refinancing loans.

### *B. Eligible Community*

An eligible community should be one that has been officially targeted for revitalization by a federal, state, or municipal governmental entity or agency, or by a government-designated entity such as a land bank.

### *C. Board-Approved Policies and Procedures*

Existing regulations and guidelines require that each bank adopt and maintain a general lending policy that establishes appropriate limits and standards for extensions of credit that are secured by liens or interests in real estate or that finance building construction or other improvements.[8] Additionally, banks should have specific policies and procedures that are approved by the board of directors, or appropriately designated board committee, and that address loan portfolio management, underwriting, and other relevant considerations for eligible loans. These board-approved policies and procedures should include provisions that address the:

- Defined geographies of an eligible community where the bank will consider making eligible loans under the program [9] and describe how the eligible loans are intended to support revitalization efforts in the eligible community (*e.g.,* how the origination of eligible loans is expected to contribute to the normalization of a distressed housing market).
- Amount, and the duration, of the bank's financial commitment to the program.
- Limitation on the aggregate level of committed eligible loans as a percentage of tier 1 capital (as defined in 12 CFR 3.2), which should not exceed 10 percent.
- Characteristics of eligible loans, including loan structure, credit terms, interest rate and fees, and maximum loan size, which should not exceed $200,000.
- Underwriting standards and approval processes for eligible loans, including appropriate documentation of relevant credit factors and document retention standards.
- Real estate appraisal and evaluation criteria applicable to eligible loans.[10]
- Credit administration requirements for eligible loans, including detailed guidelines regarding oversight of the rehabilitation process, such as controls over contracts, disbursements, inspections, and project management.
- Compliance with all applicable laws and regulations, including the ability-to-repay and other requirements of 12 CFR 1026, anti-discrimination laws, and section 5 of the Federal Trade Commission Act.
- Content, form, and timing of notice(s) the bank will provide in connection with eligible loans to clearly inform the borrower that:

—The market value of a rehabilitated property likely will be less than the original loan amount upon completion of the rehabilitation.

—The market value may continue to be less than the original loan amount thereafter and for the duration of the loan.

—There may be financial implications if the borrower seeks to sell the property after rehabilitation and the sale price of such rehabilitated property is less than the outstanding loan balance at the time of such sale, and explain the implications.

- Incentives that may be available to qualifying borrowers (*e.g.,* assistance or

[4] Id.

[5] Id.

[6] Id.

[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Truth in Lending Act to require creditors to make a reasonable, good faith determination of a consumer's ability to repay a mortgage loan, absent specified exceptions. Refer to 15 U.S.C. 1639c. The Consumer Financial Protection Bureau issued a final rule amending Regulation Z to implement these ability to repay requirements, which became effective January 1, 2014. Refer to 78 FR 6621, January 30, 2013.

[8] For national banks, refer to 12 CFR 34, ''Real Estate Lending and Appraisals,'' appendix A to subpart D, ''Interagency Guidelines for Real Estate Lending Policies.'' For federal savings associations, refer to 12 CFR 160.101, ''Real estate lending standards,'' appendix to 12 CFR 160.101, ''Interagency Guidelines for Real Estate Lending Policies.''

[9] Banks should retain documentation indicating: (1) The eligible community is one targeted for revitalization by a government entity or agency; (2) the specific revitalization criteria used by the government entity or agency; and (3) the type of financing and other support, if any, that the governmental entity provides to the community.

[10] For all mortgage loan transactions based on an appraisal, banks should select and engage appraisers with local market competency in valuing the property securing an eligible loan. Similarly, any evaluation, if applicable, should be credible and consistent with safe and sound banking practices. Given the unique underwriting considerations, banks should not use automated valuation models in connection with these programs.

grants for down payments, fees, and closing costs; at or below market interest rates; or rewards for long-term occupancy).

• Monitoring and internal reporting requirements sufficient to: (1) Assess the performance, impact, trends, and success of the program; and (2) inform the board on at least a quarterly basis of the aggregate dollar amount, and percentage of tier 1 capital, of committed eligible loans in relation to the board-approved limitation.

*D. Notice to the OCC*

The bank should notify the appropriate OCC supervisory office in writing at least 30 days before the bank's first origination of an eligible loan pursuant to the program or the bank's making of any substantive change to a previously submitted program. Substantive changes may include the addition of a new eligible community, an increase in the financial commitment or duration of a program, or material changes to eligible loan characteristics or underwriting standards. Such notice should include:

• The date the bank's board (or appropriately designated board committee) approved the program's policies and procedures.

• A copy of the board-approved policies and procedures.

**II. OCC Supervisory Considerations**

*A. Supervision of Individual Banks*

After receiving the bank's notice to the OCC, examiners will evaluate the bank's program to assess whether it complies with the requirements of applicable laws and regulations and is consistent with safe and sound lending practices, this bulletin, and other relevant guidance. Examiners' assessment will include review of the:

• Financial commitment (as a dollar amount and a percentage of Tier 1 capital) and defined geographies for originating eligible loans.

• Characteristics of eligible loans and incentives, if available, to qualifying borrowers.

• Standards for the underwriting, collateral review, credit administration, and approval of eligible loans.

• Borrower notice(s).

• Monitoring and reporting procedures for eligible loans.

• Process for ensuring compliance with all applicable laws and regulations.

In connection with the evaluation of the bank's program, examiners may request clarification or changes to the bank's policies and procedures before the bank's first origination of an eligible loan pursuant to the program or the bank's making of any substantive change to a previously submitted program. Such requests may include clarification or changes to ensure the program is consistent with safe and sound lending practices.

During the course of subsequent supervisory activities, examiners also will monitor and evaluate the program. Examiners evaluations will include consideration of the:

• Bank's governance of the program and whether the program adequately manages the various risks.

• Performance of loans that exceed the SLTV limits and whether delinquent eligible loans are managed and accurately classified consistent with the OCC's existing guidance on delinquent loans and in compliance with applicable laws pertaining to loans in delinquency.[11]

• Bank's internal reporting of program performance, impact, trends, and overall success.

• Process to establish and document community development consideration, if applicable, under the Community Reinvestment Act.

For banks found to have shortfalls or unsatisfactory governance or controls, examiners will communicate these findings to the bank and require remediation to continue the lending activity. In addition, examiners may review individual eligible loans to assess asset quality, credit risk, and consumer compliance.

*B. Overall Evaluation of Programs*

At least annually, the OCC will evaluate the overall impact of banks' programs in communities targeted for revitalization. The OCC's evaluations will consider, among other matters, whether the programs adequately control the various risks, the performance of loans that exceed the SLTV limits, and the effect such lending has had on the housing market and other economic indicators in communities targeted for revitalization.

Based on these evaluations, the OCC may amend or rescind this bulletin. Any decision by the OCC to materially amend or rescind this bulletin will apply only to the origination of new loans that exceed the SLTV limits. Any loans originated that are consistent with this bulletin, or any subsequent revisions thereof, when made will not be deemed to be unsafe and unsound solely because of any material amendment or rescission of this bulletin.

[11] Applicable laws may include (1) Regulation X, 12 CFR 1024, which provides mortgage servicing standards, including early intervention requirements and loss mitigation procedures and (2) Regulation Z, 12 CFR 1026, which establishes requirements for including delinquency-related information on the periodic statements required for residential mortgage loans.

Dated: December 18, 2015.

**Stuart E. Feldstein,**

*Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2015–32376 Filed 12–23–15; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: National Fire & Marine Insurance Company Berkshire Hathaway Homestate Insurance Company

**AGENCY:** Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 5 to the Treasury Department Circular 570, 2015 Revision, published July 1, 2015, at 80 FR 37735.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Section at (202) 874–6850.

**SUPPLEMENTARY INFORMATION:** A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following companies:

National Fire & Marine Insurance Company (NAIC# 20079), BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131–3580. PHONE: (402)393–7255. UNDERWRITING LIMITATION b/: $560,473,000. SURETY LICENSES c/: NE. INCORPORATED IN: Nebraska

Berkshire Hathaway Homestate Insurance Company (NAIC# 20044), BUSINESS ADDRESS: 1314 Douglas Street, Omaha, NE 68102. PHONE: (402)393–7255. UNDERWRITING LIMITATION b/: $115,951,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2015 Revision, to reflect these additions.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified

(*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Financial Accounting and Services Branch, Surety Bond Section, 3700 East-West Highway, Room 6D22, Hyattsville, MD 20782.

Dated: December 14, 2015.

**Kevin McIntyre,**

*Manager, Financial Accounting and Services Branch.*

[FR Doc. 2015–32474 Filed 12–23–15; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Sanctions Actions Pursuant to Executive Orders 13667 and 13712

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13667 and four individuals whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13712, and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

**DATES:** OFAC's actions described in this notice were effective December 18, 2015.

**FOR FURTHER INFORMATION CONTACT:** Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

#### Notice of OFAC Actions

On December 18, 2015, OFAC blocked the property and interests in property of the following two individuals pursuant to E.O. 13667, ''Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic'':

1. GAYE, Haroun (a.k.a. GAYE, Aroun; a.k.a. GEYE, Aroun; a.k.a. GUAYE, Haroun; a.k.a. GUEYE, Haroun), Bangui, Central African Republic; DOB 30 Jan 1968; alt. DOB 30 Jan 1969; Passport O00065872 (Central African Republic) expires 30 Dec 2019 (individual) [CAR].
2. NGAIKOSSET, Eugene Barret (a.k.a. NGAIKOISSET, Eugene; a.k.a. NGAIKOSSE, Eugene Barret; a.k.a. NGAIKOUESSET, Eugene; a.k.a. NGAKOSSET, Eugene; a.k.a. ''The Butcher of Paoua''), Bangui, Central African Republic; DOB 08 Oct 1967; alt. DOB 10 Aug 1967; POB Bossangoa, Central African Republic; nationality Central African Republic; Identification Number 911–10–77 (Central African Republic) (individual) [CAR].

Also on December 18, 2015, OFAC blocked the property and interests in property of the following four individuals pursuant to E.O. 13712, ''Blocking Property of Certain Persons Contributing to the Situation in Burundi'':

1. NDIRAKOBUCA, Gervais (a.k.a. NDIRAKOBUCHA, Gervais; a.k.a. ''Ndakugarika''), Burundi; DOB 01 Aug 1970; nationality Burundi; Passport DP0000761; General; Chief of Staff, Ministry of Public Security; Chief of Cabinet for Police Affairs; Burundian National Police Chief of Cabinet (individual) [BURUNDI].
2. NGENDAKUMANA, Leonard; DOB 24 Nov 1968; nationality Burundi; Passport DP0000885; General; Burundian National Intelligence Service (SNR) Cabinet Chief (former) (individual) [BURUNDI].
3. NIYONZIMA, Joseph (a.k.a. NIJONZIMA, Joseph; a.k.a. NIYONZIMA, Mathias Joseph; a.k.a. NIYONZIMA, Salvator; a.k.a. ''Kazungu''), Kinanira III, Kinindo, Bujumbura 257, Burundi; DOB 17 May 1960; alt. DOB 17 Jun 1960; alt. DOB 02 Jan 1967; alt. DOB 06 Mar 1956; POB Bukeye, Burundi; alt. POB Kanyosha Commune, Mubimbi, Bujumbura-Rural Province, Burundi; nationality Burundi; Passport OP0053090 (Burundi); alt. Passport OP0000185 (Burundi) issued 28 Jul 2011 expires 28 Jul 2016 (individual) [BURUNDI].
4. SINDUHIJE, (a.k.a. SINHUHIJE, Alexis); DOB 05 May 1967; alt. DOB 05 May 1966; POB Kamenge, Bujumbura, Burundi; nationality Burundi; Gender Male (individual) [BURUNDI].

Dated: December 18, 2015.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015–32379 Filed 12–23–15; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8844

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

**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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8844, Empowerment Zone Employment Credit.

**DATES:** Written comments should be received on or before February 22, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael A. Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

**SUPPLEMENTARY INFORMATION:** *Title:* Empowerment Zone Employment Credit.

*OMB Number:* 1545–1444.

*Form Number:* 8844.

*Abstract:* Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

*Estimated Number of Respondents:* 40,000.

*Estimated Time per Respondent:* 8 hrs., 5 min.

*Estimated Total Annual Burden Hours:* 237,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*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.

Approved: December 16, 2015.

**Michael A. Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015–32357 Filed 12–23–15; 8:45 am]

**BILLING CODE 4830–01–P**


# FEDERAL REGISTER

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Part II

## Department of Health and Human Services

45 CFR Part 98
Child Care and Development Fund (CCDF) Program; Proposed Rule

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 98

**[Docket Number ACF–2015–0011]**

**RIN 0970–AC67**

## Child Care and Development Fund (CCDF) Program

**AGENCY:** Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Department of Health and Human Services, Administration for Children and Families, proposes to amend the Child Care and Development Fund (CCDF) regulations. This proposed rule makes changes to CCDF regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high quality child care for low-income children; and enhance the overall quality of child care and the early childhood workforce.

**DATES:** In order to be considered, written comments on this proposed rule must be received on or before February 22, 2016.

**ADDRESSES:** You may submit comments, identified by docket number ACF–2015–0011and/or RIN number 0970–AC67, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit comments to the Office of Child Care, Administration for Children and Families, 330 C Street SW., Washington, DC 20201, Attention: Office of Child Care Policy Division.

*Instructions:* All submissions received must include the agency name and docket number or RIN number for this rulemaking. To ensure we can effectively respond to your comment(s), clearly identify the issue(s) on which you are commenting. Provide the page number, identify the column, and cite the relevant paragraph/section from the **Federal Register** document, (*e.g.,* On page 10999, second column, § 98.20(a)(1)(i).). All comments received are a part of the public record and will be posted for public viewing on *www.regulations.gov*, without change. That means all personal identifying information (such as name or address) will be publicly accessible. Please do not submit confidential information, or otherwise sensitive or protected information. We accept anonymous comments. If you wish to remain anonymous, enter ''N/A'' in the required fields.

**FOR FURTHER INFORMATION CONTACT:** Andrew Williams, Office of Child Care, 202–205–0750 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

### Contents



### I. Executive Summary

*Overview.* On November 19, 2014, President Barack Obama signed the Child Care and Development Block Grant (CCDBG) Act of 2014 (Pub. L. 113–186) into law following its passage in the 113th Congress. The CCDBG Act (to be codified, as amended, at 42 U.S.C. 9858 *et seq.,* and hereinafter referred to as the ''Act'') (along with Section 418 of the Social Security Act (42 U.S.C. 618)) authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children.

The bipartisan CCDBG Act of 2014 made sweeping statutory changes that will require significant reforms to State and Territory CCDF programs to raise the health, safety, and quality of child care and provide more stable child care assistance to families. It expanded the purposes of the CCDF for the first time since 1996, ushering in a new era for child care in this country. Since 1996, a significant body of research has demonstrated the importance of early childhood development and how stable, high quality early experiences can positively influence that development and contribute to children's futures. In particular, low-income children stand to benefit the most from a high quality early childhood experience. Research has also shown the important role of child care financial assistance in helping parents afford reliable child care in order to get and keep stable employment or pursue education. The reauthorized law recognizes CCDF as an integral program to promote both the healthy development of children and parents' pathways to economic stability.

In Fiscal Year 2014, CCDF provided child care assistance to 1.4 million children from nearly 1 million low-income working families in an average month. The Congressional reauthorization of CCDBG made clear that the prior law was inadequate to protect the health and safety of children in care and that more needs to be done to increase the quality of CCDF-funded child care. It also recognized the central importance of access to subsidy continuity in supporting parents' ability to achieve financial stability and children's ability to develop nurturing relationships with their caregivers, which creates the foundation for a high quality early learning experience.

*Purpose of this Regulatory Action.* The majority of current CCDF regulations at 45 CFR parts 98 and 99 were last revised in 1998 (with the exception of some more recent updates related to State match and error reporting). This proposed regulatory action is needed to update the regulations to accord with the reauthorized law and to update CCDF regulations to reflect what has been learned since 1998 about child care quality and child development, and changes in the law. The purposes of the law, as revised by Congress, have guided regulation development.

*Legal authority.* This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended, (42 U.S.C. 9858 *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

*Major Provisions of the Proposed Rule.* The proposed rule addresses the CCDBG Act of 2014, which includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce.

Protect Health and Safety of Children in Child Care. This proposed rule would provide detail on the health and safety standards established in the new law, including health and safety training, comprehensive background checks, and monitoring. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Regular monitoring of child care settings is necessary to ensure compliance with appropriate standards that protect the health and safety of children. The proposed rule would allow Lead Agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and would exempt relative caregivers from the monitoring requirement at the option of Lead Agencies.

In this proposed rule, we address the Act's (*i.e.,* the Child Care and Development Block Grant Act's) background check requirement by proposing to require all child care staff members (including prospective staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services to have a comprehensive background check, unless they are related to all children in their care. We propose to extend the background check requirement to all adults residing in family child care homes. Based on our interpretation of the statutory provisions, we believe that all parents, regardless of whether they receive CCDF assistance, deserve this basic protection of knowing that those individuals who have access to their children do not have prior records of behavior that could endanger their children.

The Act requires Lead Agencies to establish standards in ten topic areas related to health and safety that are fundamental for any child care setting, such as first aid, CPR, and safe sleep practices. We propose to add recognizing and reporting child abuse and neglect to this list. The Act also requires Lead Agencies to maintain records of substantiated parental complaints about child care. In this NPRM, we propose requiring Lead Agencies to designate a hotline or similar reporting process for parental complaints. Child care providers would also be required to report serious injuries or deaths that occur in child care settings in order to inform regulatory or other policy changes to improve health and safety.

Help Parents Make Informed Consumer Choices and Access Information to Support Child Development. The Act expanded requirements for the content of consumer education to be made available to parents receiving CCDF assistance, the public, and where applicable, child care providers. By adding providers, Congress recognized the positive role trusted caregivers can play in communicating and partnering with parents on a daily basis regarding their children's development and available resources in the community. Effective consumer education strategies are important to inform parental choice of child care and also to engage parents in the development of their children in child care settings—a new purpose of the CCDF. States and Territories have the opportunity to consider how information can be best provided to low-income parents through their interactions with CCDF, partner agencies, and child care providers, as well as through electronic means such as a Web site. Parents face great challenges in finding reliable information and making informed consumer choices about child care for their children. The new law strengthens and builds on a foundational tenet of CCDF—the primacy of parental choice—by requiring that Lead Agencies provide parents information about their child care options and the quality of child care providers as available.

The Act requires Lead Agencies to make available via a consumer-friendly and easily-accessible Web site, information on policies and procedures regarding: (1) Licensing child care providers; (2) conducting background checks and the offenses that would keep a provider from being allowed to care for children; and (3) monitoring of child care providers. We are proposing this be done through a single Web site that is easy for families to navigate and provides widest possible access to individuals who speak languages other than English and persons with disabilities. We propose that Lead Agencies provide information about the quality of providers on the consumer Web site, if available, and give parents receiving CCDF information about the quality of their chosen providers.

The law requires Lead Agencies to make results of monitoring available in a consumer-friendly and easily accessible manner. We are proposing that this include posting at least five years of full monitoring reports, beginning with the effective date and going forward, in a timely manner for parents and providers. In the case that full reports are not in plain language, Lead Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report. Parents should not have to parse through administrative code or understand advanced legal terms to determine whether safety violations have occurred in a child care setting.

Congress added a number of content areas that will support parents in their role as their child's first and most important teacher. In keeping with a new purpose of the CCDF program to ''promote involvement by parents and family members in the development of their children in child care settings,'' the law requires information related to best practices in child development and State policies regarding child social and emotional development, including any State policies relevant to expulsion of children under age 5 from child care settings, be made available. The reauthorized law also requires that Lead Agencies provide information that can help parents identify other financial benefits and services that may support their pathway to economic stability. Families eligible for child care assistance are often eligible for other supports, and the law specifies that information on several public benefit programs, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and the Children's Health Insurance Program (CHIP), be provided to them. In addition, the law requires information be provided on the programs and services that are part of Individuals with Disabilities Education Act (IDEA), such as early intervention and special education services and that parents are given information on how to obtain a developmental screening for their child. Low-income parents deserve to have easy access to the full range of

information, programs, and services that can support them in their parenting efforts. To ensure equal access for persons with limited English proficiency and for persons with disabilities, Lead Agencies would be required to provide child care program information in multiple languages and alternative formats.

Provide Equal Access to High Quality Child Care for Low-Income Children. Congress established requirements that will provide more stable child care financial assistance to families, including extending children's eligibility for child care for a minimum of 12 months, regardless of increases in parents' earnings (as long as income remains at or below the Federal eligibility limit) and temporary changes in participation in work, training, or education. This will make it easier for parents to maintain employment or complete education programs and supports both family financial stability and the relationship between children and their caregivers. Under the law, Lead Agencies that choose to end assistance prior to 12 months, due to a non-temporary change in a parent's work, training, or education participation, must continue assistance for a minimum of three months to allow for job search activities.

This proposed rule would require a set of policies intended to stabilize families' access to child care assistance and, in turn, help stabilize their employment or education and their child's care arrangement. These policies also have the potential to stabilize the revenue of child care providers who receive CCDF funds, as they would experience more predictable, reliable, and timely payments for services. We propose to reduce reporting requirements for families that can result in them unduly losing their assistance. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility, and State policies can be inflexible to changes in a family's circumstances. These provisions also make it easier for Lead Agencies to align CCDF policies with other programs, such as SNAP, Medicaid, CHIP, Early Head Start, and Head Start. More than half of children receiving CCDF-funded child care have incomes under poverty and qualify for Head Start and significant proportions of CCDF families are also eligible for SNAP. In this proposed rule, while families may be determined to be ineligible within the minimum 12 month eligibility period if their income exceeds 85% SMI (taking into account irregular fluctuations in income) or, at Lead Agency option, the family experiences a non-temporary cessation in job, training, or education, we clarify that additional State-imposed eligibility criteria apply only at the time of initial eligibility determination and redetermination and provide examples of changes in parents' scheduling and conditions of employment that meet the statutory intent of stabilizing assistance for families through changes in circumstance. We propose that Lead Agencies that set their income eligibility threshold below 85 percent of State median income (SMI) must allow parents who otherwise qualify for CCDF assistance to continue receiving assistance, at subsequent redeterminations, until their income exceeds the Federal income limit (85 percent of SMI for a family of the same size) or for a period of at least one year after the point at which the family's income exceeds the State eligibility threshold. This approach promotes continuity of care for children while allowing for wage growth for families to move on a path toward economic stability. All too often, getting and keeping CCDF assistance is overly burdensome for parents, resulting in short durations of assistance and churning on and off CCDF as parents lose assistance and then later return. This instability disrupts parental employment and education, harms children, and runs counter to nearly all of CCDF's purposes. We believe this full set of provisions that facilitates easier and sustained access to assistance is necessary to strengthen CCDF as a two-generation program that supports work, training, and education, as well as access to high quality child care.

Congress reaffirmed the core belief that families receiving CCDF-funded child care should have equal access to child care that is comparable to that of non-CCDF families. The Act requires Lead Agencies to set provider payment rates based on a valid market rate survey or alternative methodology. To allow for equal access, we propose that Lead Agencies set base payment rates *at least* at a level sufficient to cover the costs to providers of the health, safety, and quality requirements included in the NPRM and provide equal access to child care available to families with incomes above 85 percent of SMI. This could be assured by setting payment rates at the 75th percentile of a recent market rate survey, which we believe remains an important benchmark for gauging equal access. Lead Agencies that set rates below the 75th percentile would be required to demonstrate that their payment rates allow CCDF families to purchase care that is of comparable quality to care that is available to families with incomes above 85 percent of SMI. Low payment rates limit access to high quality care for children receiving CCDF-funded care and violate the equal access provision that is central to CCDF. We believe higher provider payment rates are necessary to ensure that providers receiving CCDF funds have the means to provide high quality care for our country's low-income children. We also propose that Lead Agencies be required to use some direct contracts or grants, in addition to vouchers or certificates, in order to build the supply of high quality care.

In this NPRM, we provide detail on the statutory requirements for Lead Agencies to pay providers in a timely manner based on generally accepted payment practices for non-CCDF providers and that Lead Agencies delink provider payments from children's absences to the extent practicable. We establish a new Federal benchmark for affordable parent fees of 7 percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. We propose that Lead Agencies be permitted to increase parent fees only at redetermination or during a period of graduated phaseout when families' incomes have increased above the Lead Agency's initial income eligibility threshold, but seek comment around several elements of these policies.

This proposed rule would require Lead Agencies to take into consideration children's development and learning and promote continuity of care when authorizing child care services; offer increased flexibility for determining eligibility of vulnerable children; and clarify that Lead Agencies are not required to restrict a child's care to the hours of a parent's work or education. We believe these changes are important to make the program more child-focused and ensure that the most vulnerable children have access to and benefit from high quality care. These provisions may be implemented broadly in ways that best support the goals of Lead Agencies.

*Enhance the Quality of Child Care and the Early Childhood Workforce.* In this NPRM, we provide detail on the statutory requirement to increase spending on initiatives that improve the quality of care. The law increases the share of CCDF funds directed towards quality improvement activities, authorizes a new set-aside for infant-toddler care, and drives investments towards increasing the supply of high quality care for infant, toddlers, children with special needs, children experiencing homelessness, and other vulnerable populations including

children in need of nontraditional hour care and children in poor communities. The law requires States and Territories to submit an annual report on quality expenditures, including measures created by the Lead Agency to evaluate progress on quality improvement. This proposed rule would require Lead Agencies to report data on their progress on those measures. The law also increases quality through more robust program standards, including training and professional development standards for caregivers, teachers, and directors to help those working with children promote their social, emotional, physical, and cognitive development.

In this rule, we address the law's training requirements by proposing that child care caregivers, teachers, and directors of CCDF providers receive training prior to caring for children, or during an orientation period not to exceed three months, and on an annual basis. In order for the health and safety requirements to be implemented, and because these are areas that the Lead Agency will monitor, we propose that training include 10 basic health and safety topics identified in the Act, as well as recognizing and reporting child abuse and neglect in order to comply with child abuse reporting requirements.

Under the proposed regulation, Lead Agencies must provide for a progression of professional development for caregivers, teachers, and directors that may include postsecondary education. Through this NPRM, we propose definitions for six key components of a professional development framework and propose, to the extent practicable, that ongoing training yields continuing education units or is credit-bearing. These components advance expert recommendations to improve the knowledge and competencies of those who care for young children, which is central to children's learning experiences and the quality of child care.

In addition, the Act includes a number of provisions to improve access to high quality child care for children experiencing homelessness. The law requires Lead Agencies to establish a grace period that allows children experiencing homelessness (and children in foster care) to receive CCDF services while allowing their families (including foster families) a reasonable time to comply with immunization and other health and safety requirements. Through this NPRM, we propose to require Lead Agencies to help families comply with such requirements and coordinate with licensing agencies and other relevant State and local agencies to provide referrals and support to help families experiencing homelessness comply with immunization and health and safety requirements. The proposed rule would also require Lead Agencies to use the definition of homeless applicable to school programs from the McKinney-Vento Act to align with other Federal early childhood programs (42 U.S.C. 11434a).

The Act does not indicate the extent to which CCDF provisions apply to Tribes. Starting in early 2015, OCC began a series of formal consultations with Tribal leaders to determine how the provisions in the newly reauthorized child care law should apply to Tribes and Tribal organizations. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the individual needs of their communities. The proposals included in this NPRM are intended to increase Tribal Lead Agency flexibility, in a manner consistent with the CCDF dual goals of promoting families' financial stability and fostering healthy child development. We are proposing to differentiate and exempt some Tribal grantees from a progressive series of CCDF provisions based on three categories of CCDF grant allocations: Large, medium and small. We are also allowing Tribes flexibility to consider any Indian child in the Tribe's service area to be eligible to receive CCDF funds, regardless of the family's income or work, education, or training status, if a Tribe's median income is below a threshold established by the Secretary.

*Costs, benefits and transfer impacts.* Changes made by the CCDBG Act of 2014 and this proposed rule would have the most direct benefit for the 1.4 million children and their parents who use CCDF assistance to pay for child care. Many of the Act's changes will also positively impact children who do not directly participate in CCDF. Many children who receive no direct assistance from CCDF will benefit from more rigorous health and safety standards, provider inspections, criminal background checks for child care staff, and accessible consumer information and education for their parents and caregivers. The attention to quality goes beyond health and safety. Caregivers, teachers, and directors of CCDF providers will be supported in their ongoing professional development. Under the Act, States and Territories must direct an increasingly greater share of their CCDF grant towards activities that improve the quality of child care, including a new share dedicated to improving the quality of infant and toddler care. Low-income parents who receive CCDF assistance will benefit from more stable financial assistance as they work toward economic stability and their children will benefit from more continuous relationships with their caregivers. Providers will benefit from improved provider payment rates (by certificate or grant or contract), as well as payment practices that support their financial stability. These include timely payments so that providers can sustain their operations and quality and paying providers for a reasonable number of absent days. The positive impacts of this law and the proposed rule will impact children, families, and providers now and into the future.

The cost of implementing changes made by the Act and this proposed rule would vary depending on a State's specific situation. There are a significant number of States and Territories that have already implemented many of these policies. ACF conducted a regulatory impact analysis to estimate costs and benefits of provisions in the final rule taking into account current State practices. We evaluated major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including Web site and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building.

Based on our analysis, annualized costs associated with these provisions, averaged over a ten year window, are $256 million and the annualized amount of transfers is approximately $840 million (both estimated using a 3 percent discount rate), which amounts to a total annualized impact of $1.10 billion. Of that amount, $1.09 billion is directly attributable to the statute, with only an annualized cost of $1.6 million (or less than 1% of the total estimated impact) attributable to discretionary provisions of this proposed regulation. While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this NPRM, we do conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation can be found in the regulatory impact analysis.

## II. Background

### *A. Child Care and Development Fund*

Nearly 13 million young children, under age 5, regularly rely on child care to support their healthy development

and school success. (Census Bureau, *Who's Minding the Kids? Child Care Arrangements,* Spring 2011). Additionally, more than 10 million children participate in a range of school-age programs, before- and after-school and during summers and school breaks. (Afterschool Alliance, American After 3PM: Afterschool Programs in Demand, 2014) CCDF is the primary Federal funding source devoted to providing low-income families with access to child care and before- and after-school care and improving the quality of care and, thus, an integral part of the nation's child care and early education system. Each year, more than $5 billion in Federal CCDF funding is allocated to State, Territory and Tribal grantees. Combined with State funds and transfers from the Temporary Assistance for Needy Families (TANF) program, States and Territories spend nearly $9 billion annually to support child care services to low-income families and to improve the quality of child care. More than $1 billion of this spending is directed towards supporting child care quality improvement activities designed to create better learning environments and more effective caregivers in child care centers and family child care homes across the country.

CCDF was created nearly 20 years ago, upon the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 (Pub. L. 104–193), in which Congress replaced the former Aid to Families with Dependent Children with the framework of TANF block grants, and established a new structure of consolidated funding for child care. This funding, provided under section 418 of the Social Security Act (42 U.S.C. 618), combined with funding from the Child Care and Development Block Grant (CCDBG) Act of 1990 (42 U.S.C 9858 *et seq.*), was designated by HHS as the Child Care and Development Fund (CCDF).

The CCDBG Act of 2014 (Pub. L. 13–186) was the first reauthorization of CCDBG since 1996. The reauthorized CCDBG affirms the importance of CCDF as a two-generation program that supports parents' financial success and children's healthy development. Since PRWORA, the focus of CCDF has shifted from one largely dedicated to the goal of enabling low-income parents to work to one that includes a focus on promoting positive child development as we have learned a great deal about the value of high quality child care for young children. While low-income parents continue to need access to child care in order to work and gain economic independence, policymakers and the public now recognize that the quality of child care arrangements is also critically important.

Fifteen years ago, HHS (in collaboration with other federal agencies and private partners) funded the National Academies of Sciences to evaluate and integrate the research on early childhood development and the role of early experiences. (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development,* Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000.) An overarching conclusion was that early experiences matter for healthy child development. Nurturing and stimulating care given in the early years of life build optimal brain architecture that allows children to maximize their enormous potential for learning. On the other hand, hardship in the early years of life can lead to later problems. Interventions in the first years of life are capable of helping to shift the odds for those at risk of poor outcomes toward more positive outcomes. A multi-site study conducted by the Frank Porter Graham Child Development Institute found that, ''. . . children who experienced higher quality care are more likely to have more advanced language, academic, and social skills,'' and, ''. . . children who have traditionally been at risk of not doing well in school are affected more by the quality of child care experiences than other children.'' (E. Peisner-Feinberg, M. Burchinal, *et al., The Children of the Cost, Quality, and Outcomes Study Go to School: Executive Summary,* University of North Carolina at Chapel Hill, Frank Porter Graham Child Development Center, 1999.)

Evidence continues to mount regarding the influence children's earliest experiences have on their later success and the role child care can play in shaping those experiences. The most recent findings from the National Institute of Child Health and Human Development (NICHD) showed that the quality of child care children received in their preschool years had small but detectable associations with their academic success and behavior into adolescence. (NICHD, *Study of Early Child Care and Youth Development,* 2010) Recent follow-up studies to the well-known Abecedarian Project, which began in 1972 and has followed participants from early childhood through young adulthood, found that adults who participated in a high quality early childhood education program are still benefiting from their early experiences. Abecedarian Project participants had significantly more years of education than their control group peers, were four times more likely to earn college degrees, and had lower risk of cardiovascular and metabolic diseases in their mid-30s. (Campbell, Pungello, Burchinal, et al., *Adult Outcomes as a Function of an Early Childhood Educational Program: An Abecedarian Project Follow-Up,* Frank Porter Graham Child Development Institute, Developmental Psychology, 2012 and Campbell, Conti, Heckman et al, *Early Childhood Investments Substantially Boost Adult Health,* Science 28 March 2014, Vol. 343.)

Research also confirms that consistent time spent in afterschool activities during the elementary school years is linked to narrowing the gap in math achievement, greater gains in academic and behavioral outcomes, and reduced school absences. (Auger, Pierce, and Vandell, *Participation in Out-of-School Settings and Student Academic and Behavioral Outcomes,* presented at the Society for Research in Child Development Biennial Meeting, 2013.) An analysis of over 70 after-school program evaluations found that evidence-based programs designed to promote personal and social skills were successful in improving children's behavior and school performance. (Durlak, Weissberg, and Pachan, *The Impact of Afterschool Programs that Seek to Promote Personal and Social Skills in Children and Adolescents,* American Journal of Community Psychology, 2010.) After-school programs also promote youth safety and family stability by providing supervised settings during hours when children are not in school. Parents with school-aged children in unsupervised arrangements face greater stress that can impact the family's well-being and successful participation in the workforce. (Barnett and Gareis, *Parental After-School Stress and Psychological Well-Being,* Journal of Marriage and the Family, 2006.)

CCDF often operates in conjunction with other programs including Head Start, Early Head Start, state pre-kindergarten, and before-and after-school programs. States and Territories have flexibility to use CCDF to provide children enrolled in these programs full-day, full-year care, which is essential to supporting low-income working parents. CCDF also funds quality improvements for settings beyond those that serve children receiving subsidies. CCDF has helped lay the groundwork for development of State early learning systems. Lead Agencies have used CCDF funds to make investments in professional development systems to

ensure a well-qualified and effective early care and education workforce. Lead Agencies have provided scholarships for child care teachers and worked closely with higher education, especially community colleges, to increase the number of teachers with training or a degree in early childhood or youth development. Lead Agencies have used CCDF funds to build quality rating and improvement systems (QRIS) to provide consumer education information to parents, help providers raise quality, and create a more systemic approach to child care quality improvement efforts and accountability. These investments have likely also generated benefits for children enrolled in unsubsidized child care programs.

Child care is a core early learning and care program and plays an important role within a broad spectrum of early childhood programs supporting young children. The Administration has consistently sought to support State and Territory efforts to improve the coordination and alignment of early childhood programs through multiple efforts, including the Race to the Top-Early Learning Challenge and the Early Head Start-Child Care Partnerships. Most recently, ACF published *Caring for our Children Basics,* a set of recommendations intended to create a common framework to align basic health and safety efforts across all early childhood settings. This proposed rule builds on the alignment and coordination work that has been advanced by the Administration. For example, Lead Agencies would be required to collaborate with multiple entities, including State Advisory Councils on Early Childhood Education and Care, authorized by the Head Start Act, or similar coordinating bodies. In addition, minimum 12-month eligibility periods will make it easier to align child care assistance with eligibility periods for other programs, such as Early Head Start, Head Start, and state prekindergarten. Policies that stabilize access to child care assistance for families and bring financial stability to child care providers will play an important role in supporting the success of Early Head Start-Child Care Partnerships.

According to a recent report by the President's Council of Economic Advisors, investments in early childhood development will reap economic benefits now and in the future. Immediate benefits include increased parental earnings and employment; future benefits come when children who experience high quality early learning opportunities are prepared for success in school and go on to earn higher wages as adults. (Council of Economic Advisors, Executive Office of the President of the United States, *The Economics of Early Childhood Investments,* 2014.) Decades of research show that experiences babies and toddlers have in their earliest years shape the architecture of the brain and have long-term impacts on human development. At the same time, increasing the employability and stability of parents reduces the impact of poverty on children and sustains our nation's workforce and economy. Studies have shown that access to reliable child care contributes to increased employment and earnings for parents. (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development,* Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000 and Council of Economic Advisors, *The Economics of Early Childhood Investments.*) In short, high quality child care is a linchpin to creation of an educational system that successfully supports the country's workforce development, economic security, and global competitiveness. Successful implementation of the CCDBG Act of 2014 will ensure that child care is not only safe, but also supports children's healthy development and their future academic achievement and success.

*Development of Regulation.* After enactment of the law, the Office of Child Care (OCC) and the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to better understand the implications of its provisions. OCC created a CCDF reauthorization page on its Web site to provide public information and an email address to receive questions. OCC received approximately 650 questions and comments through this email address, webinars, inquiries to regional offices, and meetings with State, Territory and Tribal Administrators. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, state, and local stakeholders regarding the law, held webinars, and gave presentations at national conferences. Participants included state human services agencies, child care caregivers and providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school-age caregivers and providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and Head Start grantees. In addition, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the law and to gather input from Federal grantees with responsibility for operating the CCDF program. This process informed and was invaluable to ACF's development of this proposed rule.

ACF had previously issued an NPRM for CCDF in May 2013, prior to passage of the CCDBG Act of 2014 (78 FR 29442, May 20, 2013). While that NPRM has since been withdrawn (80 FR 25260, May 4, 2015), public comments received by ACF in 2013 have informed the development of content for this proposed rule. Where relevant, we refer to comments received in response to the 2013 CCDF NPRM in the preamble for this proposed rule.

*Use of terms.* Terminology used to refer to child care settings and the individuals who provide care for children vary throughout the early childhood and afterschool fields. In this proposed rule, the terms *caregiver, director,* and *teacher* refer to individuals. The term *provider* refers to the entity providing child care services. This may be a child care program, such as a child care center, or an individual in the case of family child care or in-home care. Complete descriptions of these terms are included in Subpart A of this proposed rule.

### *B. Discussion of Changes Made in This Proposed Rule*

The changes included in this proposed rule provide detail on major provisions of the CCDBG Act of 2014 to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce.

First, Congress established minimum health and safety standards including mandatory criminal background checks, at least annual monitoring of providers, and health and safety training. Children in CCDF-funded child care will now be cared for by caregivers who have had basic training in health and safety practices and child development. Parents will know that individuals who care for their children do not have prior records of behavior that endanger their children. Health and safety is a

necessary foundation for quality child care that supports early learning and development. Research shows that licensing and regulatory requirements for child care affect the quality of care and child development. (Adams, G., Tout, K., Zaslow, M., *Early care and education for children in low-income families: Patterns of use, quality, and potential policy implications,* Urban Institute, 2007).

Second, Congress increased consumer education requirements for States and Territories and made clear that parents need transparent information about health and safety practices, monitoring results, and the quality of child care providers. Parents will now be able to easily view on a Web site the standards a child care provider meets and their record of compliance. Most States and Territories administering the CCDF program have already begun building QRIS, which make strategic investments to provide pathways for providers to reach higher quality standards. Our proposed rule builds on the reauthorization and Lead Agency efforts to inform parents about the quality of providers by proposing that the consumer education Web site include provider-specific quality information, if available, such as from a QRIS, and that Lead Agencies provide parents receiving CCDF with information about the quality of their chosen provider.

Third, parents need access to stable, high quality child care for low-income children and the law affirms that they should have equal access to settings that are comparable to those accessible to non-CCDF families. Through this proposed rule, we detail the law's continuity of care provisions, such as extending eligibility for child care for a minimum of 12 months regardless of a parent's temporary change in employment or participation in education or training. Continuity of services contributes to improved job stability and is important to a family's financial health. Family economic stability is undermined by policies that result in unnecessary disruptions to receipt of a subsidy due to administrative barriers or other processes that make it difficult for parents to maintain their eligibility and thus fully benefit from the support it offers. Continuity also is of vital importance to the healthy development of young children, particularly the most vulnerable. Disruptions in services can stunt or delay socio-emotional and cognitive development. Safe, stable environments allow young children the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Research has demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment, and overall child well-being. (Adams, Rohacek, and Danzinger, *Child Care Instability,* The Urban Institute, 2010.) This area includes a number of proposed changes including requirements for limiting administrative burdens on parents and enabling families to retain their child care assistance as their income increases in order to move towards economic success. We also address the law's equal access provisions by requiring that base payment rates be established at least at a level that supports implementation of the health, safety, and quality requirements in the NPRM and ensure access to care that is of comparable quality as care available to families with incomes above 85 percent of State median income, ensuring that copayments are affordable for families, and establishing provider payment practices that support access to high quality child care.

Finally, this proposed rule addresses improvements in the new law, which would enhance the quality of child care and the early childhood workforce. States and Territories would need to report on their investments in quality activities, which will now be a greater share of CCDF spending. They will also expand quality investments in infant-toddler care. High quality care for children under age 3 is the most expensive and hardest care to find during the most formative years. The law requires States and Territories to have training and professional development standards in effect for CCDF caregivers, providers, and we propose building on this requirement by outlining the components of a professional development framework. Research shows the fundamental importance of the caregiver in a high quality early learning setting and this proposed rule would help ensure that early childhood professionals have access to the knowledge and skills they need to best support young children and their development.

Through our proposed changes, we have strengthened program integrity by proposing changes that address Lead Agencies' policies for internal controls, fiscal management, and processes for identifying fraud and improper payments. We have also clarified key eligibility and payment policies as they relate to improper payments.

In developing this proposed rule, we were mindful of CCDF's purpose to allow Lead Agencies maximum flexibility in developing child care policies and programs. In some areas, we have added flexibility in order to allow Lead Agencies to tailor policies that better meet the needs of the low-income families they serve. For example, we are providing more flexibility for Lead Agencies to determine when it is appropriate to waive a family's co-pay requirement. In many areas, we have proposed new requirements as dictated by the updated law or because they further advance the revised purposes of the CCDF program.

Changes in the law, and in this proposed rule, would impact the State, Territorial, and Tribal agencies that administer the CCDF program. The law requires changes across many areas: Child care licensing, subsidy, quality, workforce, and program integrity and requires coordination across State agencies. Achieving the full visions of reauthorization will be challenging, but this effort is necessary to improve child care in this country for the benefit of our children. ACF has and will continue to consult with State, Territorial, and Tribal agencies and provide technical assistance throughout implementation.

In this proposed rule, we have generally maintained the structure and organization of the current CCDF regulations. The preamble in this proposed rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of existing regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained, unless specifically modified in the preamble to this proposed rule. (*See* 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007).

*C. Effective Date*

ACF expects provisions included in the Final Rule to become effective 60 days from the date of publication of the Final Rule, except for provisions with a later effective date as defined in the law (discussed further below). Compliance with provisions in the Final Rule would be determined through ACF review and approval of CCDF Plans, including State Plan amendments, as well as through the use of Federal monitoring, including on-site monitoring visits as necessary. ACF notes that Lead Agencies must comply with the provisions of the Child Care and Development Block Grant (CCDBG) Act of 1990, as revised by the CCDBG Act of 2014. Compliance with key statutorily required implementation

dates outlined in Program Instruction *CCDF–ACF–PI–2015–02 (http://www.acf.hhs.gov/programs/occ/resource/pi-2015-02*), dated January 9, 2015, remain in effect. In some cases, the CCDBG Act of 2014 specifies a particular date when a provision is effective. Where the law does not specify a date, the new requirements became effective upon the date of enactment and States and Territories have until September 30, 2016 to implement the new statutory requirement(s). ACF has previously stated that if a State or Territory cannot certify compliance with a specific requirement in the FY 2016–2018 CCDF Plan, the Lead Agency must provide a State/Territory-specific implementation plan for achieving compliance with such provision(s) no later than September 30, 2016.

We recognize that, at the time of publication of this NPRM, States and Territories are preparing their FY 2016–2018 CCDF Plans, due March 1, 2016. States and Territories have been asked to comply with the law based on their reasonable interpretation of the requirements in the revised CCDBG statute. Once a final rule is issued, any State or Territory that does not fully meet the requirements of the regulations would need to revise its policies and procedures to come into compliance, and file appropriate Plan amendments related to those changes.

We recognize that some of the proposed changes in this NPRM may require action on the part of a State's legislature or require State-level rulemaking in order to implement. ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the Final Rule.

ACF has extended CCDF Tribal Plans for one year. Tribal Lead Agencies will submit new 3-year Plans for FY 2017–2019, with an effective date of October 1, 2016. ACF expects that all provisions related to Tribes included in the Final Rule would become effective 60 days from the date of publication of the Final Rule. Tribal Lead Agencies may also want to consider ACF's interpretation of the CCDBG Act included in this NPRM as they consider policy changes and prepare CCDF plans.

## III. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act (42 U.S.C. 9858 *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

## IV. Provisions of Proposed Rule

*Subpart A—Goals, Purposes and Definitions*

Goals and Purposes (Section 98.1)

The CCDBG Act of 2014 amended and expanded the law's previous ''goals'' and renamed them ''purposes''. We are proposing changes to regulatory language at 45 CFR 98.1 to describe the revised purposes of the CCDF program, according to the updated law.

The first part of the regulations at § 98.1(a) mirrors the statutory language describing the revised purposes of CCDF. Language revised by the new law is indicated in italics in this paragraph. The purposes of CCDF are now: (1) To allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within *that* State; (2) to promote parental choice to empower working parents to make their own decisions *regarding* the child care *services* that best suits their family's needs; (3) to encourage States to provide consumer education information to help parents make informed choices about child care *services and to promote involvement by parents and family members in the development of their children in child care settings*; (4) to assist States *in delivering high quality, coordinated early childhood care and education services to maximize parents' options and support* parents trying to achieve independence from public assistance; (5) to assist States in *improving the overall quality of child care services and programs by* implementing the health, safety, licensing, *training, and oversight* standards established in *this subchapter and in State law* (*including* State regulations); (6) *to improve child care and development of participating children; and* (7) *to increase the number and percentage of low-income children in high quality child care settings.*

The second part at § 98.1(b) further defines the purposes of this proposed rule. We no longer refer to this section as the purposes of CCDF, as in the current regulations, so as not to create confusion with the purposes now established in law. We have retained much of the previous language in this paragraph but have made amendments and additions to reflect the priorities in this proposed rule of improving the health, safety, and quality of child care and supporting pathways to family economic stability. We have removed language that was included in the law's new purposes so as to avoid duplication. The new language shown in italics: (1) Maximize parental choice *of safe, healthy and nurturing child care settings* through the use of certificates and through grants and contracts, *and by providing parents with information about child care programs*; (2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers; (3) *Improve the* quality and *supply of* child care and *before- and after-school care services* that meet applicable requirements *and promotes child development and learning and family economic stability*; (4) Coordinate planning and delivery of services at all levels, *including Federal, State, Tribal, and local*; (5) Design flexible programs that provide for the changing needs of recipient families, *and engages families in their children's development and learning*; (6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; (7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible, *to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development; (8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen the child care workforce.*

Definitions (Section 98.2)

We are proposing technical changes to definitions at § 98.2 and the addition of six new definitions. In this paragraph, italics indicate defined terms. First, we are proposing technical changes by deleting the definition for *group home child care provider* and by making conforming changes to the definitions for *categories of care, eligible child care provider,* and *family child care provider.* The current regulation defines *group home child care provider* as meaning two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work. Some States, Territories, and Tribes do not consider group homes to be a separate category of care when administering their CCDF programs or related efforts, such as child care licensing. According to the National Association for Regulatory Administration, at least 13 States do not

license group homes as a separate category. Some States and Territories use alternative terminology (*e.g.,* large family child care homes), while others treat all family child care homes similarly regardless of size. Due to this variation, we propose to delete the separate definition for *group home child care provider,* which requires a number of technical changes to the definitions section. We propose to revise the definition of *categories of care* at § 98.2 to delete *group home child care.* Under the proposed rule, *categories of care* would be defined to include center-based child care, family child care, and in-home care (*i.e.,* an individual caring for a child in the child's home). Similarly, we propose to change the definition for *eligible child care provider* at § 98.2 to delete a *group home child care provider.* The revised definition defines an *eligible child care provider* as a center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation. Group home child care would be considered a family child care provider for these purposes. Accordingly, we propose to amend the definition for *family child care provider* at § 98.2 to include larger family homes or group homes. The existing definition of *family child care provider* is limited to one individual who provides services as the sole caregiver. The proposed definition would revise *family child care provider* to include one *or more* individuals who provide child care services. The remainder of the definition stays the same, specifying that services are for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Lead Agencies may continue to provide CCDF services for children in large family child care homes or group homes, and this is allowable and recognized by the revised definition of *family child care provider,* which would now include care in private residences provided by more than one individual. This proposed change would eliminate group homes as a separately-defined category of care for purposes of administering the CCDF—thereby allowing States, Territories, and Tribes to more easily align their practices with Federal requirements. Specifically, Lead Agencies would no longer be required to report separately on group homes in their CCDF Plans (for example, regarding health and safety requirements), or to consider group homes as a separate category for purposes of meeting parental choice requirements at § 98.30 and equal access requirements at § 98.45(b)(1). Rather, group homes would now be considered family child care homes for these purposes.

These changes were proposed in the 2013 CCDF NPRM and received mostly supportive comments. Several commenters did not support the deletion of group home child care. One commenter said legislation would be required to remove group home day care from their State statute and would result in those providers being classified as child care centers leading to additional costs because of higher payment rates. Another commenter said elimination of group home care would impact the market rate for this category of care since the State surveys group home and family child care providers separately. We are clarifying that States and Territories would not be required to eliminate group homes from their categories of care or change the way they categorize providers for the purposes of analyzing or setting provider payment rates.

We are also proposing two additional changes to current definitions as called for by new statutory language. We are amending the definition of *eligible child* so that, in addition to being at or below 85 percent of the State median income for a family of the same size, a member of the family must certify that the ''family assets do not exceed $1,000,000'' as specified in Section 658P(4)(B) of the Act. We are amending the definition of *Lead Agency* so that it may refer to a State, Territorial or Tribal entity, or *a joint interagency office, designated or established under §§ 98.10 and 98.16(a)* as indicated at Section 658P(9) of the Act.

Finally, we are proposing to add five new terms to the definitions due to statutory changes and to include terms commonly used in the child care profession. We propose defining *child with a disability* as: A child with a disability as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401); a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*); a child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); or a child with a disability, as defined by the State. This definition is included in the Act. We changed the language from ''and'' to ''or'' to clarify that a child only has to meet one of the four options in order to be considered a child with a disability. We are defining *English learner* as an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) or section 637 of the Head Start Act (42 U.S.C. 9832) as defined verbatim in the Act at Section 658P(5). We are defining *a child experiencing homelessness* as defined in section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a). While a definition of *child experiencing homelessness* was not included in the CCDBG Act, we understand the intent of Congress was to apply the McKinney-Vento definition here based on a letter sent to HHS Secretary Sylvia Burwell in February 2015 from Senate and House members (Senator Lamar Alexander, Senator Patty Murray, Senator Richard Burr, Senator Barbara Mikulski, Representative John Kline, Representative Robert ''Bobby'' Scott, Representative Todd Rokita, and Representative Marcia Fudge).

We also propose two new terms that reflect professional recognition for early childhood and school-age care teachers and the terms used in the field. We are defining *teacher* as a lead teacher, teacher, teacher assistant or teacher aide who is employed by a child care provider for compensation on a regular basis and whose responsibilities and activities are to organize, guide and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and/or school-age children and may be a family child care provider. We recognize that the responsibilities and qualifications for lead teachers, teachers, and teacher assistants are different as set by child care licensing, state early childhood professional development systems, and state teacher licensure policies and have proposed these definitions for simplification in relation to requirements in the law and this proposed regulation. We strongly encourage States and Territories to recognize differentiated roles and qualifications in their requirements and systems. We are defining *director* as a person who has primary responsibility for the daily operations management for a child care provider, which may be a family child care home, and which may serve children from birth to kindergarten entry and/or school-age children. The definition of *caregiver* in the Act and current regulations remains unchanged.

The proposed definitions for these terms are based on a white paper

commissioned by ACF for the proposed revisions to the U.S. Department of Labor's Standard Occupational Classification. (*Proposed Revisions to the Definitions for the Early Childhood Workforce in the Standard Occupational Classification. White Paper Commissioned by the Administration for Children and Families, U.S. Department of Health and Human Services,* prepared by the Workgroup on the Early Childhood Workforce and Professional Development under contract through the Child Care and Early Education Policy and Research Analysis, 2005–2018. June 18, 2014, *www.acf.hhs.gov/sites/default/files/occ/soc_acf_submittal.pdf*).

*Subpart B—General Application Procedures*

Lead Agencies have considerable latitude in administering and implementing their child care programs. Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as defined in the statute. A Lead Agency serves as the single point of contact for all child care issues, determines the basic use of CCDF funds and priorities for spending CCDF funds, and promulgates the rules governing overall administration and oversight.

Lead Agency Responsibilities (Section 98.10)

We are amending language at § 98.10 in accordance with new statutory language at Section 658D(a) that a Lead Agency may be a collaborative agency or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant). Paragraphs (a) through (e) remain unchanged. We propose to add paragraph (f) to require that, at the option of an Indian Tribe or Tribal organization in the State, a Lead Agency should consult, collaborate and coordinate in the development of the State Plan with Tribes or Tribal organizations in the State in a timely manner pursuant to § 98.14. Because States also provide CCDF assistance to Indian children, States benefit by coordination with Tribes and we encourage States to be proactive in reaching out to the appropriate Tribal officials for collaboration. We've added ''consult'' to recognize the need for formal, structured consultation with Tribal governments, including Tribal leadership, and the fact that many States and Tribes have consultation policies and procedures in place.

Administration Under Contracts and Agreements (Section 98.11)

*Written Agreements.* Section 98.11 currently requires Lead Agencies that administer or implement the CCDF program indirectly through other local agencies or organizations to have written agreements with such agencies that specify mutual roles and responsibilities. However, it does not address the content of such agreements. We propose amending regulatory language at § 98.11(a)(3) to specify that, while the content of the written agreements may vary based on the role the agency is asked to assume or the type of project undertaken, agreements must, at a minimum, include tasks to be performed, a schedule for completing tasks, a budget that itemizes categorical expenditures consistent with proposed CCDF requirements at § 98.65(h), and indicators or measures to assess performance. Many Lead Agencies administer the CCDF program through the use of sub-recipients that have taken on significant programmatic responsibilities, including providing services on behalf of the Lead Agency. For example, some Lead Agencies operate primarily through a county-based system, while others devolve decision-making and administration to local workforce boards, school readiness coalitions or community-based organizations such as child care resource and referral agencies. Through working with grantees to improve program integrity, ACF has learned that the quality and specificity of written agreements vary widely, which hampers accountability and efficient administration of the program. These proposed changes represent minimum, common-sense standards for the basic elements of those agreements, while allowing latitude in determining specific content. The Lead Agency is ultimately responsible for ensuring that all CCDF-funded activities meet the requirements and standards of the program, and thus has an important role to play to ensure written agreements with sub-recipients appropriately support program integrity and financial accountability.

We included this proposed provision in our 2013 NPRM and received a large number of comments from labor unions regarding this change, specifically when a sub-recipient of the Lead Agency establishes affiliation agreements with family child care networks to serve CCDF children. Unions commented that these requirements should apply in any and all instances where CCDF funds are sub-granted or passed through to an entity, including arrangements between intermediary entities and individual child care providers. Commenters believed this additional requirement would increase transparency and promote greater accountability.

We are clarifying that, as proposed, this provision applies only to written agreements between Lead Agencies and first-level sub-recipients (and not to agreements between first-level sub-recipients and their sub-recipients). The regulations state that the agreement ''must specify the mutual roles and responsibilities of the Lead Agency and the other agencies''—indicating that the Lead Agency is a party to the agreement. This language is intended to be broad as sub-entities may fulfill any number of different roles or projects, including implementing quality improvement activities, determining eligibility for families, or providing consumer education on behalf of the Lead Agency. We strongly encourage all agreements between sub-recipients to have similar provisions, but prefer to leave this as an area of flexibility to give State and local agencies discretion over such details, given the wide-range of conditions and circumstances involved. Also, we note that regulations at § 98.67(c)(2) require Lead Agencies to have in place fiscal control and accounting procedures that permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the CCDF rules. Therefore, we would expect that when Lead Agencies devolve program administration to first, second, and third-level entities they necessarily must be concerned with the integrity and transparency of all written agreements involving CCDF funds.

We appreciate commenters on the 2013 NPRM bringing this issue to our attention. We are cognizant that some States and Territories lack strong requirements to ensure there is transparency in cases where a sub-recipient contracts with a network of family child care providers to serve children receiving CCDF. This proposed rule places a strong emphasis on implementation of provider-friendly payment practices, including proposing that there be a payment agreement or authorization of services for all payments received by child care providers. When a local entity is contracting with a family child care network for services, we agree that there should be a clear understanding from the outset regarding payment rates for providers, any fees the provider may be subject to, and payment policies.

Finally, in § 98.11(b)(5) we propose to add a reference to the HHS regulations requiring that Lead Agencies oversee the

expenditure of funds by sub-grantees and contractors, *in accordance with 75 CFR parts 351 to 353.* These regulations implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards (see ACF, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements, Program Instruction: CCDF–ACF–PI–2015–01,* January 2015.)

Plan Process (Section 98.14)

*Coordination.* Currently, § 98.14(a)(1) requires Lead Agencies to coordinate the provision of program services with other Federal, State, and local early care and development programs, including the provision of such programs for the benefit of Indian children. Section 658E(c)(2)(O) of the Act added language to existing requirements for coordination of programs that benefit Indian children requiring Lead Agencies to also coordinate the provision of programs that serve infants and toddlers with disabilities, children experiencing homelessness and children in foster care. We include all children with disabilities, not just infants and toddlers, in the regulatory language, given the critical importance of serving that population of children.

Lead Agencies also are required to consult and coordinate services with agencies responsible for public health, public education, employment services/workforce development, and TANF. The CCDBG Act of 2014 added a requirement for the Lead Agency to develop the Plan in coordination with the State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) at Section 658E(c)(2)(R).

We propose to amend § 98.14(a)(1) to add the State Advisory Council on Early Childhood Education and Care or similar coordinating body, as well as additional new entities with which Lead Agencies would be required to coordinate the provision of child care services. We have added parenthetical language to paragraph (C) public education to specify that coordination with public education should also include agencies responsible for pre-kindergarten programs, if applicable, and educational services provided under Parts B and C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400). Other proposed new coordinating entities include agencies responsible for child care licensing; Head Start collaboration; Statewide after-school network or other coordinating entity for out-of-school time care; emergency management and response; the Child and Adult Care Food Program (CACFP); Medicaid; mental health services agencies; services for children experiencing homelessness, including State Coordinators for the Education of Children and Youth Experiencing Homelessness; and, to the extent practicable, local liaisons designated by local educational agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and the Department of Housing and Urban Development's Continuum of Care and Emergency Solutions Grantees.

Over time, the CCDF program has become an essential support in local communities to provide access to early care and education in before and after-school settings and to improve the quality of care. Many Lead Agencies already work collaboratively to develop a coordinated system of planning that includes a governance structure composed of representatives from the public and private sector, parents, schools, community-based organizations, child care, Head Start and Early Head Start, child welfare, family support, public health, and disability services. Local coordinating councils or advisory boards also often provide input and direction on CCDF-funded programs.

This type of coordination is frequently facilitated through entities such as State Advisory Councils on Early Childhood Education and Care. In both Head Start and CCDF, collaboration efforts extend to linking with other key services for young children and their families, such as medical, dental and mental health care; nutrition; services to children with disabilities; child support; refugee resettlement; adult education; family literacy; and employment training. These comprehensive services are crucial in helping families progress towards economic stability and in helping parents provide a better future for their young children.

Implementation of the requirements of the CCDBG Act of 2014 will require leadership and coordination between Lead Agencies and other child- and family-serving agencies, services, and supports at the State and local levels, including those identified above. For example, in many States, child care licensing is administered in a different agency than CCDF. In those States, implementation of the inspection and monitoring requirements included in the CCDBG Act necessitates coordination across agencies.

We proposed adding most of the above entities in the 2013 NPRM and received a large number of comments, nearly all supportive. Many commenters suggested including additional coordinating partners, such as child care resource and referral agencies, provider associations, maternal and child health home visiting programs, faith-based organizations, mental health services agencies, and Affordable Care Act health care outreach coordinators. With four exceptions, discussed below, we are declining to propose additional agencies as coordinating partners. We wanted to preserve State, Territory, and Tribal flexibility and keep requirements at this section manageable for Lead Agencies. This is not to devalue the importance of other coordinating partners suggested by commenters. Lead Agencies have the flexibility, and are encouraged, to engage a wide variety of cross-sector partners when developing the CCDF Plan. Some of the coordinating partners suggested by commenters, such as provider associations and faith-based organizations are already assumed to be included in existing regulations at § 98.14(a)(1), which requires coordination with child care and early childhood development programs.

In this proposed rule, we have included CACFP, which was not included in our list of proposed entities for coordination in the 2013 NPRM. CACFP is a Federal program that provides assistance to child care providers, including centers and family child care homes, for the provision of nutritious meals and snacks served to participants. A large number of public and private nonprofit child care centers, Head Start programs, before- and after-school programs, and other providers that are licensed or approved to provide child care services, including license-exempt CCDF providers, participate in CACFP. More than 3.3 million children receive nutritious meals and snacks each day as part of the child care they receive, and many children supported by CCDF subsidies attend child care programs that also participate in CACFP.

We are proposing to add CACFP because of its nutritional importance. In addition, we propose to include CACFP because some of the training and inspection requirements for child care providers participating in CACFP are similar to those that are now required for providers receiving CCDF funds. CACFP requires periodic unannounced site visits to prevent and identify management deficiencies, fraud, and abuse under the program, as well as to improve program operations. In order to maximize available resources, we are proposing to require coordination between the State/Territory CCDF Lead Agency and CACFP agency, if they are

different. In the FY 2014–2015 CCDF Plans, 43 States and Territories indicated that they coordinate with CACFP agencies in administration of the child care program. For example, one State described sharing lists of child care providers receiving CCDF funds with personnel who have oversight of CACFP to maximize access to CACFP services. Another State described coordinating with CACFP in monitoring child care services and providing professional development to child care caregivers on nutrition and health.

The second entity included above that was not included in the 2013 NPRM is the State agency responsible for services for children experiencing homelessness. The CCDBG Act of 2014 added a number of provisions related to improving access to high quality child care for children experiencing homelessness and we believe that implementing these provisions will necessitate coordination with State agencies already overseeing services for this population.

Third, we also propose to require coordination with State mental health services agencies, which were not proposed for coordination in the 2013 NPRM. We are choosing to propose these partners because of the desire to encourage collaboration that will make comprehensive services available for children who require mental health services.

We also propose to include the State/Territory Medicaid agency, which was not included in our list of proposed entities for coordination in the 2013 NPRM. The reauthorized CCDBG requires Lead Agencies to provide information on resources and services for parents to access developmental screenings for their children, including through the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, which would require coordination with the Medicaid agency.

Finally, existing regulation at § 98.14(a)(1)(B) requires Lead Agencies to coordinate the provision of services with employment services/workforce development. We propose to retain this requirement without change since this remains a critical area for coordination. Last year the President signed the Workforce Innovation and Opportunity Act (WIOA) into law, replacing the Workforce Investment Act of 1998. WIOA authorizes and provides a strategic framework for Federal investments in: (1) Employment and training services for adults, dislocated workers, and youth and Wagner-Peyser employment services administered by the Department of Labor (DOL) through formula grants to States; (2) adult education and literacy programs and Vocational Rehabilitation State grant programs that assist individuals with disabilities in obtaining employment administered by the Department of Education (ED); and (3) other programs administered by DOL, ED, and HHS, including programs for specific vulnerable populations such as the Job Corps, YouthBuild, Indian and Native Americans, and Migrant and Seasonal Farmworker programs. Because child care is an important support for families engaged in workforce training and development, we strongly encourage CCDF Lead Agencies to collaborate with WIOA implementation efforts as part of the requirement at § 98.14(a)(1)(B) to coordinate with employment services/workforce development.

*Combined Funding.* In paragraph (3) of § 98.14(a) we add the statutory requirement that any Lead Agency that combines funding for CCDF services with any other early childhood programs shall provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding according to Section 658E(c)(2)(O). Lead Agencies have the option of combining funding for CCDF child care services with programs operating at the Federal, State, and local levels for children in preschool programs, Tribal early childhood programs, and other early childhood programs, including those serving infants and toddlers with disabilities, children experiencing homelessness, and children in foster care. Combining funds could include blending, layering, or pooling multiple funding streams in an effort to expand and/or enhance services for children and families. For example, Lead Agencies may use multiple funding sources to offer grants or contracts to programs to deliver services; a Lead Agency may allow county or local government to use coordinated funding streams; or policies may be in place that allow local programs to layer funding sources to provide full-day, full-year child care that meets Early Head Start, Head Start or State/Territory pre-kindergarten standards in addition to child care licensing requirements. As per the OMB Circular A–133 Compliance Supplement 2014, *https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014*, CCDF funds may be used in collaborative efforts with Head Start programs to provide comprehensive child care and development services for children who are eligible for both programs. In fact, the coordination and collaboration between Head Start and CCDF is strongly encouraged by sections 640(g)(1)(D) and (E), 640(h), 641(d)(2)(H)(v), and 642(e)(3) of the Head Start Act in the provision of full working day, full calendar year comprehensive services. In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may blend several funding streams so that seamless services are provided. Lead Agencies can layer Early Head Start and CCDF funds for the same child as long as there is no duplication in payments for the exact same part of the service. This is an option that some Lead Agencies are already implementing. Early Head Start-Child Care Partnerships grants, which allow Early Head Start programs to partner with local child care centers and family child care providers serving infants and toddlers from low-income families, offer a new important opportunity for further utilization of this funding strategy. We do note that, when CCDF funds are combined with other funds, § 98.67 continues to require Lead Agencies to have in place fiscal control and accounting procedures sufficient to prepare required reports and trace funds to a level of expenditure adequate to establish that such funds have been used on allowable activities.

*Public-Private Partnerships.* We propose to add paragraph (a)(4) to § 98.14 in accordance with Section 658E(c)(2)(P), which requires Lead Agencies to demonstrate in their Plan how they encourage public-private partnerships to leverage existing child care and early education service delivery systems and to increase the supply and quality of child care services for children under age 13, such as by implementing voluntary shared services alliance models (*i.e.,* cooperative agreement among providers to pool resources to pay for shared fixed costs and operation). Public-private partnerships may include partnerships among State/Territory and public agencies, Tribal organizations, private entities, faith based organizations and/or community-based organizations.

Paragraphs (b) and (c) of this section would remain unchanged.

*Public availability of Plans.* We propose to add a new § 98.14(d) to require Lead Agencies to make their CCDF Plan and any Plan amendments publicly available. Ideally, Plans and Plan amendments would be available on the Lead Agency Web site or other appropriate State/Territory Web sites (such as the consumer education Web site required at § 98.33(a)) to ensure that there is transparency for the public, and particularly for parents seeking

assistance, about how the child care program operates. We believe this is especially important for Plan amendments, given that Lead Agencies often make substantive changes to program rules or administration during the Plan period (now three years) through submission of Plan amendments (subject to ACF approval), but are not currently required to proactively make those amendments available to the public.

We proposed this provision in the 2013 NPRM and received several comments requesting that Lead Agencies be required to make Plans and Plan amendments publicly available in multiple languages. We strongly encourage Lead Agencies to be mindful of the needs of families, caregivers, and providers with limited English proficiency and persons with disabilities. States should continue to work with families and community groups to give them a voice in program planning and policymaking, for example, by organizing outreach meetings with competent interpreters, recruiting qualified sign language and multilingual eligibility staff, and providing accessible vital documents. Lead Agencies should provide notice of where persons with limited English proficiency and persons with disabilities can obtain an interpretation or translation of key documents that are integral to service delivery, which may include CCDF Plans.

Assurances and Certifications (Section 98.15)

The Act requires Lead Agencies to provide assurances and certifications in its Plan. We are proposing to add new assurances based on new statutory language.

Lead Agencies are required to provide assurance that training and professional development requirements comply with § 98.44 and are applicable to caregivers, teachers, and directors working for child care providers receiving CCDF funds. They are also required to provide assurance that, to the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m). Both of these requirements are discussed in detail in later sections of this proposed rule.

Section 98.15(a)(9) adopts the statutory requirement for Lead Agencies to provide assurance that they will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Guidelines should be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten. Guidelines should be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care or similar coordinating body, and in consultation with child development and content experts.

Paragraph (a)(10) of § 98.15 details the new requirement that Lead Agencies provide assurance that funds received to carry out this subchapter will not be used to develop or implement an assessment for children that will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter; will be used as the primary or sole basis to provide a reward or sanction for an individual provider; will be used as the primary or sole method for assessing program effectiveness; or will be used to deny children eligibility to participate in the program carried out under this subchapter. The Consolidated and Further Continuing Appropriations Act of 2015, Public Law 113–235, made a correction to the CCDBG statute, adding that the assessments will not be the ''primary or'' sole basis for a child care provider being determined to be ineligible to participate in CCDF. The statute lays out the acceptable ways of using child assessments, including to support learning or improve a classroom environment; target professional development; determine the need for health, mental health, disability, developmental delay, or family support services; obtain information for the quality improvement process at the State/Territory level; or conduct a program evaluation for the purposes of providing program improvement and parent information.

Finally, § 98.15(a)(11) requires an assurance that any code or software for child care information systems or information technology that a Lead Agency, or other agency, expends CCDF funds to develop must be made available to other public agencies for their use in administering child care or related programs upon request. This provision is intended to prevent CCDF funds from being spent multiple times on the same, or similar, technology in order to provide accountability for public dollars.

Section 98.15(b) requires Lead Agencies to include certifications in its CCDF Plan. We are adding new requirements to reflect the following new statutory requirements:

- To develop the CCDF plan in consultation with the State Advisory Council on Early Childhood Education and Care (or similar coordinating body);
- to collect and disseminate to parents of eligible children, the general public, *and, where applicable, child care providers,* consumer education information that will promote informed child care choices *and information on developmental screenings,* as required by § 98.33;
- to make public the result of monitoring and inspections reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings as required by § 98.33(a);
- to require caregivers, teachers, and directors of child care providers to comply with the State's, Territory's or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);
- to have in effect monitoring policies and practices pursuant to § 98.42; and
- to ensure payment practices of child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m).

These requirements are discussed later in this proposed rule. We are also removing ''or area served by Tribal Lead Agency'' from § 98.15(b)(6), as redesignated, because we are proposing distinct requirements for Tribes to enforce health and safety standards for child care providers. At § 98.15(b)(12), as redesignated, we are updating the reference to § 98.43, which is now § 98.45. All other paragraphs in this section remain unchanged.

*Confidentiality Policies.* We propose adding a new paragraph (b)(13) requiring Lead Agencies to certify in the CCDF Plan that they have in place policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF-funded assistance and child care

providers receiving CCDF funds. Currently there are no Federal requirements either in statute or regulation governing confidentiality in CCDF, although there are Federal requirements governing information that the CCDF agency may have in its files, such as child abuse and neglect information. The Federal Privacy Act is the primary source of Federal requirements related to client confidentiality (5 U.S.C. 552a note); however the Privacy Act generally applies to Federal agencies, and is not applicable to State and local government agencies, with some exceptions, such as computer matching issues and requirements related to the disclosure and protection of Social Security numbers. (ACF has previously issued guidance: *Clarifying policy regarding limits on the use of Social Security Numbers under the CCDF and the Privacy Act of 1974, Program Instruction: ACYF–PI–CC–00–04,* 2000, which remains in effect.)

Through proposed regulatory language, we would require that Lead Agencies have in place policies to govern the use and disclosure of confidential and personally-identifiable information (PII) about children and families receiving CCDF-funded assistance and child care providers, which should include their staff, receiving CCDF funds. We propose to offer Lead Agencies discretion to determine the specifics of such privacy policies because we recognize many Lead Agencies already have policies in place and it is not our intention to make them revise such policies, as long as the policy is in accordance with existing Federal confidentiality requirements. Further, many Lead Agencies are working on data sharing across Federal and State programs and it is not our intention to make these efforts more challenging by introducing a new set of confidentiality requirements. This regulatory addition is not intended to preclude the sharing of individual, case-level data among Federal and State programs that can improve the delivery of services. The ACF *Confidentiality Toolkit* may be a useful resource for States in addressing privacy and security in the context of information sharing (*https://www.acf.hhs.gov/sites/default/files/assets/acf_confidentiality_toolkit_final_08_12_2014.pdf*).

It is important that personal information not be used for purposes outside of the administration or enforcement of CCDF, or other Federal, State or local programs, and that when information is shared with outside entities (such as academic institutions for the purpose of research) there are safeguards in place to ensure for the non-disclosure of Personally-Identifiable Information, which is information that can be used to link to, or identify, a specific individual. It is at the Lead Agency's discretion whether they choose to comply with this proposed provision by writing and implementing CCDF-specific confidentiality rules or by ensuring that CCDF data is subject to existing Federal or State confidentiality rules. Further, nothing in this provision should preclude a Lead Agency from making publicly available provider-specific information on the level of quality of a provider or the results of monitoring or inspections as described in § 98.33.

Plan Provisions (Section 98.16)

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets Federal regulatory requirements. All provisions that are required to be included in the CCDF Plan are outlined in § 98.16. Many of the additions to this section correspond to proposed changes throughout the regulations, which we provide explanation for later in this proposed rule. Paragraph (a) of § 98.16 would continue to require that the Plan specify the Lead Agency.

*Written agreements.* A new § 98.16(b) is proposed to correspond with changes at § 98.11(a)(3) discussed earlier, related to administration of the program through agreements with other entities. In the CCDF Plan, the proposed change would require the Lead Agency to include a description of processes it will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring, and auditing procedures, and indicators or measures to assess performance. This is consistent with the desire to strengthen program integrity within the context of current Lead Agency practices that devolve significant authority for administering the program to sub-recipients. Current paragraphs (b) through (f) would be redesignated as paragraphs (c) through (g). All paragraphs remain unchanged with the exception of paragraph (e), as redesignated, which has been revised by adding ''and the provision of services'' to clarify that the Plan's description of coordination and consultation processes should address the provision of services in addition to the development of the Plan.

*Continuity of Care.* A new § 98.16(h) is proposed to correspond with statutory changes in subpart C discussed later to describe and demonstrate that eligibility determination and redetermination processes promote continuity of care for children and stability for families receiving CCDF services, including a minimum 12-month eligibility redetermination period in accordance with § 98.21(a); a graduated phaseout for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b); processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c); procedures and policies to ensure that parents are not required to unduly disrupt their employment, training, or education to complete eligibility redetermination, pursuant to § 98.21(d); limiting any requirements to report changes in circumstances in accordance with § 98.21(e); policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and other policies and practices such as timely eligibility determination and processing of applications.

*Grants or contracts.* We propose to add language at § 98.16(i)(1), as redesignated, requiring a Lead Agency to include a description of how it will use grants or contracts to address shortages in the supply of high quality child care. Grants and contracts can play an important role in building the supply and availability of high quality child care in underserved areas and for underserved populations, and provide greater financial stability for child care providers. This regulatory change complements proposed changes at § 98.30(a)(1) describing parental choice requirements and § 98.50(a)(3) describing funding methods for child care services, discussed later in this proposed rule.

Under this proposed change, the Lead Agency would be required to provide a description that identifies any shortages in the supply of high quality child care for specific localities and populations, includes the data sources used to identify shortages, and explains how grants or contracts for direct services will be used to address such shortages. To identify supply shortages, the Lead Agency may analyze available data from market rate surveys, child care resource and referral agencies, and other sources. ACF recommends that the Lead Agency examine all localities in its jurisdiction, recognizing that each local child care market has unique characteristics—for example, many rural areas face supply shortages. The Lead Agency also should consider the supply of child care for

underserved populations such as infants and toddlers and children with special needs. Further, we recommend that the Lead Agency's analysis consider all categories of care, recognizing that a community with an adequate supply of one category of care (*e.g.,* centers) may face shortages for another category (*e.g.,* family child care). At § 98.16(i)(2), as redesignated, is amended to reference § 98.30(e)(1)(iii). The remaining subparagraphs remain unchanged.

*Consumer education.* We add language at § 98.16(j), as redesignated, to reference statutory changes to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, changes which are discussed later in this proposed rule.

*Co-payments.* We propose to revise language at § 98.16(k), as redesignated, requiring Lead Agencies to include a description of how co-payments are affordable for families, pursuant to § 98.45(k), including a description of any criteria established by the Lead Agency for waiving contributions for families. This proposed change is discussed later.

*Health and safety standards and monitoring.* We add a provision at § 98.16(l), as redesignated, requiring Lead Agencies to provide a description of any exemptions to health and safety requirements for relative providers made in accordance with § 98.41(a)(2), which is discussed later in this proposed rule.

We propose adding three new paragraphs, (m) through (o), requiring Lead Agencies to describe the child care standards for child care providers receiving CCDF funds, that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors, in accordance with § 98.41(d); monitoring and other enforcement procedures to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42; and criminal background check requirements, policies, and procedures, including the process in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe, in accordance with § 98.43.

*Training and Professional Development.* We propose to add § 98.16(p) requiring Lead Agencies to describe training and professional development requirements for caregivers, teachers, and directors of child care providers who receive CCDF funds in accordance with § 98.44. Paragraph (q), as redesignated, remains unchanged.

*Payment rates.* We revise § 98.16(r), as redesignated, to include the option of using an alternative methodology to set provider payment rates. This provision is described later in this proposed rule.

We revise paragraph (s), as redesignated, to include a detailed description of the State's hotline for complaints. This provision is described later in the proposed rule. Paragraph (t), as redesignated (previously paragraph (n)), remains unchanged.

We revise § 98.16(u), as redesignated (previously paragraph (o)), to include in the description of the licensing requirements, any exemption to licensing requirements that is applicable to child care providers receiving CCDF funds; a demonstration of why this exemption does not endanger the health, safety, or development of children; and a description of how the licensing requirements are effectively enforced, pursuant to § 98.42.

*Building supply and quality.* We also propose a new § 98.16(x) based on statutory language at Section 658E(c)(2)(M) requiring the Lead Agency to describe strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. As described in the statute, strategies may include alternative payment rates to child care providers, the provision of direct contracts or grants to community-based organizations, offering child care certificates to parents, or other means determined by the Lead Agency.

Pursuant to § 98.50 as proposed, Lead Agencies would be required to use CCDF funds for some direct contracts or grants for child care services. For contracts to be effective at increasing the supply of high quality care, contracts should be funded at levels that are sufficient to meet any higher quality standards associated with that care. Along with increased rates and contracts, we encourage Lead Agencies to consider other strategies, including training and technical assistance to child care providers to increase quality for these types of care.

We add § 98.16(y) requiring Lead Agencies to describe how they prioritize increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46(b). This provision is discussed later in this proposed rule.

Finally, we propose to add § 98.16(z) reiterating the statutory requirement for Lead Agencies to describe how they develop and implement strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services. Some child care providers need support on business and management practices in order to run their child care businesses more effectively and devote more time and attention to quality improvements. Improved business practices can benefit caregivers and children. An example of a key business practice is providing paid sick leave for caregivers to keep children healthy. Without paid time off, caregivers may come to work sick and risk spreading illnesses to children in care. We also encourage child care providers to provide paid sick leave because it promotes better health for child care employees, which is important to maintaining a stable workforce as well as consistency of care for children. According to The Council of Economic Advisors, ''[Pa]id sick leave also induces a healthier work environment by encouraging workers to stay home when they are sick.'' (The Economics of Paid and Unpaid Leave, The Council of Economic Advisors, June 2014.)

*Emergency preparedness.* We propose to add § 98.16(aa) to the regulation, based on Section 658E(c)(2)(U) of the Act, to require the Lead Agency to demonstrate how the Lead Agency will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Child Care Disaster Plan (or Disaster Plan for a Tribe's service area). The Disaster Plan must be developed in collaboration with the State/Territory human services agency, the State/Territory emergency management agency, the State/Territory licensing agency, local and State/Territory child care resource and referral agencies, and the State/Territory Advisory Council on Early Childhood Education and Care, or similar coordinating body. Tribes must have similar Disaster Plans, for their Tribal service area, developed in consultation with relevant agencies and partners. The Disaster Plan must include guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary

child care services and temporary operating standards for child care during and after a disaster; coordination of post-disaster recovery of child care services; and requirements that providers receiving CCDF funds and other child care providers, as determined appropriate by the Lead Agency, have in place procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for caregivers of providers receiving CCDF.

This provision largely reflects statutory language of Section 658E(c)(2)(U), but we have clarified that the Plan must apply, at a minimum, to CCDF providers and may apply to other providers (such as all licensed providers) at the Lead Agency option. We also added language on post-disaster recovery.

In past disasters, the provision of emergency child care services and rebuilding and restoring of child care facilities and infrastructure emerged as an essential service. The importance of the need to improve emergency preparedness and response in child care was highlighted in an October 2010 report released by the National Commission on Children and Disasters. The Commission's report included two primary sets of recommendations for child care: (1) To improve disaster preparedness capabilities for child care; and (2) to improve capacity to provide child care services in the immediate aftermath and recovery from a disaster (*2010 Report to the President and Congress,* National Commission on Children and Disasters, p. 81, October 2010). Child care has also been recognized by the Federal Emergency Management Agency (FEMA) as an essential service and an important part of disaster response and recovery. (FEMA Disaster Assistance Fact Sheet 9580.107, Public Assistance for Child Care Services Fact Sheet, 2013).

Maintaining the safety of children in child care programs during and after disaster or emergency situations necessitates planning in advance by State/Territory agencies and child care providers. The reauthorization of the CCDBG Act, and this proposed rule, implement the key recommendation of the National Commission on Children and Disasters by requiring a child care-specific Statewide Disaster Plan. ACF has previously issued guidance (CCDF–ACF–IM–2011–01) recommending that Disaster Plans include five key components: (1) Planning for continuation of services to CCDF families; (2) coordinating with emergency management agencies and key partners; (3) regulatory requirements and technical assistance for child care providers; (4) provision of temporary child care services after a disaster, and (5) rebuilding child care after a disaster. The guidance recommends that disaster plans for child care incorporate capabilities for shelter-in-place, evacuation and relocation, communication and reunification with families, staff training, continuity of operations, accommodation of children with disabilities and chronic health needs, and practice drills. ACF intends to provide updated guidance and TA to States, Territories, and Tribes as they move forward with implementing Disaster Plans as required by the reauthorization.

*Payment practices.* We propose new § 98.16(bb), requiring Lead Agencies to describe payment practices applicable to child care providers receiving CCDF, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices. This is discussed later in this proposed rule.

*Program integrity.* We propose new § 98.16(cc), requiring Lead Agencies to describe processes in place to describe internal controls to ensure integrity and accountability; processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud; and procedures in place to document and verify eligibility, pursuant to § 98.68. This change corresponds to a new program integrity section included in subpart G of the regulations, which is discussed later in the NPRM.

*Outreach and services for families and providers with limited English proficiency and persons with disabilities.* We propose to add a new § 98.16(dd) to require that the Lead Agency describe how it would provide outreach and services to eligible families with limited English proficiency and persons with disabilities, and facilitate participation of child care providers with limited English proficiency and disabilities in CCDF. Currently, the Plan requires Lead Agencies to describe how they provide outreach and services to eligible limited English proficient families and providers. In the FY 2014–2015 CCDF Plans, States and Territories reported a number of strategies to overcome language barriers. Forty-nine States and Territories have bilingual caseworkers or translators, 44 have applications in multiple languages, and 18 offer provider contracts or agreements in multiple languages. We are proposing to require that Lead Agencies develop policies and procedures to clearly communicate program information such as requirements, consumer education information, and eligibility information, to families and child care providers of all backgrounds.

*Suspension and expulsion policies.* We propose to add a new § 98.16(ee) to require that the Lead Agency describe its policies on suspension and expulsion of children from birth to age five in child care and other early childhood programs receiving CCDF funds, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v). This requirement is detailed later in this proposed rule.

*Reports of serious injuries or death in child care.* We propose to add new § 98.16(ff) to require the Lead Agency to designate a State, Territorial, or Tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, regardless of whether or not they receive CCDF assistance.

*Family Engagement.* We propose to add new § 98.16(gg) to require the Lead Agency to describe how it would support child care providers in the successful engagement of families in children's learning and development.

*Complaints received through the national hotline and Web site.* We propose to add new § 98.16(hh) to require the Lead Agency to describe how it will respond to complaints received through the national hotline and Web site, required in the reauthorized CCDBG Act (Section 658L(b)(2)). The description must include the designee responsible for receiving and responding to those complaints for both licensed and license-exempt child care providers. Clear channels of communication are crucial to ensure that complaints submitted through the national hotline or Web site are responded to quickly, especially when a child's health or safety is at risk. This proposed plan provision is aimed at building those connections and ensuring that a process is in place for addressing complaints regarding both licensed and license-exempt child care providers.

Finally, we have redesignated paragraph (v) as paragraph (ii) with no other changes.

Approval and Disapproval of Plans and Plan Amendments (Section 98.18)

This section of the regulations describes processes and timelines for CCDF Plan approvals and disapprovals, as well as submission of Plan amendments. CCDF Plans are submitted triennially and prospectively describe how the Lead Agency will implement the program. To make a substantive change to a CCDF program after the Plan has been approved, a Lead Agency must submit a Plan amendment to ACF for approval.

*Advance written notice.* In conjunction with the change discussed at § 98.14(d) to make the Plan and any Plan amendments publicly available, we propose to add a provision at § 98.18(b)(2) to require Lead Agencies to provide advance written notice to affected parties, specifically parents and child care providers, of changes in the program made through an amendment that adversely affect income eligibility, payment rates, and/or sliding fee scales so as to reduce or terminate benefits. The notice should describe the action to be taken (including the amount of any benefit reduction), the reason for the reduction or termination, and the effective date of the action. The Lead Agency may choose to issue the notification in a variety of ways, including a mailed letter or email sent to all participating child care providers and families. We are providing Lead Agencies with flexibility to determine an appropriate time period for advance notice, since this may vary, such as depending on the type of policy change being implemented or the effective date of that policy change. Advance notice would add transparency to the Plan amendment process and provide a mechanism to ensure that affected parties remain informed of any substantial changes to the Lead Agency's CCDF Plan that may affect their ability to participate in the child care program. We note that while we encourage Lead Agencies to provide written notice of any changes that affect income eligibility, payment rates, and/or sliding fee scales, we would only require written notice of those that adversely impact parents or providers.

We would not require the Lead Agency to hold a formal public hearing or solicit comments on each Plan amendment, as is required by current regulations at § 98.14(c) for the submission of the CCDF Plan. However, we encourage solicitation of public input whenever possible and consider this proposed regulatory change to be consistent with the spirit and intent of the CCDF Plan public hearing provision. Paragraph (c) of § 98.18 describing appeal and disapproval of a Plan or Plan amendment would remain unchanged.

Requests for Temporary Relief From Requirements (Section 98.19)

Section 658I(c) of the CCDBG Act indicates that Lead Agencies are allowed to submit a request to the Secretary to waive one or more requirements contained in the CCDBG Act to ensure that effective delivery of services are not interrupted by conflicting or duplicative requirements, to allow for a period of time for a State legislature to enact legislation to implement the provisions of the Act or this part, or in response to extraordinary circumstances, such as a natural disaster or financial crisis. We are proposing to extend the waiver option to rules under this part as well. Prior to the enactment of the CCDBG Act in 2014, there was no waiver authority within the CCDF program.

We propose new § 98.19, Requests for Temporary Relief from Requirements, to provide guidance and clarity on: The eligibility of States, Territories, and Tribes to request a waiver; what provisions would not be eligible for waivers; and how the waiver request and approval (or disapproval) process would work. In addition to outlining the requirements detailed in the CCDBG Act of 2014, § 98.19 includes clarifying provisions to provide greater understanding of the intent and implementation of the waiver process.

This section details the process by which the Secretary may waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements, consistent with the requirements described in section 658I(c)(1) of the Act. In order for a waiver application to be considered, the waiver request must: Describe circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part; demonstrate that the waiver, by itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of this part; show that the waiver will not contribute to inconsistency with the objectives of this law; and meet the additional requirements in this section as described.

We propose to include a delineation of the types of waivers that States, Territories, and Tribes can request into two distinct types: (1) Transitional and legislative waivers and (2) waivers for extraordinary circumstances. States, Territories, and Tribes may apply for temporary transitional and legislative waivers meeting the requirements described in this section that would provide temporary relief from conflicting or duplicative requirements preventing implementation, or for a temporary extension in order for a State, Territorial, or Tribal legislature to enact legislation to implement the provisions of this subchapter.

Transitional and legislative waivers are designed to provide States, Territories, and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and are limited to a one-year initial period and at most, an additional one-time, one-year renewal from the date of approval of the extension (which may be appropriate for a State with a two-year legislative cycle, for example).

Waivers for extraordinary circumstances would address temporary circumstances or situations, such as a natural disaster or financial crisis. Extraordinary circumstance waivers are limited to an initial period of no more than two years from the date of approval, and at most, an additional one-year renewal from the date of approval of the extension.

Both types of waivers are probationary, subject to the decision of the Secretary to terminate a waiver at any time if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory, or Tribe granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

In order to request a waiver, the Lead Agency must submit a written request, indicating which type of waiver the State, Territory, or Tribe is requesting and why. The request must also provide detail on which provision(s) the State, Territory, or Tribe is seeking relief from and how relief from that sanction or provision, by itself, will improve delivery of child care services for children and families. If a transitional waiver, the Lead Agency should describe the steps being taken to address the barrier to implementation (*i.e.,* a timeline for legislative action). Furthermore, and importantly, in the written request, the State, Territory, or Tribe must certify and demonstrate that the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

Within 90 days of submission of the request, the Secretary would notify the State, Territory, or Tribe of the approval or disapproval. If rejected, the Secretary

would provide the State, Territory, or Tribe, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate of the reasons for the disapproval and give the State, Territory, or Tribe the opportunity to amend the request. If approved, the Secretary would notify and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the circumstances of the waiver including each specific sanction or provision waived, the reason as given by the State, Territory, or Tribe of the need for a waiver, and the expected impact of the waiver on children served under this program.

No later than 30 days prior to the expiration date of the waiver, a State, Territory, or Tribe, at its option, may make a formal written request to re-certify the provisions described in this section, which must explain the necessity of additional time for relief from such sanction(s) or provisions. The Secretary may approve or disapprove a request from a State, Territory, or Tribe for a one-time renewal of an existing waiver under this part for a period no longer than one year. The Secretary would adhere to the same approval or disapproval process for the renewal request as the initial request.

The goal of all the proposed inclusions at § 98.19 is to make continuity of the effective delivery of child care services a priority throughout the implementation process or in times of extraordinary circumstances. We are seeking comment on ways to ensure efficient and timely relief, when appropriate, for States, Territories, and Tribes impacted by extraordinary circumstances, such as natural disasters. Therefore, we ask for feedback about making the application process for waivers for extraordinary circumstances straightforward to provide States, Territories, and Tribes with minimal obstacles while they are likely in the preparedness, response, and recovery stages of handling the circumstances that prompted the initial request.

*Subpart C—Eligibility for Services*

This subpart establishes parameters for a child's eligibility for CCDF assistance and for Lead Agencies' eligibility and redetermination procedures. Congress made significant changes to CCDBG that emphasize stable financial assistance and continuity of care through CCDF eligibility policies, including establishing minimum 12-month eligibility for all children. In this subpart, we propose to restate these changes in regulation and provide additional clarification where appropriate.

A Child's Eligibility for Child Care Services (Section 98.20)

*A child's eligibility for child care services:* This proposed rule clarifies at § 98.20(a) that eligibility criteria apply only at the time of eligibility determination or redetermination based on statutory language at Section 658E(c)(2)(N)(i) of the Act, which establishes a minimum 12-month eligibility period by affirmatively stating that the child ''will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months before the State or local entity re-determines the eligibility of the child.'' (We discuss minimum 12-month eligibility at greater length below.)

*Income eligibility.* We propose revising § 98.20(a)(2) by adding a sentence to clarify that the State median income (SMI) used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the U.S. Census Bureau. This clarification would provide for use of the most current and valid data. It is important for Lead Agencies to use current data as, once determined eligible, children may continue to receive CCDF assistance until their household income exceeds 85 percent of SMI for a family of the same size, pursuant to § 98.21(a)(1) discussed further below, or at Lead Agency option, the family experiences a non-temporary cessation of work, training, or education. Using the most recent SMI data also allows for consistency for cross-State comparisons and a better understanding of income eligibility thresholds nationally. SMI data may not be available from the Census Bureau for some Territories, in which case an alternative source (subject to ACF approval through the CCDF State/Territory Plan process) may be used. The Act does not specify whether States should use the SMI with a single year estimate, a two-year average, or a three-year average (which is used by the Low Income Home Energy Assistance Program (LIHEAP)). We are requesting comment on whether ACF should provide additional guidance and specificity on the SMI used to determine eligibility.

Tribes are already allowed to use Tribal median income (TMI) (pursuant to § 98.81(b)(1)) and this would continue to be allowable under this proposed rule. ACF also recognizes that some Lead Agencies establish eligibility thresholds that vary by geographic area and that some Lead Agencies use Area median income (AMI) to calculate income eligibility for different regions in order to account for cost of living variations across geographic areas. Lead Agencies may use AMI in their calculations, but must also report the threshold in terms of SMI in their Plan, and ensure that thresholds based on AMI are at or below 85 percent of SMI.

*Asset limit.* The Act revised the definition of eligible child at Section 658P(4)(B) so that in addition to being at or below 85 percent of SMI for a family of the same size, a member of the family must certify that the ''family assets do not exceed $1,000,000 (as certified by a member of such family),'' which we include in the proposed rule at § 98.20(a)(2)(ii). We interpret this language to mean that this requirement can be met solely through self-certification by a family member, with no further need for additional documentation. This new requirement provides assurance that CCDF funds are being used for families with the greatest need, but is not intended to impose an additional burden on families. In this proposed rule, we are not defining ''family assets,'' but instead would allow the Lead Agency flexibility to determine what assets to count toward the asset limit.

*Protective Services.* Section 658P(4) of the CCDBG Act indicates that, for CCDF purposes, an eligible child includes a child who is receiving or needs to receive protective services. We are proposing to add language at § 98.20(a)(3)(ii) to clarify that the protective services category may include specific populations of vulnerable children as identified by the Lead Agency. Children do not need to be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. Because the statute references children who ''need to receive protective services,'' we believe the intent of this language was to provide services to at-risk children, not to limit this definition to serve children already in the child protective services system. It is important to note that including additional categories of vulnerable children in the definition of protective services is only relevant for the purposes of CCDF eligibility and does not mean that those children should automatically be considered to be in official protective service situations for other programs or purposes. It is critical that policies be structured and implemented so these children are not

identified as needing formal intervention by the CPS agency, except in cases where that is appropriate for reasons other than the inclusion of the child in the new categories of vulnerable child for purposes of CCDF eligibility.

Similarly, we propose to remove the requirement that case-by-case determinations of income and co-payment fees for this eligibility category must be made by, or in consultation with, a child protective services (CPS) worker. While consulting with a CPS worker would no longer be a requirement, it would not be prohibited; a Lead Agency may consult with or involve a CPS caseworker as appropriate. We encourage collaboration with the agency responsible for children in protective services, especially when a child also is receiving CCDF assistance.

These changes would provide Lead Agencies with additional flexibility to offer services to those who have the greatest need, including high-risk populations, and reduce the burden associated with eligibility determination for vulnerable families.

Under current regulations at § 98.20(a)(3)(ii)(B), at the option of the Lead Agency, this category may include children in foster care. The regulations allow that children deemed eligible based on protective services may reside with a guardian or other person standing ''in loco parentis'' and that person is not required to be working or attending job training or education activities in order for the child to be eligible. In addition, the existing regulations allow grantees to waive income eligibility and co-payment requirements as determined necessary on a case-by-case basis, by, or in consultation with, an appropriate protective services worker for children in this eligibility category. This proposed change would clarify, for example, that a family living in a homeless shelter may not meet certain eligibility requirements (*e.g.,* work or income requirements), but, because the child is in a vulnerable situation, could be considered eligible and benefit from access to high quality child care services.

This change was also included in the 2013 NPRM and received broad support in public comments. One commenter wrote this change ''recognizes the particular challenges and barriers to assistance that these children [from other vulnerable populations] face and the importance of stable, supportive child care.'' Several commenters requested that the term ''vulnerable populations'' be defined at the Federal level and suggested several specific populations to be included in the definition—such as teen parents, the children of parents or guardians with disabilities who are unable to work, children with disabilities who have Individual Family Service Plans (IFSPs) or Individual Education Plans (IEPs), and children who are experiencing homelessness. While we encourage Lead Agencies to consider these vulnerable populations in their definitions and policies, we are declining to specifically define ''vulnerable populations'' in this proposed rule in order to allow Lead Agencies the flexibility to define the term in a way that is most responsive to the particular needs of their communities.

We note that this new provision would not require Lead Agencies to expand their definition of protective services. It merely provides the option to include other high-needs populations in the protective services category solely for purposes of CCDF, as many Lead Agencies already choose to do.

*Additional eligibility criteria.* Under existing regulations, Lead Agencies are allowed to establish eligibility conditions or priority rules in addition to those specified through Federal regulation so long as they do not discriminate, limit parental rights, or violate priority requirements (these are described in full at § 98.20(b)). This proposed rule revises this section to add that any additional eligibility conditions or priority rules established by the Lead Agency cannot ''impact eligibility other than at the time of eligibility determination or redetermination.'' This revision was made to be consistent with the aforementioned change to § 98.20(a) which says that eligibility criteria apply only at the time of determination or redetermination. It follows that the same would be true of additional criteria established at the Lead Agency's option.

We propose to add paragraph (c) clarifying that only the citizenship and immigration status of the child, the primary beneficiary of CCDF, is relevant for the purposes of determining eligibility under PRWORA and that a Lead Agency, or other administering agency, may not condition eligibility based upon the citizenship or immigration status of the child's parent. Under title IV of PRWORA, CCDF is considered a program providing Federal public benefits and thus is subject to requirements to verify citizenship and immigration status of beneficiaries. In 1998, ACF issued a Program Instruction (ACYF–PI–CC–98–08) which established that ''only the citizenship status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes.'' This proposal codifies this policy in regulation and clarifies that Lead Agencies are prohibited from considering the parent's citizenship and immigration status.

ACF has previously clarified that when a child receives Early Head Start or Head Start services that are supported by CCDF funds and subject to the Head Start Performance Standards, the PRWORA verification requirements do not apply. Verification requirements also do not apply to child care settings that are subject to public educational standards. These policies remain in effect. (ACYF–PI–CC–98–09)

Eligibility Determination Processes (Section 98.21)

We propose to add a new section at § 98.21 to address the processes by which Lead Agencies determine and redetermine a child's eligibility for services.

*Minimum 12-month eligibility.* At § 98.21, we reiterate the statutory change made in Sec. 658E(c)(2)(N)(i) of the Act, which establishes minimum 12-month eligibility periods for all CCDF families, regardless of changes in income (as long as income does not exceed the Federal threshold of 85 percent of SMI) or temporary changes in participation in work, training, or education activities. Under the law, Lead Agencies may not terminate CCDF assistance during the 12-month period if a family has an increase in income that exceeds the Lead Agency's income eligibility threshold but not the Federal threshold, or if a parent has a temporary change in work, education or training. We note that during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorizations or provider payments due to a temporary change in a parent's work, training, or education status. In other words, once determined eligible, children are expected to receive a minimum of 12 months of child care services, unless family income rises above 85% SMI or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training.

These requirements apply to both the initial eligibility period and any subsequent eligibility periods. Under the law, other than income exceeding 85 percent of SMI (unless the increase in income is considered temporary, pursuant with the irregular fluctuations in earning requirement discussed below), a family is considered to meet eligibility criteria for the entire 12-month period, though the Lead Agency has the option of also considering a status change due to non-temporary

changes in employment, education, or training status (discussed below.)

As the statutory language states that a child determined eligible will not only be considered to meet all eligibility requirements, but also ''will receive such assistance,'' Lead Agencies may not offer authorization periods shorter than 12 months as that would functionally undermine the statutory intent that, barring limited circumstances, eligible children shall receive a minimum of 12 months of CCDF assistance. We note that, despite the language that the child ''will receive such assistance,'' the receipt of such services remains at the option of the family. The law does not require the family to continue receiving services nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

We propose to define ''temporary change'' in the rule at § 98.21(a)(1)(ii) to include, at a minimum: (1) Any time-limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave; (2) any interruption in work for a seasonal worker who is not working between regular industry work seasons; (3) any student holiday or break for a parent participating in training or education; (4) any reduction in work, training or education hours, as long as the parent is still working or attending training or education; and (5) any cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency.

The above circumstances represent temporary changes to the parents' schedule or conditions of employment, but do not constitute permanent changes to the parents' status as being employed or attending a job training or educational program. This definition is in line with Congressional intent to stabilize assistance for working families. Lead Agencies must consider all changes on this list to be temporary, but should not be limited by this definition and may consider additional changes to be temporary.

At § 98.21(a)(1)(ii)(F), we clarify that a child should retain eligibility despite any change in age, including turning 13 years old during the eligibility period. This is consistent with the statutory requirement that a child shall be ''considered to meet all eligibility requirements'' until the next redetermination. This allows Lead Agencies to avoid terminating access to CCDF assistance immediately upon a child's 13th birthday in a manner that may be detrimental to positive youth development and academic success or that might abruptly put the child at-risk if a parent cannot be with the child before or after school.

At § 98.21(a)(1)(ii)(G), we propose that a child retain eligibility despite ''any change in residency within the State, Territory, or Tribal service area.'' This would provide stability for families who, under current practice, may lose child care assistance despite maintaining their State, Territory or Tribal residency. This may require coordination between localities within States, Territories, or Tribes or necessitate some Lead Agencies to change practices for allocating funding. We believe this level of coordination is essential, as the State, Territory, or Tribe is the entity responsible for CCDF assistance.

Nothing in this rule prohibits Lead Agencies from establishing eligibility periods longer than 12 months or lengthening eligibility periods prior to a redetermination. We encourage (but do not require) Lead Agencies to consider how they can use this flexibility to align CCDF eligibility policies with other programs serving low-income families, including Head Start, Early Head Start, Medicaid, or SNAP. For example, once determined eligible, children in Head Start remain eligible until the end of the succeeding program year. Children in Early Head Start are considered eligible throughout the course of the program. Consistent with existing ACF guidance (ACYF–PIQ–CC–99–02) a Lead Agency could establish eligibility periods longer than 12 months for children enrolled in Head Start and receiving CCDF in order to align eligibility periods between programs. Similarly, a Lead Agency could establish longer eligibility periods during an infant or toddler's enrollment in Early Head Start or in other collaborative models, such as Early Head Start-Child Care Partnerships.

Operationalizing alignment across programs can be challenging, particularly if families enroll in programs at different times. While the Lead Agency must ensure that eligibility is not redetermined prior to 12 months, it could align with other benefit programs by ''resetting the clock'' on the eligibility period to extend the child's CCDF eligibility by starting a new 12-month period if the Lead Agency receives information, such as information pursuant to eligibility determinations or recertifications in other programs, that confirms the child's eligibility and current co-payment rate. Alignment promotes conformity across Federal programs, such as SNAP, and can simplify eligibility and reporting processes for families and administering agencies. However, it should be noted that a Lead Agency cannot terminate assistance for a child prior to the end of the minimum 12-month period if the recertification process of another program reveals a change in the family's circumstances, unless those changes impact CCDF eligibility (*e.g.,* a change in income over 85 percent of SMI or, at the option of the Lead Agency, a non-temporary change in the work, job training, or educational status of the parent).

*Continued Assistance.* If a parent experiences a non-temporary job loss or cessation of education or training, Lead Agencies have the option—but are not required—to terminate assistance prior to 12 months. Per the Act, prior to terminating assistance, the Lead Agency must provide a period of continued assistance of at least three months to allow parents to engage in job search activities. At the end of the minimum three-month period of continued assistance, if the parent is engaged in an eligible work, education, or training activity, assistance should not be terminated and the child should either continue receiving assistance until the next scheduled redetermination or be redetermined eligible for an additional 12-month period. In this proposed rule, we clarify that assistance must be provided ''at the same level'' during the period. This clarification is important because reducing levels of assistance during this period would undermine the statutory intent to provide stability for families during times of increased need or transition.

It is important to note that the Act allows Lead Agencies to continue child care assistance for the full 12-month eligibility period even if the parent experiences a non-temporary job loss or cessation of education or training. The default policy is that a child remains eligible for the full minimum 12-month eligibility period, but the Lead Agency has the option to terminate assistance under these particular conditions. A Lead Agency may choose not to terminate assistance for any families prior to a redetermination at 12 months. If a Lead Agency chooses to terminate assistance under these conditions, it has the option of doing so for all CCDF families or for only a subset of CCDF families. For example, a Lead Agency could choose to allow priority families (*e.g.,* children with special needs, children experiencing homelessness) to remain eligible through their eligibility period despite a parent's loss of work or cessation of attendance at a job training or educational program, but terminate assistance (with a period of continued assistance) for families who do not fall

in a priority category. Or, a Lead Agency may choose to allow families in certain types of care, such as high quality care, to remain eligible regardless of a parent's work or education activity.

While the Lead Agency must provide continued assistance for at least three months, there is no requirement to document that the parent is engaged in a job search or other activity related to resuming attendance in an education or training program during that time. In fact, we strongly discourage such policies as they would be an additional burden on families and be inconsistent with the purposes of CCDF and this proposed rule.

If a Lead Agency does choose to terminate assistance under these circumstances, it should allow families that have been terminated to reapply as soon as they are eligible again instead of making the family wait until their original eligibility period would have ended in order to reapply.

A policy that provides continuous eligibility, regardless of non-temporary changes, would reduce the burden on families and the administrative burden on Lead Agencies by minimizing reporting and the frequency of eligibility adjustments. Retention of eligibility during periods of family instability (such as losing a job) can alleviate some of the stress on families, facilitate a smoother transition back into the workforce, and support children's development by maintaining continuity in their child care. Moreover, studies show that the same families that leave CCDF often return to the program after short periods of ineligibility. A report published by the Assistant Secretary for Planning and Evaluation (ASPE) at HHS, *Child Care Subsidy Duration and Caseload Dynamics: A Multi-State Examination,* found that ''many families receive subsidies sporadically over time and frequently return to the subsidy programs after they exit.'' Short periods of subsidy receipt can be the result of a variety of factors, including eligibility policies and procedures. The ''churning'' present in CCDF demonstrates that families often lose their child care assistance for conditions that are temporary, which is detrimental for the family and child and inefficient for the Lead Agency.

Lead Agencies considering the option to terminate assistance in response to ''non-temporary'' changes are encouraged to use administrative data to understand the extent to which CCDF families currently cycle on and off the program, to make a determination as to whether it is in the interest of anyone (child, parent, or agency) to terminate assistance for families who may ultimately return to the program.

We understand that some Lead Agencies include in their definition of allowable work activities a period of job search and allow children to qualify for CCDF assistance based on their parent(s) seeking employment. It is not our intention to discourage Lead Agencies from allowing job search activities as qualifying work. We believe that it is in line with the intent of the statute to allow Lead Agencies the option to end assistance prior to a redetermination if the parent(s) has not secured employment or educational or job training activities, as long as assistance has been provided for no less than three months. In other words, if a child qualifies for child care assistance based on a parent's job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still has not found employment. Lead Agencies could choose, however, to provide additional months of job search to families as well or to continue assistance for the full minimum 12-month eligibility period.

We are soliciting comment on whether there are any additional circumstances other than those discussed above under which a Lead Agency should be allowed to end a child's assistance (after providing three months of continued assistance) prior to the minimum 12-month period. Commenters should remember that since these regulations must comply with statutory requirements, any suggestions must remain within the bounds of the CCDBG Act in order to be considered.

Based on feedback from States and various stakeholders, ACF has already considered possible exceptions to the minimum 12-month eligibility period for certain populations, such as children in families receiving TANF and children in protective services, but has decided that such special considerations would be in conflict with the CCDBG Act, which clearly provides 12-month eligibility for all children.

*Co-payments.* At § 98.21(a)(3) we clarify that a Lead Agency cannot increase family co-payment amounts within the minimum 12-month eligibility period as raising co-payments within the eligibility period would not be consistent with the statutory requirement that the child ''receive such assistance'' for not less than 12 months. Protecting co-payments levels within the eligibility period provides stability for families and reduces administrative burden for Lead Agencies. We propose an exception to this rule for families that are eligible as part of the graduated phaseout provision discussed below.

In addition, we propose requiring the Lead Agency to allow families the option to report changes, particularly because we want to permit families to report those changes that could be beneficial to the family's co-payment or subsidy level. The Lead Agency must act upon such reported changes if doing so would reduce the family's co-payment or increase the subsidy. The Lead Agency would be prohibited from acting on the family's self-reported changes if it would reduce the family's benefit, such as increasing the co-payment or decreasing the subsidy.

We believe that the limitation on raising copayments, by protecting the child's benefit level for the minimum 12 month eligibility period, is consistent with the statutory requirement at 658E(c)(2)(N) that once deemed eligible, a child shall ''receive such assistance, for not less than 12 months.'' Raising co-payments earlier that the 12 month period could potentially destabilize the child's access to assistance and has the unintended consequence of forcing working parents to choose between advancing in the workplace and child care assistance. This is discussed further below in the section on reporting changes in circumstances.

*Graduated phaseout.* New statutory language at Section 658E(c)(2)(N)(iv) requires Lead Agencies to have policies and procedures in place to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of State median income. We are interpreting this provision to mean that children receiving CCDF assistance would remain income-eligible for CCDF until their family income exceeds 85 percent of SMI. Section 98.21(b)(1), as proposed, requires Lead Agencies that set their initial income eligibility level below 85 percent of SMI for a family of the same size to provide for a graduated phaseout of assistance by implementing one of two approaches: (1) Two-tiered eligibility (an initial, entry-level income threshold and a higher exit-level income threshold for families already receiving assistance) with the exit threshold set at 85 percent of SMI. If a Lead Agency's initial eligibility threshold is set at 85 percent of SMI, it would be exempt from this requirement; or (2) using the tiered eligibility approach in (1) but for a limited period of not less than an additional 12 months.

Lead Agencies retain the authority to establish their initial income eligibility threshold at or below 85 percent of SMI. This rule proposes to give Lead Agencies the option to decide between allowing children, who are otherwise eligible, to stay on CCDF until their income exceeds 85 percent of SMI for a family of the same size or to adopt this approach for at least one additional year. This provision promotes continuity of care and is consistent with the statutory requirement that families retain child care assistance during an eligibility period as their income increases as long as it remains at or below 85 percent of SMI. We are seeking comments on the anticipated impacts of the proposed graduated phaseout provision, including suggestions for possible alternative approaches to consider that would also promote continuity of care for children and family financial stability.

Pursuant to § 98.21(a)(3) as proposed, Lead Agencies are prohibited from increasing family copayments within the minimum 12-month eligibility period. We propose, in paragraph (b)(2), that Lead Agencies be permitted to adjust family co-payment amounts during the proposed graduated phaseout period to help families transition off of child care assistance. ACF encourages Lead Agencies to ensure that copayment increases are gradual in proportion to a family's income growth and do not constitute too high a cost burden for families so as to ensure stability as family income increases.

Income eligibility policies play an important role in promoting pathways to financial stability for families. Currently, 16 Lead Agencies use two-tiered income eligibility. However, even with higher exit-level eligibility thresholds in these States/Territories, a small increase in earnings may result in families becoming ineligible for assistance before they are able to afford the full cost of care. An unintended consequence of low eligibility thresholds is that low income parents may pass up raises or job advancement in order to retain their subsidy, which undermines a key goal of CCDF to help parents achieve independence from public assistance. As proposed, this rule would allow low-income families to continue child care assistance as their income grows to 85 percent of State median income in order to support financial stability.

*Irregular fluctuations in earnings.* In § 98.21(c), we propose to reiterate statutory language at Sec. 658E(c)(2)(N)(i)(II) that Lead Agencies establish processes for initial determination and redetermination of eligibility that take into account parents' irregular fluctuations in earnings. We clarify that temporary increases in income should not affect eligibility or family copayments, including monthly income fluctuations that show *temporary* increases, which when taken in isolation, may incorrectly indicate that a family is above the federal threshold of 85 percent of SMI, when in actuality their annual income remains at or below 85% SMI.

Lead Agencies retain broad flexibility to set their policies and procedures for income calculation and verification. We propose, as examples, several approaches Lead Agencies may take to account for irregular fluctuations in earnings. Lead Agencies may average family earnings over a period of time (*e.g.,* 12 months) to better reflect a family's financial situation; Lead Agencies may adjust documentation requirements to better account for average earnings, for example, by requesting the earnings statement that is most representative of the family's income, rather than the most recent statement; or Lead Agencies may choose to discount temporary increases in income provided that a family demonstrates that an isolated increase in pay (*e.g.,* short-term overtime pay, lump sum payments such as tax credits, etc.) is not indicative of a permanent increase in income.

*Undue disruption.* Pursuant to section 658E(c)(2)(N)(i)(II) of the CCDBG Act, we are adding § 98.21(d), which requires the Lead Agency to establish procedures and policies to ensure that parents, especially parents receiving TANF assistance, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process. This provision of the law seeks to protect parents from losing assistance for failure to meet renewal requirements that place unnecessary barriers or burdens on families, such as requiring parents to take leave from work in order to submit documentation in person or requiring parents to resubmit documents that have not changed (*e.g.,* children's birth certificates).

To meet this provision, Lead Agencies could offer a variety of family-friendly mechanisms through which parents could submit required documentation (*e.g.,* phone, email, online forms, extended submission hours, etc.). Lead Agencies could also consider strategies that inform families, and their providers, of an upcoming redetermination and what is required of the family. Lead Agencies could consider only asking for information necessary to make an eligibility determination or only asking for information that has changed and not asking for documentation to be re-submitted if it has been collected in the past (*e.g.,* children's birth certificates; parents' identification, etc.) or is available from other electronic data sources. Lead Agencies can pre-populate renewal forms and have parents confirm that information is accurate.

In general, ACF strongly encourages Lead Agencies to adopt reasonable policies for establishing a family's eligibility that minimize burdens on families. Given the new eligibility provisions established by reauthorization, Lead Agencies are encouraged to re-evaluate processes for verifying and tracking eligibility to simplify eligibility procedures and reduce duplicative requirements across programs. Simplifying and streamlining eligibility processes along with other proposed changes in the subpart may require significant change within the CCDF program. Lead Agencies should provide appropriate training and guidance to ensure that caseworkers and other relevant child care staff (including those working for designated entities) clearly understand new policies and are implementing them correctly.

*Reporting changes in circumstance.* Currently, many Lead Agencies have policies in place to monitor eligibility on an ongoing basis to ensure that at any given point in time a family is eligible for services, often called change-reporting or interim-reporting. As the revised statute provides that children may retain eligibility through changes in circumstance, it is our belief that comprehensive reporting of changes in circumstance is not only unnecessary but runs counter to CCDF's goals of promoting continuity of care and supporting families' financial stability.

Additionally, there are challenges associated with interim monitoring and reporting, including costs to families trying to balance work or education and family obligations and costs to Lead Agencies administering the program. Overly burdensome reporting requirements can also result in increased procedural errors, as even parents who remain eligible may face difficulties complying with onerous reporting rules.

Lead Agencies should significantly reduce change reporting requirements for families within the eligibility period, and limit the reporting requirements to changes that impact CCDF eligibility. Under this proposed rule, a Lead Agency would be required to specify in its Plan any requirements for families to notify the Lead Agency (or its designee)

of changes in circumstances between eligibility periods, and describe efforts to ensure such requirements do not impact continuity for eligible families between redeterminations (§ 98.21(e)).

Under paragraph (e)(1), the Lead Agency must require families to report a change at any point during the minimum 12-month period only in circumstances where the family's income exceeds 85% of SMI, taking into account irregular income fluctuations. At the option of the Lead Agency, the Lead Agency may require families to report changes where the family has experienced a non-temporary cessation of work, training, or education.

In paragraph (e)(2), we specify that any notification requirements shall not constitute an undue burden on families and propose that compliance with requirements must include a range of notification options (*e.g.,* phone, email, online forms, extended submission hours) and not require an in-person office visit to accommodate the needs of parents.

We also propose limiting notification requirements only to items that impact a family's eligibility (*e.g.,* income changes over 85 percent of SMI, and at Lead Agency option, the status of the child's parent as working or attending a job training or educational program) or those that are necessary for the Lead Agency to contact the family or pay providers (*e.g.,* a family's change of address or a change in the parent's choice of provider). Nothing in this rule or the law precludes Lead Agencies from examining additional eligibility criteria at the time of the next redetermination.

In paragraph (e)(4), we propose requiring Lead Agencies to allow families the option of reporting of information on an ongoing basis, particularly to allow families to report information that would be beneficial to their assistance (such as an increase in work hours that necessitates additional child care hours or a loss of earnings that could result in a reduction of the family copayment). While we encourage limiting reporting requirements for families, it was not our intent to limit the family's ability to report changes in circumstances, particularly in cases where they may have entered into more stressful or vulnerable situations or would be eligible for additional child care assistance.

Moreover, as proposed in § 98.21(e)(4), if a family reports changes on an ongoing basis to the Lead Agency that do not make the family ineligible, the Lead Agency must act on these provisions if it would increase the family's benefit, but cannot act on any information that would reduce the family's benefit. All of the above provisions would apply to any entities that perform eligibility functions in the CCDF program on the Lead Agency's behalf.

Finally, some Lead Agencies currently use electronic data from other State/Territory and Federal databases to verify or monitor CCDF eligibility. Lead Agencies may continue this practice, which is particularly useful in reducing the burden on families at the time of initial determination or redetermination. However, Lead Agencies should ensure any such data that is acted upon during the minimum 12-month eligibility period conform to the above requirements for change reporting and all CCDF rules.

We recognize that some States currently send interim reporting forms to families during the eligibility period to request that families verify or update information. Some States use such interim reporting to align with processes in other programs, such as semi-annual SNAP simplified change reporting. We believe that such periodic reporting forms are contrary to the spirit of the law, which provides for minimum 12-month eligibility between redeterminations. We ask for comments on whether States should have the option for 6-month interim reporting forms for CCDF, and if such reports are allowed, the best way to structure them so as to promote continuity of services for the minimum 12-month eligibility period for eligible families, consistent with the law. We also ask for comment on whether States should be able to adjust co-payments or otherwise act on verified information (*e.g.,* updated income information) received from other programs or sources. As discussed earlier, acting on information received pursuant to eligibility determinations or recertifications in other programs allows CCDF Lead Agencies to extend a child's eligibility by ''resetting the clock'' and starting a new 12-month period. We ask for comments on whether the benefits of this approach outweigh the impact of any co-payment increases, if allowed, during the minimum 12-month period, and whether those benefits would be a reason to allow Lead Agencies to act on verified information from other programs.

*Program integrity.* It is important to ensure that CCDF funds are effectively and efficiently targeted towards eligible low-income families. Policies to promote continuity, such as lengthening eligibility periods and allowing a child to remain eligible between redetermination periods, are consistent with and support a strong commitment to program integrity. ACF expects Lead Agencies to have rigorous processes in place to detect fraud and improper payments, but these should be reasonably balanced with family-friendly practices.

In order to remain consistent with the requirements in this subpart, we are proposing to add § 98.21(a)(4) to affirmatively state that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1), any payment for such a child shall not be considered an error or improper payment under subpart K due to the family's circumstances. This clarifies that compliance with the policies in this Subpart do not constitute an error and Lead Agencies will not be held accountable for payments within these parameters.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These proposed changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit a Lead Agencies' ability to balance these priorities in a way that best meets the needs of children.

Some Lead Agencies currently use ''look back'' and recoupment policies as part of eligibility redeterminations. These review a family's eligibility for the prior eligibility period to see if the family was ineligible during any portion of that time and recoup benefits for any period where the family had been ineligible. ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child ''will be considered to meet all eligibility requirements'' for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would

not be considered eligible after an initial eligibility determination. We encourage Lead Agencies instead to focus program integrity efforts on the largest areas of risk to the program, which tend to be intentional violations and fraud involving multiple parties.

Existing regulations at § 98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

*Taking into consideration children's development and learning.* The proposed rule affirms that both the child's development and the parent's need to work or attend school or training are factors in the child care needs of each family. This proposed rule would amend § 98.21 to add paragraph (f) to require that ''Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.'' There are myriad ways in which this provision could be incorporated into Lead Agencies' eligibility, intake, authorization, and CCDF policies and practices. ACF intends to work with Lead Agencies to provide technical assistance and identify a variety of strategies to fit different eligibility processes. As an example, in serving a preschool-aged child (*e.g.,* age 3 or 4), the Lead Agency may consider whether or not the child has access to a high quality preschool setting and how CCDF can make enrollment in a high quality preschool more likely. Lead Agencies could partner with Head Start, pre-kindergarten, or other high quality programs to build an intentional package of arrangements for the child that allows for attendance at preschool and a second arrangement that accommodates the parent's work schedule. For infants and toddlers, a Lead Agency may want to coordinate services with Early Head Start, while also maintaining a secondary child care arrangement to preserve the relationship with a familiar caregiver, as it is particularly important for infants and toddlers to build and maintain secure relationships with caregivers. A Lead Agency could also offer parents the choice to select high quality infant slots that are funded through contracts or grants. For children of all ages, providing more intensive case management for families with children with multiple risk factors can increase the likelihood that the family will find a stable, quality child care provider that is willing to work with other service providers in assisting the child and family.

The intent of this provision is that the Lead Agency has some mechanism in place to consider the child's development and learning, but a Lead Agency has broad flexibility to determine how this is done. At a minimum, we would expect Lead Agencies to collect sufficient information during the CCDF intake process in order to make necessary referrals for services. For example, a Lead Agency could make sure there is an automatic referral of eligible children to Early Head Start or Head Start. A Lead Agency could include in their eligibility determination process a question about whether or not the child has an Individualized Education Program (IEP) or Individual Family Service Plan (IFSP), so that the parent could be provided with information on providers that are equipped to provide services that meet the child's individual needs.

ACF encourages Lead Agencies to engage in public-private partnerships so that responsibility for implementing this provision does not fall solely on CCDF eligibility workers. Partnerships with child care resource and referral agencies, early intervention agencies, and others may mean that a few well-chosen questions during the intake process can prompt the eligibility worker (or automated system if the process is online) to direct the family to appropriate resources. This proposed requirement does not require a developmental screening of every child as part of the eligibility process; however, child care agencies should partner to ensure that children in the CCDF subsidy system can access appropriate screening and follow-up.

We recognize that given constraints on funding, limited human resource capacity, and the inadequate supply of high quality care, a perfect arrangement will not be found in all cases. Rather, we expect Lead Agencies to consider how they can best meet the developmental and learning needs of children in their policies and practices and to encourage partnerships among high quality providers, child care resource and referral agencies, and case management partners to strengthen CCDF's capacity to fulfill its child development mission for families.

*No requirement to limit authorized care to parent schedule.* The proposed rule would clarify at § 98.21(g) that ''Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.'' Tying child care subsidy authorizations closely to parental work hours may limit access to high quality settings and does not support the fixed costs of providing care. In particular, it creates challenges for parents with variable schedules and inhibits their children from accessing a consistent child care arrangement. This provision clarifies that ''matching'' the hours of child care to a parent's hours of work is not required. ACF believes that, in some cases, such ''matching'' works against the interests of the parent or child.

Lead Agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training. For example, if most local high quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care.

*Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities*

Two of the Act's purposes are ''to promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs'' and ''to encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings.'' Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities conducted by Lead Agencies to increase parental awareness of the range of child care options available to them.

Parental Choice (Section 98.30)

*Group home child care.* As discussed earlier, we are proposing a technical change to delete *group home child care* from the variety of child care categories at § 98.30(e) from which parents receiving a certificate for child care service must be able to choose.

*In-home care.* We propose to revise § 98.30(f)(2) to explicitly allow for Lead Agencies to adopt policies that may

limit parental access to in-home care. This change aligns with current policy as discussed in the preamble to the 1998 Final Rule. Specifically, the preamble documented Lead Agencies' ''complete latitude to impose conditions and restrictions on in-home care.'' (63 FR 39950) As discussed in the 1998 preamble, monitoring the quality of care and the appropriateness of payments to in-home providers poses special challenges for Lead Agencies. We continue to urge Lead Agencies to consider the factors that may lead parents to choose in-home care, including the need for care at non-traditional hours or care for children with special needs, when deciding whether to put limitations on in-home care. It is crucial that parents have access to the types of care necessary for them to work and for their children to be in a safe and enriching environment. While this proposed change codifies Lead Agencies' ability to impose limits on the use of in-home care, it does not allow for Lead Agencies to flatly prohibit the use of in-home care. As this is longstanding policy, we do not expect the proposed change to have a significant impact on families or Lead Agencies.

*Parental choice and child care quality.* In order to be meaningful, we believe the parental choice requirements included in this section should give parents access to a range of child care providers that foster healthy development and learning for children. Many Lead Agencies have invested a significant amount of CCDF funds to implement quality rating and improvement systems (QRIS) to promote high quality child care and education programs, and some have expressed concerns that the current regulatory language related to parental choice inhibits their ability to link the child care subsidy program to these systems. ACF published a Policy Interpretation Question (CCDF–ACF–PIQ–2011–01) clarifying that parental choice provisions do not preclude a Lead Agency from implementing policies that require child care providers serving children receiving CCDF funds to meet certain quality requirements, including those specified within a quality improvement system. As long as parental choice conditions are met, a Lead Agency could require that, in order to provide care to children receiving CCDF, the provider chosen by the parent must meet requirements associated with a specified level in a quality improvement system.

We propose to incorporate this policy interpretation into regulation by adding paragraph (g) at § 98.30 clarifying that as long as parental choice provisions at paragraph (f) of this section are met, parental choice provisions should not be construed as prohibiting a Lead Agency from establishing policies that require child care providers that serve children receiving subsidies to meet higher standards of quality as defined in a QRIS or other transparent system of quality indicators.

When establishing such policies, we encourage Lead Agencies to assess the availability of care across categories and types, and availability of care for specific subgroups (*e.g.,* infants, school-age children, families who need weekend or evening care) and within rural and underserved areas, to ensure that eligible parents have access to the full range of categories of care and types of providers before requiring them to choose providers that meet certain quality levels. Should a Lead Agency choose to implement a quality improvement system that does not include the full range of providers, the Lead Agency would need to have reasonable exceptions to the policy to allow parents to choose a provider that is not eligible to participate in the quality improvement system (*e.g.,* relative care). As an example, a Lead Agency may implement a system that incorporates only center-based and family child care providers. In cases where a parent selects a center-based or family child care provider, the Lead Agency may require that the provider meet a specified level or rating. However, the policy also must allow parents to choose other categories, such as in-home care, and types of child care providers, such as relative providers, that may not be eligible to participate in the quality improvement system. This is particularly important for geographic areas lacking an adequate supply of child care or when a parent has scheduling, transportation, or other issues that prevent the use of a preferred provider within the system.

Lead Agencies should ensure adequate time and support for providers before implementing a policy that requires providers to meet a certain level of quality in order to be eligible to serve CCDF children. While most States and Territories have implemented a QRIS, the number of providers participating varies significantly. In order to implement the policy at § 98.30(g), Lead Agencies should ensure that an adequate number of child care providers are included in the QRIS to provide parents with a variety of settings and high quality child care options from which to choose. Furthermore, it is important to ensure that providers have been given the financial, technical, and professional development supports necessary to meet high quality standards.

Similarly, we propose adding paragraph (h) at § 98.30 to clarify that Lead Agencies may provide parents with information and incentives that encourage the selection of high quality child care without violating parental choice provisions. For example, Lead Agencies may provide brochures or other products that encourage parents to select a high quality provider without violating parental choice provisions. This provision would allow, but not require, Lead Agencies to adopt policies that incentivize parents to choose high quality providers as determined by a system of quality indicators and we strongly encourage that they do so. We believe this policy change would help Lead Agencies leverage the CCDF quality funds that have been invested in QRIS and ensure that more children receiving CCDF are in high quality child care, which is in line with the new purposes and provisions in the statute.

Lead Agencies would have the flexibility to determine what types of information and incentives to use to encourage parents to choose high quality providers. One option is to lower parental copayments for parents that choose a high quality provider. We encourage Lead Agencies, or their partners such as child care resource and referral agencies, to use information from a QRIS or other system of quality indicators to make recommendations and help parents make informed child care decisions, for example, by listing the highest rated providers at the top of a referral list and providing information about the importance of high quality child care. Lead Agencies are not limited to these examples and should design information sharing and incentives in a way that best fits the families they serve with CCDF.

Parental Access (Section 98.31)

We propose a technical change at § 98.31 to specify that Lead Agencies shall provide a detailed description ''in the Plan'' of how they ensure that providers allow parents to have unlimited access to their children while the children are in care. This corresponds to the provision at § 98.16(t).

Parental Complaints (Section 98.32)

*Hotline for parental complaints.* Section 658E(c)(2)(C) of the CCDBG Act requires Lead Agencies to maintain a record of substantiated parental complaints, make information regarding such parental complaints available to the public on request, and provide a

detailed description of how such record is maintained and is made available. Current language at § 98.32 mirrors the statutory requirement. We elaborate on the statutory requirement by proposing § 98.32(a), which would require Lead Agencies to ''establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers.'' In connection with this change we have added a provision at § 98.33(d), to require Lead Agencies to include in the consumer statement for CCDF parents disclosure of the hotline number or other reporting process pursuant to this requirement. Lead Agencies should identify the capability for the parental complaint hotline to be accessible to persons with limited English proficiency and persons with disabilities, such as through the provision of interpretation services and auxiliary aids.

The purpose of the proposed parental complaint hotline is to provide parents with an easy way to submit complaints about a child care provider or their staff. The current process for complaint submission varies widely across Lead Agencies, with some lacking any system at all. According to an analysis of FY 2014–2015 CCDF Plans, as well as State/Territory child care and licensing Web sites, 18 States/Territories have a parental complaint hotline that covers all CCDF providers, 22 States/Territories have a parental complaint hotline that covers some child care providers, and 16 States/Territories do not have a parental complaint hotline. Maintaining and sharing substantiated complaints is a statutory requirement and establishing a clear, easily-accessible way for parents to file complaints is an important part of meeting that requirement.

The value of parental complaint hotlines is illustrated by the longstanding national hotline established for the Department of Defense (DOD) military child care program. The Military Child Care Act of 1989 (Pub. L. 101–189) required the creation of a national 24 hour, toll-free hotline that allows parents to submit complaints about military child care centers anonymously. DOD has found the hotline to be an important tool in engaging parents in child care. In addition, complaints received through the hotline have helped DOD identify problematic child care programs. (Campbell, N., Appelbaum, J., Martinson, K., *Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System,* National Women's Law Center, 2000).

Lead Agencies can meet the proposed requirement at § 98.32(a) by establishing a telephone hotline or other type of system, such as a web-based system for accepting parental complaints about child care providers. However, we discourage reliance on only a web-based system as some families may have limited access to the Internet. We strongly encourage a parental complaint system that includes multiple submission platforms such as both telephonic and web-based submission. Regardless of the type of system utilized, Lead Agencies are encouraged to establish multilingual options and to ensure access for those with hearing and vision impairments.

The Lead Agency may choose a different agency at the State, Territory, Tribal, or local level to manage the parental complaint system or find ways to combine the process for collecting parental complaints with already existing hotlines. For example, in some States/Territories the licensing agency handles complaints of licensed providers and a different agency handles license-exempt providers. Lead Agencies may choose to devolve management of a complaint system to the local level in order to facilitate more prompt and timely follow-up. We leave it to the discretion of the Lead Agency to determine the best way to manage the hotline.

We also strongly encourage Lead Agencies to implement a single point of entry (*e.g.,* one toll-free hotline number) as the most straightforward way for parents to file a complaint. There should not be a burden for the parent in finding the correct hotline number or Web page address. Many parents may not know whether the provider is licensed or license-exempt, for example, and therefore will not know which hotline to call if there are separate contact points for providers. Lead Agencies that choose to combine existing lines or devolve responsibility to local agencies should set-up a single point of entry with a process to immediately refer the call to the appropriate agency.

Lead Agencies should widely publicize the process for submitting a complaint about a provider and consider requiring child care providers to publicly post the process, including the hotline number and/or URL for the web-based complaint system, in their center or family child care home. Other areas for posting may be on the Web site required by § 98.33(a), through a child care resource and referral network, at local agencies where parents apply for benefits, or other consumer education materials distributed by the Lead Agency. In addition to making sure this information is made widely available to the public, the hotline or other reporting process must be disclosed to parents receiving CCDF as part of their consumer statement at § 98.33(d). To be most useful, parents should be able to file a complaint at any time. We strongly recommend that a telephonic hotline be operational 24 hours a day, or at minimum include a voicemail system that allows parents to leave complaints when an operator is not available. We encourage Lead Agencies to have a complaint response plan in place that includes appropriate time frames for following up on a complaint depending on the urgency or severity of the parent's concern and other relevant factors. We are not requiring Lead Agencies to do a monitoring visit in response to a complaint. However, inspections and monitoring visits may be necessary in order to substantiate the complaints received through the proposed hotline. Therefore, Lead Agencies should have a process for substantiating those complaints. We strongly recommend this process include unannounced visits in response to a complaint pertaining to the health and safety of children in the care of child care providers receiving CCDF. As discussed in Subpart E of this preamble, we are seeking comment on whether the final rule should include a requirement that Lead Agencies conduct an unannounced monitoring visit in response to a complaint, and whether this requirement should apply to providers receiving CCDF funds or additional providers.

We propose a technical change at § 98.32(c), which we propose to redesignate as § 98.32(d), to specify that Lead Agencies shall provide a detailed description ''in the Plan'' of how they will maintain and make available to the public a record of substantiated parental complaints. This corresponds to the provision at § 98.16(s).

Consumer and Provider Education (Section 98.33)

In the 2014 reauthorization, Congress expanded the requirements related to consumer and provider education. Section 658E(c)(2)(E) of the CCDBG Act requires Lead Agencies to collect and disseminate, through child care resource and referral organizations or other means as determined by the Lead Agency, to parents of eligible children, the general public, and, where applicable, providers, consumer education information that will promote informed child care services. In addition, Section 658E(c)(2)(D) requires monitoring and inspection reports of child care providers to be made available electronically. This focus on consumer education as a crucial part of

parental choice has laid the foundation for a more transparent system, helping parents to better understand their child care options and encouraging providers to improve the quality of their services.

Every interaction parents have with the subsidy system is an opportunity to engage them in consumer education to help them make informed decisions about their child care providers, as well as provide resources that promote child development. We propose that consumer education services be directly included as part of the intake and eligibility process for families applying for child care assistance. Parents of eligible children often lack the information necessary to make informed decisions about their child care arrangement. Low-income working families may face additional barriers when trying to find information about child care providers, such as limited access to the internet, limited literacy skills, limited English proficiency, or disabilities. Lead Agencies can play an important role in bridging the gap created by these barriers by providing information directly to families receiving CCDF subsidies to ensure they fully understand their child care options and are able to assess the quality of providers.

When implementing proposed consumer and provider education provisions, we recommend Lead Agencies consider three target audiences: Parents, the general public, and child care providers. While some components are aimed at ensuring parents have the information they need to choose a child care provider, others are equally important for caregivers who interact with parents on a regular basis and can serve as trusted sources of information.

Lead Agencies should ensure that all materials are consumer-friendly and easily accessible; this includes using plain language and considering the abilities, languages, and literacy levels of the targeted audiences. Lead Agencies should consider translation of materials into multiple languages, as well as the use of ''taglines'' on consumer education materials for frequently encountered non-English languages and to inform persons with disabilities how they can access auxiliary aids or services and receive information in alternate formats at no cost.

*Consumer education Web site.* We propose amending paragraph (a) of § 98.33 to require Lead Agencies ''to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site.'' The Web site must, at a minimum, include five components: (1) Lead Agency policies and procedures, (2) provider-specific information, (3) aggregate number of deaths, serious injuries, and instances of substantiated child abuse in child care settings each year (4) referral to local child care resource and referral organizations, and (5) directions on how parents can contact the Lead Agency, or its designee, and other programs to better understand information on the Web site. The specifics of each component are discussed in detail below.

The statute requires the Web site to be consumer-friendly and easily accessible. To ensure that the Web site is accessible for all families, we propose to require that it provide for the widest possible access to services for families who speak languages other than English and persons with disabilities. Lead Agencies should make sure the Web site meets all Federal and State laws regarding accessibility, including the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*), to ensure that individuals with disabilities are not excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services. We recommend Lead Agencies follow the guidelines laid out by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), when designing their Web sites. Section 508 requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities. The US Department of Justice has provided guidance and resources on how to create an accessible site at *http://www.ada.gov/Websites2.htm*.

Parents should be able to access all consumer information they need to make an informed choice through a simple, single online source. We encourage Lead Agencies to review current systems and redesign if needed to allow for a single point of entry, especially if the systems are funded with CCDF funds. However, we recognize that Lead Agencies have made significant investments in databases and other web-based applications. For many States/Territories, the CCDF Lead Agency and the licensing agency may not be the same, leading to multiple data systems with different ownership. We do not intend to require completely new systems be built. Rather, the Web site would be a single starting point for parents to access the various sources of public information required by the statute, including health and safety information, licensing history, and other related provider information. In the case where this information is already available on multiple Web sites, such as in a locally-administered State where each county has its own Web site, the Lead Agency could choose to create a single Web page that includes links to each of these Web sites, provided that each of the Web sites meets all the criteria at § 98.33(a). Similarly, if there are two Web sites, one that includes licensed providers and another that includes CCDF providers, we strongly encourage Lead Agencies to create a single Web site through which parents can access information.

The first statutorily required component of the consumer education Web site is a description of Lead Agency policies and procedures relating to child care. This includes explaining how the Lead Agency licenses child care providers including the rationale for exempting providers from licensing requirements, as described at § 98.40; the procedure for conducting monitoring and inspections of child care providers, as described at § 98.42; policies and procedures related to criminal background checks for staff members of child care providers, as described at § 98.43; and the offenses that prevent individuals from being employed by a child care provider or receiving CCDF funds. The information about Lead Agency policies and procedures included on the consumer education Web site should be in plain language.

The second proposed component is provider-specific information in several categories for all eligible and licensed child care providers, excluding those related to all children in their care. These categories include a localized list of all providers that is searchable by zip code and differentiates whether they are licensed or license-exempt providers; information about the quality of a provider as determined by the Lead Agency, if the information is available for that provider; and the results of monitoring and inspection reports, including those due to major substantiated complaints about failure to comply with health and safety provisions and Lead Agency policies, if available; and the number of serious injuries and deaths of children occurring in that child care setting. When making information public, Lead Agencies should ensure that the privacy of individual caregivers and children is maintained, consistent with State and, local, and tribal laws.

While not required, we recommend that Lead Agencies include additional information with provider profiles, beyond what is required by statute, including contact information, enrollment capacity, years in operation, education and training of caregivers, and languages spoken by caregivers. We also suggest that the quality information and monitoring reports be included in the initial search results.

The Act requires the Secretary to operate a national Web site for consumer education and submission of complaints. (Section 658L(b)(2)). The statute requires several components be included in the Web site, including many of the same requirements of the Lead Agency consumer education Web sites. We are proposing to incorporate all requirements of the national Web site into the requirements of the Lead Agency consumer education Web site, including the localized list of child care providers searchable by zip code proposed at § 98.33(a)(2)(i). The statute allows for the national Web site to provide the information either ''directly or through linkages to State databases.'' It is not feasible or sensible for HHS to recreate databases many States have already created. Therefore, we are proposing to require Lead Agencies to include these components in their databases and Web sites to which we plan to link the national Web site. We welcome comments regarding this proposed provision and suggestions for having the national Web site link to State/Territory-level databases and Web sites.

The Web site must include provider-specific quality information as determined by the Lead Agency, in accordance with Section 658E(c)(2)(E)(i)(II) of the Act. Lead Agencies may choose the best method for differentiating the quality levels of child care providers. In this proposed rule, we are not requiring that Lead Agencies have a QRIS. However, we strongly encourage Lead Agencies to use a QRIS, or other transparent system of quality indicators, to collect the quality information proposed at § 98.33(a)(2)(ii). Lead Agencies that have a QRIS should use information from the QRIS to provide parents with provider-specific quality information. By transparent system of quality indicators we mean a method of clear, research-based indicators that are appropriate for different types of providers, including child care centers and family child care homes, and appropriate for providers serving different age groups of children, including infants, toddlers, preschool, and school-age children. The system should help families easily understand whether a provider offers services meeting Lead Agency-determined best practices and standards to promote children's development, or is meeting a nationally recognized, research-based set of criteria, such as Head Start or national accreditation. We encourage Lead Agencies to incorporate mandatory licensing requirements as the foundation of any system of quality indicators, as a baseline of information for parents. By building on licensing structures, Lead Agencies may have an easier transition to a more sophisticated system that differentiates between indicators of quality.

Because not all eligible and licensed non-relative child care providers may be included in a transparent system of quality indicators, the proposed regulation clarifies that provider-specific quality information must only be posted on the consumer Web site if it is available for the individual provider, which is a caveat included in statute. We recognize that it takes time to build a comprehensive system that is inclusive of a large number of providers across a wide geographic area. However, in order for the quality information provided on the Web site to be meaningful and useful for parents it should include as many providers as possible. We are not proposing a specific participation rate, but the public should have contextual information regarding the extent of participation by providers in a system of quality indicators.

In designing a mechanism for differentiating child care quality, we suggest considering the following key principles: Provide outreach to targeted audiences; ensure indicators are research-based and incorporate the use of validated observational tools when feasible; ensure assessments of quality include program standards that are developmentally appropriate for different age groups; incorporate feedback from child care providers and families; make linkages between consumer education and other family-specific issues such as care for children with special needs; engage community partners; and establish partnerships that build upon the strengths of child care resource and referral programs and other public agencies that serve low-income parents.

The majority of States/Territories reported in their FY 2014–2015 CCDF Plans that they have at least started to implement a QRIS. HHS has established a Priority Performance Goal to track the number of States that implement a QRIS meeting recommended benchmarks, and, as of FY 2014, 29 States/Territories met the benchmark, and 27 States/Territories have made progress on implementing a high quality QRIS that meets HHS benchmarks since the goal was establish in FY 2011.

While ACF encourages Lead Agencies to implement a systemic framework for evaluating, improving, and communicating the level of quality in child care programs, we are not limiting Lead Agencies to a QRIS as the only mechanism for collecting the required quality information. Lead Agencies have the flexibility to implement more limited, alternative systems of quality indicators. For example, Lead Agencies could choose to use a profile or report card of information about a child care provider that could include compliance with State/Territory licensing or health and safety requirements, information about ratios and group size, average teacher training or credentials, type of curriculum used, any private accreditations held, and presence of caregivers to work with young English learners or children with special needs. Lead Agencies could also build on existing professional development registries or other training systems to provide parents with information about caregiver training.

Section 658E(c)(2)(D) of the Act requires Lead Agencies to also include provider-specific results of monitoring and inspection reports, including those reports that are due to major substantiated complaints (as defined by the Lead Agency) about a provider's failure to comply with health and safety requirements and other Lead Agency policies. The definition of ''major substantiated complaint'' varies across the country. Therefore, we are not proposing a standard definition. However, the proposed rule would require Lead Agencies to explain how they define it on their consumer education Web sites. This proposed requirement ensures that the results of proposed monitoring and inspection requirements at § 98.42 are available to parents when they are deciding on a child care provider.

We propose requiring Lead Agencies to post full monitoring and inspection reports. In order for inspection results to be consumer-friendly and easily accessible, Lead Agencies would be required to use plain language for parents and child care providers and caregivers to understand. Often monitoring and inspection reports are long and include jargon and references to codes or regulations without any explanation. Reports that include complicated references and lack explanation are not consumer-friendly, limiting a parent's ability to make an informed decision about a child care

provider. In the case that full reports are not in plain language, Lead Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report. We encourage Lead Agencies to consider simplifying and translating their monitoring and inspection reports in order to create more consumer-friendly documents.

We propose to require that results be posted in a timely manner and include information about the date of inspection, information about any corrective actions taken by the Lead Agency and child care provider, where applicable, and include at least five years of results, where available going forward. A single year of results could mask patterns of infractions and is insufficient for a parent to judge the safety of the environment. We do not expect Lead Agencies to post reports retrospectively or prior to the effective date of this provision (November 17, 2017). We expect Lead Agencies to keep five years of results posted once they are available, beginning with the November 17, 2017 effective date (unless a provider has been providing services for less time). We believe five years is a reasonable amount of time to include on the Web site. As adding new results to the completed Web site should not be a burden for the Lead Agency, we expect all reports to remain on the Web site. Finally, while not required, if earlier reports are available, we encourage Lead Agencies to post them on the Web site in order to provide more information for parents.

Posting results and corrective actions in a timely manner is crucial to ensuring parents have updated information when making their provider decisions. We recommend Lead Agencies update results as soon as possible and no later than 90 days after an inspection or corrective action is taken. We are interested in comments on whether this is an appropriate amount of time. However, we are not in the proposed rule defining timely in the regulatory language. Rather, the proposed rule would leave it to the discretion of the Lead Agency to determine a reasonable amount of time based on the needs of its families and its capacity for updating.

In following the statutory language at Section 658E(c)(2)(D), Lead Agencies must post the monitoring and inspections results for child care providers, as defined at § 98.2. This means that the Web site must include any provider subject to the monitoring requirements at § 98.42, as well as all licensed child care providers and all child care providers eligible to deliver CCDF services. Lead Agencies would be required to post inspection reports for child care providers that do not receive CCDF, if available. However, if information is not available, such as if a provider is not being inspected and there is no inspection report, the requirement does not apply.

Lead Agencies with concerns regarding providers' privacy could use a unique identifier, such as a licensing number, to include on the profile. Parents interested in a certain provider can ask the provider or the Lead Agency for the identifier in order to look up more information about health and safety requirements met by a certain provider on the Web site. Lead Agencies also may choose to provide only limited information about a provider, such as provider name and zip code to make it easier for parents to identify their chosen provider.

We strongly support Lead Agencies implementing policies that are fair to providers, including protections related to the consumer education Web site. Lead Agencies should establish an appeals process for providers that receive violations. This appeals process should include timeframes for filing the appeal, for the investigation, and for removal of any violations from the Web site determined on appeal to be unfounded. Lead Agencies also must ensure that the consumer education Web site is updated regularly. Some Lead Agencies currently allow providers to review monitoring and inspection results prior to posting on a public Web site. Nothing in this proposed rule should be taken as prohibiting that practice moving forward. However, the proposed requirement that information be posted in a timely manner means that Lead Agencies may need to limit the amount of time providers have to review the results prior to posting.

Finally, we propose to require that Lead Agencies post provider-specific information about the number of serious injuries (as defined by the State) and deaths that occurred in child care for all eligible child care providers on the consumer education Web site. This information should be included as part of the child care provider's profile discussed earlier. This proposed requirement works in conjunction with the proposed provision at § 98.42(b)(4), which would require child care providers to report serious injuries or deaths occurring in child care. Because Lead Agencies have different definitions, we are not proposing to define serious injury in this proposed rule.

Whether a provider has a history of serious injuries or deaths of children while in their care is a crucial piece of information that parents must have access to in order to make an informed decision about a provider. In addition, learning that a provider does not have a history of violations may provide parents additional peace of mind when leaving their children with a provider.

We recognize that not all serious injuries or deaths of children that occur in child care are the fault of the child care provider. We recommend that Lead Agencies include additional information about the context of the serious injuries and deaths to ensure that parents have the full picture when looking at these numbers on the consumer education Web site.

We are not proposing to require provider-specific information on substantiated cases of child abuse and neglect that occurred while a child was in the care of the provider. The Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a(b)(2)(B)(viii)–(ix)) requires States to preserve the confidentiality of all child abuse and neglect reports and records to protect the privacy of the child and the child's parent or guardian. We believe that requiring provider-specific information on occurrences of child abuse and neglect may violate some of those privacy requirements. However, we think it is important for parents to have access to this information as well. We request comment on whether this information should be included and suggestions for ensuring the information does not violate privacy rules.

The third statutorily required component of the consumer education Web site is posting of the aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers. This proposed requirement is associated with the provider setting and therefore it should include information about any child in the care of a provider eligible to receive CCDF, not just children receiving subsidies. As with serious injuries, we are choosing not to define substantiated child abuse in this proposed rule. We encourage Lead Agencies to use their State or Territory child welfare agency's definition of substantiated child abuse for consistent reporting across programs. Because of the wide variation in how child abuse in child care settings is reported and counted, we are requesting comments and examples about best practices for ensuring accurate data is collected and posted on the consumer education Web site. Lead Agencies may choose how the data are presented on the Web site. We encourage them to include the data with

the results of an annual review of all serious injuries and deaths occurring in child care, as proposed at § 98.53(f)(4).

The fourth proposed component of the consumer education Web site is the ability to refer to local child care resource and referral organizations, which is also a requirement of the national Web site discussed earlier. The Web site should include contact information, as well as any links to Web sites for any local child care resource and referral organizations.

The final component of the consumer education Web site is information on how parents can contact the Lead Agency, or its designee, or other programs that can help the parent understand information included on the consumer education Web site. The proposed consumer education Web site at § 98.33(a) represents a significant step in making it easier for parents to access information about the child care system and potential child care providers. However, the amount of information may be difficult to understand or find. In addition, parents searching for child care may prefer to speak with a person directly as they make decisions about their child's care. Therefore, we propose that the Web site include information about how to contact the Lead Agency, or its designee such as a child care resource and referral agency, to answer any questions parents might have after reviewing the Web site.

*Additional consumer education.* We propose to incorporate statutory requirements at Section 658E(c)(E)(i) by adding new paragraph (b) at § 98.33, which requires Lead Agencies to provide additional consumer education to eligible parents, the general public, and, where applicable, child care providers. The consumer education may be done through child care resource and referral organizations or other means as determined by the Lead Agency, and can be delivered through the consumer education Web site at § 98.33(a). We strongly encourage Lead Agencies to use additional means to provide this information including through direct conversations with case workers and information sessions for parents and child care providers, outreach and counseling available at intake from eligibility workers, and to and through child care providers to parents.

The statute requires consumer education to include: Information about the availability of child care services through CCDF, other programs for which families might be eligible, and the availability of financial assistance to obtain child care services; other programs for which families receiving CCDF may be eligible; programs carried out under Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*); research and best practices concerning children's development, including meaningful parent and family engagement and physical health and development; and policies regarding the social-emotional behavioral health of children, which are described below and included in the proposed rule at § 98.33(b)(1).

The first required piece of information is about the availability of child care services through CCDF and other programs that parents may be eligible for, as well as any other financial assistance that may be available to help parents obtain child care services. Lead Agencies should provide information about any other Federal, State/Territory/Tribal, or local programs that may pay for child care or other early childhood education programs, such as Head Start, Early Head Start and state-funded pre-kindergarten that would meet the needs of parents and children. It should also explain how other forms of child care assistance, including CCDF, are available to cover additional hours the parent might need due to their work schedule.

The second statutory requirement is for consumer education to include information about other assistance programs for which families receiving child care assistance may be eligible. These programs include: Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*); Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*); Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*); Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*); Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (42 U.S.C. 1786); Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766); and Medicaid and the State Children's Health Insurance Programs (CHIP) (42 U.S.C. 1396 *et seq.,* 1397aa *et seq.*).

In providing consumer education, Lead Agencies may consider the most appropriate and effective ways to reach families, which may include information in multiple languages and partnerships with other agencies and organizations, including child care resource and referral. Lead Agencies should also coordinate with workforce development entities that have direct contacts with parents in need of child care. Some Lead Agencies co-locate services for families in order to assist with referrals or enrollment in other programs.

Families eligible for child care assistance are often eligible for other programs and benefits but many parents lack information on accessing the full range of programs available to support their children. More than half of infants and toddlers in CCDF have incomes below the federal poverty level, making them eligible for Early Head Start. Lead Agencies can work with Early Head Start programs, including those participating in Early Head Start-Child Care Partnerships, to direct children who are eligible for Early Head Start to available programs.

Despite considerable overlap in eligibility among the major work support programs, historically, many eligible working families have not received all public benefits for which they qualify. For example, more than 40 percent of children who are likely to be eligible for both SNAP and Medicaid or CHIP fail to participate in both programs (Rosenbaum, D. and Dean, S. *Improving the Delivery of Key Work Supports: Policy & Practice Opportunities at A Critical Moment,* Center on Budget and Policy Priorities, 2011). A study using 2001 data found that only 5 percent of low-income working families obtained Medicaid or CHIP, SNAP, and child care assistance (Mills, G., Compton, J. and Golden, O., *Assessing the Evidence about Work Support Benefits and Low-Income Families,* Urban Institute, 2011).

In addition to informing families about the availability of these programs, some Lead Agencies have streamlined parents' access to other benefits and services by coordinating and aligning eligibility criteria or processes and/or documentation or verification requirements across programs. This benefits both families and administering agencies by reducing administrative burden and inefficiencies. Lead Agencies also coordinate to share data across programs so families do not have to submit the same information to multiple programs. Finally, Lead Agencies have created online Web sites or portals to allow families to screen for eligibility and potentially apply for multiple programs. We recommend Lead Agencies consider alignment strategies that help families get improved access to all benefits for which they are eligible.

Thirdly, consumer education must also include information about programs for children with disabilities carried out under Part B Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*).

The fourth piece of required consumer education is information about research and best practices

concerning children's development, and meaningful parent and family engagement. It must also include information about physical health and development, particularly healthy eating and physical activity. This information may be included on the consumer education Web site, as well as be provided through brochures, in person meetings, and other trainings.

While this information is important for parents and the general public, we encourage Lead Agencies to target this information to child care providers as well. Each of these components is crucial for caregivers to understand in order to provide an enriching learning environment and build strong relationships with parents. Lead Agencies may choose to include information about family engagement frameworks in their provider education. Many States and communities have employed these frameworks to promote caregiver skills and knowledge through their QRIS, professional development programs, or efforts to build comprehensive early childhood systems. States have used publicly-available tools, including from the Office of Head Start. The Head Start *Parent, Family, and Community Engagement* framework is a research-based approach to program change that shows how different programs can work together as a whole—across systems and service areas—to support parent and family engagement and children's learning and development.

Understanding research and best practices concerning children's development is an essential component for the health and safety of children, both in and outside of child care settings. Caregivers should be knowledgeable of important developmental milestones not only to support the healthy development of children in their care, but also so they can be a resource for parents and provide valuable parent education. Knowledge of developmental stages and milestones also reduces the odds of child abuse and neglect by establishing more reasonable expectations about normative development and child behavior. This requirement is associated with the proposed requirement at § 98.44(b)(1) that orientation or pre-service for child care caregivers, teachers and directors include training on child development.

Lastly, consumer education must include provision of information about policies regarding social-emotional behavioral health of children, which may include positive behavioral health intervention and support models for birth to school-age or as age-appropriate, and policies on suspension and expulsion of children birth to age five in child care and other early childhood programs as described in the Plan at § 98.16(ee).

Social-emotional development is fostered through securely attached relationships; and learning, by extension, is fostered through frequent cognitively enriching social interactions within those securely attached relationships. Studies indicate that securely attached children are more advanced in their cognitive and language development, and show greater achievement in school. In 2015, ACF issued an information memorandum detailing research and policy options related to children's social-emotional development. (CCDF–ACF–IM–2015–01, *http://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_im_2015_01.pdf*). By providing consumer education on social-emotional behavioral health policies, Lead Agencies are helping parents, the general public, and caregivers understand the importance of social-emotional and behavioral health and how the Lead Agency is encouraging the support of children's ability to build healthy and strong relationships.

In conjunction with this consumer education requirement, we are proposing to add § 98.16(ee) to require Lead Agencies to provide a description of their policies on suspension and expulsion of children birth to age five in child care and other early childhood programs receiving CCDF assistance. Ensuring that parents and providers understand suspension and expulsion policies for children birth to age five is particularly important. In 2014, the U.S. Departments of Health and Human Services and Education jointly released a policy statement addressing expulsion and suspension in early learning settings and highlighting the importance of social-emotional and behavioral health (*https://www.acf.hhs.gov/sites/default/files/ecd/expulsion_suspension_final.pdf*). The policy statement affirms the Departments' attention to social-emotional and behavioral health and includes several recommendations to States and early childhood programs, including child care programs, to assist in their efforts. It strongly encourages States to establish statewide policies, applicable across settings, including publicly and privately funded early childhood programs, to promote children's social-emotional and behavioral health and to eliminate or severely limit the use of expulsion, suspension, and other exclusionary discipline practices. These policies may be included in State child care licensing regulations, as some States have done.

*Information about developmental screenings.* The reauthorized CCDBG Act requires at Section 658E(c)(2)(E)(ii) that consumer education about developmental screenings be provided to parents, the general public, and, when applicable, child care providers. Specifically, it should include (1) information on existing resources and services the Lead Agency can use in conducting developmental screenings and providing referrals to services for children who receive child care assistance; and (2) a description of how a family or eligible child care provider may use those resources and services to obtain developmental screenings for children who receive child care assistance and may be at risk for cognitive or other developmental delays, including social, emotional, physical, or linguistic delays. The information about the resources may include the State or Territory's coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the IDEA (20 U.S.C. 1419, 1431 *et seq.*). We propose to reiterate the statutory requirements and add new paragraph (c) at § 98.33 to require Lead Agencies to provide information on developmental screenings as part of their consumer education efforts during the intake process for families receiving CCDF assistance and to caregivers, teachers, and directors through training and education. Information on developmental screenings, as other consumer education information, should be accessible for individuals with limited English proficiency and individuals with disabilities.

Educating parents and caregivers on what resources are available for developmental screenings, as well as how to access these screenings, is crucial to ensuring that developmental delays or disabilities are identified early. Some children may require a more thorough evaluation by specialists and additional services and supports. Lead Agencies should ensure that all providers are knowledgeable on how to access resources to support developmental and behavioral screening, and make appropriate referrals to specialists, as needed, to ensure that children receive the services and supports they need as early as possible.

While we are not proposing that all children be required to receive a

developmental screening, we strongly recommend that Lead Agencies develop strategies to ensure all children receive a developmental and behavioral screening within 45 days of enrollment in CCDF, which aligns with Head Start standards. With regular screenings, families, teachers, and other professionals can assure that young children get the services and supports they need, as early as possible to help them thrive alongside their peers. *Birth to 5: Watch Me Thrive,* a coordinated Federal effort to encourage universal developmental and behavioral screening for children and to support their families and caregivers, has information and resources at *www.acf.hhs.gov/programs/ecd/watch-me-thrive*. In addition to research-based developmental and behavioral screenings, Lead Agencies should encourage parents and child care providers to use the tools and resources developed by the Centers for Disease Control and Prevention as part of their ''Learn the Signs. Act Early.'' campaign. These resources help parents and child care providers to become familiar with and keep track of the developmental milestones of children. These resources are available at *http://www.cdc.gov/ncbddd/actearly/*. The resources provided through this campaign are not a substitute for regular developmental screenings, but help to improve early identification of children with autism and other developmental disabilities so children and families can get the services and support they need as early as possible.

*Consumer statement for families.* In addition to consumer education for parents, the general public, and where applicable, child care providers, we have a special interest in helping parents receiving CCDF select high quality child care because we know from research that low-income children have the most to gain from such settings and because the care is publicly subsidized. We propose adding a new paragraph (d) to § 98.33 to require Lead Agencies to provide families receiving CCDF assistance with easily understandable information on the child care provider they choose, including health and safety requirements met by the provider, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any quality standards met by the provider. Lead Agencies also should provide information necessary for parents and providers to understand the components of a comprehensive background check, and whether the child care staff members of their provider have received such a check. We also propose to require this consumer statement to include information about the hotline for parental complaints about possible health and safety violations and information describing how CCDF assistance is designed to promote equal access to comparable child care in accordance with § 98.45.

If a parent chooses a provider that is legally-exempt from regulatory requirements or exempt from CCDF health and safety requirements (*e.g.,* relatives at the Lead Agency option), the Lead Agency or its designee should explain the exemption to the parent. Lead Agencies that choose to use an alternative monitoring system for in-home providers, as proposed at § 98.42(b)(2)(v)(B), should describe this process for parents that choose in-home care. When a parent chooses a relative or in-home child care provider, the Lead Agency should explain to the parent the health and safety policies associated with relative or in-home care. The Lead Agency should provide the parents with resources about health and safety trainings should the parent wish for the relative to obtain training regardless of the exemption.

There is a great deal of variation in how Lead Agencies handle intake for parents receiving child care subsidies. Therefore, we propose flexibility for Lead Agencies to implement the proposed consumer statement in the way that best fits both their administrative needs and the needs of the parents. This means that the consumer statement may be presented as a hard copy or electronically. When providing this information, a Lead Agency may provide it by referring to the Web site required by § 98.33(a). In such cases, the Lead Agency should ensure that parents have access to the Internet or provide access on-site in the subsidy office. While we recognize the need for Lead Agency flexibility in this area, we have concerns about relying solely on electronic consumer statements. Parents may not have access to the Internet or may have questions about the consumer statement that need to be answered by a person. If a parent is filing an application online, we encourage the inclusion of a phone number, directed to either the Lead Agency or another organization such as a child care resource and referral agency, to ensure parents can have their questions answered. We also recommend that intake done over the phone should include the offer to either email or mail the consumer statement to the parent; and, that information on consumer statements should be accessible by individuals with limited English proficiency and individuals with disabilities.

We realize, in some cases, a parent has chosen their provider prior to the intake process. If the parent comes in with a provider already chosen, the parent should be given the consumer statement on that provider. When a parent has not chosen a child care provider prior to intake, Lead Agencies should ensure that the parent receives information about available child care providers and general consumer education information proposed at § 98.33(a), (b), and (c). This information should include a description of health and safety requirements and licensing or regulatory requirements for child care providers, processes for ensuring requirements are met, as well as information about the background check process for child care staff members of providers, and what offenses may preclude a provider from serving children. Once the parent selects a provider, this proposed provision would require the Lead Agency to provide a consumer statement to the parent with information about the provider they have selected, such as by mail or email.

Finally, we encourage Lead Agencies to provide parents receiving CCDF assistance with updated information on their child care provider on a periodic basis, such as by providing an updated consumer statement at the time of the family's next eligibility redetermination. Ties between the CCDF Lead Agency and the licensing agency can help to ensure that families are notified when providers are seriously out-of-compliance with health and safety requirements, and that placement of children and payment of CCDF funds do not continue where children's health and safety may be at-risk.

An area we want to highlight is child care consumer education for families receiving TANF. Commenters on our 2013 NPRM expressed concern that families receiving TANF are not given the support needed to identify high quality child care and that there should be a more coordinated, seamless process for TANF families to access consumer information on the availability of high quality providers. We strongly recommend that Lead Agencies provide parents receiving TANF and child care assistance, whether through CCDF or TANF, with the necessary support and consumer education in choosing child care. We strongly encourage social service agencies, child care licensing agencies, child care resource and referral agencies, and other related programs to work closely to ensure that

parents receiving TANF are provided with the information and support necessary for them to make informed child care decisions.

*CCDF plan.* We propose a technical change at § 98.33(f) to change the reference to a biennial Plan to a *triennial* Plan as established in the statute at Section 658E(b).

*Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements*

Subpart E of the regulations describes Lead Agency and provider requirements related to applicable State/Territory and local regulatory and health and safety requirements, monitoring and inspections, and criminal background checks. It addresses training and professional development requirements for caregivers, teachers, and directors working for CCDF providers. It also includes provisions requiring the Lead Agency to ensure that payment rates to providers serving children receiving subsidies ensure equal access to the child care market, to establish a sliding fee scale that provides for affordable cost-sharing for families receiving assistance, and to establish priorities for who receives child care services.

Compliance With Applicable State/Territory and Local Regulatory Requirements (Section 98.40)

Section 658E(c)(2)(F) of the Act maintains the requirement that every Lead Agency has in effect licensing requirements applicable to child care services within its jurisdiction. The Act now requires Lead Agencies, if they exempt any CCDF providers from licensing requirements, to describe ''why such licensing exemption does not endanger the health, safety, or development of children who receive services from child care providers who are exempt from such requirements.'' We include a corresponding change in the proposed rule at § 98.40(a)(2), and we provide clarification that the Lead Agency's description must include a demonstration of how such exemptions do not endanger children and that such descriptions and demonstrations must include any exemptions based on provider category, type, or setting; length of day; providers not subject to licensing because the number of children served falls below a Lead Agency-defined threshold; and any other exemption to licensing requirements. This relates to the corresponding CCDF Plan provision proposed at § 98.16(u).

To clarify, this requirement does not compel the Lead Agency to offer exemptions from licensing requirements to providers. Rather, it requires that, if the Lead Agency chooses to do so, it must provide a rationale for that decision. We also note that these exemptions refer to exemptions from licensing requirements, but that license-exempt CCDF providers continue to be subject to the health and safety requirements applicable to all CCDF providers in the Act. The only allowable exception to CCDF health and safety requirements is for providers who care only for their own relatives, which we discuss further below.

Health and Safety Requirements (Section 98.41)

The Act requires Lead Agencies to have in effect health and safety requirements for providers and caregivers caring for children receiving CCDF assistance that relate to ten health and safety topics: (i) Prevention and control of infectious diseases (including immunization); (ii) prevention of sudden infant death syndrome and use of safe sleeping practices; (iii) administration of medication, consistent with standards for parental consent; (iv) prevention and response to emergencies due to food and allergic reactions; (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; (vi) prevention of shaken baby syndrome and abusive head trauma; (vii) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility); (viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants; (ix) appropriate precautions in transporting children, if applicable; and (x) first aid and cardiopulmonary resuscitation.

The Act says that health and safety topics ''may include requirements relating to nutrition, access to physical activity, or any other subject area determined by the State to be necessary to promote child development or to protect children's health and safety'' (Section 658E(c)(2)(I)(ii)), which we restate at § 98.41(a)(1)(xii). While these topics are optional in this proposed rule, we strongly encourage Lead Agencies to include them in basic health and safety requirements. Educating caregivers on appropriate nutrition, including age-appropriate feeding, and physical activity for young children is essential to prevent long-term negative health implications and assist children in reaching developmental milestones. We also propose to add ''caring for children with special needs'' as an optional topic on this list.

Lead Agencies are responsible for establishing standards in the above areas for CCDF providers and should require providers to develop policies and procedures that comply with these standards. We encourage Lead Agencies to adopt these standards for all caregivers and providers regardless of whether they currently receive CCDF funds. The Act requires health and safety training on the above topics to be completed pre-service or during an orientation period and on an ongoing basis. This training requirement is discussed in greater detail below in § 98.44 on training and professional development.

ACF recently released *Caring for Our Children Basics (CfoC) Basics, http://www.acf.hhs.gov/programs/ecd/caring-for-our-children-basics*). *CfoC Basics* is a set of recommendations, which is intended to create a common framework to align basic health and safety efforts across all early childhood settings. *CfoC Basics,* represent minimum, baseline standards for health and safety. *CfoC Basics* is based on *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition,* produced with the expertise of researchers, physicians, and practitioners. (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011). *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition,* American Academy of Pediatrics; Washington, DC: American Public Health Association.)

Lead Agencies looking for guidance on establishing health and safety standards should consult ACF's *CfoC Basics.* The list of health and safety topics required by the Act is aligned with, but not fully reflective of, health and safety recommendations from both *CfoC Basics* as well as *Caring for Our Children: National Health and Safety Performance Standards.* Lead Agencies can be confident that if their standards are aligned with *CfoC Basics,* they would be considered to have adequate minimum standards. Lead Agencies are encouraged, however, to go beyond these baseline standards to develop a comprehensive and robust set of health and safety standards that cover additional areas related to program design, caregiver safety, and child developmental needs, using the full *Caring for Our Children: National*

*Health and Safety Performance Standards* guidelines.

We propose reiterating these new health and safety requirements at § 98.41(a) and propose some clarifications. These include specifying that the health and safety requirements be appropriate to the age of the children served in addition to the provider setting. Lead Agency requirements should reflect necessary content variation, within the required topic areas, depending on the provider's particular circumstances. For example, prevention of sudden infant death syndrome and safe sleep training would only be necessary if a caregiver cares for infants. Similarly, if an individual is caring for children of different ages, training in first-aid and CPR should include elements that take into account that practices differ for infants and older children. We also clarify that, in addition to having these requirements in effect, they must be ''implemented and enforced,'' and that these requirements are subject to monitoring pursuant to § 98.42. This is intended to help ensure that requirements are put into practice and that providers are held accountable for meeting them. The required health and safety topics are included at § 98.41(1).

*Immunizations and Tribal programs.* This proposed rule amends the regulatory language at § 98.41(a)(1)(i)(A) by replacing ''States and Territories'' with ''Lead Agencies'' to be inclusive of Tribes. Minimum Tribal health and safety standards under effect currently address immunization in a manner that is consistent with the requirements of this section. As a result, there is no longer a compelling reason to continue to exempt Tribes from this requirement. We have made a corresponding change to the regulations at § 98.83(d) in subpart I and further discus this and other changes regarding health and safety requirements as they pertain to Tribes.

*Immunization and in-home care.* We also propose to add ''provided there are no other unrelated children who are cared for in the home'' to the existing exemption to the immunization requirement for children who receive care in their own homes at § 98.41(a)(1)(i)(B)(*2*). Such children may continue to be exempt from requirements, provided that they are not in care with other unrelated children, which could endanger the health of those children.

*Children experiencing homelessness and children in foster care.* In § 98.41(a)(1)(i)(C), we restate the new statutory requirement that Lead Agencies establish a grace period for children experiencing homelessness and children in foster care to allow such children to receive CCDF services while their families (including foster families) are given a reasonable time to take any necessary action to comply with immunization and other health and safety requirements. We clarify that any payment for such child during the grace period shall not be considered an error or improper payment under 45 CFR part 98, subpart K. We propose adding § 98.41(a)(1)(i)(C)(*2*) to allow Lead Agencies the option of establishing grace periods for other children who are not homeless or in foster care consistent with current regulations, which allow the establishment of grace periods more broadly. This was included in the last CCDF regulation due to significant feedback that requiring immunizations to be completely up-to-date prior to receiving services could constitute a barrier to working. This provision was added to offer additional State flexibility and we believe that adding the a specific grace period provision in the statute was not intended to limit State's abilities to establish these policies, but rather to ensure that at a minimum this policy existed for children experiencing homelessness and children in foster care.

The intent of this provision was to reduce barriers to enrollment given the uniquely challenging circumstances of homeless and foster children, not to undermine children's health and safety. Therefore, we do not believe that the intent was for those children to be permanently exempt from immunization and other health and safety requirements. For that reason, we propose adding at § 98.41(a)(1)(i)(C)(*3*), which would require the Lead Agency to coordinate with licensing agencies and other relevant State/Territory and local agencies to provide referrals and support to help families experiencing homelessness and foster children comply with immunization and other health and safety requirements. This would help children, once enrolled and receiving CCDF services, to obtain necessary services and the proper documentation in a timely fashion.

*Emergency preparedness and response.* Section 658E(c)(2)(I)(i)(VII) of the Act indicates that CCDF health and safety requirements should include emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility) as defined under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)). We propose to include this provision at § 98.41(a)(1)(vii) and to include additional language drawn from Section 658E(c)(2)(U) of the Act regarding Statewide Disaster Plans. According to the Act, Statewide Disaster Plans should address: Evacuation, relocation, shelter-in-place, and lock-down procedures; procedures for staff and volunteer emergency preparedness training and practice drills; procedures for communication and reunification with families; continuity of operations; and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. Communication and reunification with families should include procedures that identify entities with responsibility for temporary care of children in instances where the child care provider is unable to contact the parent or legal guardian in the aftermath of a disaster. Accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions should include plans that address multiple facets, including ensuring adequate supplies (*e.g.,* formula, food, diapers, other essential items) in the event that sheltering-in-place is necessary. In addition to being addressed in the Statewide Disaster Plan, we would require that health and safety requirements for CCDF providers include these topics so that child care providers and staff would be adequately prepared in the event of a disaster.

*Guidance in Caring for Our Children: National Health and Safety Performance Standards,* includes recommended standards for written evacuation plans and drills, planning for care for children with medical conditions, and emergency procedures related to transportation and emergency contact information for parents. The former National Association of Child Care Resource and Referral Agencies (now Child Care Aware of America) and Save the Children published *Protecting Children in Child Care During Emergencies: Recommended State and National Standards for Family Child Care Homes and Child Care Centers,* that includes recommended State regulatory standards related to emergency preparedness for family child care homes and child care centers.

*Group Size Limits and Child-Staff Ratios.* Section 658E(c)(2)(H) of the Act requires Lead Agencies to establish group size limits for specific age populations and appropriate child-staff ratios that will provide healthy and safe conditions for children receiving CCDF assistance and meet children's developmental needs. It also requires Lead Agencies to address required qualifications for caregivers, teachers,

and directors, which is discussed at § 98.44. Consistent with these requirements, § 98.41(d) of the proposed rule would require the Lead Agency to establish standards for CCDF child care services that promote the caregiver and child relationship in the type of child care setting involved and provide for the safety and developmental needs of the children served.

Ratio and group size standards are necessary to ensure that the environment is conducive to safety and learning. Child-staff ratios should be set such that caregivers can demonstrate the capacity to meet health and safety requirements and to evacuate all of the children in their care in a timely manner. A low child-staff ratio allows for stronger relationships between a child and their caregiver, which is a key component of quality child care. Studies of high quality early childhood programs found that group size and ratios mattered to the safety and the quality of children's experiences, as well as to children's health. (*13 Indicators of Quality Child Care: Research Update, presented to Office of the Assistant Secretary for Planning and Evaluation and Health Resources and Services Administration/Maternal and Child Health Bureau U.S. Department of Health and Human Services, 2002* and *National Institute of Child Health and Human Development (NICHD). 2006. The NICHD study of early child care and youth development: Findings for children up to age 4½ years. Rockville, MD: NICHD.*).

CARING FOR OUR CHILDREN BASICS MAXIMUM CHILD:STAFF RATIOS FOR CHILD CARE CENTERS BY AGE OF CHILDREN

| Age | Maximum child:staff ratio |
|---|---|
| ≤12 months | 4:1 |
| 13–23 months | 4:1 |
| 24–35 months | 4:1–6:1 |
| 3-year-olds | 9:1 |
| 4- to 5-year-olds | 10:1 |

While we are not establishing a Federal requirement for group size and child-staff ratios, there are resources that Lead Agencies can use when developing their standards. *CfoC Basics* recommends:

> Appropriate ratios should be kept during all hours of program operation. Children with special health care needs or who require more attention due to certain disabilities may require additional staff on-site, depending on their special needs and the extent of their disabilities. In center-based care, child-staff ratios should be determined by the age of the majority of children and the needs of children present. In family child care homes, the caregivers' children as well as any other children in the home temporarily requiring supervision should be included in the child-staff ratio. In family child care settings where there are mixed age groups that include infants and toddlers, a maximum ratio of 6:1 should be maintained and no more than two of these children should be 24 months or younger. If all children in care are under 36 months, a maximum ratio of 4:1 should be maintained and no more than two of these children should be 18 months or younger. If all children in care are 3 years old, a maximum ratio of 7:1 should be preserved. If all children in care are 4 to 5 years of age, a maximum ratio of 8:1 should be maintained.

As stated earlier, these represent baseline recommendations and Lead Agencies should not feel limited by them. ACF encourages Lead Agencies to consider the group size and child-staff ratios outlined in *Caring for Our Children: National Health and Safety Performance Standards* and the Head Start and Early Head Start standards for child-staff ratios, especially in light of partnerships between Head Start and child care. The Head Start program performance standards set forth ratios and group size requirements for the center-based, combination program, and family child care options for Head Start and Early Head Start providers. Early Head Start requires a ratio of one staff person for every four infants and toddlers in center based programs with a maximum group size of eight. The requirement for family child care homes when an adult is working alone is two children under two years old in a maximum group of 6. When there is a teacher and an assistant, the maximum group size is 12 children, with no more than four of the 12 children under two years old. Head Start requires a ratio of one staff person for every eight children in center-based programs with a maximum group size of 17 children for 3 year olds and 20 children for 4 year olds.

Another resource for determining appropriate child-staff ratios and group sizes is *NFPA 101: Life Safety Code* from The National Fire Protection Association (NFPA), which recommends that small family child care homes with one caregiver serve no more than two children incapable of self-preservation. For large family child care homes, the NFPA recommends that no more than three children younger than 2 years of age be cared for where two caregivers are caring for up to 12 children. (National Fire Protection Association, *NFPA 101: Life Safety Code,* 2009)

*Compliance with Child Abuse Reporting Requirements.* Section 658E(c)(2)(L) of the Act requires Lead Agencies to certify in its plan that child care providers comply with procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a(b)(2)(B)(i)). That provision of CAPTA requires that ''the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes . . . provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances.'' Thus, Lead Agencies must certify that caregivers, teachers, and directors of child care providers will be required to report child abuse and neglect as individuals or mandatory reporters, whether or not the State explicitly identifies these persons as mandatory reporters.

Because the CAPTA requirement above is not applicable to Tribes or, in some circumstances, to Territories, we propose to expand upon this provision at § 98.41(e) by requiring Lead Agencies to certify that caregivers, teachers, and directors of child care providers within the State (or service area) will comply with the State's, Territory's or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of CAPTA or other child abuse reporting procedures and laws in the service area. We propose adding this last phrase to be consistent with any other child abuse reporting procedures and laws that may apply in the service area. Territories and Tribes may have their own reporting procedures and mandated reporter laws. Also, some Tribes may work with States to use the State's reporting procedures. Further, the Federal Indian Child Protection and Family Violence Prevention Act requires mandated reporters to report child abuse occurring in Indian country to local child protective services agency or a local law enforcement agency (18 U.S.C. 1169). While State, Territory, and Tribal laws about when and to whom to report vary, child care providers and staff are often considered mandatory reporters of child abuse and neglect and responsible for notifying the proper authorities in accordance with applicable laws and procedures. Regardless, the provision is intended for the Lead Agency to ensure that caregivers, teachers, and directors follow all relevant child abuse and neglect reporting procedures and laws, regardless of whether a child care caregiver or provider is considered a

mandatory reporter under existing child abuse and neglect laws. We note that this requirement applies to caregivers, teachers, and directors of all child care providers, regardless of whether they receive CCDF funds.

To support this statutory requirement, we propose adding ''recognition and reporting of child abuse and neglect'' to the list of health and safety topics at § 98.41(a)(1)(xi) to ensure that caregivers, teachers, and directors are properly trained to be able to recognize the manifestations of child maltreatment. Child abuse and neglect training can be used to educate and establish child abuse and neglect prevention and recognition measures for children, parents, and caregivers. While caregivers, teaches, and directors are not expected to investigate child abuse and neglect, it is important that all of these individuals be aware of common physical and emotional signs and symptoms of child maltreatment. According to the FY 2014–2015 CCDF Plans, 31 States and Territories have a pre-service training requirement on mandatory reporting of suspected abuse or neglect for staff in child care centers and 25 States and Territories require pre-service training in this area for family child care.

Enforcement of Licensing and Health and Safety Requirements (Section 98.42)

The majority of § 98.42 is new, based on requirements added in the reauthorized statute. Lead Agencies receiving CCDF funds are required to have child care licensing systems in place and must ensure child care providers serving children receiving subsidies meet certain health and safety requirements.

*Procedures to ensure compliance with health and safety requirements.* Current regulations, formerly at § 98.41(d), require that the Lead Agency must have procedures in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the service area served by the Lead Agency, comply with all applicable State, local, or Tribal requirements. Through this proposed rule, we clarify at § 98.42(a) that these requirements must include the health and safety requirements described in § 98.41.

*Monitoring requirements.* Section 658E(c)(2)(K) of the Act requires that Lead Agencies conduct monitoring visits for all child care providers receiving CCDF funds, including license-exempt providers (except, at Lead Agency option, those that serve relatives). The Act requires Lead Agencies to certify that licensed child care providers receive one pre-licensure inspection for compliance with health, safety, and fire standards and at least one, annual, unannounced licensing inspection for compliance with licensing standards, including health, safety, and fire standards. License-exempt CCDF providers (except at Lead Agency option, those serving relatives) must receive at least one annual inspection for compliance with health, safety, and fire standards at a time determined by the Lead Agency. We propose to restate these requirements at § 98.42(b). For existing licensed providers already serving CCDF children, we will consider the Lead Agency to have met the pre-licensure requirement through completion of the first, annual on-site inspection.

We propose to add clarification at § 98.42(b)(2) that would require annual inspections for both licensed and license-exempt CCDF providers to include, but not be limited to, those health and safety requirements described in § 98.41. We also clarify that Tribes would be subject to the monitoring requirements, unless a Tribal Lead Agency requests an alternative monitoring methodology in its Plan and provides adequate justification, subject to ACF approval, pursuant to § 98.83(d)(2).

*Pre-licensure inspections.* The vast majority of States and Territories already require inspections for all child care providers prior to licensure, which we strongly encourage. Only one State does not require pre-licensure inspections for child care centers and seven States do not require pre-licensure inspections for family child care. In States/Territories without pre-licensure inspections, it is unclear how to apply this statutory requirement specifically to CCDF providers as it may be unknown whether a child care provider will be a CCDF provider at some time in the future at the time of seeking licensure. In this NPRM, we are interpreting the pre-licensure inspection requirement as an indication that an on-site inspection is necessary for licensed child care providers prior to providing CCDF-funded child care. Therefore, any licensed provider that did not previously receive a pre-licensure inspection must be inspected prior to caring for a child receiving CCDF. We are interested in comments on whether there should be a specified time period for the inspection (*i.e.* within the previous 12 months).

*Annual Inspections of Licensed Providers.* The Act and this NPRM would require annual inspections of licensed child care providers receiving CCDF funds; however, we strongly encourage Lead Agencies to conduct annual, unannounced visits of all licensed child care providers, including those not receiving CCDF funds. Research supports the use of regular, unannounced inspections for monitoring compliance with health and safety standards and protecting children. A recent series of Department of Health and Human Services' (HHS) Office of Inspector General (OIG) audits identified deficiencies with health and safety protections for children in child care in several states, including in Arizona, Connecticut, Louisiana, Maine, Michigan, Minnesota, Nebraska, and Pennsylvania. For example, an OIG audit in one State examined the monitoring of 20 family child care home providers and found 17 in violation of at least one licensing requirement, including four providers who did not comply with background check requirements. Another found 19 out of 20 licensed family child care home providers in violation of at least one State licensing requirement related to the health and safety of children. (HHS Office of the Inspector General, *Some Minnesota Childcare Home Providers Did Not Always Comply With State Health and Safety Licensing Requirements (A–05–14–00021),* 2015; HHS Office of the Inspector General, *Some Pennsylvania Family Child Day Care Home Providers Did Not Always Comply With State Health and Safety Requirements,* A–03–14–00250, 2015).

In addition to concerns about safeguarding children's well-being, ACF is very concerned that if all licensed child care providers are not subject to at least annual inspections, CCDF families would be restricted from accessing a portion of the provider population (those that have not been inspected annually), effectively denying children access to some providers, limiting parental choice, and resulting in a bifurcated system. We are soliciting comments on this concern and suggestions for addressing it to ensure equal access to child care for CCDF families.

*Annual Inspections of License-Exempt Providers.* The law does not require that inspections for license-exempt providers be unannounced, but ACF strongly encourages some use of unannounced visits, as they have been found effective in promoting compliance with health and safety requirements. (R. Fiene, *Unannounced vs. announced licensing inspections in monitoring child care programs,* Pennsylvania Office of Children, Youth and Families, 1996; American Academy of Pediatrics, American Public Health Association, National Resource Center

for Health and Safety in Child Care and Early Education; *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition.*) However, there may be situations in which a Lead Agency cannot be sure that a provider and children will be present (*e.g.,* when a provider is caring for a child whose parent has a variable work schedule). In such situations, advance notification of a visit may be necessary. The Lead Agency may also choose to inform providers before monitoring staff depart for unannounced visits that involve significant travel time, such as those in rural areas, to avoid staff visits when the provider or children are not present. Lead Agencies are encouraged to make reasonable efforts to conduct visits during the hours providers are caring for children and ensure that providers who care for children on the evenings and weekends are monitored so that the supply of non-traditional hour care is not reduced. ACF intends to provide technical assistance to CCDF Lead Agencies on best practices for monitoring license-exempt providers, including the use of unannounced inspections.

*Monitoring in response to complaints.* Section 658E(c)(2)(C) of the Act requires Lead Agencies to maintain a record of substantiated parental complaints and we have proposed at § 98.32 that Lead Agencies establish a reporting process for parental complaints. We believe a logical extension of these requirements would be for Lead Agencies to monitor in response to complaints, in particular those of greatest concern to children's health and safety. Unannounced inspections allow for an investigation of the situation and, if the threat is substantiated, may prevent future incidences. A majority of States already conduct inspections in response to complaints for licensed child care providers. We believe that threats to any child's health and safety in child care warrant investigation, regardless of whether the provider is licensed, regulated, or receiving CCDF funds. We have not proposed a requirement for monitoring in response to complaints but are seeking comments on whether the final rule should include a requirement for Lead Agencies to conduct unannounced inspections in response to complaints and whether this requirement should apply to providers receiving CCDF funds or additional providers.

*Coordination of Monitoring.* We propose at § 98.42(b)(2)(iii) to require Lead Agencies to coordinate, to the extent practicable, with other Federal, State/Territory, and local entities that conduct similar on-site monitoring. Possible partners include licensing, QRIS, Head Start, and the CACFP.

Coordinating with other monitoring agencies can be beneficial to both agencies as they prevent duplication of services. As an example of current interagency coordination, one State holds monthly meetings with representation from its licensing division, CCDF Lead Agency, CACFP, and other public agencies with child care monitoring responsibilities. These divisions and agencies identify areas of overlap in monitoring and coordinate accordingly to leverage combined resources and minimize duplication of efforts. It is important that any shared costs be properly allocated between the organizations participating and benefiting from the partnership.

To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the new monitoring requirement under the statute and this proposed rule, the Lead Agency is encouraged to pursue collaboration, which may include sharing information and data as well as coordinating resources. However, the Lead Agency is ultimately responsible for meeting these requirements and ensuring that any collaborative monitoring efforts satisfy all CCDF requirements.

*Differential monitoring.* At § 98.42(b)(2)(iv)(A), we propose giving Lead Agencies the option of using differential monitoring, or a risk-based monitoring approach, provided that the monitoring visit is representative of the full complement of health and safety standards and is conducted for all applicable providers annually, as required in statute.

A white paper developed by HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE), found the following:

> Many states are using differential monitoring to make monitoring more efficient. As opposed to 'one size fits all' systems of monitoring, differential monitoring determines the frequency and depth of needed monitoring from an assessment of the provider's history of compliance with standards and regulations. Providers who maintain strong records of compliance are inspected less frequently, while providers with a history of non-compliance may be subject to more announced and unannounced inspections. In some states, more frequent inspections are conducted for providers who are on a corrective action plan, or after a particularly egregious violation. (Trivedi, P. A. (2015). *Innovation in monitoring in early care and education: Options for states. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services).*

Differential monitoring often involves monitoring programs using a subset of requirements to determine compliance. There are two methods used to identify rules for differential monitoring:

- Key Indicators: An approach that focuses on identifying and monitoring those rules that statistically predict compliance with all the rules; and
- Risk Assessment: An approach that focuses on identifying and monitoring those rules that place children at greater risk of mortality or morbidity if violations or citations occur.

The key indicators approach is often used to determine the rules to include in an abbreviated inspection. A risk assessment approach is often used to classify or categorize rule violations and can be used to identify rules where violations pose a greater risk to children, distinguish levels of regulatory compliance, or determine enforcement actions based on categories of violations. Note that monitoring strategies that rely on sampling of providers or allow for a monitoring frequency of less than once per year for providers are not allowable as every child care provider must receive at least one inspection annually, in accordance with the Act.

ACF encourages Lead Agencies to consider the use of differential monitoring as a method for determining the scheduling and priority for unannounced monitoring visits. This may be based on an assessment of the child care provider's past level of compliance with health and safety requirements, information received that could indicate violations, or the occurrence of a monitoring visit from another program. Differential monitoring allows Lead Agencies to prioritize monitoring of providers that have previously been found out of compliance or the subject of parental complaints or that have not been monitored through other programs.

Lead Agencies should use data to make necessary adjustments to differential monitoring or the frequency of monitoring visits over time. For example, if widespread or significant compliance issues are found under existing monitoring protocol, the Lead Agency could consider increasing the frequency of monitoring visits. As discussed in *Innovations in Monitoring,* Lead Agencies should be intentional and cautious in their use of differential monitoring and not replace routine inspection of all licensed providers, including those with good compliance records.

*Monitoring in-home care.* At § 98.42(b)(2)(iv) we propose that Lead Agencies have the option to ''develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting.'' A child's home may not meet the same standards as other child care facilities and this provision gives Lead Agencies flexibility in conducting a more streamlined and targeted inspection. This flexibility cannot be used to bypass the monitoring requirement altogether. We are actively soliciting comments on this proposal.

*Licensing inspector qualifications.* Section 658E(c)(2)(K)(i)(I) of the Act requires Lead Agencies to ''ensure that individuals who are hired as licensing inspectors in the State are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements, and are trained in all aspects of the State's licensure requirements.'' We propose restating this statutory requirement at § 98.42(b)(1) and clarify that such training should include, at a minimum, the areas listed in § 98.41 as well as all aspects of State, Territory, or Tribal licensure requirements. As inspectors must monitor the health and safety requirements in § 98.41, it follows that the training of inspectors should include these standards.

We also propose to clarify that inspectors be trained in health and safety requirements ''appropriate to provider setting and age of children served.'' Inspecting care for children of different ages, and in different settings, may require specialized training in order to understand differences in care. We also encourage Lead Agencies to consider the cultural and linguistic diversity of caregivers when addressing inspector competencies and training. *Caring for Our Children: National Health and Safety Performance Standards* recommends that licensing inspectors have ''pre-qualified'' education and experience about the types of child care they will be assigned to inspect and in the concepts and principles of licensing and inspections. When hired, the standards recommend at least 50 clock hours of competency-based orientation training and 24 annual clock hours of competency-based continuing education.

*Licensing Inspector-Provider Ratios.* Section 658E(c)(2)(K)(i)(III) of the Act requires Lead Agencies to have policies in place to ensure the ratio of inspectors to providers is sufficient to ensure visits occur in accordance with Federal, State, and local law. We expand on this requirement at § 98.42(b)(3) to ensure applicability with Federal, State, Territory, Tribal, and local law. Large caseloads make it difficult for inspectors to conduct valid and reliable inspections. While the Act does not require a specific ratio, Lead Agencies can refer to the National Association of Regulatory Agencies recommendation of a maximum workload for inspectors of 50–60 facilities. (*NARA and Amie Lapp-Payne. (May 2011). Strong Licensing: The Foundation for a Quality Early Care and Education System: Preliminary Principles and Suggestions to Strengthen Requirements and Enforcement for Licensed Child Care.)*

*Reporting of serious injuries and deaths.* At § 98.42(b)(4), we propose requiring Lead Agencies to require child care providers to ''report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.'' This complements § 98.53(f)(4)), which requires States and Territories to submit a report describing any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving CCDF children and, to the extent possible, other regulated and unregulated child care settings. States, Territories, and Tribes would be required to apply this reporting requirement to all child care providers, regardless of subsidy receipt, to report incidents of serious child injuries or death to a designated agency. This is also consistent with the statutory requirement at Section 658E(c)(2)(D), which requires Lead Agencies to collect and disseminate aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

The Lead Agency may, at their option, have providers report to a ''designated entity'' as proposed at § 98.16(ff), which offers some flexibility on the implementation of the requirement. If there are existing structures in place that look at child morbidity, the Lead Agency would be able to work within that structure to establish a designated entity. The reporting mechanism can be tailored to fit with existing policies and procedures. Our purpose is the reporting of incidents so that the Lead Agency and other responsible entities can make the appropriate response.

*Exemption for relative providers.* Current regulations at § 98.41(e) allow Lead Agencies to exempt relative caregivers, including grandparents, great-grandparents, siblings (if such providers live in a separate residence), and aunts or uncles from health and safety and monitoring requirements described in this section. This relative exemption remains at § 98.42(c). We propose adding language that would require Lead Agencies, if they choose to exclude such providers from any of these requirements, to ''provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.'' Asking Lead Agencies to describe and justify relative exemptions from health and safety requirements and monitoring would provide accountability that any exemptions are issued in a thoughtful manner that does not endanger children.

Criminal Background Checks (Section 98.43)

The reauthorization added Section 658H on requirements for comprehensive, criminal background checks, which are a basic safeguard essential to protect the safety of children in child care and reduce children's risk of harm. Parents have the right to be confident that their children's caregivers, and others who come into contact with their children, do not have a record of violent offenses, sex offenses, child abuse or neglect, or other behaviors that would disqualify them from caring for children. A GAO report found several cases in which individuals convicted of serious sex offenses had access to children in child care facilities as employees, because they were not subject to a criminal history check prior to employment (GAO, *Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities, GAO–11–757,* 2011).

Comprehensive background checks have been a long-standing ACF policy priority. According to an analysis of the FY 2014–2015 CCDF Plans, all States and Territories require that child care center staff undergo at least one type of criminal background check, and approximately 44 require a FBI fingerprint check for centers. Fifty-four States and Territories require family child care providers to have a criminal background check, and approximately 42 require an FBI fingerprint check. For some States and Territories, these requirements are currently limited to licensed providers, rather than all providers that serve children receiving CCDF subsidies.

*Background check implementation.* The statute requires that States ''shall have in effect requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of

child care providers. . . .'' Having procedures in place to conduct background checks on child care staff members will require coordination across public agencies. The CCDF Lead Agency must work with other agencies, such as the Child Welfare office and the State Identification Bureau, to ensure the checks are conducted in accordance with the law. In recognition of this effort, we propose to add to the law's language at § 98.43(a)(1) to clarify that these requirements involve multiple State, Territorial, or Tribal agencies.

*Tribes and background checks.* ACF is proposing that Tribal Lead Agencies be subject to the background check requirements described in this section, with some flexibility as discussed later in subpart I.

*Applicability of background checks requirements.* The statutory language identifying which providers must conduct background checks on child care staff members is unclear. It is our interpretation of the statute that all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (with the exception of those individuals who are related to all children for whom child care services are provided) are subject to the Act's background check requirements. At § 98.43(a)(1)(i), we propose to apply this requirement to all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of individuals who are related to all children for whom child care services are provided).

We acknowledge that the statutory language is not clear about the universe of staff and providers subject to the background check requirement; however, we believe that our interpretation aligns with the general intent of the statute to improve the overall safety of child care services and programs. Furthermore, there is justification for applying this requirement in the broadest terms for two important reasons. First, all parents using child care deserve this basic protection of having confidence that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children. Second, limiting those child care providers who are subject to background checks has the potential to severely restrict parental choice and equal access for CCDF children, two fundamental tenets of CCDF. If not all child care providers are subject to comprehensive background checks, providers could opt to not serve CCDF children, thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the CCDBG Act and would not serve to advance the important goal of serving more low-income children in high quality care. We would like to invite comment on the anticipated impacts of requiring background checks for child care staff members of all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (other than an individual who is related to all children for whom child care services are provided) based on current State practices and policies.

The law defines a child care staff member as someone (other than an individual who is related to all children for whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. We are proposing at § 98.43(a)(2)(ii) to include contract and self-employed individuals in the definition of child care staff members as they may have direct contact with children. We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks, as well as the disqualifying crimes and appeals processes. We asked for comment on individuals 18 or older in family child care homes receiving background checks in the 2013 NPRM and received support from commenters who agreed this was important for ensuring the safety of children in child care. Forty-three States require some type of background check of family members 18 years of age or older that reside in the family child care home (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012).

We are asking for comment on whether additional individuals in the family child care home should be subject to the background check requirements. Volunteers who have not had background checks should not be left with children unsupervised. We encourage Lead Agencies to require that volunteers who have not had background checks be easily identified by children and parents, for example through visible name tags or clothing.

*Components of a criminal background check.* The CCDBG Act outlines five components of a criminal background check: (1) A search of the State criminal and sex offender registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (2) a search of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (3) a search of the National Crime Information Center; (4) a Federal Bureau of Investigation (FBI) fingerprint check using the Integrated Automated Fingerprint Identification System; and (5) a search of the National Sex Offender Registry.

After extensive consultation with the FBI and other subject-matter experts, we propose technical changes to address duplication among these components. We propose to consolidate the list of required components in the regulations at § 98.43(b) to:

- A search of the National Crime Information Center's National Sex Offender Registry;
- A Federal Bureau of Investigation fingerprint check using Next Generation Identification; and
- A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding 5 years:
  - State criminal registry or repository using fingerprints;
  - State sex offender registry or repository; and
  - State-based child abuse and neglect registry and database.

The National Crime Information Center (NCIC) is a law enforcement tool consisting of 21 files, including the National Sex Offender Registry (NSOR). The 21 files contain seven property files that help track missing property and 14 person files with information relevant to law enforcement (*e.g.,* missing persons or wanted persons). State criminal records are not stored in the NCIC. We believe that the only file with information that would aid in determining whether an individual could be hired as a child care employee is the NSOR. The other files do not appear to contain information on the disqualifying crimes listed in the statute. Further, the FBI has advised that a general search of the NCIC database will return records that cannot be made privy to individuals outside of law enforcement (*i.e.* the Known or Appropriately Suspected Terrorist File). Therefore, we are clarifying that a check of the NCIC will only need to search the NSOR file.

ACF has identified a number of potential challenges in requiring an NCIC check. It is our understanding that

an NCIC check has not been included in any other non-criminal background check law applicable to States to date and so resolving these challenges is in many ways unchartered territory. First, access to the NCIC, including, in some cases, physical access to computers capable of searching the NCIC, is limited, and it is primarily available to law enforcement agencies. Therefore, to conduct this check, Lead Agencies will have to partner with a State, Tribal, or local law enforcement agency. Because the NCIC has not been used this way, we do not know of examples of other State agencies partnering in this way or what such partnerships would entail. We also do not know the implications for Lead Agencies that use third-party vendors to conduct background checks. Third-party vendors do not have authorized access to conduct name-based checks for noncriminal justice purposes. Secondly, the NCIC is a name-based check, rather than finger-print based. Hit verification of name-based checks may be labor intensive, especially when searching for individuals with common names. While we are concerned about the burden on Lead Agencies to conduct this check, we recognize that the NCIC was included in the statute, and we are concerned about the potential for missing sex offenders by not conducting a comprehensive search. We are very interested in comments on the feasibility of a search of the NCIC as proposed and the level of burden required by Lead Agencies.

The FBI fingerprint check using Next Generation Identification (NGI) (formerly the Integrated Automated Fingerprint Identification System-IAFIS) will provide a person's criminal history record information and will search ten of the NCIC person files, including the NSOR, providing certain identifying information has been entered into the NSOR record. The change in the language from IAFIS to NGI is a technical change and should not impact Lead Agency background check processes. The NGI is the biometric identification system that has now replaced the older IAFIS.

Based on consultation with the FBI, we understand there is significant overlap between the FBI fingerprint check and the NSOR check (via the NCIC), yet there are a number of individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search. The FBI links fingerprint records to the NSOR records via a Universal Control Number, but a small percentage of cases are missing the fingerprints. In some cases, individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality. This small percentage of records can be accessed through a name-based search of the NCIC, and a number of those individuals may also be identified by a search of the State sex offender registries.

Although we do not believe it is required, we also encourage an additional search of the National Sex Offender Public Web site (NSOPW) at *www.nsopw.gov*. The NSOPW acts as a pointer for each State, Territory, and Tribally run sex offender registry. The registries are updated and kept in real time and may be searched by name, but other identifying information may be limited in these records.

It is our understanding that there is some duplication between the NCIC, FBI fingerprint searches, and searches of State criminal, sex offender, and child abuse and neglect registries. An FBI fingerprint check provides access to national criminal history record information across State lines on people arrested for felonies and some misdemeanors under State, Federal, or Tribal law. However, there are instances where information is contained in State databases, but not in the FBI database. A search of the State criminal records and a FBI fingerprint check returns the most complete record and better addresses instances where individuals are not forthcoming regarding their past residences or committed crimes in a State in which they did not reside.

We are also proposing to require that the search of the State criminal records include a fingerprint check. The 2013 NPRM also proposed to require States to use a fingerprint check when checking the State's criminal history records. Fingerprint searches reduce instances of false positives and also help capture records filed under aliases. We do not believe that a fingerprint search of the State repository would be an additional burden. States can use the same set of fingerprints to check both the State criminal history check and the FBI fingerprint check.

In addition to gaps in the State criminal records, there are a number of instances in which an individual may be listed in the State sex offender registry and not in NSOR, and vice versa. For example, some States have statutes that disallow the removal of offenders, regardless of offender status, while in the NSOR the agency owning the record is required to remove the offender from active status once his/her sentencing is completed. In addition, federal, juvenile, and international sex offender records may be included in the NSOR; whereas, State laws may prohibit the use of this information in the State sex offender registry. Because of these discrepancies, we believe that it is important to check the State sex offender registries in addition to an FBI fingerprint check and a check of the NCIC NSOR.

The final component of a comprehensive background check included in the new law is the search of the State child abuse and neglect registries. We recognize that implementation of this critically important component of protecting children will vary across States. Every State has procedures for maintaining records of child abuse and neglect, but only 41 States, the District of Columbia, American Samoa, Guam, and Puerto Rico require central registries by statute. The type of information contained in central registries and department records differ from State to State. Some States maintain all investigated reports of abuse and neglect, while others maintain only substantiated reports. The length of time the information is held and the conditions for expunction also vary. Access to information maintained in registries and departments also varies by State and some States may need to make internal changes to meet the requirement to search the State's own child abuse and neglect registry. Approximately 31 States and the District of Columbia allow or require a check of the central registry or department records for individuals applying to be child or youth care providers. (*Establishment and Maintenance of Central Child Abuse Registries,* Children's Bureau, July 2014).

The law requires States to check the State criminal registry or repository; sex offender registry or repository; and child abuse and neglect registry and database for every State that a child care staff member has lived in for the past five years. Based on our preliminary conversations with States, the requirement to conduct cross-state background checks of the three different repositories is another unexplored area for Lead Agencies. We have heard concerns about how to obtain and interpret the results and protect the privacy of individuals. We are asking for comments on whether States have any best practices or strategies to share and how ACF can support Lead Agencies in meeting the cross-State background check requirements.

In particular, we have heard concern about cross-State checks of the child abuse and neglect registries. We understand that States have developed their own requirements for submitting requests, and there is not a uniform method of responding. In addition,

some States prohibit the use of child abuse and neglect registries for employment purposes. As the statute requires cross-state checks, we are soliciting comments on how States will meet this requirement and respond to other State requests.

The cross-State background check requirement has similarities to language at Section 152(a)(1)(C) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 671(a)(1)(C)) for foster or adoptive parents: ''the State shall check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding five years, to enable the State to check any child abuse and neglect registry maintained by such State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child . . .'' We are requesting comment from States about whether these systems for foster or adoptive parents could be used to support cross-State background checks for prospective child care staff members as well. It is impossible to know exactly how many individuals will require a check from another State. As discussed later in the Regulatory Impact Analysis, Census data on geographic mobility shows an out of state mobility rate of approximately 2 percent for employed adults.

While ACF is still working to understand how we can support cross-State background checks, this rule proposes a couple of provisions to help create transparency around the process. At § 98.43(a)(1)(iii), we propose that Lead Agencies must have ''requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe.'' We also propose that Lead Agencies include the process by which another Lead Agency may submit a background check request on the Lead Agency's consumer education Web site, along with all of the other background check policies and procedures. In addition, this proposed rule would require at § 98.16(o) that Lead Agencies describe in their Plans the procedures in place to respond to other State, Territory, or Tribal requests for background check results within the 45 day timeframe. ACF will use this question in the Plan to help ensure compliance with the background check requirements in the law. These proposals are intended to minimize confusion about the correct contact information for background check requests and ensure that there are processes in place for timely responses.

*Disqualifications.* The law specifies a list of disqualifications for child care providers and staff members who are serving children receiving CCDF assistance. Unlike the other requirements in the background check section of the statute, the restriction against employing ineligible child care staff members would only apply to child care providers receiving CCDF assistance. These employment disqualifications specifically do not apply to child care staff members of licensed providers who do not serve children receiving CCDF subsidies. We believe this gives Lead Agencies the flexibility to impose similar restrictions upon child care providers who are licensed, regulated, or registered and do not receive CCDF funds. These proposed disqualification requirements appear at §§ 98.43(a)(1)(ii) and 98.43(c). We are not proposing any additional disqualifications.

The Act did not include child abuse and neglect findings in the list of disqualifying crimes. Because there is so much variation in the information maintained in each registry, we are allowing Lead Agency flexibility in how to handle findings on the child abuse and neglect registries. We believe that the value of findings in these registries is in the identification of patterns of negative behavior.

Even though the law includes a specific list of disqualifications, it also allows Lead Agencies to prohibit individuals' employment as child care staff members based on their convictions for other crimes that may impact their ability to care for children. If a Lead Agency does disqualify an individual's employment, they must, at a minimum, give the individual the same rights and remedies described in § 98.43(e). This language from Section 658H(h) of the Act is restated in the proposed rule at § 98.43(h), and we have not proposed any changes. We strongly encourage Lead Agencies that chose to consider other crimes as disqualifying crimes for employment to ensure that a robust waiver and appeals process is in place. A waiver and appeals process should conform to the recommendations of the U.S. Equal Employment Opportunity Commission, including the ability to waive findings based on factors as inaccurate information, certificate of rehabilitation, age when offense was committed, time since offense, and whether the nature of offense is a threat to children. (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*). Moreover, we strongly discourage Lead Agencies from considering additional disqualifying crimes for other household members in family child care homes.

Lead Agencies may also consider requiring applicant self-disclosure for child care staff in order to avoid unnecessary checks on individuals who disclose information that would preclude them from passing a background check.

*Frequency of Background Checks.* Section 658H(d) of the Act requires child care providers to submit requests for background checks for each staff member. The requests must be submitted prior to when the individual becomes a staff member and must be completed at least once every five years. These requirements are included in the regulations at § 98.43(d)(1) and (2). For staff members employed prior to the enactment of the CCDBG Act, the provider must request a background check prior to September 30, 2017 (the last day of the second full fiscal year after the date of enactment) and at least once every five years.

Although not a requirement, we encourage Lead Agencies to enroll child care staff members in rap back programs. A rap back program works as a subscription notification service. An individual is enrolled in the program, and the State Identification Bureau receives a notification if that individual is arrested or convicted of a crime. States can specify which events trigger a notification. Rap back programs provide authorizing agencies with notification of subsequent criminal and, in limited cases, civil activity of enrolled child care staff members so that background check information is not out of date. However, unless the rap back program includes all the components of a comprehensive background check under the law, the Lead Agency is responsible for ensuring that child care staff members complete all other components at least once every five years.

Section 658H(d)(4) of the Act specifies instances in which a child care provider does *not* need to submit a background check for a staff member. Staff members do not need background check requests if they satisfy three requirements: (1) The staff member received a background check that included the five required parts within

the past five years while employed by, or seeking employment by, another child care provider in the State; (2) the State gave a qualifying result to the first provider for the staff member; and (3) the staff member is employed by a child care provider within the State or has been separated from employment from a child care provider for less than 180 days. These requirements are included in the proposed rule at § 98.43(d)(3). Lead Agencies should consider how to facilitate tracking this type of information and maintaining records of individual providers so that unnecessary checks are not repeated.

*Provisional Employment.* The law requires child care providers to submit a request for background check results prior to a staff member's employment but does not describe instances of provisional employment while waiting for the results of the background check. We received many comments on this issue in the 2013 NPRM, with commenters expressing concern that the background check requirements could prevent parents from accessing the provider of their choice, if the provider's staff has not already received a background check. Parents often need to access child care immediately, for example, as they start new jobs, and commenters were worried that this could lead to delays in accessing care.

In recognition of the possible logistical constraints and barriers to parents accessing the care they need, ACF proposes to allow prospective staff members to provide services to children on a provisional basis, while the background checks are being processed. We are proposing at § 98.43(d)(4) that a prospective staff member may begin work for a child care employer after a background check request has been submitted as long as: The staff member is continually supervised by an individual who has already completed the background check requirements. Prospective staff members in family child care homes may work under the continual supervision of a family child care provider, or other caregiver, who has completed the required checks. We encourage Lead Agencies to require child care providers to inform parents about background check policies and any provisional hires they may have. Allowing provisional hiring does offer more flexibility, but it is also important that Lead Agencies ensure that any provisional status is limited in scope and implemented with transparency.

*Completion of Background Checks.* Once a child care provider submits a background check request, Section 658H(e)(1) of the law requires the Lead Agency to carry out the request as quickly as possible. The process must not take more than 45 days after the request was submitted. These requirements are included in the proposed rule at § 98.43(e)(1). While we expect checks to be completed in the timeframe established by the law, we propose allowing Lead Agencies discretion on procedures in the event that all of the components of a background check are not complete within 45 days.

We have heard from Lead Agencies that are concerned about not being able to meet the 45 day timeframe. Lead Agencies must work together with the relevant State/Territory entities to minimize delays. After the FBI receives electronic copies of fingerprints, they typically turn around background check results within 24 hours. There can be delays when the submitted fingerprint image quality is poor. Some States use hard copy fingerprints that need to be made electronic for submission to the FBI, which can lead to delays. We encourage Lead Agencies to adopt electronic fingerprinting, which allows for background check results to be processed more quickly.

We encourage Lead Agencies to leverage existing resources to build and automate their background check systems. One potential resource for States is the National Background Check Program (NBCP), as established by the Patient Protection and Affordable Care Act, which aims to create a nationwide system for conducting comprehensive background checks on applicants for employment in the long-term care (LTC) industry. The NBCP is an open-ended funding opportunity that can award up to $3 million dollars (with a $1 million dollar State match) to each State to support building State background check infrastructure. The Centers for Medicare & Medicaid Services (CMS) administers the NBCP and since 2010, has awarded nearly $57 million in grant funds to participating States to design, implement, and operate background check programs that meet CMS's criteria.

*Privacy of Results.* Section 658H(e)(2) of the Act requires the Lead Agency to make determinations regarding a child care staff member's eligibility for employment. The Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information. If the staff member is ineligible, the Lead Agency must provide information about each disqualifying crime specific to the staff member, as well as information on how to appeal the results of the background check to challenge the accuracy and completeness. We have not proposed any additions to the statutory language, and this requirement is found at § 98.43(e)(2) of the proposed regulations.

In order for a Lead Agency to conduct FBI fingerprint checks, there must be statutory authority to authorize the checks. The CCDBG law may be used an authority to conduct FBI background checks, but Lead Agencies may continue to use other statutes as authorities to conduct FBI background checks on child care staff as well. Most Lead Agencies currently use Public Law 92–544 or the National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (42 U.S.C. 5119a) as the authority to conduct FBI background checks. Public Law 92–544, enacted in 1972, gave the FBI authority to conduct background checks for employment and licensing purposes. The majority of States are using Public Law 92–544 as authority to conduct background checks, but a few States use the NCPA/VCA.

Public Law 92–544 is similar to the CCDBG statute and only allows the State to notify the provider whether an individual is eligible or ineligible for employment. Similarly, the NCPA/VCA requires dissemination of the results to a governmental agency, unless the State has implemented a Volunteer and Employee Criminal History System (VECHS) program. Thus, a major difference between the CCDBG statute and the NCPA/VCA with a VECHS program is in the protection of privacy of results. Through the NCPA/VCA VECHS program, Lead Agencies may share an individual's specific background check results with the child care provider, providing the individual has given consent. Lead Agencies have the flexibility to continue to use these statutes as authority to complete the FBI fingerprint check, as long as the employment determination process required by the CCDBG statute is followed. That is, Lead Agencies must make employment eligibility determinations in accordance with the requirements in the CCDBG Act, but they also may exercise the flexibility allowed through the NCPA/VCA VECHS program to share results of background checks with child care providers.

*Appeal and Review Process.* Section 658H(e)(3) of the Act requires Lead Agencies to have a process for child care staff members (including prospective staff members) to appeal the results of a background check by challenging the accuracy or completeness of the information contained in their criminal

background report. An appeals process is an important aspect of ensuring due process for providers. According to statute, each child care staff member should be given notice of the opportunity to appeal and receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of their background report. The appeals process must be completed in a timely manner. The statute's appeal requirements appear at § 98.43(e)(3) of the proposed rule. We are not proposing any additional requirements here.

Section 658H(e)(4) of the Act, which is reiterated at § 98.43(e)(4) of the proposed rule, allows Lead Agencies to allow for a review process through which the Lead Agency may determine that a child care staff member (including a prospective child care staff member) convicted of a disqualifying drug-related offense, committed during the preceding five years, may be eligible for employment by a provider receiving CCDF funds. The review process must be consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), which *prohibits employment discrimination based on race, color, religion, sex and national origin.* Lead Agencies may consider in their review process the nature of the conviction, age at the time of the conviction, length of time since the conviction, and relationship of the conviction to the ability to care for children, or other extenuating circumstances. Lead Agencies can consult the U.S. Equal Employment Opportunity Commission's guidance on the consideration of criminal records in employment decisions to ensure compliance with Title VII's prohibition against employment discrimination (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*). Finally, Section 658H(e)(5) of the Act notes that ''nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.''

*Background Check Fees.* Lead Agencies have the flexibility to determine who pays for background checks (*e.g.,* the provider, the applicant, or the Lead Agency) but Section 658H(f) of the Act requires that the fees charged for completing a background check may not exceed the actual cost of processing and administration. The cost of conducting background checks varies across States and Territories. The FBI fee is $14.75 to conduct a national fingerprint check, and, according to CCDF State Plan data, most Lead Agencies report low costs to check State registries.

ACF recognizes the important role that fees play in sustaining a background check system. While States and Territories cannot profit from background check fees, we do not want to prevent fees that support the necessary infrastructure. Fees cannot exceed costs and result in return to State general funds, but they can be used to build and maintain background check infrastructure. Further, we expect that Lead Agencies using third party contractors to conduct background checks will ensure that these contractors are not charging excessive fees that would result in huge profits. ACF does not want background check fees to be a barrier or burden for entry into the child care workforce. At Lead Agency discretion, CCDF funds may be used to pay the costs of background checks.

*Consumer education Web site.* The statute requires States and Territories to ensure that their background check policies and procedures are published on their Web sites. These policies and procedures should be included on the consumer education Web site discussed in detail in subpart D at § 98.33(a). We propose that States and Territories also include information on the process by which a child care provider or other State or Territory may submit a background check request in order to increase transparency about the process.

Training and Professional Development (Section 98.44)

Section 658E(c)(2)(G) of the Act requires Lead Agencies to describe in their CCDF Plan their training and professional development requirements designed to enable child care providers to promote the social, emotional, physical and cognitive development of children and to improve the knowledge and skills of caregivers, teachers, and directors in working with children and their families, which are applicable to child care providers receiving CCDF assistance.

At § 98.44 we elaborate on the statute's provisions for professional development at Section 658E(c)(2)(G), provider training on health and safety at Section 658E(c)(2)(I)(i)(XI), and provider qualifications at Section 658E(c)(2)(H)(i)(III), as a cohesive approach to training and professional development. Our proposed regulations build on the pioneering work of States on professional development and reflect current State policies.

*Caregiver, Teacher and Director.* As discussed earlier, we have added definitions for ''teacher'' and ''director'' to § 98.2. We believe adding these terms promotes professional recognition for early childhood and school-age care teachers and directors and aligns with terms used in the field. The Act uses the terms ''caregiver'' and ''provider'' and we maintain the use of those terms throughout this section as appropriate. We also use the terms ''teacher'' and ''director'' to recognize the different professional roles and their differentiated needs for training and professional development. For example, teachers provide direct services to children and need knowledge of curricula and health, safety, and developmentally appropriate practices. In addition, directors need skills to manage and support staff and perform other administrative duties.

*Framework and progression of professional development.* At § 98.44(a), we propose that Lead Agencies describe in their CCDF Plan the State or Territory framework for training, professional development and postsecondary education based on statutory language at Section 658E(c)(2)(G)(i). The statute requires the framework to be developed in consultation with the State Advisory Council on Early Childhood Education and Care (SAC). We propose at § 98.44(a)(1) that frameworks be developed in consultation with SACs or similar coordinating body. SAC grants, funded by the American Recovery and Reinvestment Act, along with Race to the Top-Early Learning Challenge grants, leveraged CCDF funds to develop and implement comprehensive professional development systems. An inclusive process for the design of a professional development system with a range of stakeholders (child care resource and referral agencies, State/Territory and local professional associations, entities that grant credentials and certificates, higher education institutions, workforce registries, QRIS administrators, for example) will result in a more effective and credible framework.

Section 658E(c)(2)(G)(ii)(II) allows the Lead Agency to ''engage training providers in aligning training opportunities with the State's training framework,'' which we restate in the proposed rule at § 98.44(a)(2). We encourage the participation of the full range of training and professional development providers, including higher education and entities that grant certificates and credentials in early childhood education, to align with the framework. Training and professional development may be provided through

institutions of higher education, child care resource and referral agencies, worker organizations, early childhood professional associations, and other entities. This alignment may lead to a more coherent and accessible sequence of professional development for individuals to meet Lead Agency requirements and progress in their professional development and to maximize the use of professional development resources.

Proposed § 98.44(a)(3) describes the components of a professional development framework. We propose that Lead Agencies address six components (described below) in their professional development framework based on recommendations by the National Child Care Information Center and the National Center on Child Care Professional Development Systems and Workforce Initiatives (former technical assistance projects of the Office of Child Care), and national early childhood professional associations, including the National Association for the Education of Young Children. The recent report of the National Academies of Sciences' expert panel on the early childhood workforce speaks to the intentional and multifaceted system of supports that will be needed to ensure that every caregiver, teacher, and director can provide high quality development and learning to the diversity of children in child care and early childhood programs. (Institute of Medicine and National Research Council, 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press). The six proposed components are: Professional standards and competencies, career pathways, advisory structures, articulation, workforce information, and financing. These components are discussed below. In the FY 2014–2015 CCDF Plans, the majority of States and Territories indicated that they have implemented the same components of a professional development framework system. We provide for flexibility on the strategies, breadth and depth with which States and Territories will develop and implement a framework that includes these components.

1. *Core knowledge and competencies.* Caregivers, teachers, and directors need a set of knowledge and skills to be able to provide high quality child care and school-age care. The foundational core knowledge—what all early childhood professionals should know and be able to do—should be supplemented with specialized competencies and professional development that recognizes different professional roles, ages of children being served, and special needs of children. According to the FY 2014–2015 CCDF Plans, 49 States and all but one Territory have developed core knowledge and competencies aligned to professional standards.

2. *Career pathways.* Section 658E(c)(2)(G)(ii)(I) of the Act requires Lead Agencies to create a progression of professional development, which may include encouraging postsecondary education. This progression is in essence a career pathway, also known as a career lattice or career ladder. The National Academies of Sciences' report, *Transforming the Early Childhood Workforce: A Unifying Framework,* calls for States to implement ''phased, multiyear pathways to transition to a minimum bachelor's degree requirement with specialized knowledge and competencies'' for all early childhood teachers working with children from birth through age eight. *(Institute of Medicine (IOM) and National Research Council (NRC). 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press).* According to the FY 2014–2015 CCDF Plans, nearly all States and Territories have developed a career pathway that includes qualifications, specializations, and credentials by professional role. Although we do not propose that States set any particular credential as a licensing qualification or a point on the career pathway, the pathway should form a transparent, efficient sequence of stackable credentials from entry level that can build to more advanced professional competency recognition. One model of professional development is the Registered Apprenticeship, providing job-embedded professional development and coursework that leads to a Child Development Associate (CDA) credential. In many apprenticeships, this is done through an agreement with the community college to carry credit toward an Associate degree. The costs of tuition, books, and the CDA evaluation fee is covered by the apprenticeship. The CDA is often a first professional step on an early childhood education career ladder that can lead to better compensation and a pathway to higher levels of education.

3. *Advisory structures.* Because professional development and training opportunities and advancement may cut across multiple agencies, it is important to have a formal communication and coordination effort. For example, professional development resources for individuals providing special education services for preschools and infants and toddlers may not be administered by the CCDF Lead Agency. Policies for higher education institutions are generally made by the State higher education board or board of education. Many States use the SACs as an advisory body for professional development systems policy and coordination. (Administration for Children and Families, U.S. Department of Health and Human Services, *Early Childhood State Advisory Councils Final Report,* 2015) We encourage the advisory body to include representatives of different types of professional development providers (such as higher education, child care resource and referral, QRIS coaches and technical assistance providers) as well as CCDF providers through membership on the advisory or participation in subcommittees or advisory groups.

4. *Articulation.* Articulation of coursework, when one higher education institution matches its courses or coursework requirements with other institutions, prevents students from repeating coursework when changing institutions or advancing toward a higher degree. Transfer agreements, another type of articulation, allow the credit earned for an associate degree to count toward credits for a baccalaureate degree. States and Territories can encourage articulation and transfer agreements between two- and four-year higher education degree programs, as well as articulation with other credentials and demonstrated competencies. In their FY 2014–2015 Plans, 45 States and Territories reported having articulation agreements in place across and within institutions of higher education and 39 States and Territories reported having articulation agreements that translate training and/or technical assistance into higher education credit.

5. *Workforce information.* It is important to collect and evaluate data to identify gaps in professional development accessibility, affordability, and quality. Information may be gathered from different sources, such as child care resource and referral agencies, scholarship granting entities, higher education institutions, Head Start Program Information Report data, and early childhood workforce registries. Information about the characteristics of the workforce, access to and availability of different types of training and professional development, compensation, and turnover can help the advisory body and other stakeholders make policy and financing decisions.

6. *Financing.* Financing of the framework and of individuals to access training and professional development, including postsecondary education, is

critical. Many Lead Agencies use CCDF funds to finance the professional development infrastructure and the costs of training and professional development, including postsecondary education, for caregivers, teachers, and directors. States and Territories report using their SAC grants and Race to the Top-Early Learning Challenge grants to leverage and expand CCDF funds for workforce improvement and retention. Twenty-eight States/Territories reported that they used SAC grants to complete a workforce study; 29 States/Territories used SAC grants to create or enhance their Core Knowledge and Competencies framework; and 18 States/Territories used SAC grants to develop or enhance their workforce registries. We encourage Lead Agencies to leverage CCDF funds with other public and private resources to accelerate professional development efforts.

*Qualifications.* Section 658E(c)(2)(H)(i)(III) of the Act requires Lead Agencies to set qualifications for CCDF providers. We propose to include that requirement at § 98.44(a)(4) and clarify that such qualifications should be designed to enable caregivers, teachers, and directors to promote the full range of children's development: Social, emotional, physical, and cognitive development. States and Territories currently set minimum qualifications for teacher assistants, teachers, directors, and other roles in centers, family child care, and school-age care settings in their licensing standards. We encourage Lead Agencies to consider the linkage between these minimum qualifications and higher qualifications in the progression of professional development or career pathways. According to Section 658E(c)(2)(G)(ii)(I) of the Act, professional development should be conducted on an ongoing basis, provide for a progression of professional development (which may include encouraging the pursuit of postsecondary education), and reflect current research and best practices relating to the skills necessary for the caregivers, teachers, and directors to meet the developmental needs of participating children and engage families. These requirements are proposed in paragraphs (5) and (6) of § 98.44(a).

*Quality, Diversity, Stability and Retention of the Workforce.* Section 658E(c)(2)(G)(ii)(I) of the Act also requires assurances in the Plan that training and professional development will improve the quality of, and stability within, the child care workforce. At § 98.44(a)(7) we propose adding that the training and professional development requirements must also improve the quality and diversity of caregivers, teachers, and directors. Maintaining diverse and qualified caregivers, teachers, and directors is a benefit to serving children of all backgrounds. We also propose to add that such requirements improve the retention (including financial incentives) of caregivers, teachers, and directors within the child care workforce, based on the high turnover rate in child care that can disrupt continuity of care for children. In order for children to benefit from high quality child care, it is important to retain caregivers, teachers, and directors who have the knowledge and skills to provide high quality experiences. In 2012, the average annual turnover rate of classroom staff was 13 percent, and the turnover rate among centers (child care, Head Start and schools) that experienced any turnover was 25 percent. (Whitebook, M., Phillips, D. & Howes, C. (2014.)) *Worthy work, STILL unlivable wages: The early childhood workforce 25 years after the National Child Care Staffing Study.* Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley)

*Aligning training and professional development with the professional development framework.* We propose at § 98.44(b) to require each Lead Agency to describe in the Plan its requirements for training and professional development for caregivers, teachers, and directors of CCDF providers that, to the extent practicable, align with the State or Territory's training and professional development framework required by § 98.44(a).

*Pre-service or orientation health and safety training.* Section 658E(c)(2)(I)(i)(XI) of the Act requires Lead Agencies to set ''minimum health and safety training, to be completed pre-service or during an orientation period in addition to ongoing training, appropriate to the provider setting involved'' that addresses the specific topic areas listed in the proposed rule at § 98.41(a)(1). All caregivers, teachers, and directors in programs receiving CCDF funds must receive this training. Many States and Territories already have pre-service and orientation training requirements for licensed providers. We have placed this requirement in the professional development section of the proposed rule because we see preliminary health and safety training requirements as a part of a continuum of professional development. We propose that pre-service or orientation training include the major domains of child development in addition to the Act's requirement for health and safety training. Understanding child development is integral to providing high quality child care.

The Act allows an orientation period during which staff can fulfill the training requirement. Lead Agencies will have broad flexibility to determine what training is required ''pre-service'' and what training may be completed during an ''orientation'' period. We propose that all orientation training be completed within three months of caring for children as recommended by *CfoC Basics.* We encourage providers to document completion of the pre-service or orientation training so that caregivers, teachers, and directors do not need to repeat foundational training when they change employment. This documentation can be useful for the State's or Territory's licensing agency and career pathway.

We expect variability in how Lead Agencies will implement this provision. There are a number of low or no cost resources available, including online resources, which cover many of these trainings. We do not advocate the exclusive use of online trainings, but believe that a mixed delivery training system that includes both online and in-person trainings can meet the varied needs of child care caregivers, teachers, and directors. We encourage Lead Agencies to permit individuals to use certificates and credentials that include a demonstration of competence in any or all of the health, safety, and child development topics to fulfill, partially or in full, the training requirements.

*Ongoing Professional Development:* Section 658E(c)(2)(G)(ii)(I) of the Act requires the Plan to include assurances that training and professional development will be conducted on an ongoing basis, which we restate at § 98.44(b)(2) with a number of parameters. At § 98.44(b)(2)(i), we propose that ongoing training maintain and update the health and safety training standards described at § 98.41(a)(1).

Section 658E(c)(2)(G)(iii) of the Act requires each Lead Agency's Plan to include the number of hours of training for eligible providers and caregivers to engage in annually, as determined by the Lead Agency. We propose to reiterate this requirement at § 98.44(b)(2) by requiring Lead Agencies to establish the minimum annual requirement for hours of training and professional development for caregivers, teachers and directors of CCDF providers. While Lead Agencies have flexibility to set the number of hours, *Caring for Our Children: National*

*Health and Safety Performance Standards, Guidelines for Early Care and Education Programs, 3rd Edition,* recommends that teachers and caregivers receive between 24 and 30 hours of ongoing training annually.

The Act also specifies that the ongoing professional development must: Incorporate knowledge and application of the Lead Agency's early learning and developmental guidelines (where applicable) and the Lead Agency's health and safety standards; incorporate social-emotional behavior intervention models, which may include positive behavior intervention and support models; be accessible to providers supported by Tribal organizations or Indian Tribes that receive CCDF assistance; and be appropriate for different populations of children, to the extent practicable, including different ages of children, English learners, children with disabilities, Native Americans and Native Hawaiians. We have re-stated these areas within § 98.44(b)(2)(iii) through (v) and (vii) with some elaboration. We propose at § 98.44(b)(2)(v) that the Plan promote, to the extent practicable, ongoing professional development opportunities that earn Continuing Education Units (CEUs) or are credit-bearing. Too often, early childhood educators participate in professional development that is not accepted by a credential or degree program or does not link to the career pathway. In some instances, this type of training is necessary, but often it results in an inefficient use of resources that does not help individuals advance professionally. CEUs and college credits are quality accountability mechanisms because they require some form of assessment of adult learning. CEUs may be accepted in some articulation agreements, particularly if granted by a higher education institution or accredited by the International Association for Continuing Education and Training (IACET). They also can facilitate articulation with degree programs, preventing individuals from repeating coursework for which they have already expended private funds or taken out loans. We encourage, as part of the State or Territory framework, a process for individuals to receive career and professional development advisement so that they can make informed choices about ongoing professional development opportunities.

Equal Access (Section 98.45)

Section 658E(c)(4) of the Act requires the Lead Agency to certify in its CCDF Plan that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services provided to children whose parents are not eligible to receive child care assistance. In this NPRM, we are interpreting the comparison group as families whose incomes exceed 85 percent of SMI. Many families with income above 85 percent of SMI have higher quality child care options available to them and we propose that families receiving CCDF should have access to child care of comparable quality. The statute requires the CCDF Plan to provide a summary of the facts the Lead Agency used to determine that payment rates are sufficient to ensure equal access. This proposed rule modifies three key elements in the current regulation, now at § 98.45(b), used to determine that a CCDF program provides equal access for eligible families and proposes five additional elements consistent with statutory provisions on equal access and rate setting at Section 658E(c)(4) and payment practices at Section 658E(c)(2)(S) of the Act. As proposed, the summary of data and facts would include: (1) Choice of the full range of providers; (2) adequate payment rates, based on the most recent market rate survey or alternative methodology; (3) base payment rates established at least at a level sufficient to support implementation of the health, safety and quality requirements in the NPRM; (4) payment rates that are sufficient to provide parental choice for families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income; (5) the cost of higher quality child care; (6) payment practices that support equal access to a range of providers; (7) affordable copayments; and (8) any additional facts considered by the Lead Agency. All of these proposed changes are discussed further below.

*Market Rate Survey or Alternative Methodology.* We propose adding paragraph (c) based on new statutory language at Section 658E(c)(4)(B) of the Act requiring Lead Agencies to conduct, no earlier than two years before the submission of their CCDF Plan, a *statistically valid and reliable* market rate survey or an alternative methodology, such as a cost estimation model. Previously, the conducting of a market rate survey was a regulatory requirement, not statutory. ACF is not defining *valid and reliable* within this proposed rule but is proposing a set of benchmarks, largely based on CCDF-funded research to identify the components of a valid and reliable market rate survey. (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., *Study of Market Prices: Validating Child Care Market Rate Surveys,* Oregon Child Care Research Partnership, 2008)

ACF will consider a market rate survey valid if it meets the following benchmarks:

- Includes the priced child care market. The survey includes child care providers within the priced market (*i.e.,* providers that charge parents a price established through an arm's length transaction). In an arm's length transaction, the parent and the provider do not have a prior relationship that is likely to affect the price charged. For this reason, some unregulated, license-exempt providers, particularly providers who are relatives or friends of the child's family, are generally not considered part of the priced child care market and therefore are not included in a market rate survey. These providers typically do not have an established price that they charge the public for services, and the amount that the provider charges is often affected by the relationship between the family and the provider. In addition, from a practical standpoint, many Lead Agencies are unable to identify a comprehensive universe of license-exempt providers since individuals frequently are not included on lists maintained by licensing agencies, resource and referral agencies, or other sources. In the absence of findings from a market rate survey, Lead Agencies often use other facts to establish payment rates for providers outside of the priced market (*e.g.,* license-exempt providers); for example, many Lead Agencies set these payment rates as a percentage of the rates for providers in the priced market.
- Provides complete and current data. The survey uses data sources (or combinations of sources) that fully capture the universe of providers in the priced child care market. The survey should use lists or databases from multiple sources, including licensing, resource and referral, and the subsidy program, if necessary, for completeness. In addition, the survey should reflect up-to-date information for a specific time period (*e.g.,* all of the prices in the survey are collected within a three-month time period).
- Represents geographic variation. The survey includes providers from all geographic parts of the State, Territory, or Tribal service area. It also should collect and analyze data in a manner that links prices to local geographic areas.
- Uses rigorous data collection procedures. The survey uses good data collection procedures, regardless of the

method (mail, telephone, or web-based survey; administrative data). This includes a response from a high percentage of providers (generally, 65 percent or higher is desirable and below 50 percent is suspect). Some research suggests that relatively low response rates in certain circumstances may be as valid as higher response rates. (Curtin R., Presser S., Singer E., *The Effects of Response Rate Changes on the Index of Consumer Sentiment,* Public Opinion Quarterly, 2000; Keeter S., Kennedy C., Dimock M., Best J., Craighill P., *Gauging the Impact of Growing Nonresponse on Estimates from a National RDD Telephone Survey,* Public Opinion Quarterly, 2006) Therefore, in addition to looking at the response rate, it is necessary to implement strong sample designs and conduct analyses of potential response bias to ensure that the full universe of providers in the child care market is adequately represented in the data and findings. Lead Agencies should consider surveying in languages in addition to English based on the languages used by child care providers, and other strategies to ensure adequate responses from key populations.

- Analyzes data in a manner that captures market differences. The survey should examine the price per child care slot, recognizing that all child care facilities should not be weighted equally because some serve more children than others. This approach best reflects the experience of families who are searching for child care. When analyzing data from a sample of providers, as opposed to the complete universe, the sample should be appropriately weighted so that the sample slots are treated proportionally to the overall sample frame. The survey should collect and analyze price data separately for each age group and category of care to reflect market differences.

The purpose of the market rate survey is to guide Lead Agencies in setting payment rates within the context of market conditions so that rates are sufficient to provide equal access to the full range of child care services, including high quality child care. However, the child care market itself often does not reflect the actual costs of providing child care and especially of providing high quality child care designed to promote healthy child development. Financial constraints of parents prevent child care providers from setting their prices to cover the full cost of high quality care, which is unaffordable for many families. As a result, a market rate survey may not provide sufficient information to assess the actual cost of quality care. Therefore, it's often important to consider a range of data, including, but not limited to, market rates, to understand prices in the child care market. In this proposed rule, we clarify that the market rate survey is intended to be an examination of prices and that Lead Agencies have flexibility to use data collection methodologies other than a survey so long as the data are reflective of the current child care market. For example, Lead Agencies may use administrative data from resource and referral agencies or other sources, which may be used to determine payment rates.

We propose that the market rate survey also include information on the extent to which child care providers are participating in CCDF and any barriers to participation, including barriers related to CCDF payment rates and practices. We expect that Lead Agencies would include questions related to identifying such barriers in their survey. Previous surveys and focus groups with child care providers have found that low payment rates as well late or delayed payments and other hassles may force some providers to stop serving or limit the number of children receiving subsidies in their care. Other providers may choose to not serve CCDF children at all. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) We think it is important to publicize information from child care providers on the extent to which barriers related to payment rates and practices deter providers from participating in CCDF and therefore limit equal access for children receiving CCDF. While we propose this requirement as part of the market rate survey, we encourage Lead Agencies that choose to use an alternative rate-setting methodology in lieu of a market rate study, discussed below, to find ways of collecting and publicizing information on barriers to CCDF participation from child care providers through survey or other means.

The revised law allows a Lead Agency to base payment rates on an alternative methodology, such as a cost estimation model, in lieu of a market rate survey. A cost estimation model is one such alternative approach in which a Lead Agency can estimate the cost of providing care at varying levels of quality based on resources a provider needs to remain financially solvent. The Provider Cost of Quality Calculator is a publicly available Web-based tool that calculates the cost of quality-based on site-level provider data for any jurisdiction. Many States, working with the Alliance for Early Childhood Finance and Augenblick, Palaich and Associates (APA), contributed to the development of the cost calculator methodology that preceded the online tool, and was funded by the Office of Child Care through the support of the Child Care Technical Assistance Network. The tool helps policymakers understand the costs associated with delivering high quality child care and can inform payment rate setting.

In our 2013 NPRM, ACF proposed allowing Lead Agencies to use an alternative rate-setting methodology in lieu of a market rate study. We received many comments opposed to the proposal, including those expressing concern that alternative methodologies were an unproven approach that may be used to justify existing low payment rates. Due to concern about alternative methodologies and because they are new (in comparison to the long-standing use of market rate surveys), we propose that any alternative methodology used by a Lead Agency must receive advance approval by ACF. To obtain approval, we anticipate that the Lead Agency will need to demonstrate how the alternative methodology provides a sound basis for setting payment rates that promote equal access and support a basic level of health, safety and quality, as discussed below. ACF approval will only be necessary if the Lead Agency plans to *replace* the market rate survey with an alternative methodology. Approval will not be required if the Lead Agency plans to implement both a market rate survey and an alternative methodology. After enactment of a final rule, ACF will provide guidance to Lead Agencies regarding the process for proposing an alternative methodology, including criteria and a timeline for approval. We will also consider whether to provide a list of recommended methodologies.

We propose adding paragraph (d) based on the updated law, which requires that the market rate survey reflect variations by geographic location, provider, and child's age. We propose applying the same requirement to any alternative methodology used by a Lead Agency. Lead Agencies must include in their Plan how and why they differentiate their rates based on these factors.

We propose adding paragraph (e) that reflects new statutory language requiring the Lead Agency to consult with the State's Early Childhood Advisory Council or similar coordinating body, child care directors, local child care resource and referral agencies, and other appropriate entities prior to conducting a market rate survey

or alternative methodology. Lead Agencies should consult with members of the public in the development of their survey or methodology, including worker organizations representing child care caregivers, teachers, and directors.

In accordance with §§ 98.81(b)(5) and 98.83(d)(1)(v), we propose to exempt Tribal grantees from the requirement to conduct a market rate survey or alternative methodology. However, in their CCDF Plans, Tribes must still describe their payment rates; how they are established; and how they support quality and, where applicable, cultural and linguistic appropriateness. Tribes, at their option, may still conduct a market rate survey or alternative methodology or use the State's market rate survey or alternative methodology when setting payment rates.

*Setting Payment Rates.* We propose adding § 98.45(f)(1) reflecting the statutory requirement for a Lead Agency to prepare and make widely available a detailed report containing results of its survey or alternative methodology. Section 658E(c)(4)(B)(ii) of the Act requires this report be available 30 days after completion of the survey or alternative methodology. Because we consider analysis and preparation of the report to be part of completing a survey, we are clarifying that Lead Agencies have 30 days from completion of the report to make the information available.

We propose adding language that would require Lead Agencies to indicate in their report the estimated price or cost of care necessary to support child care providers' implementation of the health, safety, and quality requirements at §§ 98.41, 98.42, 98.43, and 98.44, including any relevant variation by geographic location, category of provider, or age of child. We expect that payment rates, *at a minimum,* should be sufficient to ensure compliance with applicable licensing and regulatory requirements, health and safety standards, training and professional development standards, and appropriate child to staff ratio and group size limits (that Lead Agencies define) as required by the Act. We intend to ask Lead Agencies in their Plans to indicate the estimated price or cost of care necessary to support child care providers' implementation of these health, safety, and quality requirements, as well as how that baseline corresponds with licensing requirements and levels of a quality rating and improvement system or other transparent system of quality indicators. We also strongly encourage Lead Agencies to consider the costs associated with implementation of higher quality standards, such as those in *Caring for Our Children Basics,* the Head Start program performance standards, or various levels of QRIS, when establishing base payment rates.

Section 658E(c)(4)(B)(iii) of the Act requires Lead Agencies to set payment rates in accordance with the result of the market rate survey or alternative methodology, taking into consideration the cost of providing higher quality care. We interpret this statutory provision to mean that Lead Agencies must use results of the most *recent* market rate survey or alternative methodology to set payment rates and propose language in § 98.45(f)(2)(i) to clarify this. Payment rates should reflect the current child care market. Setting payment rates based on older market rate surveys that reflect outdated prices, results in insufficient payment rates that do not reflect current market conditions and undermine the statutory requirement of equal access. This proposal would effectively require Lead Agencies to reevaluate their payment rates *at least* every three years. Where updated data from a market rate survey or alternative methodology indicate that prices or costs have increased, Lead Agencies must update their rates as a result. Moreover, we encourage Lead Agencies to consider annual increases in rates that keep pace with regular increases in the costs of providing child care. While we anticipate that payment rates will differ by types of care, ages of children and geographic location, among other factors, we expect that Lead Agencies will ensure that rates for all provider categories and age groups similarly provide equal access for children served by CCDF.

The preamble to the 1998 Final Rule reminds Lead Agencies of the general principle that Federal subsidy funds cannot pay more for services than is charged to the general public for the same service. (63 FR 39959). While this principle remains in effect, we are clarifying that Lead Agencies may pay amounts above the provider's private pay rate to support quality. A Lead Agency also may peg a higher payment rate to the provider's cost of doing business at a given level of quality. For example, an analysis of the cost of providing high quality care (*i.e.,* at the top levels of a QRIS) using a cost estimation model or other method could show the cost of providing the service is greater than the price charged in the market. Recognizing that private pay rates are often not sufficient to support high quality, many Lead Agencies have already implemented tiered subsidy payments that support quality. Payments may exceed private pay rates if they are designed to pay providers for additional costs associated with offering higher quality care or types of care that are not produced in sufficient amounts by the market (*e.g.,* non-standard hour care, care for children with disabilities or special health care needs, etc.).

In paragraphs (f)(2)(ii) and (iii), we propose new parameters for determining whether payment rates are set at levels that allow eligible families equal access to child care that is comparable to child care access by families who are not eligible for CCDF. We propose, as mentioned above, that Lead Agencies set payment rates, *at a minimum,* at levels sufficient to support implementation of health, safety, and quality requirements as described in this NPRM. We also propose that Lead Agencies set payment rates at levels that provide parental choice to families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income. The preamble to the 1998 Final Rule indicated that payments established at least at the 75th percentile of prices charged in the private-pay child care market would be regarded as providing equal access (63 FR 39959). We believe the 75th percentile remains an important benchmark for gauging equal access and recognize that Lead Agencies and other stakeholders are familiar with this rate as a proxy for equal access. To establish payments at the 75th percentile, rates within categories from the market rate survey are arranged from lowest to highest. The 75th percentile is the number separating the 75 percent of lowest rates from the 25 percent that are highest. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of all available child care, including care available to families with incomes above 85 percent of State median income. While it is true that the price of child care does not always correlate with the quality of child care, we believe it is essential that CCDF families have access to a majority of the care available to families with incomes above 85 percent of income, which would be accomplished with rates established at the 75th percentile. Retaining this benchmark also allows for accountability and comparability across States using a market rate survey approach, which can be useful in gauging equal access and monitoring trends in rates and access to quality care over time. We recognize that this benchmark is an imperfect proxy for the affordability of higher quality care. In order for providers to offer high quality

care that meets the needs of children from low-income families, they need sufficient funds to be able to recruit and retain qualified staff, use intentional approaches to promoting learning and development using curriculum and engaging families, and provide safe and enriching physical environments. ACF plans to continue monitoring rates and equal access, which may lead to improved rate setting approaches and benchmarks in future years.

Currently, nearly all Lead Agencies set rate ceilings that are below the 75th percentile and in many cases significantly below that benchmark. This is of great concern to ACF both because inadequate rates may violate the statutory requirement for equal access and because CCDF is serving a large number of vulnerable children who would benefit from access to high quality care and for whom payment rates even higher than the 75th percentile may be necessary to afford access to such care. Low rates simply do not provide sufficient resources to cover costs associated with the provision of high quality care or to attract and retain qualified caregivers, teachers, and directors. Low rates may also impact the willingness of child care providers to serve CCDF children thereby restricting access. Currently, even in States and Territories that pay higher rates for higher quality care, base rates are so inadequate that even the highest payment levels are often below the 75th percentile. While rates vary by category of care, locality, and other factors, 22 States/Territories reported in their FY 2014–2015 CCDF Plans they had at least some base rates below the 10th percentile of a market rate survey. This means that CCDF families are unable to access a significant portion of the child care market, including higher quality care accessed by families with incomes over 85 percent of SMI.

While we are not requiring that Lead Agencies pay providers at the 75th percentile, we strongly discourage Lead Agencies from paying providers less than the 75th percentile. Further, Lead Agencies that set rates below the 75th percentile would be required to demonstrate that their payment rates allow CCDF families to purchase care that is of comparable quality to care that is available to families with incomes above 85 percent of SMI. This should include data about the quality of care that CCDF families can purchase and that is available to families above 85 percent of SMI. For example, a State could provide data on the share of licensed providers in the State or service area that meet established quality benchmarks, as well as the share of CCDF providers meeting those standards and the share of children receiving CCDF in care that meets an established quality level. States could use information on QRIS participation and ratings, national accreditation or other quality benchmarks for providers.

ACF intends to enhance its monitoring of rates through the CCDF Plan approval process. ACF may deny Plans or take penalties under the equal access provision of this law if base rates do not give access to a minimum level of quality. Lead Agencies that set their rates at the 75th percentile of the most recent market rate survey will be assured approval by ACF that rates provide equal access. ACF will apply scrutiny in its review to rates set below that threshold, as well as to rates that appear to be below a level to meet minimum quality standards based on alternate methodologies.

We recognize that at the present time in many States and Territories the available quality data on child care providers is limited and we are requesting comments on how to best assess the comparability of child care quality between that accessed by families receiving CCDF and that available to families above 85 percent of SMI, including parameters and requirements for any data collection. ACF intends to examine the integrity of reported data and provide assistance to Lead Agencies in assessing comparability. We are also seeking comments on a possible benchmark or metric for measuring the adequacy of rates set by alternative methodologies, as comparable to the 75th percentile. Finally, any alternative methodology or market rate survey that results in stagnant or reduced payment rates will result in further increased scrutiny by ACF in its review, and the Lead Agency will need to provide a justification for how such rates result in improving access to higher quality child care.

We propose adding paragraph (f)(2)(iii) in accordance with the new statutory requirement for Lead Agencies to take into consideration the cost of providing higher quality care than was provided prior to the reauthorization when setting payment rates. Lead Agencies may take different approaches to meeting this provision, including increasing base payment rates, using pay differentials or higher rates for higher quality care, or other strategies, such as direct grants or contracts that pay higher rates for child care services that meet higher quality standards. As stated, ACF acknowledges that rates above the benchmark of 75th percentile may be required to support the costs associated with high quality care.

We propose adding paragraph (f)(2)(iv) reflecting new language in the law that requires Lead Agencies set payment rates without reducing the number of families receiving assistance, to the extent practicable. ACF recognizes the limitations of Lead Agencies' abilities to increase rates under resource constraints and that Lead Agencies must balance competing priorities. We recognize that greater budgetary resources are needed to serve all children eligible for CCDF. While we do not want to see a reduction in children served, it is our belief that current payment rates for CCDF-funded care in many cases do not support equal access to a minimum level of quality for CCDF children and should be increased.

Current regulations prohibit Lead Agencies from differentiating payment rates based on a ''family's eligibility status or circumstance''. This provision is intended to prevent Lead Agencies from establishing different payment rates for child care for low-income working families as payments for children from TANF families or families in education or training. We believe that such a prohibition remains relevant and that differentiating payment rates, based on an eligibility status (such as receiving TANF or participation in education or training), would violate the equal access provision. In order to clarify that this prohibition does not conflict with the ability of Lead Agencies to differentiate payments based on the needs of particular children, for example paying higher rates for higher quality care for children experiencing homelessness, we have removed the word ''circumstance'' in paragraph (g) so that this provision only refers to the conditions of eligibility and not the needs or circumstance of children. We do not believe that setting lower payment rates based on the eligibility status of the child is consistent with Congress' intent to allow for differentiation of rates or that establishing different payment rates for low-income families and TANF families furthers the goals of the Act or support access to high quality care for low-income children.

Finally, we propose, in paragraph (i), to add, ''if the Lead Agency acted in accordance with'' this regulation, to the existing language that nothing in this section shall be construed to create a private right of action in accordance with statutory language.

Section 658E(c)(4)(C) of the Act states that Lead Agencies may not be prevented from differentiating payment rates based on geographic location of child care providers, age or particular needs of children (such as children with

disabilities and children served by child protective services), whether child care providers provide services during weekend or other non-traditional hours; or a Lead Agency's determination that differential payment rates may enable a parent to choose high quality child care. Section 98.45(j)(2) proposes to add children experiencing homelessness to this list of children with particular needs. Paying higher rates for higher quality care is an important strategy as it provides resources necessary to cover the costs of quality improvements in child care programs. Lead Agencies should also consider differentiating rates for care that is in low supply, such as infant-toddler care and care during nontraditional hours, as an incentive for providers.

*Parent Fees.* Section 658E(c)(5) requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost-sharing for families receiving CCDF funds. The reauthorization added language that cost-sharing should not be a barrier to families receiving CCDF assistance. In this proposed rule, we have moved the regulatory language on sliding fee scales (previously § 98.42) under this section, recognizing affordable copayments as an important aspect of equal access.

We propose amending the previous regulatory language, now § 98.45(k) by adding language that the cost-sharing should not be a barrier to families receiving assistance. Lead Agencies have flexibility in establishing their sliding fee scales and determining what constitutes a cost barrier for families. The preamble to the 1998 Final Rule established the Federal benchmark of 10 percent of family income as an affordable copayment. As in the past, we are declining from defining affordable in regulation but we are revising this established benchmark through this preamble. It is our view that a fee that is no more than 7 percent of a family's income is a better measure of affordability. According to the U.S. Census Bureau, the percent of monthly income families spend on child care on average has stayed constant between 1997 and 2011, at around 7 percent. Poor families on average spend approximately four times the share of their income on child care compared to higher income families. *Who's Minding the Kids? Child Care Arrangements: Spring 2011,* U.S. Census Bureau, 2013.) As CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, it is our belief that CCDF families should not be expected to pay a greater share of their income on child care than reflects the national average. For the majority of CCDF families receiving assistance, this new Federal benchmark would not result in a change in the amount of copay charged. The average percentage of family income spent on CCDF copayments, among families with a copayment, is 6.2 percent.

According to § 98.21(a)(3), as proposed, Lead Agencies would be unable to increase family copayments within the minimum 12-month eligibility period unless the family's income is in a graduated phaseout of care as described at § 98.21(b)(2). When designing fee scales, we encourage Lead Agencies to consider how their fee scales address affordability for families at all income levels. Lead Agencies should ensure that small increases in earnings, during the graduated phaseout period, do not trigger large increases in copayments, in order to ensure stability for families as they improve their economic circumstance and transition off child care assistance.

In addition, we propose to add language to provide that Lead Agencies may not use the cost, price of care, or subsidy payment rate as a factor in setting co-payment amounts. This corrects a contradiction between the 1992 and 1998 preamble discussions. The 1992 preamble stated that ''Grantees may take into account the cost of care in establishing a fee scale,'' (57 FR 34380), while the 1998 preamble states that ''As was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed.'' (63 FR 39960) This proposed change would correct this discrepancy by stating that Lead Agencies may not use the cost or price of care when setting their co-pay amounts, which could violate the statutory requirements to preserve equal access and parental choice by incentivizing families to use lower cost care.

Finally, current CCDF regulations at § 98.42(c) state that ''Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.'' This provision would remain in effect and we encourage Lead Agencies to implement it. We propose amending this section so that Lead Agencies can waive contributions from families ''that meet other criteria established by the Lead Agency.'' Lead Agencies have often requested more flexibility to waive copayments beyond just those families at or below the poverty level. This change would increase flexibility to determine waiver criteria that the Lead Agency believes would best serve subsidy families. For example, a Lead Agency could use this flexibility to target particularly vulnerable populations, such as homeless families, migrant workers, or families receiving TANF. Lead Agencies may choose to waive copayments for children in Head Start and Early Head Start, which is an important alignment strategy. Head Start and Early Head Start are provided at no cost to eligible families, who cannot be required to pay any fees for Head Start services. Waiving CCDF fees for families served by both Head Start/Early Head Start and CCDF can support continuity for families. While we are allowing Lead Agencies to define criteria for waiving co-payments, the criteria must be described and approved in the CCDF Plan. Lead Agencies may not use this revision as an authority to eliminate the co-payment requirement for all families receiving CCDF assistance. We continue to expect that Lead Agencies would have co-payment requirements for a substantial number of families receiving CCDF subsidies. We included this proposal on increasing Lead Agency flexibility on waiving co-payments in our 2013 NPRM and many commenters supported this policy revision.

We propose adding paragraph (l) that requires Lead Agencies to prohibit child care providers receiving CCDF funds from charging parents additional mandatory fees above the family co-payment based on the Lead Agencies' sliding fee scale. According to the 2015–2016 CCDF Plans, 41 Lead Agencies have policies allowing providers to charge families the difference between the maximum payment rate and their private pay rate. In some States/Territories, parents may be asked to pay the difference only in certain circumstances or for certain types of providers. For example, Lead Agencies that allow providers to charge parents may prohibit providers from charging families who are exempt from copayments, or may only allow providers who have met an established quality level to charge families the difference in rates. (Minton, S., Durham, C., and Giannarelli, L., *The CCDF Policies Database Book of Tables: Key Cross-State Variations in CCDF Policies as of October 1, 2013, OPRE Report 2014–72,* U.S. Department of Health and Human Services, 2014). We believe that requiring families to pay above the established copayment may make care unaffordable for families and may be a barrier to families receiving assistance. We are also concerned that such policies require families to make up the difference for Lead Agencies' low payment rates. To ensure that providers

are informed about this provision, Lead Agencies should include this prohibition in any written information given to providers and/or written provider agreements. Lead Agencies may want to consider what methods they would use to monitor compliance with this prohibition. This policy does not preclude providers from charging families optional fees, such as those to participate in field trips or other non-mandatory activities. We anticipate that any fiscal impact on providers from this policy change would be reduced or eliminated by the expectation that Lead Agencies increase and regularly update their payment rates and improve their payment policies pursuant to § 98.45(f)(2) and (m). We solicit comments on the impact of this proposal for both parents and providers, including whether ACF should provide a phase-in period for implementation.

*Provider Payment Practices.* Section 658E(c)(2)(S) of the Act requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers in the State/Territory that serve children who do not receive CCDF-funded assistance in order to support stability of funding and encourage more child care providers to serve children receiving CCDF funds. It also requires the Lead Agency, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances, such as illness. Section 658E(c)(4)(iv) requires Lead Agencies to describe how they will provide for the timely payment for child care services provided by CCDF funds.

In addition to payment rates, policies governing provider payments are an important aspect of equal access and supporting the ability of providers to provide high quality care. Currently, many States closely link provider payments to the hours a child attends care. A child care provider may not be paid for days or hours when a child is absent, resulting in a loss of income. Moreover, the instability that results from such payment practices makes it difficult for providers to meet fixed costs of providing child care (such as rent, utilities and salaries) and to plan for investments in quality. Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the full payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies.

Generally accepted payment practices typically require parents who pay privately for child care to pay their provider a set fee based on their child's enrollment, often in advance of when services are provided. Payments are not altered due to child absences. While Lead Agencies have flexibility to determine payment processes for subsidies, we believe that it is appropriate to set some Federal benchmarks for what constitutes timely payments, delinking of payments and absent days, and generally accepted payment practices. We are interested in receiving comments on whether these or other benchmarks should be included in a final rule.

At § 98.45(m)(1), we propose that Lead Agencies ensure timely provider payments by *either* paying prospectively prior to the delivery of services *or* paying providers retrospectively within no more than 21 days of the receipt of invoice for services. We strongly encourage Lead Agencies to pay prospectively where possible. For Lead Agencies that choose to reimburse providers for services, we provide 21 days as a *maximum* period of time but encourage Lead Agencies to provide payment sooner if possible. We do not expect this requirement to be burdensome for Lead Agencies. According to their FY 2014–2015 CCDF Plans, 37 States/Territories had an established timeframe for provider payments ranging from 3 to 35 days, the majority of which were shorter than 21 days. Administrative improvements such as automated billing and payment mechanisms, including direct deposit and web-based electronic attendance and billing systems can help facilitate timely payments to providers.

At § 98.45(m)(2), we propose three examples for how Lead Agencies could meet the statutory requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. This may include: (1) By paying providers based on a child's enrollment, rather than attendance; (2) by providing a full payment to providers as long as a child attends for 85 percent of the authorized time; or (3) by providing full payment to providers as long as a child is absent for five or fewer days in a four week period. We recognize that these three examples represent different levels of stringency; however, we have provided flexibility in acknowledgement of the ways that States structure their policies. Lead Agencies that do not choose one of these three approaches must describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

We are establishing 85 percent, or five or fewer days, as a benchmark for when providers should receive a full payment, regardless of the reason for the absence (*e.g.,* whether it is approved or unapproved). We selected 85 percent (or five or fewer days) as a threshold based in part on Head Start policy, which currently requires center-based programs to maintain a monthly 85 percent attendance rate and to analyze absenteeism if monthly average daily attendance falls below that threshold. New proposed Head Start Performance Standards, issued in June 2015, would require programs to take actions (which could include additional home visits or the provision of support services) to increase child attendance when children have four or more consecutive unexcused absences or are frequently absent. While Head Start policy informed the development of this proposal, our proposed provisions differ in several ways. We are not requiring CCDF child care providers to take action to address individual or systemic absenteeism, although Lead Agencies may encourage CCDF providers to take this approach and consider how child care providers may be supported in addressing high rates of absenteeism among families. Chronic absenteeism from high quality programs is a concern because it may lessen the impact on children's school readiness and may signal that a family is in need of additional supports.

We are proposing using a common threshold to encourage alignment and because it seems to reasonably allow for routine absences, such as due to illness, that occur among children. Lead Agencies retain discretion to allow for *additional* excused and/or unexcused absences and to provide for the full payment for services in those circumstances. Many Lead Agencies have invested in electronic time and attendance systems linked to provider payments. These systems may be used to track whether a child is enrolled and attending care; however, Lead Agencies should ensure that such systems do not

link attendance and payment so tightly as to violate this provision.

The law requires Lead Agencies to implement this provision ''to the extent practicable.'' We interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all. We are not requiring Lead Agencies to pay for all days when children are absent, although that would most closely mirror private pay practices, but each Lead Agency is expected to implement a policy that accomplishes the goals of the statute. A refusal to implement any such policies as being ''impracticable'' will not be accepted. We are asking for comment on alternatives to the three identified approaches that States may want to use to meet this requirement.

At § 98.45(m)(3), we propose minimum requirements for complying with the provision of ''generally-accepted payment practices.'' Unless a Lead Agency is able to prove that the following policies are *not* generally-accepted in its particular State, Territory, or service area, or among particular types of providers, we propose requiring Lead Agencies to pay providers based on established part-time or full-time rates, rather than paying for hours of service or smaller increments of time. We also propose that Lead Agencies pay for mandatory fees that the provider charges to private-paying parents. This would include initial or annual registration fees. It is not meant to include optional fees charged to families, such as those to participate in optional field trips or program activities.

In addition, there are certain generally-accepted payment practices that we propose to require of all Lead Agencies. In paragraphs (m)(4) through (6) we propose requiring Lead Agencies to ensure that child care providers receive payment for any services in accordance with a payment agreement or authorization for services, receive prompt notice of changes to a family's eligibility status that may impact payment, and establish timely appeal and resolution processes for any payment inaccuracies and disputes. While these practices are unique to the subsidy system, they are analogous to generally-accepted payment practices in the private pay market, such as establishing contracts between providers and parents and providing adequate advance notice of changes that impact payments. We believe the appeals and resolution process is important in fairness to providers.

Finally, Lead Agencies should ensure that payment practices for each type of provider reflect generally accepted payment practices for such providers in order to ensure that families have access to a range of child care options. We note that these benchmarks represent *minimum* generally accepted practices. Lead Agencies may consider additional policies that are fair to providers, promote the financial stability of providers and encourage more providers to serve CCDF eligible children. Such policies may include paying providers based on the provider's established procedures for private-pay families (*i.e.,* a flat monthly rate rather than paying by the day or week), providing information on payment practices in multiple languages to promote the participation of diverse child care providers; implementing dedicated phone lines, web portals, or other access points for providers to easily reach the subsidy agency for questions and assistance regarding payments; and periodically surveying child care providers to determine their satisfaction with payment practices and timeliness, and to identify potential improvements.

Priority for Services (Section 98.46)

The reauthorization included several provisions to increase access to CCDF services for children and families experiencing homelessness. Consistent with the spirit of these additions, we are proposing to add ''children experiencing homelessness'' to the Priority for Services section at § 98.46.

Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher quality care, or using grants or contracts to reserve slots for priority populations. Section 658E(c)(3)(B)(ii) of the Act requires ACF to report to Congress on whether Lead Agencies are prioritizing services to children experiencing homelessness, children with special needs, and families with very low incomes.

The Section 658E(c)(2)(Q) of the Act also requires Lead Agencies to describe the process by which they propose to prioritize investments for increasing access to high quality child care for children of families in areas that have significant concentrations of poverty and unemployment and lack such programs. We propose reiterating this requirement in the proposed rule in § 98.46(b). It is our interpretation that the investments referred to in the statute may include direct child care services provided under § 98.50(a) and activities to improve the quality of child care services under § 98.50(c).

While Lead Agencies have flexibility in implementing this new statutory language, ACF encourages Lead Agencies to target investments based on analysis of data showing poverty, unemployment and supply gaps. Lead Agencies may also consider how to best support parent's access to workforce development and employment opportunities (such as allowing job search as a qualifying activity for assistance and allowing broader access to assistance for education and training by reducing eligibility restrictions), which would support the child care needs of families in areas with high poverty and unemployment.

*Subpart F—Use of Child Care and Development Funds*

Subpart F of CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, Matching fund requirements, restrictions on the use of funds, and cost allocation.

Child Care Services (Section 98.50)

This proposed rule includes a technical change to § 98.50(a) which we propose to redesignate as new paragraph (g) at § 98.50. The proposed change requires Lead Agencies to spend a substantial portion of the funds remaining after applying provisions at paragraphs (a) through (f) of this section to provide *direct* child care services to low-income working families.

We also make a clarifying change at current paragraph (b) in this section, which we propose to redesignate as paragraph (a). We propose to specify that proposed paragraph (a) is describing use of funds for *direct* child care services. These proposed changes work in conjunction to clarify that the reference to ''a substantial portion of funds'' applies to direct services, as opposed to other types of activities.

Section 658G(a)(2) of the CCDBG Act increases the percentage of total CCDF funds (including mandatory funding) that Lead Agencies must spend on activities to improve the quality of child care services. Paragraphs (b), (d), (e), and (f), respectively, require Lead Agencies to spend a minimum of nine percent of funds (phased in over five years) on activities to improve the quality of care and three percent (beginning in FY 2017) to improve the quality of care for infants and toddlers; not more than five percent for administrative activities; not less than 70 percent of the Mandatory and Matching funds to meet the needs of families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on

TANF; and, after setting aside funds for quality and administrative activities, at least 70 percent of remaining Discretionary funds on direct services. These provisions are all based on statute.

*Grants and contracts.* We propose to add language at § 98.50(a)(3) which would require that funding methods used by States and Territories include some use of grants or contracts for direct services based on an assessment of shortages in the supply of high quality care. The statute references the use of grants or contracts in multiple places and we believe they are a critical aspect of an effective CCDF system and promote the fundamental principles of equal access and parental choice. Note that this proposal would not impact the requirement that the Lead Agency operate a certificate (or voucher) program and that eligible families be offered a certificate. Rather, the proposed change would require Lead Agencies to incorporate grants or contracts into their CCDF program, with specific consideration for how they can be used to address shortages in the supply of high quality child care.

According to preliminary FY 2013 CCDF administrative data, approximately 90 percent of children receiving CCDF-funded child care were served through certificates. According to analysis of the FY 2014–2015 CCDF Plans, only 20 States and Territories provide services through grants or contracts for child care slots, meaning parents in the majority of States/Territories do not have a choice other than certificates.

While child care certificates may also support parental choice, demand-side mechanisms like certificates are only fully effective when there is an adequate supply of child care. Grants or contracts can play a role in building the supply and availability of child care, particularly high quality care, in underserved areas and for special populations in order to expand parental choice. For example, Lead Agencies may use grants or contracts to incentivize providers to open in an area they might not otherwise consider, or to serve children for whom care is more costly. Grants and contracts are paid directly to the provider so long as slots are adequately filled, which is a more predictable funding source than vouchers or certificates. Stable funding can incent providers to pay the fixed costs associated with providing high quality child care, such as adequate salaries to attract qualified staff, or to provide higher cost care, such as for infants and toddlers or children with special needs, or to locate in low-income or rural communities.

We want to emphasize that this proposed addition is not meant to limit or discourage the use of certificates to provide assistance to families. As noted in the Senate Committee report, certificates ''offer eligible parents the broadest array of options and afford parents maximum choice.'' (S. Rept. No. 113–138, at 12). We expect a substantial number of CCDF children would continue to be served through certificates or vouchers. However, we believe a mixed funding system that includes certificates, grants or contracts, and private pay families is the most sustainable option for the CCDF program and for child care providers. Further, a mixed funding system is a straightforward interpretation of language in the CCDBG statute, which clearly states that parents are to be given the option of child care funded by grants and contracts, as well as certificates. While Section 658Q(b) of the Act provides that ''Nothing in this subchapter shall be construed in a manner (1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates,'' Congress chose not to change the language at Section 658E(c)(2)(A) of the Act, requiring Lead Agencies to, ''provide assurances that (i) the parent or parents of each eligible child within the State who receives or is offered child care service for which assistance is provided under this subchapter, are given the option either—(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or (II) to receive a child care certificate.''

Lead Agencies are strongly encouraged to contract with multiple types of settings, including child care centers and family child care networks or systems, to maximize parental choice. Family child care networks or systems are groups of associated family child care providers who pool funds to share some costs of operating and staff who provide supports to providers often to manage their businesses and enhance quality. Contracting directly with family child care networks allows for more targeted use of funds with providers that benefit from additional supports that can improve quality. Research shows affiliation with a staffed family child care network is a strong predictor of quality in family child care homes, when providers receive visits, training, materials, and other supports from the network through a specially trained coordinator. (Bromer, J., et al., *Staffed Support Networks and Quality in Family Child Care: Findings from the Family Child Care Network Impact Study,* Erikson Institute, 2008)

Faith-based or religious organizations may be funded through a grant or contract, although they may not use the funding for religious purposes. Pursuant to existing regulations at § 98.54(d), which we propose to redesignate as § 98.56(d), funds provided through grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. These provisions are designed to promote the participation of faith-based organizations in the CCDF program in a manner consistent with applicable Federal statutes. In many States, faith-based organizations play a key role in the delivery of child care services, and this proposed rule fully supports their continued participation.

We do not expect Lead Agencies currently using direct grants or contracts to necessarily make changes to current grants or contracts. However, we strongly encourage these Lead Agencies to examine their current approach to ensure grants and contracts are focused on increasing the supply of high quality care, especially for underserved populations and communities.

*Expenditures on activities to improve the quality of child care.* Both the quality activity set-aside and the set-aside for infants and toddlers codified in § 98.50(b) apply to the Lead Agency's full CCDF award, which includes Discretionary, Mandatory, and Federal and State shares of Matching Funds. Non-Federal maintenance-of-effort funds are not subject to the quality and infant and toddler set-asides. These amounts are minimum requirements. Lead Agencies may reserve a larger amount of funding than is required at paragraphs (b)(1) and (2) for these activities.

We also propose to revise paragraph (c), which relates to the quality activity funds. First, the proposed rule would require use of the quality funds to align with an assessment of the Lead Agency's need to carry out such services. As part of this assessment, we expect Lead Agencies to review current expenditures on quality, assess the need for quality investment in comparison with revised purposes of the law, including the placement of more low-income children in high quality child care, and determine the most effective and efficient distribution of funding among and across the categories authorized by the statute. Second, the activities must include measurable indicators of progress in accordance with the required measures proposed at

§ 98.53(f). We recognize that some activities may have the same indicators of progress. However, each activity must be reported on and linked to some indicator(s). Finally, the proposed rule allows for quality activities to be carried out by the Lead Agency or through grants and contracts with local child care resources and referral organizations or other appropriate entities.

*Funding for Direct Services.* The proposed rule includes a technical change at paragraph (e) to clarify that the provision applies to the Mandatory and Federal and State share of Matching Funds. This proposed change simply formalizes current policy. We propose to redesignate current paragraph (f) as paragraph (h) without changes.

We propose to replace current paragraph (f) with new regulatory language to restate requirements included in the Act. The proposed regulatory language would require at least 70 percent of any Discretionary funds left after the Lead Agency sets aside funding for quality and administrative activities to be used to fund direct services.

Services for Children Experiencing Homelessness (Section 98.51)

We propose a new section at § 98.51 that codifies new statutory language at 658E(c)(3)(B)(i) of the Act, which requires Lead Agencies to spend at least some CCDF funds on activities that improve access to quality child care services for children experiencing homelessness. The proposed regulatory language would require Lead Agencies to have procedures for allowing children experiencing homelessness to be determined eligible and enroll prior to completion of all required documentation. The proposed regulation also clarifies that if a child experiencing homelessness is found ineligible, after full documentation, any CCDF payments made prior to the final eligibility determination should not be considered errors or improper payments and any payments owed to a child care provider for services should be paid. Lead Agencies would also be expected to provide training and technical assistance on identifying and serving children and families experiencing homelessness and outreach strategies.

Child Care Resource and Referral System (Section 98.52)

The law authorizes use of CCDF funds for child care resource and referral services to assist with consumer education and specifies functions of such entities. Consistent with this provision, this proposed rule would revise § 98.52 to include statutory language that allows Lead Agencies to spend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, local child care resource and referral organization. The statute permits, but does not require, Lead Agencies to fund a child care resource and referral system. We recommend Lead Agencies give consideration to the expanded requirements for consumer education at § 98.33 and how best to meet those requirements, including whether existing child care resource and referral agencies and/or additional partners can assist in reaching low-income parents of children receiving subsidies, providers, and the general public.

Proposed paragraph (b) specifies a list of resource and referral activities that the statute says should be at the direction of the Lead Agency. Therefore, if the Lead Agency does not need the child care resource and referral organization to carry out a certain activity, the organization does not have to carry out that activity.

Activities To Improve the Quality of Child Care (Section 98.53)

As noted above, reauthorization increased the percent of expenditures Lead Agencies must spend on quality activities. We strongly encourage Lead Agencies to develop a carefully considered framework for quality expenditures that takes into account the activities specified by the law, and uses data on gaps in quality of care and the workforce, as well as effectiveness of existing quality enhancement efforts, to target these resources. Lead Agencies should also coordinate quality activities with the statutory requirement to spend at least three percent of expenditures on improving quality and access for infants and toddlers, beginning in FY 2017.

Section 658G(b) of the Act includes a new list of 10 allowable quality activities and requires that Lead Agencies spend their quality funds on at least one of the 10 activities. This proposed rule incorporates and expands on the list of allowable activities at § 98.53(a) with details described below.

1. *Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development.* We propose restating the statutory language specifying training and professional development as an allowable quality improvement expenditure at § 98.53(a)(1). The Act references the section of the Plan requiring assurances related to training and professional development, which is elaborated in the proposed rule at § 98.44. We encourage Lead Agencies to align the uses of funds for training, professional development, and postsecondary education with the State or Territory's framework and progression of professional development to maximize resources. Training and professional development may be provided through institutions of higher education, child care resource and referral agencies, worker organizations, early childhood professional associations, and other entities. The Act also lists additional areas for investments in training and professional development, which we include with additional detail at § 98.53(a)(1)(i) through (vii) as follows:

(a) Offering training, professional development and post-secondary education that relate to the use of scientifically based, developmentally, culturally, and age appropriate strategies to promote all of the major domains of child development and learning, including those related to nutritional nutrition and physical activity and specialized training for working with populations of children, including different age groups, English learners, children with disabilities, and Native Americans and Native Hawaiians, to the extent practicable, in accordance with the Act.

(b) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education. We expanded upon the statutory language to include opportunities for caregivers, teachers and directors to advance professionally as there are a variety of data collected (such as information from licensing inspectors, quality rating and improvement systems, or accreditation assessments) that can guide program improvement by helping providers make adjustments in the physical environment and teaching practices.

(c) Including effective behavior management strategies and training, including positive behavior interventions and support models for birth to school-age or age-appropriate, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors.

(d) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate

ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development.

(e) Providing training in nutrition and physical activity needs of young children.

(f) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(g) Connecting caregivers, teachers and directors of child care providers with resources to assist them in pursuing relevant postsecondary education.

2. *Improving upon the development or implementation of the early learning and development guidelines.* We restate at § 98.53(a)(2) statutory language to allow the use of CCDF quality funds to provide technical assistance to eligible child care providers on the development or implementation of early learning and development guidelines. Early learning and development guidelines should be developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and cover the essential domains of early childhood development. Most States and Territories already have such guidelines, but may need to update them or better integrate them into their professional development system proposed at § 98.44. Section 658E(c)(G) of the Act requires Lead Agencies to describe training and professional development, including the ongoing professional development on early learning guidelines. In June 2015, ACF released the newly revised *Head Start Early Learning Outcomes Framework: Ages Birth to Five* (HSELOF, 2015. The HSELOF provides research-based expectations for children's learning and development across five domains from birth to age 5. As States and Territories undertake revisions to their early learning guidelines, we encourage them to crosswalk their guidelines with the HSELOF to ensure they are comprehensive and aligned. Coordinating between State/Territory early learning and development guidelines and the HSELOF can help build connections between child care programs and Early Head Start/Head Start programs. We also encourage Lead Agencies to consider expanding learning and development guidelines for school-age children, either through linkages to programs already in place through the State department of education or local educational agencies (LEAs), or by adapting current early learning and development guidelines to be age-appropriate for school-age children.

3. *Developing, implementing, or enhancing a tiered quality rating and improvement system (QRIS).* We propose to incorporate this allowable activity at § 98.53(a)(3). The statute lists seven activities that Lead Agencies may choose to include when funding a QRIS with quality funds, which we expand upon:

(a) Support and assess the quality of child care providers in the State, Territory, or Tribe. QRIS should include training and technical assistance to child care providers to help them improve the quality of care and on-site quality assessments appropriate to the setting;

(b) Build on licensing standards and other regulatory standards for such providers. We encourage Lead Agencies to incorporate their licensing standards and other regulatory standards as the first level or tier in their QRIS. Making licensing the first tier facilitates incorporating all licensed providers into the QRIS;

(c) Be designed to improve the quality of different types of child care providers and services. We encourage Lead Agencies to implement QRIS that are applicable to all child care sectors and address the needs of all children, including children of all ages, families of all cultural-socio-economic backgrounds, and practitioners. One way to provide support for different types of care is providing quality funds to established family child care networks that can work with individual family child care providers to improve the quality in those settings.

(d) Describe the safety of child care facilities. Health and safety are the foundation of quality, and should not be treated as wholly separate requirements. Including the safety of child care facilities as part of a QRIS helps to reinforce this connection.

(e) Build the capacity of early childhood programs and communities to support parents' and families' understanding of the early childhood system and the ratings of the programs in which the child is enrolled. This capacity may be built through a robust consumer and provider education system, as described at § 98.33. Lead Agencies should provide clear explanations of quality ratings to parents. In addition to the Web site, Lead Agencies may have providers post their quality rating or have information explaining the rating system available at child care centers and family child care homes. This information should also be accessible to parents with low literacy or limited English proficiency;

(f) Provide to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services. Research has found that significant financial incentives are needed to make the quality improvements necessary for providers to move up levels in the QRIS. In order to ensure that providers continue to improve their quality and help move more low-income children into high quality child care, we recommend Lead Agencies to make these incentives a focus of investment; and

(g) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practices in faith-based settings, community based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development. Parental choice is a very important part of the CCDF program, and parents often consider a variety of factors, including religious affiliation, when choosing a child care provider. Lead Agencies should take these factors into account when setting quality standards and levels in their QRIS, as well as designing how the information will be made available to the public.

4. *Improving the supply and quality of child care programs and services for infants and toddlers.* The statute includes improving the supply and quality of child care programs and services for infants and toddlers as an allowable quality activity, which we propose to reiterate at § 98.53(a)(4). Lead Agencies may use any quality funds for infant and toddler quality activities, in addition to the required three percent infant and toddler quality set-aside. Lead Agencies are encouraged to pay special attention to what is needed to enhance the supply of high quality care for infants and toddlers in developing their quality investment framework and coordinate activities from the main and targeted set asides to use resources most effectively. The statute and proposed rule state that allowable activities may include:

(a) Establishing or expanding high quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high quality, age-appropriate care to infants and toddlers from low-income families. We interpret

this provision to encourage the provision of resources to high quality child care providers or other qualified community-based organizations that serve as hubs of support to providers in the community (by providing coaching or mentoring opportunities, lending libraries, etc.);

(b) Establishing or expanding the operation of community or neighborhood-based family child care networks. As discussed earlier, established family child care networks can help improve the quality of family child care providers. Lead Agencies may choose to use the quality funds to help networks cover overheard and quality enhancement costs, such as providing access to coaches or health consultants;

(c) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers;

(d) If applicable, developing infant and toddler components within the Lead Agency's QRIS for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(e) Improving the ability of parents to access transparent and easy to understand consumer education about high quality infant and toddler care as described at § 98.33; and

(f) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers).

5. *Establishing or expanding a statewide system of child care resource and referral services.* We propose to reiterate the statutory language by adding § 98.53(a)(5) to include establishing or expanding a statewide system of child care resource and referral services as an allowable quality activity. Activities that may be done by child care resource and referral organizations are included at § 98.52.

6. *Facilitating compliance with health and safety.* We restate the statutory language at § 98.53(a)(6) that includes facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards. While it is likely Lead Agencies will need to use quality funding for implementation and enforcement of the new minimum health and safety requirements for child care providers in the law, we urge them to consider expenditures on this purpose foundational to enhancing quality, but not sufficient to meet the purposes of this reauthorization. For example, Lead Agencies should consider linking quality expenditures for health and safety to the quality framework discussed earlier in this preamble, such that a Lead Agency may establish a QRIS that ties eligibility for providers to participate directly to licensing as the base level.

7. *Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.* The statutorily allowable list of quality activities includes at § 98.53(a)(7) evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children. We propose at § 98.53(f)(3) to require Lead Agencies to report on the measures they will use to evaluate progress in improving the quality of child care programs and services. Including evaluation as an allowable quality activity recognizes that evaluating progress may take additional investments, for which Lead Agencies may use quality funds. A good evaluation design can provide information critical to improving a quality initiative at many points in the process, and increase the odds of its ultimate success. (Government Accountability Office, *Child Care: States Have Undertaken a Variety of Quality Improvement Initiatives, but More Evaluations of Effectiveness Are Needed,* GAO–02–897)

*8. Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high quality.* We propose to restate statutory language at § 98.53(a)(8) supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid and reliable program standards of high quality as an allowable quality activity. Accreditation is one way to differentiate the quality of child care providers. In order to gain accredited, child care centers and family child care homes must meet certain quality standards outlined by accrediting organizations.

9. *Supporting efforts to develop or adopt high quality program standards relating to health, mental health, nutrition, physical activity, and physical development.* We restate statutory language at § 98.53(a)(9) supporting Lead Agency or local efforts to develop or adopt high quality program standards relating to health, mental health, nutrition, physical activity, and physical development for children as an allowable quality activity. We recommend Lead Agencies look to Head Start for strong program standards in comprehensive services and consider how these standards may be translated into child care program standards. This could include adding the standards to licensing, encouraging standards through QRIS, or embedding them in the requirements of grants or contracts for direct services. We encourage Lead Agencies that choose to use their quality funds for this activity to focus on research-based standards and work with specialists to develop age appropriate standards in these areas.

10. *Carrying out other activities, including implementing consumer education provisions, determined by the Lead Agency.* We propose to restate statutory language at § 98.53(a)(10) that carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible, are considered allowable quality activities This tenth allowable activity provides Lead Agencies the flexibility they need to invest in quality activities that best suit the needs of parents, children, and providers in their area. Over the years, Lead Agencies have been innovative in how they spent their quality funds, creating novel ways for improving quality of care, such as QRIS, that are now widely used tools for quality improvement. Therefore, we encourage Lead Agencies to experiment with the types of quality activities in which they invest. However, it is critical that Lead Agencies ensure that these new quality activities are focused and represent a smart investment of limited resources, which is why any activity that falls in the ''other'' category must have measurable outcomes that relate to provider preparedness, child safety, child well-being, or entry to kindergarten. Lead Agencies are encouraged to establish research-based measures for evaluating the outcomes of these quality activities. Lead Agencies will report on these measures and activities on an annual basis through the

proposed Quality Progress Report at § 98.53(f).

*Quality activities not restricted to CCDF children.* This proposed rule adds new paragraph (d) to clarify that activities to improve the quality of child care are not restricted to children meeting eligibility requirements under § 98.20 or to the child care providers serving children receiving subsidies. Thus, CCDF quality funds may be used to enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance. This proposed provision clarifies existing policy regarding CCDF quality expenditures.

*Targeted funds and quality minimum.* The proposed rule adds paragraph (e) at § 98.53 to codify longstanding ACF policy that targeted funds for quality improvement and other activities included in appropriations law may not count towards meeting the minimum quality spending requirement, unless otherwise specified by Congress. Beginning in FY 2000, Congress included in annual appropriations legislation for CCDF discretionary funds a requirement for Lead Agencies to spend portions of such funds on specified quality activities. Changes to the minimum quality spending requirement and the addition of a set-aside for infant and toddler care included in reauthorization may lead to changes or removal of targeted funds from annual appropriations legislation. However, we have chosen to propose this provision, as we did in the 2013 NPRM, to formalize the policy, in the event that targeted funds are included in future appropriations.

*Reporting on quality activities.* Sections 658G(c) and (d) of the Act require Lead Agencies to report total expenditures on quality activities, certify that those expenditures met the minimum quality expenditure requirement, and describe the quality activities funded. We propose to incorporate these reporting requirements into the regulation § 98.53(f), which would require Lead Agencies to prepare and submit annual reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available. We also propose to require that Lead Agencies detail the measures used to evaluate progress in improving the quality of child care programs and services, and data on the extent to which the Lead Agency has met these measures. Additionally, Lead Agencies would describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children. While Lead Agencies are required to include child care programs serving children receiving CCDF, we encourage the inclusion of other regulated and unregulated child cares and family child care homes, to the extent possible.

Currently, States and Territories report their categorical expenditures through the ACF 696 reporting form. This form is used to determine if the Lead Agency has met the minimum quality expenditure amount and is referenced at § 98.65(g) in this proposed rule. We expect to continue to use the ACF 696 form to determine whether a Lead Agency has met expenditure requirements at § 98.50(b), including both the quality set-aside and the set-aside to improve quality for infants and toddlers.

We propose to capture information on the quality activities and the measures and data used to determine progress in improving the quality of child care services through a Quality Progress Report. This report would replace the Quality Performance Report that was an appendix to the Plan. The Quality Performance Report has played an important role in increasing transparency on quality spending. The new Quality Progress Report would continue to gather detailed information about quality activities, but include more specific data points to reflect the new quality activities required by the statute. The Quality Progress Report would be a new annual data collection and would require a public comment and response period as part of the Paperwork Reduction Act process, which will give Lead Agencies and others the opportunity to comment on the specifics of the report.

As part of the Quality Progress Report, we propose to include a requirement that States and Territories describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious injuries and any deaths occurring in child care programs serving children receiving child care assistance, and in other regulated and unregulated child cares and family child care homes, to the extent possible. This proposed provision complements § 98.41(d)(4), discussed earlier in the preamble, which requires child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care. States and Territories would consider any serious injuries and deaths reported by providers and other information as part of their annual review and assessment. This report also works in conjunction with the proposed requirements at § 98.33(a)(1)(iv) that Lead Agencies post provider-specific information about the number of serious injuries and deaths of children that occurred while in the care of that provider and at § 98.33(a)(3) that Lead Agencies post the aggregate number of deaths and serious injuries to their consumer education Web sites.

This proposed provision would require Lead Agencies to list and describe the annual number of child injuries and fatalities in child care and to describe the results of an annual review of all serious child injuries and deaths occurring in child care. The primary purpose of this change is the prevention of future tragedies. Sometimes, incidents of child injury or death in child care are preventable. For example, one State recently reviewed the circumstances surrounding a widely-publicized, tragic death in child care and identified several opportunities to improve State monitoring and enforcement that might otherwise have identified the very unsafe circumstances surrounding the child's death and prevented the tragedy. The State moved quickly to make several changes to its monitoring procedures. It is important to learn from these tragedies to better protect children in the future. Lead Agencies should review all serious child injuries and deaths in child care, including lapses in health and safety (*e.g.,* unsafe sleep practices for infants, transportation safety, issues with physical safety of facilities, etc.), to help identify appropriate responses, such as training needs.

The utility of this assessment is reliant upon the Lead Agency obtaining accurate, detailed information about any child injuries and deaths that occur in child care. Therefore, ACF strongly encourages Lead Agencies to work with the State or Territory entity responsible for child care licensing in conducting the review and also with their established Child Death Review systems and with the National Center for the Review and Prevention of Child Death Review (*www.childdeathreview.org*). The National Center for the Review and Prevention of Child Death Review, which is funded by the Maternal and Child Health Bureau in the Health Resources and Services Administration (HRSA), reports that all 50 States and the District of Columbia already review child deaths through 1,200 State and local Child Death Review panels. (National Center for Child Death Review, *Keeping Kids Alive: A Report on the Status of Child Death Review in the United States,* 2011) The Child

Death Review system is a process in which multidisciplinary teams of people meet to share and discuss case information on deaths in order to understand how and why children die so that they can take action to prevent other deaths. These review systems vary in scope and in the types of death reviewed, but every review panel is charged with making both policy and practice recommendations that are usually submitted to the State governor and are publicly available. The National Center for the Review and Prevention of Child Death Review provides support to local and State teams throughout the child death review process through training and technical assistance designed to strengthen the review and the prevention of future deaths.

Lead Agencies also may work in conjunction with the National Commission to Eliminate Child Abuse and Neglect Fatalities, established in 2013 by the Protect Our Kids Act. (Pub. L. 112–275) The Commission, consisting of 12 members appointed by the President and Congress, will work to develop recommendations to reduce the number of children who die from abuse and neglect. The Commission will hold hearings and gather information about current Federal programs and prevention efforts in order to recommend a comprehensive strategy to reduce and prevent child abuse and neglect fatalities nationwide. Although this Commission will only be studying a subsection of child injuries and deaths, it is important that the commissioners examine the issue of child abuse and neglect in child care settings.

Administrative Costs (Section 98.54)

Section 658E(c)(3)(C) of the Act and regulations proposed at redesignated § 98.54(a) prohibit Lead Agencies from spending more than five percent of CCDF funds for administrative activities, such as salaries and related costs of administrative staff and travel costs. Section 98.54(b) provides that this limitation applies only to States and Territories. (Note that a 15 percent limitation applies to Tribes under § 98.83(g)). At § 98.54(b) we propose a list of activities that should not be counted towards the limitation on administrative expenditures. As stated in the preamble to the 1998 CCDF Final Rule, the Conference Agreement (H.R. Rep. 104–725 at 411) that accompanied the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 indicated that these activities should not be considered administrative costs. We propose to incorporate this list into the regulation itself for clarity and easy reference.

*Administrative costs and sub-recipients.* We propose to add new paragraph (e) at § 98.54 to clarify that, if a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.54(a) (or § 98.83(g) for Tribes) shall be counted towards the administrative cost limit. Current CCDF regulations at § 98.52(a), which we propose to redesignate as § 98.54(a), provide a listing of activities that may constitute administrative costs and defines administrative costs to include administrative services performed by grantees or sub-grantees or under agreements with third-parties.

We have received questions from Lead Agencies to clarify whether activities performed through sub-recipients or contractors are subject to the five percent administrative cost limitation. Our interpretation is that sub-recipients (contractors or sub-grantees) that receive funds from the Lead Agency are not individually bound by this requirement. However, the Lead Agency continues to be responsible for ensuring that the program complies with all Federal requirements and is required to oversee the expenditures of funds by sub-recipients. While we do not, as a technical matter, separately apply the administrative cap to funds provided to each sub-recipient, the Lead Agency must ensure that the total amount of CCDF funds expended on administrative activities—regardless of whether it is expended by the Lead Agency directly or via sub-grant, contract, or other mechanism—does not exceed the administrative cost limit.

To clarify, the administrative costs cap only applies to activities related to administering the CCDF program in a State, Territory, or Tribe. It does not apply to administration of child care services in an individual child care center or family child care home. Any costs related to administration of services by a provider, even if that provider is being paid through a contract, are considered direct services. However, if a sub-recipient provides services that are part of administering the CCDF program, as defined at § 98.54(a) as redesignated, then those administrative costs would count toward the administrative cost limit.

Determining whether a particular service or activity provided by a sub-recipient under a contract, sub-grant, or other mechanisms would count as an administrative activity towards the five percent administrative cost limitation depends on the function or nature of the contract, sub-grant, or other mechanism. If a Lead Agency provides a contract or sub-grant for direct services, the entire cost of the contract could potentially be counted as direct services if there is no countable administrative component. On the other hand, if the entire sub-grant or contract provided services to administer the CCDF program (*e.g.,* for payroll services for Lead Agency employees), then the entire cost of the contract would count towards the administrative cost cap. If a sub-grant/contract includes a mix of administrative and programmatic activities, the Lead Agency must develop a method for attributing an appropriate share of the sub-grant/contract costs to administrative costs. Lead Agencies should refer to the list of activities that are exempt from the administrative cost cap proposed at § 98.54(b) when determining what components must be included in the administrative cost limit.

Restrictions on the Use of Funds (Section 98.56)

Current CCDF regulations at § 98.54(b)(1), which we propose to redesignate as § 98.56(b)(1), indicate that States and local agencies, may not spend CCDF funds for the purchase or improvement of land or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. Tribal Lead Agencies may request approval to use CCDF funds for construction and major renovation of child care facilities (§ 98.84).

We propose to modify § 98.54(b)(1), redesignated as § 98.56(b)(1), to indicate that improvements or upgrades to a facility that are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited. This proposed addition would formally incorporate ACF's long-standing interpretation into regulatory language.

When we proposed this addition in the 2013 NPRM, several commenters requested the regulation clarify that funds may be used to ensure facilities comply with the on-going requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*) In response, we want to note that current CCDF regulations at § 98.54(b) allow for funds to be expended for upgrading child care facilities to assure

that providers meet State and local health and safety standards, which may include assisting providers in meeting requirements of the ADA. States and Territories may use CCDF funds for minor renovations related to meeting the requirements of the ADA. However, funds may not be used for major renovation or construction for purposes of meeting the requirements of the ADA.

We propose making a technical change at § 96.54(e) by adding that CCDF may not be used as the non-Federal share for other Federal grant programs, *unless explicitly authorized by statute.*

*Subpart G—Financial Management*

The focus of subpart G is to ensure proper financial management of the CCDF program, both at the Federal level by HHS and the Lead Agency level. The proposed changes to this section include: Addressing the amount of CCDF funds the Secretary may set-aside for technical assistance, research and evaluation, a national toll-free hotline and Web site; incorporating targeted funds that have been included in appropriations language (but are not in the current regulations); inclusion of the details of required financial reporting by Lead Agencies; and clarifying requirements related to obligations. Lastly, we propose a new section on program integrity.

Availability of Funds (Section 98.60)

*Technical Assistance; Research and Evaluation; National Toll-free Hotline and Web site.* Prior to reauthorization, the CCDBG Act allowed the Secretary to provide technical assistance to help Lead Agencies carry out the CCDF requirements. Under current regulations at § 98.60(b)(1), the Secretary may withhold one quarter of one percent of a fiscal year's appropriation for technical assistance.

Reauthorization added greater specificity to the Act regarding the provision of technical assistance. Specifically, Section 658I(a)(3) of the Act requires the Secretary to provide technical assistance, such as technical assistance to improve the business practices of child care providers, (which may include providing technical assistance on a reimbursable basis) which shall be provided by qualified experts on practices grounded in scientifically valid research, where appropriate. Section 658I(a)(4) requires the Secretary to disseminate, for voluntary informational purposes, information on practices that scientifically valid research indicates are most successful in improving the quality of programs that receive CCDF assistance. Section 658G requires the Secretary to offer technical assistance which may include technical assistance through the use of grants or cooperative agreements, on activities funded by quality improvement expenditures. Section 658O(a)(4) indicates that the Secretary shall reserve up to ½ of 1 percent of the amount appropriated for the CCDBG Act to support these technical assistance and dissemination activities.

Section 658O(a)(5) of the Act also provides that the Secretary may reserve up to ½ of 1 percent of the amount appropriated for the Act to conduct research and demonstration activities, as well as periodic external, independent evaluations of the impact of the CCDF program on increasing access to child care services and improving the safety and quality of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis. For over a decade, annual appropriations law has included a set-aside of approximately $10 million a year for research. The reauthorization for the first time includes research funding in the CCDBG Act itself.

Over the years, this research funding has increased our knowledge of what child care services work best, has disseminated that knowledge throughout the country, and has been integral to improving the quality of care provided to children. It has funded numerous research projects, including the recent implementation of the National Survey of Early Care and Education to provide national estimates of utilization of child care and early education, parental preferences and choices of care, and characteristics of programs and of the teaching and care-giving staff. This research funding will be critical in informing and evaluating the implementation of the reauthorized statute and these implementing regulations.

In addition, section 658O(a)(3) of the Act indicates that the Secretary may reserve up to $1.5 million for the operation of a national toll-free hotline and Web site. Annual appropriations law has provided funding for a national hotline and Web site in prior years, but this funding is now authorized through the Act with an expanded scope and requirements. As authorized by section 658L(b), this national hotline and Web site will develop and disseminate publicly available child care consumer education information for parents, and help parents access safe and quality child care services in their community. The hotline and Web site will also allow persons to report suspected child abuse or neglect, or violations of health and safety requirements, occurring in child care settings.

In this proposed rule at § 98.60(b), we do not specify a particular funding amount for technical assistance, research and evaluation, or the national hotline and Web site. Rather, we say that ''a portion'' of CCDF funds will be made available for these purposes. Because appropriations law has addressed the amount of funding for some of these activities in the past, we want to leave flexibility to accommodate any future decisions by Congress. As we indicate in the proposed regulatory language, funding for these activities is subject to the availability of appropriations, and will be made in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget.

*Obligations.* We propose to add a paragraph at § 98.60(d)(7) to clarify that the transfer of funds from a Lead Agency to a third party or sub-recipient counts as an obligation, even when these funds will be used for issuing child care certificates. Some Lead Agencies contract with local units of government or non-governmental third parties, such as child care resource and referral agencies, to administer their CCDF programs. The functions included in these contracts could include eligibility determination, subsidy authorization, and provider payments. The contracting of some of these duties to a third party has led to many policy questions as to whether CCDF funds that are used by third parties to administer certificate programs are considered obligated at the time the sub-grant or contract is executed between the Lead Agency and the third party pursuant to current regulation at § 98.60(d)(5), or rather at the time the voucher or certificate is issued to a family pursuant to current regulation at § 98.60(d)(6).

The preamble to the August 4, 1992 CCDBG Regulations (57 FR 34395) helps clarify the intent of § 98.60(d). It states, ''The requirement that State and Territorial grantees obligate their funds [within obligation timeframes] applies only to the State or Territorial grantee. The requirement does not extend to the Grantee's sub-grantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.'' It follows that, in the absence of State or local laws or procedure to the contrary, § 98.60(d)(6) would not apply when the issuance of a voucher or certificate is administered by a third party because the funds used to issue

the vouchers or certificates would have already been obligated by the Lead Agency. Based on this language, we have interpreted the obligation to take place at the time of contract execution between the Lead Agency and the third party. The addition of proposed paragraph (d)(7) simply codifies current ACF policy, and does not change existing obligation and liquidation requirements. Note that a local office of the Lead Agency, and certain other entities specified in regulation at § 98.60(d)(5) are not considered third parties. A third party must be a wholly separate organization with and cannot be subordinate or superior offices of the Lead Agency, or under the same governmental organization as the Lead Agency.

Finally, we propose a number of technical changes. At § 98.60(d)(4)(ii), we update a reference to HHS regulations on expenditures and obligations to reflect new rules issued by HHS that implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards. At § 98.60(d)(6), we clarify that the provision regarding the obligation of funds used for certificates applies specifically ''in instances where the Lead Agency issues child care certificates.'' We also propose to make a technical change at § 98.60(h) to eliminate a reference to § 98.51(a)(2)(ii) of the regulation which would otherwise become obsolete since this proposed rule proposes to delete it. This technical change does not change the meaning or the substance of paragraph (h), which specifies that repayment of loans made to child care providers as part of a quality improvement activity may be made in cash or in services provided in-kind.

Allotments From Discretionary Funds (Section 98.61)

*Tribal funds.* To address amended section 658O(a)(2) of the Act, we propose to revise § 98.61(c) to indicate that Indian Tribes and Tribal organizations will receive an amount ''not less than'' two percent of the amount appropriated for the Child Care and Development Block Grant (*i.e.,* CCDF Tribal Discretionary Funds). Under prior law and regulation, Tribes received ''up to'' two percent. Under the new law, the Secretary may only reserve an amount greater than 2 percent for Tribes if two conditions are met: (1) The amount appropriated is greater than the amount appropriated in FY 2014, and (2) the amount allotted to States is not less than the amount allotted in FY 2014. It is important to note that reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but it does not affect the Tribal Mandatory funds. Tribes may only be awarded up to 2 percent of the Mandatory Funds, per Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Recognizing the needs of Tribal communities, ACF increased the Tribal CCDF Discretionary set-aside from 2 percent to 2.5 percent for FY 2015, and we encourage Tribes to use any increased funds for activities included in reauthorization, such as health and safety, continuity of care, and consumer education. ACF has consulted with Tribes regarding future funding levels and plans to make that determination, taking into consideration unique Tribal needs and circumstances, including the need for sufficient funding to provide care that address culture and language in Tribal communities. We welcome comments on the specific, appropriate funding level for Tribes, but we do not intend to include that decision in the regulatory language in order to allow for adjustments over time as conditions warrant.

*Targeted funds.* We propose to add § 98.61(f) to reference funds targeted through annual appropriations law. Since FY 2000, annual appropriations law has required the use of specified amounts of CCDF funds for targeted purposes (*i.e.,* quality, infant and toddler quality, school-age care and resource and referral). The reauthorized CCDBG Act includes increased quality spending requirements; however, we propose this regulatory addition in the event that Congress provide for additional targeted funds in the future. This proposed addition is for clarification so that the regulations provide a complete picture of CCDF funding parameters. New paragraph (f) provides that Lead Agencies shall expend any funds set-aside for targeted activities as directed in appropriations law.

Audits and Financial Reporting (Section 98.65)

We propose a technical change at § 98.65(a) regarding the requirement for the Lead Agency to have an audit conducted in accordance with the Single Audit Act Amendments of 1996. In this paragraph, we propose to replace a reference to OMB Circular A–133 with a reference to 45 CFR part 75, subpart F, which is the new HHS regulation implementing the audit provisions in the Office of Management and Budget's Uniform Administrative Requirements for Federal awards.

We propose revising § 98.65(g), which currently provides that the Secretary shall require financial reports as necessary, to specify that States and Territories must submit quarterly expenditure reports for each fiscal year. Currently, States and Territories file quarterly expenditure reports (ACF–696); however, the current regulations do not describe this reporting in detail. Under proposed paragraph (h), States and Territories will be required to include the following information on expenditures of CCDF grant funds, including Discretionary (which includes any reallocated funds and funds transferred from the TANF block grant), Mandatory, and Matching funds; and State Matching and Maintenance-of-Effort (MOE) funds: (1) Child care administration; (2) Quality activities, including any sub-categories of quality activities as required by ACF; (3) Direct services; (4) Non-direct services including: (i) Computerized information systems, (ii) Certificate program cost/eligibility determination, (iii) All other non-direct services; and (6) Such other information as specified by the Secretary.

We propose adding greater specificity to the regulation in light of the important role expenditure data play in ensuring compliance with the quality expenditure requirements at § 98.51(a), administrative cost cap at § 98.52(a), and obligation and liquidation deadlines at § 98.60(d). Additionally, expenditure data provide us with important details about how Lead Agencies are spending both their Federal and State CCDF funds, including what proportion of funds are being spent on direct services to families or how much has been invested in quality activities. These reporting requirements do not create an additional burden on Lead Agencies because we are simply updating the regulations to reflect current expenditure reporting processes.

*Tribal financial reporting.* We propose to add paragraph (i) at § 98.65 that would require Tribal Lead Agencies to submit annual expenditure reports to the Secretary (ACF–696T). As with State and Territorial grantees, these expenditure reports help us to ensure that Tribal grantees comply with obligation and liquidation deadlines at § 98.60(e), the fifteen percent administrative cap at § 98.83(g), and the quality expenditure requirement at § 98.51(a). This reporting requirement is current practice.

*Program Integrity.* We propose to add a new section § 98.68 Program Integrity, which would include requirements that Lead Agencies have effective procedures and practices that ensure integrity and accountability in the CCDF program.

These proposed changes formalize changes made to the CCDF Plan which require Lead Agencies to report in these areas. The Plan now includes questions on internal controls, monitoring sub-recipients, identifying fraud and errors, methods of investigation and collection of identified fraud, and sanctions for clients and providers who engage in fraud. ACF has been working with State, Territorial, and Tribal CCDF Lead Agencies to strengthen program integrity to ensure that funds are maximized to benefit eligible children and families. For example, ACF issued a Program Instruction (CCDF–ACF–PI–2010–06) that provides stronger policy guidance on preventing waste, fraud, and abuse and has worked with States to conduct case record reviews to reduce administrative errors. The requirements proposed in this section build on these efforts and are designed to reduce errors in payment and minimize waste, fraud, and abuse to ensure that funds are being used for allowable program purposes and for eligible beneficiaries.

At § 98.68(a) we propose to require Lead Agency internal controls to include processes to ensure sound fiscal management, processes to identify areas of risk, and regular evaluation of internal control activities. Examples of internal controls include practices that identify and prevent errors associated with recipient eligibility and provider payment such as: Checks and balances that ensure accuracy and adherence to procedures; automated checks for red flags or warning signs; and established protocols and procedures to ensure consistency and accountability. The *Grantee Internal Control Self Assessment Instrument* is available as a resource for assisting Lead Agencies in assessing how well their policies and procedures meet the CCDF regulatory requirements for supporting program integrity and financial accountability.

At § 98.68(b)(1) we propose to require Lead Agencies to describe in their Plan the processes that are in place to identify fraud and other program violations associated with recipient eligibility and provider payment. These processes may include, but are not limited to, record matching and database linkages, review of attendance and billing records, quality control or quality assurance reviews, and staff training on monitoring and audit processes. Lead Agencies may wish to use unique identifiers to crosscheck information provided by parents and providers across State and national data systems. For example, income reported on the application for child care assistance may be checked with State quarterly wage databases or other benefit programs (*i.e.,* SNAP, TANF, or Medicaid). Many such data systems can be structured to automatically flag potential improper payments. Lead Agencies should also provide training to caseworkers responsible for eligibility determination and redetermination and make efforts to simplify forms.

We also propose regulatory language at § 98.68(b)(2) that would require Lead Agencies to describe in their Plans the processes that are in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud. This provision complements the existing requirement at § 98.60(h)(1) that requires Lead Agencies to recover child care payments that are made as the result of fraud; these payments must be recovered from the party responsible for committing the fraud. The proposed new provision ensures that Lead Agencies have the necessary processes in place to identify fraud and program violations so that recovery can be pursued and so that the Lead Agency can better design practices and procedures that prevent fraud from occurring in the first place. We recommend that each Lead Agency include staff dedicated to program integrity efforts and that these staff should partner with law enforcement as appropriate to address fraud.

We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families. In cases not involving fraud, recouping overpayments from low-income families is often administratively inefficient, and contrary to the goal of promoting economic stability, particularly for families already living in vulnerable conditions. The parents typically did not receive a cash benefit, but rather the child care provider received reimbursement for the delivery of services. We are concerned about the ramifications for families if Lead Agencies try to recoup overpayments that resulted from small changes in family circumstances, such as modest changes in hours worked or income. The goals of CCDF—putting families on a pathway to financial stability and creating better developmental opportunities for children—are undermined by recoupment policies that burden low-income families with large debts. Given limited administrative resources, Lead Agencies should focus program integrity efforts on the largest areas of risk to the program, which tend to be intentional violations and fraud involving multiple parties.

At § 98.68(c) we propose to require Lead Agencies to describe in their Plans the procedures that are in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination and redetermination. Lead Agencies are responsible for ensuring that all children served in CCDF are eligible at the time of eligibility determination or redetermination. Lead Agencies should, at a minimum, verify or maintain documentation of the child's age, family income, and require proof that parents are engaged in eligible activities. Income documentation may include, but is not limited to, pay stubs, tax records, child support enforcement documentation, alimony court records, government benefit letters, and receipts for self-employed applicants. Documentation of participation in eligible activities may include school registration records, class schedules, or job training forms. Lead Agencies are encouraged to use automated verification systems and electronic recordkeeping practices to reduce paperwork. In addition, Lead Agencies may use client information collected and verified by other State programs (*e.g.,* through the use of consolidated application forms) to streamline the eligibility determination process for CCDF. This new amendment would require Lead Agencies to institute procedures that ensure eligibility is appropriately verified and to monitor State, local, and non-governmental agencies directly engaged in eligibility determination and would provide additional safeguards to ensure that children receiving child care subsidies are eligible pursuant to requirements found at § 98.20. While documentation and verification of eligibility is generally required, Section 658P(4)(b) of the Act indicates that compliance with the $1,000,000 limit on family assets included as part of eligibility requirements at § 98.20(a)(2)(ii) shall be ''certified by a member of such family.'' Therefore, the Lead Agency should not seek documentation or conduct verification of the amount of family assets beyond the family member's certification.

Proposed § 98.68(c) would clarify that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1), the Lead Agency shall pay any amount owed to a child care provider for services provided to such a child during this period in accordance with a payment agreement or

authorization. Under this provision, the Lead Agency should not attempt to recoup payments for such services provided during this period for a child's whose eligibility was correctly determined at the most recent determination or redetermination. Further, the regulation provides that any CCDF payment made during this period to such child shall not be considered an error or improper payment under 45 CFR part 98, subpart K, due to a change in the family's circumstances, as set forth at § 98.21(a).

The program integrity efforts required by proposed § 98.68 can help ensure that limited program dollars are going to low-income eligible families for which assistance is intended; however, it is important to ensure that these efforts do not inadvertently reduce access for eligible families. The Administration has emphasized that efforts to reduce improper payments and fraud must be undertaken with consideration for impacts on eligible families seeking benefits. In November 2009, the President issued Executive Order 13520, which underscored the importance of reducing improper payments in Federal programs while protecting access to programs by their intended beneficiaries (74 FR 62201). It states, ''The purpose of this order is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries.''

It is important to have a strategic and intentional planning process to formalize mechanisms that promote program integrity and financial accountability while balancing quality and access for eligible families. Efforts to promote program integrity and financial accountability should not compromise child care access for eligible children and families. A foundation for accountability should be policies and procedures that help low-income parents' access child care assistance to support their work and training and promote children's success in school. Once a Lead Agency has established policies and procedures, steps should be taken to implement the program with fidelity and to include a variety of checks to detect areas both where there may be vulnerability to error or fraud and areas in which the system is failing to serve families well. Lead Agencies also can promote program integrity by clearly communicating specific policies to staff, parents, and providers. When policies are easily understood by the public and clearly communicated, parents and providers can better understand reporting requirements and deadlines.

*Subpart H—Program Reporting Requirements*

Section 658K of the Act requires that Lead Agencies submit specified monthly case-level data (submitted on a quarterly basis) and annual aggregate data on the children and families receiving CCDF services. The Act included a number of changes to the administrative data reporting requirements for CCDF. To address these changes and to improve data collection and reporting, ACF has separately proposed changes to the CCDF quarterly family case-level administrative data report (ACF–801) and the CCDF annual aggregate data report (ACF–800). The proposed revisions were available for two rounds of public comment under the Paperwork Reduction Act. Proposed revisions in this Subpart reflect changes made to the ACF–801 and ACF–800 forms.

Content of Reports (Section 98.71)

Section 98.71 describes administrative data elements that Lead Agencies are required to report to ACF, including basic demographic data on the children served, the reason they are in care, and the general type of care. The ACF–801 report includes a data element on the total monthly family income and family size used for determining eligibility. Current regulations as § 98.71(a)(1) do not include *family size* so we propose to amend this paragraph to align the regulations with the reporting requirements in effect. This does not represent any change in how Lead Agencies currently report family income.

At § 98.71(a)(2) we propose to add zip code data to both the family and the child care provider records. These new elements will allow States and Territories and ACF to identify the communities where CCDF families and providers are located, including the type and quality level of providers. Sections 658E(a)(2)(M) and 658E(a)(2)(Q) of the CCDBG Act require States and Territories to address the needs of certain populations regarding supply and access to high quality child care services in underserved areas including areas that have significant concentrations of poverty and unemployment.

Section 658K(a)(1)(E) of the Act prohibits the monthly case-level report from containing personally identifiable information. As a result, we are proposing to amend § 98.71(a)(13) by deleting Social Security Numbers (SSNs) and instead requiring a unique identifying number from the head of the family unit receiving assistance and from the child care provider. It is imperative that the unique identifier assigned to each head of household be used consistently over time—regardless of whether the family transitions on and off subsidy, or moves within the State or Territory. This will allow Lead Agencies and ACF to identify unique families over time in the absence of the Social Security Number (SSN). A Lead Agency may still use personally identifiable information, such as SSNs, for its own purposes, but this information cannot be reported on the ACF–801. We also remind CCDF Lead Agencies that, under the Privacy Act (5 U.S.C. 552a note), Lead Agencies cannot require families to disclose SSNs as a condition of receiving CCDF.

We propose a new § 98.71(a)(15) to indicate whether a family is experiencing homelessness based on statutory language at Section 658K(a)(1)(B)(xi) that requires Lead Agencies to report whether children receiving CCDF assistance are experiencing homelessness.

We propose a new § 98.71(a)(16) to indicate whether the parent(s) are in the military service. The Administration has taken a number of actions to increase services and supports for members of the military and their families. This element will identify if the parent is currently active duty (*i.e.,* serving full-time) in the U.S. Military or a member of either a National Guard unit or a Military Reserve unit. This data will allow Lead Agencies and ACF to determine the extent to which military families are accessing the CCDF program.

We propose a new § 98.71(a)(17) to indicate whether a child is a child with a disability. Section 658E(c)(3)(B) requires a Lead Agency's priority for services to include children with special needs. ACF is required to determine annually whether Lead Agencies use CCDF funds in accordance with priority for services requirements, including the priority for children with special needs. While Lead Agencies have flexibility to define ''children with special needs'' in their CCDF Plans, many include children with disabilities in their definitions. This data will help ACF determine, as required by law, whether Lead Agencies are in compliance with priority for service requirements. Additionally, the reauthorization added several other provisions related to ensuring children with disabilities have access to subsidies, and that the child care available meets the needs of these children and this proposed data element

will provide information about the extent to which the CCDF program is serving children with disabilities.

We propose a new § 98.71(a)(18) to add a new data element on the primary language spoken in the child's home, using responses that are consistent with data reporting requirements for the Head Start program. The reauthorized Act includes provisions that support services to English learners. Specifically, Section 658E(c)(2)(G) of the Act requires Lead Agencies to assure that training and professional development of child care providers address needs of certain populations to the extent practicable, including English learners. Under Section 658G, allowable quality activities include providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development. Furthermore, Title VI of the Civil Rights Act of 1964 requires federally assisted programs to take reasonable steps to provide meaningful access for persons who have limited English proficiency. The new data element on the ACF–801 will allow CCDF Lead Agencies to track provision of CCDF services to families who speak languages other than English. By collecting information on the language spoken at home by families, the CCDF Lead Agency will be able to design outreach and consumer education materials that meet the needs of populations in their service areas.

We propose a new § 98.71(a)(19) to indicate for each child care provider currently providing services to a CCDF child, the date of the most recent inspection for compliance with health, safety, and fire standards (including licensing standards for licensed providers) as described in § 98.42(b). Lead Agencies will need to track inspection dates to ensure that CCDF providers are monitored at least annually. If the Lead Agency uses more than one visit to check for compliance with these standards, the Lead Agency should report the most recent date on which all inspections were completed.

Finally, we propose to add new § 98.71(a)(20) to require Lead Agencies to submit an indicator of the quality of the child care provider as part of the quarterly family case-level administrative data report. This change will allow ACF and Lead Agencies to capture child-level data on provider quality for each child receiving a child care subsidy. This addition is in line with one of the Act's new purposes, which is to increase the number and percentage of low-income children in high quality child care. States and Territories currently report on the quality of child care provider(s) based on several indicators—including: QRIS participation and rating, accreditation status, compliance with State pre-kindergarten standards or Head Start performance standards, and other State-defined quality measure. However, previously, States and Territories were required to report on at least one of the quality elements for a portion of the provider population. This resulted in limited quality data, often for only a small portion of child care providers in a State or Territory. This change would require quality information for every child care provider. Working with States and Territories to track this data will give us a key indicator on the progress we are making toward the goal of increasing the number of low-income children in high quality care. Lead Agencies must also take into consideration the cost of providing higher quality care when setting payment rates pursuant to § 98.44(f)(iii). To ensure that the CCDF program is providing meaningful access to high quality care, it is essential for Lead Agencies to have data on the quality of CCDF providers. Current paragraph (a)(15) would be redesignated as paragraph (a)(21) but otherwise is unchanged.

We propose a new § 98.71(b)(5) to report the number of child fatalities by type of care as required by section 658K(a)(2)(F) of the CCDBG Act. This should include the number of fatalities occurring among children while in the care and facility of child care providers serving CCDF children (regardless of whether the child who dies was receiving CCDF). Current paragraph (b)(5) would be redesignated as paragraph (b)(6) but otherwise is unchanged.

We are revising paragraph (c), regarding reporting requirements for Tribal Lead Agencies, to specify that the Tribal Lead Agency's annual report shall include such information as the Secretary shall require. We intend to revisit requirements for all Tribal Lead Agencies, pursuant to proposed changes in Subpart I, at a later date. Proposed reporting requirements will be subject to public comment under the Paperwork Reduction Act.

*Subpart I—Indian Tribes*

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds. This section describes provisions of Subpart I and serves as the Tribal summary impact statement as required by Executive Order 13175. CCDF currently provides funding to approximately 260 Tribes and Tribal organizations that, either directly or through consortia arrangements, administer child care programs for approximately 520 federally-recognized Indian Tribes. Tribal CCDF programs are intended for the benefit of Indian children, and these programs serve only Indian children. With few exceptions, Tribal CCDF grantees are located in rural and economically challenged areas. In these communities, the CCDF program plays a crucial role in offering child care options to parents as they move toward economic stability, and in promoting learning and development for children. In many cases, Tribal child care programs also emphasize traditional culture and language. Below we discuss the proposed Tribal CCDF framework and proposed regulatory changes.

The CCDBG Act is not explicit in how its provisions apply to Tribes. ACF traditionally issues regulations to define how the law applies to Tribes. These proposed regulations are the result of several months of consultation on the new law with Tribes, as well as past consultations and Tribal comments on our 2013 NPRM. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the needs of individual communities. The proposals included in this NPRM are designed to increase Lead Agency flexibility, while balancing the CCDF dual goals of promoting families' financial stability and fostering healthy child development.

*Funding.* Tribal CCDF funding is comprised of two funding sources: (1) Discretionary Funds, authorized by the Act and annually appropriated by Congress; and (2) Tribal Mandatory Funds, provided under Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but does not affect the Tribal Mandatory funds. Tribes may only be awarded up to two percent of the Mandatory Funds, per the Social Security Act.

According to Section 658O(a)(2) of the Act, Tribes will receive not less than two percent of the Discretionary CCDF funding. The Secretary may reserve an amount greater than two percent for Tribes if two conditions are met: 1) The amount appropriated is greater than the amount appropriated in FY 2014, and 2) the amount allotted to States is not less than the amount allotted in FY 2014.

Recognizing the needs of Tribal communities, ACF increased the Tribal

CCDF Discretionary set-aside from two percent to 2.5 percent for FY 2015, which increased total Tribal CCDF Funding from $107 million to $119 million. As part of the consultations on the law (see below), ACF asked for Tribal input on the funding level for future years. We encouraged Tribes to use the increased funding on activities included in reauthorization, such as health and safety, continuity of care, and consumer education. In light of the proposals in this NPRM for how the law will apply to Tribes, ACF continues to ask for comment on the Tribal CCDF Discretionary set-aside, including the process to be used to determine the amount of the discretionary set-aside if the above-listed conditions are met to reserve a greater set-aside.

*Tribal consultation.* ACF is committed to consulting with Tribes and Tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has Tribal implications. As this proposed rule has been developed, ACF has engaged with Tribes through multiples means. The requirements in this proposed rule were informed by past consultations, listening sessions, and meetings with Tribal representatives on related topics. Starting in early 2015, we began a series of formal consultations, conducted in accordance with the ACF Tribal Consultation Policy (76 FR 55678) with Tribal leaders to determine how the provisions in the Act apply to Tribes and Tribal organizations. Tribal CCDF administrators and staff were also invited to attend. In addition to an informal listening session in February, from March to May, OCC held three formal conference calls and an in-person consultation session with Tribal leaders and Tribal CCDF administrators to discuss the impact of reauthorization on Tribes. Tribes and Tribal organizations were informed of these consultations and conference calls through letters to Tribal leaders. Much of the testimony and dialogue focused on the vast differences among Tribes and Tribal organizations. This proposed rule was informed by these conversations and continues to balance flexibility for Tribes with the need to ensure accountability and quality child care for children.

*102–477 Programs.* We note that Tribes continue to have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477). This law permits Tribal governments to integrate a number of their federally-funded employment, training, and related services programs into a single, coordinated comprehensive program. ACF publishes annual program instructions providing directions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training, and Related Services plan. The Department of the Interior has lead responsibility for administration of Pub. L. 102–477 programs.

*Dual Eligibility of Indian Children.* Census data indicates over 60 percent of American Indian and Alaskan Native families do not reside on reservations or other Native lands; therefore, significant numbers of eligible Indian children and families are served by State Lead Agencies. Eligible Indian children who reside in Tribal service areas continue to have dual eligibility to receive child care services from either the State or Tribal CCDF program in accordance with existing regulation at § 98.80(d). Section 658O(c)(5) of the Act mandates that, for child care services funded by CCDF, the eligibility of Indian children for a Tribal program does not affect their eligibility for a State program.

*Tribal CCDF Framework.* We propose that Tribes shall be subject to the CCDF requirements in Part 98 and 99 based on the size of their CCDF allocation. CCDF Tribal allocations vary from less than $25,000 to over $12 million. We recognize that Tribes receiving smaller CCDF grants may not have sufficient resources or infrastructure to effectively operate a program that complies with all CCDF requirements. Therefore, we are proposing three categories of CCDF Tribal grants, with thresholds established by the Secretary: Large allocations, medium allocations, and small allocations. Each category is paired with different levels of CCDF requirements, with those Tribes receiving the largest allocations expected to meet most CCDF requirements. Tribes receiving smaller allocations are exempt from specific provisions in order to account for the size of the grant awards (see table below).

| Large allocations | Medium allocations | Small allocations |
|---|---|---|
| • Subject to the majority of CCDF requirements.<br>• Exempt from some requirements, including: Consumer education Web site, use of grants or contracts, the requirement to have licensing for child care services, and market rate survey or alternative methodology (but still required to have rates that support quality).<br>• Subject to the monitoring requirements, but allowed the flexibility to propose an alternative monitoring methodology in their Plan.<br>• Subject to the background check requirement to check other adults in a family child care home, but allowed to request an exemption in their Plan. | • Allowed the same exemptions as the large allocation category.<br>• Exempt from operating a certificate program. | • Exempt from the majority of CCDF requirements, including those exemptions for large and medium allocation categories.<br>• Must spend their funds in alignment with CCDF goals and purposes.<br>• Only subject to:<br>  • If providing direct services: The health and safety requirements, the monitoring requirements, and the background check requirements;<br>  • Quality spending requirements;<br>  • The 15% admin cap;<br>  • Fiscal, audit, and reporting requirements; and<br>  • Any other requirement defined by the Secretary.<br>• Submit an abbreviated Plan. |

ACF proposes that grants over $ 1 million would be considered large allocations. In FY 2015, this category would include 18 Tribes. Grants between $1 million and $250,000 would be considered medium allocations. For FY 2015, this category would include 79 Tribes. Grants of less than $250,000 would be considered small allocations. In FY 2015, this category would include 162 Tribes. We are not proposing to set the allocation thresholds through regulation so that they may be updated or revised at a later date through consultation and notice. We discuss the exemptions further below.

In keeping with the goals of this NPRM and the intent of the law, ACF believes that ensuring the health and safety of children in child care and promoting quality to support child

development are of the utmost importance. As such, we are proposing that all Tribes providing direct services be subject to the health and safety requirements at § 98.41 (as well as the monitoring and background check requirements, discussed later in this preamble) and that all Tribes be required to meet the quality spending requirements at §§ 98.50(b) and 98.53.

*Health and Safety.* We propose that all Tribes providing direct services are required to meet the requirements at § 98.41(a), which include requirements around a list of health and safety topics; health and safety training; setting group size limits and ratios; and compliance with child abuse reporting requirements. These health and safety requirements create a baseline essential to protecting children in child care. (In addition, as discussed below, we propose that Tribes be subject to the immunization requirements that previously only applied to States and Territories.)

The Act, at Section 658O(c)(2)(D), continues to require HHS to develop minimum child care standards for Indian Tribes and Tribal organizations receiving funds under CCDF. After three years of consultation with Tribes, Tribal organizations, and Tribal child care programs, health and safety standards were first published in 2000. The standards were updated and reissued in 2005. The HHS minimum standards are voluntary guidelines that represent the baseline from which all programs should operate to ensure that children are cared for in healthy and safe environments and that their basic needs are met. Many Tribes already exceed the minimum Tribal standards issued by HHS, and some have used the minimum standards as the starting point for developing their own more specific standards.

These minimum standards will need to be revised and updated to align with new requirements of the law and this proposed rule. In the preamble to Subpart E, ACF recommends that Lead Agencies consult the recently published *Caring for Our Children Basics (CfoC Basics)* for guidance on establishing health and safety standards. *CfoC Basics* represents a baseline for health and safety standards and would fulfill the need for updated HHS minimum standards for Tribes. However, before updating or replacing the HHS minimum standards, ACF is committed to consulting with Tribes. We welcome comments on whether the *CfoC Basics* should replace the current HHS minimum standards as the new health and safety guidelines for Tribes.

*Quality improvement activities.* We propose that all Tribes and Tribal organizations be subject to the quality spending and quality improvement activities requirements described at §§ 98.50(b) and 98.53. Current regulations at § 98.83(f) exempt Tribes and Tribal organizations with smaller allocations (total CCDF allocations less than $500,000) from the requirement to spend four percent on quality activities. We propose to amend § 98.83(f) by deleting paragraph (f)(3) so that all Tribes, regardless of their allocation size, are now required to meet quality spending requirements included at § 98.50(b). The law requires Lead Agencies to spend increasing minimum amounts on quality activities, reaching nine percent in 2020. In addition, Lead Agencies must spend at least three percent on quality activities to support infants and toddlers.

In the 2013 NPRM, we also proposed a similar change to make Tribal grantees, regardless of size, meet the quality spending requirements and we received a positive response from commenters. A primary goal of this proposed rule is to promote high quality child care to support children's learning and development. We want to ensure that Indian children and Tribes benefit from the increased recognition of the importance of high quality child care.

Because the quality requirement is applied as a percentage of the Tribe's CCDF expenditures, the amount required will be relatively small. However, we are requesting comments on this provision, in particular as it relates to Tribes that receive small allocations.

There are a wide range of quality improvement activities that Tribes have the flexibility to implement, and the scope of these efforts can be adjusted based on the resources available so that even smaller Tribal Lead Agencies can effectively promote the quality of child care. Most Tribal Lead Agencies are likely already engaged in activities that would count as quality improvement. We will provide technical assistance to help Tribes identify current activities that may count towards meeting the quality spending requirement, as well as appropriate new opportunities for quality spending.

The revisions to § 98.53 (Activities to Improve the Quality of Child Care), discussed earlier in this preamble, provide a systemic framework for organizing, guiding, and measuring progress of quality improvement activities. We recognize that this systemic framework may be more relevant for States than for many Tribes, given the unique circumstances of Tribal communities. However, Tribes may implement selected components of the quality framework at § 98.53, such as training for caregivers, teachers, and directors or grants to improve health and safety.

The revisions to § 98.53 in no way restrict Tribes' ability to spend CCDF quality dollars on a wide range of quality improvement activities. Under existing § 98.53(a), Tribes continue to have the flexibility to use quality dollars for activities that include, but are not limited to: Activities designed to provide comprehensive consumer education to parents and the public; activities that increase parental choice; and activities designed to improve the quality and availability of child care. As is currently the case, these activities could include: Child care resource and referral activities, consumer education, grants or loans to assist providers, training and technical assistance for providers and caregivers, improving salaries of caregivers, teachers and directors, monitoring or enforcement of health and safety standards, and other activities to improve the quality of child care, including native language lesson and cultural curriculum development. While Tribes have broad flexibility, to the degree possible, Tribes should plan strategically and systemically when implementing their quality initiatives in order to maximize the effectiveness of those efforts.

We also are working with Tribes on creating a culturally appropriate quality vision and framework specifically for Tribes. The framework will include a range of quality improvement activities, including activities that integrate native culture and language into child care, in order to encompass both large and small Tribes. We look forward to working with Tribes on this quality framework, and we will provide opportunities for Tribes to give feedback.

In addition, we encourage strong Tribal-State partnerships that promote Tribal participation in States' systemic initiatives, as well as State support for Tribal initiatives. For example, Tribes and States can work together to ensure that quality initiatives in the State are culturally relevant and appropriate for Tribes, and to encourage Tribal child care providers to participate in State initiatives such as QRIS and professional development systems.

General Procedures and Requirements (Section 98.80)

Section 98.80 provides an introduction to the general procedures and requirements for CCDF Tribal grantees. As discussed above, ACF proposes to modify § 98.80(a) so that

Tribes are subject to CCDF requirements based on the size of their CCDF allocation.

Application and Plan Procedures (Section 98.81)

Section 98.81 addresses the application and Plan procedures for Tribal CCDF grantees, and much of the new proposed regulatory language in this section, particularly the Plan exemptions listed at §§ 98.81(b)(6) and (9), reflects the changes made in § 98.80 (General procedures and requirements) and § 98.83 (Requirements for Tribal programs). These exemptions will be discussed in greater detail later in the preamble. Tribes receiving large or medium allocations will continue to fill out a traditional Tribal CCDF Plan, proposed at § 98.81(b), and Tribes receiving small allocations will fill out an abbreviated Plan, proposed at § 98.81(c). The Plan periods will now be three years, as required by the new statute.

*Tribal Median Income.* At § 98.81(b)(1), the regulations require that the Plan must include the basis for determining family eligibility. ACF proposes at § 98.81(b)(1)(i) to allow a Tribe, whose Tribal Median Income (TMI) is below a level established by the Secretary, the option of considering any Indian child in the Tribe's service area to be eligible to receive CCDF funds, regardless of the family's income, work, or training status. We believe that this flexibility allows Tribes to create opportunities to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, and Head Start. We are considering setting the threshold at 85 percent of State median income (SMI) and would welcome comment on whether this is an appropriate threshold. Using 85 percent of SMI mirrors other thresholds set by the CCDBG law and would allow the majority of CCDF Tribes to exercise this option, if they choose. We are choosing not to set this threshold through regulation to allow the level to be updated in the future though consultation and notice.

We also propose to move the requirement at § 98.80(f) to § 98.81(b)(1)(ii). Under this revised provision, if a Tribe chooses not to exercise the option at § 98.81(b)(1)(i) or has a higher TMI, the Tribe would need to determine eligibility for services in accordance with § 98.20(a)(2). Tribes will continue to have the option of using either 85 percent of SMI or 85 percent of TMI.

*Payment Rates.* ACF proposes to exempt all Tribes from the requirement to use a market rate survey or alternative methodology to set provider payment rates (discussed later in this preamble). However, at § 98.81(b)(5), we propose that Plans submitted by Tribes receiving large or medium allocations include a description of the Tribe's payment rates; how they are established; and how they support quality, and where applicable, cultural and linguistic appropriateness. While market rate surveys or alternative methodologies do not necessarily make sense for Tribal communities, it is important for Tribal Lead Agencies to have rates sufficient to provide equal access to the full range of child care services, including high quality child care.

*Plan Exemptions.* At § 98.81(b)(6), ACF proposes three new Plan exemptions for Tribes receiving large or medium allocations. Such Tribal Lead Agencies would be exempt from including in their Plans descriptions of the market rate survey or alternative methodology; the licensing requirements applicable to child care services; and the early learning guidelines. These requirements should not apply to Tribal communities.

At § 98.81(b)(9), ACF proposes that Plans for Tribes receiving medium allocations would be exempt from the requirement to include a description of the child care certificate program, unless the Tribe choses to include those services. This exemption corresponds with the exemption in § 98.83 discussed later in the preamble.

*Plans for Tribes Receiving Small Allocations.* ACF proposes to exempt Tribes receiving small allocations (less than $250,000) from the majority of CCDF requirements. These Tribes would only be subject to core CCDF requirements. As such, we propose at § 98.81(c) that these Tribes fill out an abbreviated CCDF Plan, tailored to these core requirements. A shorter Plan application is more aligned with the level of funding that these Tribes receive. All of the Plan exemptions described in § 98.81(b) for Tribes receiving large or medium allocations will also apply to Tribes receiving small allocations. ACF will release a Program Instruction defining the elements that will be included in the abbreviated Plan for Tribes receiving small allocations.

Coordination (Section 98.82)

Section 98.82 currently requires Tribal Lead Agencies to coordinate with State CCDF programs and with other Federal, State, local, and Tribal child care and child development programs. Tribal Lead Agencies must also coordinate with the entities listed at §§ 98.12 and 98.14. We propose to add language at § 98.82(a) that would require Tribal Lead Agencies to coordinate the development of the Plan and the provision of services with the entities listed at §§ 98.12 and 98.14. This addition does not change existing policy; it serves as a clarification of the regulatory language.

The regulations at § 98.82(a) currently require Tribal Lead Agencies to coordinate with the entities described at § 98.14 in the development of their Plans. This list includes newly added child care licensing, Head Start collaboration, State Advisory Councils on Early Childhood Education and Care or similar coordinating bodies, statewide afterschool networks, emergency management and response, CACFP, services for children experiencing homelessness, Medicaid, and mental health services. While we are not making any Tribally-specific changes to §§ 98.14 or 98.82, we do recognize that Tribes may not always have access or connections with these entities. Many of these agencies, especially the State Advisory Councils and the statewide afterschool networks, interact primarily on the State level. Others, including child care licensing and Head Start, may not exist in the Tribe's service area.

Tribes should coordinate with these agencies to the extent possible. The Tribal Plan pre-print will ask Tribes to describe their efforts to coordinate with all the entities listed at § 98.14, but if coordination is not applicable, then the Tribes may simply say so in their Plans. We will support Tribal Lead Agency efforts to coordinate with these entities and plan to provide technical assistance to both Tribes and States to promote Tribal access and participation.

Tribes should also take note of two new provisions in the CCDBG law, included in this NPRM, which require State coordination with Tribes. First, at § 98.10(f), State Lead Agencies must collaborate and coordinate with the Tribes, at the Tribes' option, in a timely manner in the development of the State Plan. We encourage States to be proactive in reaching out to the Tribal officials for collaboration.

Second, State Lead Agencies must have training and professional development in place designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of child care caregivers, teachers, and directors in working with children and their parents. Section 98.44(b)(2)(vi) would require this training and professional development be accessible to caregivers, teachers, and directors of

CCDF child care providers supported through Indian Tribes or Tribal organizations. Section 98.44(b)(2)(iv) would provide that the training and professional development should also, to the extent practicable, be appropriate for Native American children. Tribes should work with States to help ensure that these statutory requirements are met. Tribal CCDF programs should also coordinate with other childhood development programs located in the Tribal service area, including any programs that support the preservation and maintenance of Native languages.

Requirements for Tribal Programs (Section 98.83)

Section 98.83 addresses specific requirements for Tribal CCDF programs. In recognition of the unique social and economic circumstances in many Tribal communities, Tribal Lead Agencies are exempt from a number of CCDF requirements. At paragraph (d)(1), we propose to exempt all Tribes, regardless of allocation size, from the requirements for licensing applicable to child care services at § 98.40; a consumer education Web site at § 98.33(a); the market rate survey or alternative methodology and the related requirements at § 98.45(b)(2); the use of some grants or contracts at § 98.50(a)(3); the professional development framework at § 98.44(a); and the quality progress report at § 98.53(f). Tribes that receive medium or small CCDF allocations are also exempt from the requirements of operating a certificate program at § 98.30(a) and (d). Tribes that receive small allocations would be exempt from the majority of the new CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds. Finally, several provisions would apply to all Tribes providing direct services, unless the Tribe describes an alternative in its Plan: monitoring of child care providers and facilities at § 98.42(b)(2) and conducting background checks on other individuals residing in family child care homes at § 98.43(a)(2)(ii)(C).

We propose to remove previously-existing language on immunizations so that Tribes must now assure that children receiving CCDF services are age-appropriately immunized. We also propose to add regulatory language to add clarity to the previously-existing exemptions; this language does not change the previous policy. ACF also proposes two new paragraphs at (d)(2) and (d)(3) giving Tribes more flexibility around the monitoring inspections requirements and the requirement for comprehensive background checks on other individuals in family child care homes. At paragraph (e), ACF proposes to exempt Tribes receiving medium or small CCDF allocations from the requirement to operate a certificate program. At paragraph (f), ACF proposes more flexibility for Tribes receiving small allocations by only subjecting them to core CCDF requirements.

*Service Area.* We propose a technical addition at § 98.83(b) to clarify that Tribes (with the exception of Tribes located in Alaska, California, or Oklahoma) must operate their CCDF programs on or near Indian reservations. ACF has long-standing policy guidance that clarifies that a Tribe's service area must be ''on or near the reservation,'' and therefore must be within a reasonably close geographic proximity to the delineated borders of a Tribe's reservation. Tribes that do not have reservations must establish service areas within reasonably close geographic proximity to the area where the Tribe's population resides. ACF will not approve an entire State as a Tribe's service area. This policy clarification does not impact States' jurisdiction over child care licensing. Tribal service areas are also addressed in the regulations at § 98.81(b)(2)(ii), and the same policy guidance applies.

*Licensing for Child Care Services.* ACF proposes to exempt all Tribes from the requirement to have in effect licensing requirements applicable to child care services at § 98.40. This is a pre-existing statutory and regulatory requirement that was re-affirmed by the reauthorized CCDBG law. The majority of CCDF Tribal grantees do not have their own licensing requirements. Many Tribes certify in their Plans that they have adopted their State's licensing standards, but these requirements may not be appropriate for Tribal communities. In addition, we believe that requiring Tribes to have licensing requirements is counter to t Section 658O(c)(2)(D) of the Act, which states, ''In lieu of any licensing and regulatory requirements under State or local law, the Secretary, in consultation with Indian Tribes and Tribal organizations, shall develop minimum child care standards that shall be applicable to Indian Tribes and Tribal organization receiving assistance under this subchapter.'' Tribes may instead use the voluntary guidelines issued by HHS, described earlier in the preamble.

*Consumer Education Web site.* We propose to exempt all Tribes from the requirement for a consumer education Web site at § 98.33(a). We propose this exemption due to the administrative cost of building a Web site, as well as the lack of reliable high-speed internet in some Tribal areas. Furthermore, in some instances, the small number of child care providers in the Tribe's service area may not warrant the development and maintenance of a Web site. However, where appropriate, we encourage Tribes to implement Web sites for consumer education and to work with entities, such as States or child care resource and referral agencies that maintain provider-specific information on a Web site. For example, in cases where Tribal child care providers are licensed by the State, information about compliance with health and safety requirements should be available on the State's Web site.

*Market Rate Survey or Alternative Methodology.* At § 98.83(d)(1)(iv), we propose to exempt all Tribes from conducting a market rate survey or alternative methodology and all of the related requirements. In many Tribal communities, the child care market is extremely limited. Also, many Tribes are located in rural, isolated areas and conducting a market rate survey or alternative methodology would be difficult. Furthermore, we have proposed at § 98.83(f) that Tribes receiving CCDF allocations of $1 million or less (medium and small allocations) be exempt from operating a certificate program, and therefore, these Tribes are not required to offer the full range of child care services. For these Tribes especially, market rate surveys are not relevant. Despite exempting Tribes from these requirements, we believe that setting payment rates to support quality is essential to providing equal access to child care services. Tribes receiving large or medium allocations, will be asked in their Plans how rates were set and how these rates support quality.

*Grants or Contracts.* We propose to exempt all Tribes from the requirement at § 98.50(a)(3), which would require direct services to be provided using funding methods provided for in § 98.30 (*i.e.,* grant or contract, certificate), *which must include some use of grants or contracts, with the extent of such services determined by the Lead Agency after consideration of the shortages in the supply of high quality care.* We recognize that some Tribes, particularly those receiving smaller CCDF grant allocations, may lack the resources necessary to provide services through grants or contracts. In addition, we recognize that many Tribes directly administer their own Tribally-operated child care facilities, rather than purchasing slots through a grant or contract. These Tribally-operated centers can accomplish many of the same goals as the use of grants and contracts (*e.g.,* building supply, strengthening quality). The provision of

services by Tribal Lead Agencies through certificates is already separately addressed at § 98.83(f) and is discussed in this preamble further below.

*Training and Professional Development Framework.* We propose to exempt Tribes from the requirement at § 98.44(a) to describe in their CCDF Plan the State framework for professional development. This requirement is State-specific and not relevant for Tribes. We note, however, as required by the law at Section 658E(c)(2)(G)(ii)(IV), ongoing State professional development must be accessible to caregivers supported through Indian Tribes and Tribal organizations. The trainings must also be, to the extent practicable, appropriate for populations of Native American and Native Hawaiian children. Tribes are encouraged to work with States to help States meet these statutory requirements.

*Quality Progress Report.* We propose that Tribal Lead Agencies be exempt from completing the Quality Progress Report (QPR) at § 98.53(f), which is a revised version of the former Plan appendix, the Quality Performance Report. In the future, we may consider adding additional questions on quality improvement activities to the Tribal Plan, ACF–700 or ACF–696T, but we will discuss these changes with Tribes and provide opportunity for public comment.

The QPR includes a report describing any changes to State regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs. Under this provision, Tribes are exempt from completing the QPR, including the review and assessment of serious injuries and deaths. Notwithstanding, we encourage Tribal Lead Agencies to complete a similar process to the one described in the QPR and to review the reported serious injuries or deaths and make policy or programmatic changes that could potentially save a child's life.

*Immunization requirement.* Consistent with the proposed rule's overall focus on promoting high quality care that supports children's learning and development, we propose to revise § 98.83(d) to extend coverage of CCDF health and safety requirements related to immunization so that the requirements would apply to Tribes, whereas previously Tribes were exempt. At the time the current regulations were issued in 1998, minimum Tribal health and safety standards had not yet been developed and released by HHS. However, the minimum Tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements at § 98.41(a)(1)(i). As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement. We believe that many Tribes have already moved forward with implementing immunization requirements for children receiving CCDF assistance. By extending the requirement to Tribes, we will ensure that Indian children receiving CCDF assistance are age-appropriately immunized as part of efforts to prevent and control infectious diseases.

As with States and Territories, Tribes would have flexibility to determine the method to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of CCDF eligibility determinations, or they may require child care providers to maintain proof of immunization for children enrolled in their care. As indicated in the regulation, Lead Agencies have the option to exempt the following groups: (1) children who are cared for by relatives; (2) children who receive care in their own homes; (3) children whose parents object on religious grounds; and (4) children whose medical condition requires that immunizations not be given. In determining which immunizations will be required, a Tribal Lead Agency has flexibility to apply its own immunization recommendations or standards. Many Tribes may choose to adopt recommendations from the Indian Health Service or the State's public health agency.

*Monitoring Inspections.* We propose that all Tribes providing direct services, regardless of allocation size, be subject to the monitoring requirements at § 98.42(b)(2), which reflect the requirements in the law. However, a Tribal Lead Agency may describe an alternative monitoring approach in its Plan, subject to ACF approval, and must provide adequate justification for the approach. Section 658E(c)(2)(K) of the Act requires at least one pre-licensure inspection and annual unannounced monitoring for licensed child care providers. License-exempt providers are subject to annual monitoring on health, safety, and fire standards. The proposed rule would also allow Lead Agencies to use differential monitoring strategies and to develop alternate monitoring requirements for care provided in the child's home.

In our 2013 NPRM, we also proposed that Tribal Lead Agencies would be subject to monitoring requirements, and we received many comments asking for more flexibility for Tribes. As with the 2013 NPRM, we believe that the monitoring requirements in the law and the additional requirements proposed in this NPRM may not be culturally appropriate for some Tribal communities. By allowing Tribes to describe alternative monitoring strategies in their Plans, we wanted to give Tribal Lead Agencies some flexibility in determining which monitoring requirements should apply to child care providers. Tribes cannot use this flexibility to bypass the monitoring requirement altogether, but may introduce a monitoring strategy that is culturally appropriate for their communities. Tribes may also use this flexibility to partner with other agencies that may already be conducting monitoring visits, such as State Lead Agencies, the Indian Health Service, or the Child and Adult Care Food Program. Coordinating and partnering with existing agencies can help lessen the financial and administrative burden.

*Comprehensive Background Checks.* We propose that Tribal Lead Agencies be subject to the background check requirements at § 98.43, including the requirement for comprehensive background checks on other individuals residing in family child care homes. A comprehensive background check includes an FBI fingerprint check; a search of the National Crime Information Center; and a search of the following registries in the State where the child care staff member lives and each State where the staff member has lived for the past five years: State criminal registry using fingerprints, state sex offender registry, and the state child abuse and neglect registry, as described at § 98.43(b).

We note that in order to conduct an FBI fingerprint check using Next Generation Identification, Lead Agencies must act under an authority granted by a Federal statute. States, as described in subpart E, may choose among three federal laws that grant authority for FBI background checks for child care staff. These three statutes are: the CCDBG Act, Public Law 92–544, and the National Child Protection Act/Volunteers for Children Act. These three laws give States the authority to conduct FBI fingerprint checks, but none of them specifically grant that same authority to Tribes. In order for Tribes to conduct FBI background checks, they may use the Indian Child Protection and Family Violence Prevention Act, which to date only covers those individuals who are being considered for employment by the Tribe in positions that have regular contact with, or control over, Indian

children. Otherwise, Tribes will need to work with States to complete the FBI background check using a State's authority under an approved Public Law 92–544 statute or under procedures established pursuant to the National Child Protection Act/Volunteers for Children Act (NCPA/VCA). We understand that this may present difficulties for Tribes, especially for those that do not currently have a partnership with the State. We believe that comprehensive background checks are important for ensuring children's health and safety in child care. We are asking for comments on Tribes' experiences obtaining FBI fingerprint checks.

ACF does want to offer some flexibility for Tribes around the background check requirements. We are proposing at § 98.83(d)(3) to allow Tribes to use an alternative approach to conducting full background checks on other individuals residing in a family child care home if the Tribal Lead Agency provides an adequate justification in its Plan, subject to ACF approval. We have heard through our consultation sessions that many Tribal families reside in households with several generations. Requiring all members of the household to complete all five components of a comprehensive background check could be burdensome for the family and for the Tribal Lead Agency. Therefore, we are proposing to allow a Tribal Lead Agency to use an alternative strategy to conduct background checks on other individuals in a family child care home. ACF expects that Tribal Lead Agencies will conduct some components of a background check for these individuals. In its justification, a Tribe must describe how the alternative background check strategy is appropriately comprehensive and protects the health and safety of children in care.

*Certificate Program.* We propose at § 98.83(e) that Tribes that receive medium or small allocations be exempt from operating a certificate program. We recognize that small Tribal grantees may not have sufficient resources or infrastructure to effectively operate a certificate program. In addition, many smaller Tribes are located in less-populated, rural communities that frequently lack the well-developed child care market and supply of providers that is necessary for a certificate program. Tribes that receive large allocations will still be required to offer all categories of care through a certificate program.

Under current regulations, Tribes receiving smaller CCDF grants are exempt from operating a certificate program. The dollar threshold for determining which Tribes are exempt from operating a certificate program is established by the Secretary. It was set at $500,000 in 1998 and has not changed. By proposing to exempt Tribes receiving medium or small allocations from operating a certificate program, we are effectively proposing to raise the dollar threshold to $1 million. As discussed earlier, we are proposing to consider medium allocations to be grants between $250,000 and $1 million and small allocations to be grants of less than $250,000. These proposals would expand the number of Tribes that are exempt from operating a certificate program. We believe that this higher threshold will allow Tribes with smaller CCDF allocations to focus on implementing the new requirements proposed in this NPRM, specifically concentrating on the health and safety and quality requirements.

*Small Allocations Requirements.* ACF believes that the Tribes receiving the smallest CCDF allocations should not be subject to the same requirements as the Tribes receiving larger grant awards. ACF is proposing to exempt Tribes receiving small allocations (less than $250,000) from the majority of the CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds and to focus these funds on health and safety and quality spending. At § 98.83(f), we propose that Tribal Lead Agencies receiving small allocations spend their CCDF funds in alignment with the goals and purposes of CCDF as described in § 98.1. We propose that Tribes that provide direct services comply with the health and safety requirements, monitoring requirements; background checks requirements, and quality spending requirements. The proposed language at § 98.83(f) defines the only CCDF provisions that would apply to Tribes with small allocations.

We believe that this proposal allows Tribes with small allocations the flexibility to spend their CCDF funds in ways that would most benefit their communities. Tribes could choose to spend all of their CCDF funds on quality activities, or they could invest all of their funds into a Tribally-operated center. If a Tribe that receives a small allocation chooses to spend funds on direct services, then the Tribe would be required to meet the health and safety requirements, including the monitoring and background check requirements, as discussed earlier. Tribes that receive small allocations would also continue to be required to meet the fiscal, audit, and reporting requirements in the rule. To align with these limited CCDF requirements, Tribes with small allocations will complete an abbreviated Plan, as discussed earlier. This proposal balances increased flexibility with accountability, and ACF encourages these Tribes to focus their CCDF spending on ensuring health and safety and quality for children in child care.

*Base amount.* Beginning with FY 2017, OCC is proposing to increase the base amount from $20,000 to $30,000 to account for inflation that has eroded the value of the base amount since it was originally established in 1998. Each year, Tribal CCDF grantees' CCDF allocations are based on a Discretionary base amount, as well as a Discretionary and Mandatory amount based on the number of children submitted in the child count.

OCC first notified Tribes of our proposal to increase the base amount through our 2013 NPRM. The base amount is not included in regulation, and does not require regulatory change. However, OCC wanted to give Tribes the opportunity to comment on this change through the public comment period associated with the proposed rule, and the comments received were largely supportive.

The increase in the Discretionary base amount will result in a lower Discretionary per child amount than would occur without the change in base amount. An increase in the base amount benefits smaller Tribes and consortia, and OCC hopes it will encourage capacity building, especially in Tribal consortia. Larger Tribes will receive less funding then they would have in the absence of this change; however, this impact could largely be offset by the overall increase in CCDF funding for Tribes and by an increase in the Tribal Discretionary set-aside, described above. Therefore, OCC anticipates stable or increased funding for most Tribal Lead Agencies.

Construction and Renovation of Child Care Facilities (Section 98.84)

Section 98.84 currently describes the procedures and requirements around Tribal construction or renovation of child care facilities. The CCDBG Act reaffirmed Tribes' ability to request to use CCDF funds for construction or renovation purposes. Section 658O(c)(6)(C) of the Act continues to disallow the use of CCDF funds for construction or renovation if it will result in a decrease in the level of child care services. However, the law now allows for a waiver for this clause if the decrease in the level of child care services is temporary. A Tribe will also need to submit a plan to ACF that demonstrates that after the construction or renovation is completed the level of

child care services will increase or the quality of child care services will improve. In order for a Tribe to use CCDF funds on construction or renovation while decreasing the level of direct services, the Tribe must certify that, after the construction is completed, the number of children served will increase or the quality of care will increase. ACF added this language from the law to the regulations at § 98.84(b)(3).

ACF also issued a Program Instruction to describe the application process for using CCDF funds on construction or renovation. This Program Instruction will also be updated to reflect the new requirements in the law. The Program Instruction expands upon and describes the statutory and regulatory requirements. In the event that the CCDF regulations do not address a specific issue, then we will look to Head Start and HHS's generally-accepted construction and renovation guidelines.

*Subpart J—Monitoring, Non-Compliance, and Complaints*

Subpart J contains provisions regarding HHS monitoring of Lead Agencies to ensure compliance with CCDF requirements, processes for examining complaints and for determining non-compliance, and penalties and sanctions for non-compliance.

Penalties and Sanctions (Section 98.92)

Current regulations allow HHS to impose penalties and other appropriate sanctions for a Lead Agency's failure to substantially comply with the Act, the implementing regulations, or the Plan. Such penalties and sanctions may include the disallowance or withholding of CCDF funds in accordance with § 98.92. These regulations remain in effect.

In addition, we propose to add new provisions at § 98.92(b) in accordance with two penalties added by the reauthorization of the Act. New section 658E(c)(3)(B)(ii) requires HHS to annually prepare a report that contains a determination about whether each Lead Agency uses CCDF funding in accordance with priority for services provisions. These priority provisions are reiterated at § 98.44(a) of these proposed regulations, and require Lead Agencies to give priority to children with special needs, children from families with very low incomes, and children experiencing homelessness. The Act requires HHS to impose a penalty on any Lead Agency failing to meet the priority for services requirements. We propose to implement this new penalty through a new regulatory provision at § 98.92(b)(3). In accordance with the statute, the proposed rule provides that a penalty of not more than five percent of the CCDF Discretionary Funds shall be withheld if the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.44. This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and the penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure. The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

The second new penalty was added by section 658H(j)(3) of the Act and is related to the new criminal background check requirements. We propose to implement this penalty through new regulatory language at § 98.92(b)(4). In accordance with the statute, the proposed rule provides that a penalty of not more than five percent of the CCDF Discretionary Funds for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43. We propose to add that this penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and this penalty will not be applied if the State, Territory or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

*Subpart K—Error Rate Reporting*

On September 5, 2007, ACF published a Final Rule that added subpart K to the CCDF regulations. This subpart, which was effective October 1, 2007, established requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia, and Puerto Rico. The error reports were designed to implement provisions of the Improper Payments Information Act of 2002 (IPIA; Pub. L. 107–300). In July 2010, the President signed into law the Improper Payments Elimination and Recovery Act (IPERA) (Pub. L. 111–204), which amended the IPIA of 2002 and provided a renewed focus on government-wide efforts to control improper payments. In recent years, ACF has provided technical assistance and guidance to CCDF Lead Agencies to assist their efforts in preventing and controlling improper payments. These program integrity efforts help ensure that limited program dollars are going to low-income eligible families for which assistance is intended.

This proposed rule retains the error reporting requirements at subpart K, but proposes changes which are discussed below. In addition to the regulatory requirements at subpart K, details regarding the error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and Budget's (OMB) information collection process.

Error Rate Reports and Content of Error Rate Reports (Sections 98.100 and 98.102)

*Interaction with eligibility requirements.* We propose to add language at § 98.100(d), which defines an improper payment, to clarify that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.20(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a).

*Corrective action plan.* We propose to add § 98.102(c) to require that any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan. This is a conforming change to match new requirements for corrective action plans that were contained in the recent revisions to the forms and instructions. The corrective action plan must be submitted within 60-days of the deadline for submission of the Lead Agency's standard error rate report required by § 98.102(b). The corrective action plan must include: identification of a senior accountable official, milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action, a timeline for completing each action within one year of ACF approval of the plan and for reducing improper payments below the threshold established by the Secretary, and targets for future improper payment rates. Subsequent progress reports must be submitted as requested by the Assistant Secretary. Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

This requirement will strengthen CCDF program integrity and accountability. Existing CCDF regulations at § 98.102(a)(6) and (8)

currently require all 50 States, the District of Columbia, and Puerto Rico to report error rate targets for the next reporting cycle and to describe actions that will be taken to correct causes of improper payments. However, the information reported by Lead Agencies sometimes lacks detail or specificity, is only reported on a three-year cycle, and does not include status updates about the Lead Agency's progress in implementing corrective action. More specific and timely requirements are necessary for Lead Agencies with high improper payment rates. Therefore, any Lead Agency exceeding a threshold of improper payments will be required to submit a formal, comprehensive corrective action plan with a detailed description and timeline of action steps of how it will meet targets for improvement. The corrective action plan should also address any relevant findings from annual audits required by existing regulation at § 98.65(a) and the Single Audit Act. The Lead Agency would also be required to submit subsequent reports, on at least an annual basis, describing progress in implementing corrective action. These requirements will ensure that Lead Agencies engage in a strategic and thoughtful planning process for reducing improper payments, take action in a timely fashion, and provide information on action steps that is transparent and available to the public.

The proposed rule indicates that the improper payment threshold, which triggers the requirement for a corrective action plan, will be established by the Secretary. Although the proposed rule provides flexibility to adjust the threshold in the future, the initial threshold would be an improper payment rate of 10 percent or higher. In other words, if a Lead Agency indicates that its improper payment rate reported in accordance with § 98.102(a)(3) equals or exceeds 10 percent, the Lead Agency would be subject to corrective action under proposed § 98.102(b). This 10 percent threshold is consistent with the IPERA which indicates that an improper payment rate of less than 10 percent for a Federal program is necessary for compliance. Under IPERA, ACF must submit a corrective action plan if the national improper payment rate for CCDF exceeds 10 percent. Since CCDF is administered by State and Territory Lead Agencies and the error rate review process is executed by States, the only effective way for ACF to achieve and maintain an improper payment rate below the 10 percent threshold is to hold Lead Agencies accountable.

## V. Paperwork Reduction Act

A number of sections in this proposed rule refer to collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*). In some instances (listed in the table below), the collections of information for the relevant sections of this proposed rule have been previously approved under a series of OMB control numbers, or are currently in the OMB approval process.

| CCDF title/code | Relevant section in the proposed rule | OMB control number | Expiration date | Description |
|---|---|---|---|---|
| ACF–118 (CCDF State and Territory Plan). | §§ 98.14, 98.15, and 98.16 (and related provisions). | 0970–0114 | 05/13/2016 | The Act and this proposed rule add new requirements which States and Territories will be required to report in the CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. State and Territorial compliance with the final rule will be determined in part through the review of CCDF Plans and Plan amendments. ACF has published **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate. |
| ACF–800 (Annual Aggregate Data Reporting—States and Territories). | § 98.71 | 0970–0150 | 06/30/2015 | The Act and this proposed rule adds new data reporting requirements which States and Territories will be required to on the ACF–800. ACF has published **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate. |
| ACF–801 (Monthly Case-Level Data Reporting—States and Territories). | § 98.71 | 0970–0167 | 04/30/2015 | The Act and this proposed rule adds new data reporting requirements which States and Territories will be required to on the ACF–800. ACF has published **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate. |
| ACF–403, ACF–404, ACF–405 (Error Rate Reporting). | §§ 98.100 and 98.102 | 0970–0323 | 09/30/2015 | The proposed rule does not make changes to this information collection. |

| CCDF title/code | Relevant section in the proposed rule | OMB control number | Expiration date | Description |
|---|---|---|---|---|
| ACF–700 (Administrative Data Report—Tribes). | § 98.71 | 0980–0241 | 10/31/2016 | The proposed rule does not make changes to this information collection. If ACF proposes changes in the future, it will publish **Federal Register** notices seeking public comment. |
| ACF–696–T (Financial Reporting-Tribes). | § 98.65 | 0970–0195 | 05/31/2016 | The proposed rule does not make changes to this information collection. |

In other instances, which are listed below, the proposed rule modifies several previously-approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and the associated burden estimates, and will make available the proposed forms and instructions for review.

| CCDF title/code | Relevant section in the proposed rule | OMB control number | Expiration date | Description |
|---|---|---|---|---|
| Quality Progress Report (QPR)—States and Territories. | § 98.53 | 0970–0114 | 05/13/2016 | The Act and the proposed rule require States and Territories to submit reports on quality improvement, and measures to evaluate progress. The QPR is currently approved as an appendix to the CCDF State Plan. ACF intends to propose a revised QPR through a separate information collection. |
| ACF–696 (Financial Reporting-States). | § 98.65 | 0970–0163 | 05/31/2016 | The proposed rule would modify this information collection to require any sub-categories of quality activities as required by ACF. |
| ACF–118–A (CCDF Tribal Plan) .... | §§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections). | 0970–0198 | 05/31/2016 | The rule changes requirements that Tribes and Tribal organizations will be required to report in the CCDF Plans, and indicates that Plan and application requirements will vary based on the size of a Tribe's allocation. Tribal compliance with the final rule will be determined in part through the review of Tribal CCDF Plans and Plan amendments. |
| CCDF–ACF–PI–2013–01 (Tribal Application for Construction Funds). | § 98.84 | 0970–0160 | 03/31/2016 | The Act and the proposed rule change requirements related to maintaining the level of child care services as a condition of using funds for construction and renovation. |

The table below provides annual burden estimates for these existing information collections that are modified by this proposed rule. These estimates reflect the total burden of each information collection, including the changes made by this proposed rule.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of annual responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Quality Progress Report (QPR)—States and Territories | 56 | 1 | 50 | 2,800 |
| ACF–696 (Financial Reporting-States) | 56 | 4 | 5.5 | 1,232 |
| ACF–118–A (CCDF Tribal Plan) | 257 | 0.33 | 120 | 10,177 |
| CCDF–ACF–PI–2013–01 (Tribal Application for Construction Funds) | 5 | 1 | 20 | 100 |

Finally, this proposed rule contains 2 new information collection requirements, and the table below provides an annual burden hour estimate for these collections. First, § 98.33 requires Lead Agencies to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site. This Web site will include information about State or Territory policies (related to licensing, monitoring, and background checks) as well as provider-specific information, including results of monitoring and inspection reports and, if available, information about quality. This requirement applies to the 50 States, the District of Columbia, and 5 Territories that receive CCDF grants. In estimating the burden estimate, we considered the fact that many States already have existing Web sites. Even in States without an existing Web site, much of the information will be available from licensing agencies, quality rating and improvement systems, and other sources. The burden hour estimate below reflects an average estimate, recognizing that there will be significant State variation. The estimate is annualized to encompass initial data entry as well as updates to the Web site over time.

Second, § 98.42 requires Lead Agencies to establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care. This is necessary to be able to examine the circumstances leading to serious injury or death of children in child care, and, if necessary, make adjustments to health and safety requirements and enforcement of those requirements in order to prevent any future tragedies. The requirement would potentially apply to the nearly 390,000 child care providers who serve children receiving CCDF subsidies, but only a portion of these providers would need to report, since our burden estimate assumes that no report is required in the absence of serious injury or death. Using currently available aggregate data on child deaths and injuries, we estimated the average number of provider respondents would be approximately 10,000 annually. In estimating the burden, we considered that more than half the States already have reporting requirements in place as part of their licensing procedures for child care providers. States, Territories, and Tribes have flexibility in specifying the particular reporting requirements, such as timeframes and which serious injuries must be reported. While the reporting procedures will vary by jurisdiction, we anticipate that most providers will need to complete a form or otherwise provide written information.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Consumer Education Website | 56 States/Territories | 1 | 300 | 16,800 |
| Reporting of Serious Injuries and Death | 10,000 child care providers | 1 | 1 | 10,000 |

We will consider public comments regarding information collection in the following areas: (1) Evaluating whether the proposed collection is necessary for the proper performance of the CCDF program, including whether the information will have practical utility; (2) evaluating the accuracy of the estimated burden of the proposed collection; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information, including the use of appropriate technology.

Written comments regarding information collection should be sent to ACF and to the Office of Management and Budget, Office of Information and Regulatory Affairs (Attention: Desk Officer for the Administration for Children and Families) by email to: *oira_submissions@omb.eop.gov*, or by fax to (202) 395–7285.

**VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. 605(b)) requires federal agencies to determine, to the extent feasible, a rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach.

This NPRM will not result in a significant economic impact on a substantial number of small entities. This rule is intended to implement provisions of the Act, and is not duplicative of other requirements. The reauthorization of the Act and these implementing regulations are intended to better balance the dual purposes of the CCDF program by adding provisions that ensure that healthy, successful child development is a consideration for the CCDF program (*e.g.,* preserving continuity in child care arrangements; ensuring that child care providers meet basic standards for ensuring the safety of children, etc.).

The primary impact of the Act and this proposed rule is on State, Territory, and Tribal CCDF grantees because the rule articulates a set of expectations for how grantees are to satisfy certain requirements in the Act. To a lesser extent the rule would indirectly affect small businesses and organizations, particularly family child care providers, as discussed in more detail in the Regulatory Impact Analysis below. In particular, requirements for comprehensive criminal background checks and health and safety training in areas such as first-aid and CPR may impact child care providers caring for children receiving CCDF subsidies. However, the rule will not have a significant economic impact on a substantial number of child care providers. The estimated cost of a comprehensive criminal background check is $55 per check. For the required health and safety training, a number of low-cost or free training options are available. Many States use CCDF quality dollars or other funding to fully or partially cover the costs of background checks and trainings. The health and safety provisions in the rule will primarily impact those CCDF providers currently exempt from State licensing that are not relatives—which account for only about 22 percent of CCDF providers nationally. Finally, we note that the proposed rule contains many provisions that will benefit child care providers by providing more stable funding through the subsidy program (*e.g.,* eligibility provisions that promote continuity and improved payment practices).

## VII. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct federal 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). The Orders require federal agencies to submit significant regulatory actions to the Office of Management and Budget (OMB) for approval. Section 3(f)(1) of Executive Order 12866 defines ''significant regulatory actions,'' generally as any regulatory action that is likely to result in a rule that may (1) 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; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We estimate that the reauthorized CCDBG Act and this NPRM will have an annual effect on the economy of more than $100 million. Therefore, this NPRM represents a significant regulatory action within the meaning of section 3(f)(1) of Executive Order 12866. Given both the directives of Executive Orders 12866 and 13563 and the importance of understanding the benefits, costs, and savings associated with these proposed changes, we describe the costs and benefits associated with the proposed changes and available regulatory alternatives below in the Regulatory Impact Analysis.

## VIII. Regulatory Impact Analysis

We have conducted a Regulatory Impact Analysis (RIA) to estimate and describe expected costs and benefits resulting from the reauthorized CCDBG Act and this NPRM. This included evaluating State-by-State policies in major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including Web site and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building (see Table 1).

The State policies described in this RIA, including information from the FY2014–2015 CCDF Plans, represent policies that were in place prior to the reauthorization of the CCDBG Act. This is consistent with Office of Management and Budget (OMB) Circular A–4 which indicates that in cases where substantial portions of a rule simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action, the RIA should use a pre-statute baseline (*i.e.,* comparison point for determining impacts). In conducting the analysis, we also took into account the statutory effective dates for various provisions. A number of States have already begun changing their policies toward compliance with the CCDBG Act, which passed in November of 2014, but data on those changes is not yet available and are not factored into this analysis.

TABLE 1—OVERVIEW OF MAJOR PROVISIONS

| | Relevant provisions of CCDBG Act | Provisions of proposed rule |
|---|---|---|
| **Health and Safety** | | |
| Background checks | 658H | § 98.43. |
| Monitoring and inspections (including a hotline for parental complaints). | 658E(c)(2)(J), 658E(c)(2)(C) | § 98.42, § 98.32. |
| Training and Professional Development (Pre-service, orientation, and ongoing training). | 658E(c)(2)(G), 658E(c)(2)(I) | § 98.44. |
| **Consumer Education** | | |
| Consumer education website | 658E(c)(2)(D), 658E(c)(2)(E) | § 98.33. |
| Consumer statement | 658E(c)(2)(D), 658E(c)(2)(E) | § 98.33. |
| **Quality Spending** | | |
| Quality, infant and toddler spending | 658G | §§ 98.53, 98.50(b). |
| **Continuity of Care** | | |
| Minimum 12-month eligibility and related provisions. | 658E(c)(2)(N) | §§ 98.20, 98.21. |
| **Increased subsidy and supply building** | | |
| Increased subsidy | 658E(c)(4), 658(c)(2)(S) | § 98.45. |
| Supply building | 658E(c)(2)(A), 658E(c)(2)(M) | § 98.50(a)(3). |

*Need for regulatory action.* CCDF has far reaching implications for America's low-income children, and the reauthorized CCDBG Act and these proposed regulations shine a new light on the role that child care plays in child development and making sure children are ready for school. The law and this proposed rule takes important steps toward ensuring that children's health and safety is being protected in child care settings. Both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care. Prior to reauthorization of the CCDBG Act, there was a wide range of health and safety standards across States. For

example, ten States lacked even the most basic first aid and CPR requirements, and many did not have requirements in other vital areas such as safe sleep practices and recognition and reporting of suspected child abuse and neglect. In addition, without any monitoring requirement prior to CCDBG reauthorization, 24 States allowed license-exempt family child care providers to self-certify that they met health and safety requirements without any documentation or other verification. As discussed throughout this proposed rule, minimum health and safety standards included in the new law and this proposed rule are essential to help prevent children from being exposed to child care settings that put their health and safety at risk. The importance of such standards and the inherent risks are discussed at length in *Caring for Our Children* (*Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition,* which was produced with the expertise of researchers, physicians, and practitioners. (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011).

Parental choice is a foundational tenet of the CCDF program—to ensure parents are empowered to make their own decisions regarding the child care that best meets their family's needs. Prior to reauthorization, CCDF rules required Lead Agencies to promote informed child care choices by collecting and disseminating consumer education information to parents and the general public. Over the years, economists have researched and written about the problem of information asymmetry in the child care market and the resulting impact both on the supply of high quality care and a parent's ability to access high quality care. (Blau, D., The Child Care Problem: An Economic Analysis, 2001; Mocan, N., The Market for Child Care, National Bureau of Economic Research, 2002) In order for parental choice to be meaningful, parents need to have access to information about the choices available to them in the child care market and have some way to gauge the level of quality of providers. The CCDBG Act and this proposed rule strengthen consumer education requirements to make information about child care providers more accessible and transparent for parents and the general public.

Stable relationships between a child and their caregiver are an essential aspect of quality. Yet, under current policies, clients ''churn'' on and off of CCDF assistance every few months, even when they remain eligible. Some studies show that many families appear to remain eligible for the subsidies after they leave the program, suggesting that child care subsidy durations also are likely influenced by factors unrelated to employment (Grobe, D., R. B. Weber and E. E. Davis (2006). Why do they leave?: Child care subsidy use in Oregon.).

Many State subsidy policies make it overly burdensome for parents to keep their subsidy, or are not flexible enough to allow for temporary or minor changes in a family's circumstances. This is supported by a study that featured a series of interviews with state and local child care administrators and identified a number of administrative practices that appear to reduce the duration of child care subsidy usage (Adams, G., K. Snyder and J. R. Sandfort (2002) Navigating the child care subsidy system: Policies and practices that affect access and retention.) The study found that families often faced considerable administrative burden when trying to apply for or recertify their eligibility status. For example, families sometimes had to interact with more than one agency during the application process, had to make more than one trip to an administrative office, and sometimes had to wait for weeks or months to get an appointment with a social worker. In addition, families receiving Temporary Assistance for Needy Families (TANF) sometimes had additional difficulties with redetermination because of the temporary nature of their employment or training activities. The study also found that agencies had different policies regarding the ways in which families could recertify their eligibility status including mail, phone, or fax. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility when policies are inflexible to changes in a family's circumstances. Policies that make it difficult for parents to keep their subsidy threaten the employment stability of parents and can disrupt children's continuity of care. This proposed rule establishes a number of family-friendly policies that benefit CCDF families by promoting continuity in subsidy receipt and child care arrangements.

Changes made by the CCDBG Act and this proposed rule, consistent with the revised purposes of the Act, are needed to: Protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high quality child care for low-income children; and enhance the quality of child care and the early childhood workforce. For the purposes of estimating the costs of these new requirements, the analysis makes a number of assumptions. We welcome comment on all aspects of the analysis, but throughout the narrative, we specifically request comment in areas where there is uncertainty.

One overarching assumption that is consistent across all the estimates is that we are assuming that the current caseload of children in the CCDF program (approximately 1.4 million children) remains constant. Due to inflation and the potential for erosion in the value of the subsidy over time, funding increases will likely be necessary to maintain the caseload; however, those changes are not reflected in this RIA since they are not directly associated with this proposed rule.

While the estimate cannot fully predict how States and Territories will design policies in response to these new requirements or who would be responsible for paying certain costs, we do recognize that absent additional funding, these costs could impact the CCDF caseload. This point is discussed in greater detail below.

*A. Analysis of Costs*

In our analysis of costs, we considered any claims on resources that would be made as a result of the proposed rule that would not have occurred absent the rule. This includes new requirements that are merely reiterating changes made in the reauthorized CCDBG Act of 2014, which were effective upon the date of enactment of November 19, 2014. This RIA discusses the potential impact of the following major provisions in the statute and in the proposed rule:

- Monitoring and inspections (including State hotlines for parental complaints);
- background checks;
- health and safety training;
- consumer education (Web site and consumer statement);
- minimum 12-month eligibility periods;
- administrative and IT/infrastructure costs;
- increased subsidy rates per child associated with increasing continuity and equal access; and
- supply building.

We conducted a State-by-State analysis of these major provisions. It should be noted that due to insufficient data, the health and safety portions of this cost estimate do not include Territories and Tribes. This omission should not minimize the fact that

requirements of the CCDBG Act and the proposed rule would still have a significant programmatic and financial impact on Territories and Tribes. For the purposes of a national cost estimate, however, Territories and Tribes comprise a relatively small percentage of the CCDF population and therefore excluding the Territories and Tribes from analysis should not significantly impact the overall cost of the proposal. This is particularly the case since Tribes are exempt from, or subject to a modified version of, a number of these new requirements. However, we welcome public comment on the anticipated financial impact of the CCDBG Act and this proposed rule on Territories and Tribes.

In order to determine State practices, we relied on information from state-submitted FY 2014–2015 CCDF Plans, as well as the *2011–13 Child Care Licensing Study* (prepared by the National Association for Regulatory Administration). If a State already met or exceeded an individual requirement, we assumed no additional cost associated with the proposed rule. For example, a State that has an annual monitoring requirement for its licensed centers would be assigned no additional cost to implement that part of the proposed regulatory requirement.

We used data on requirements within a State by child care setting type (center, family home, group home, child's home) and licensing status, to project costs based on specific features of a State's existing requirements. When possible, if a State partially met the requirement we applied a partial implementation cost. For example, some States already conduct comprehensive background checks that include all components of a comprehensive background check except an FBI fingerprint check. Costs were assigned accordingly (assumptions about partial costs are explained in greater detail in the discussions below). The proposed rule offers significant flexibility in implementing various provisions, therefore in the RIA we identified a range of implementation options to establish lower and upper bound estimates and chose a middle-of-the-road approach in assessing costs.

This RIA takes statutory effective dates into account within a 10-year window. The analysis and accounting statements distinguish between average annual costs in years 1–5 during which some of the provisions will be in varying stages of implementation and the average annual ongoing costs in years 6–10 when all the requirements would be fully implemented. Some costs will be higher during the initial period due to start-up costs, such as building a consumer Web site, and costs associated with bringing current child care providers into compliance with health and safety requirements. However, significant costs, such as the requirement to renew background checks every five years, would not be realized until later. These compounding requirements account for the escalation in costs in the out years of the analysis.

Throughout this RIA, we calculate two kinds of costs: *Money costs* and *opportunity costs.* Any new requirements that have budgetary impacts on States or involve an actual financial transaction are referred to as *money costs.* For example, there is a fee associated with conducting a background check, which is a money cost regardless of who pays for the fee. For purposes of this analysis, we examined what additional resource claims would be made as a result of the reauthorized Act and proposed rule regardless of who incurs the cost or from what source it is paid (which varies widely by State). In some instances, money costs will be incurred by the State and may require States to redistribute how they use CCDF funds in a way that has a budgetary impact. In other cases, money costs will be incurred by child care providers or parents.

Alternatively, claims that are made for resources where no exchange of money occurs are identified as *opportunity costs.* Opportunity costs are monetized based on foregone earnings and would include, for example, a caregiver's time to attend health and safety trainings when they might otherwise be working.

Each year, more than $5 billion in federal funding is allocated to State, Territory, and Tribal CCDF grantees. Activities in the proposed rule are all allowable costs within the CCDF program and we expect many activities to be paid for using CCDF funds. For example, although some States may supplement funding, others may choose to redistribute funding from a current use to address start-up costs or new priorities. We received a number of comments from States in response to the 2013 NPRM that, in the absence of additional funding, meeting requirements in the proposed rule would result in a reduction in the CCDF caseload. Therefore, we anticipate some money costs will result in this type of re-distributive budgetary impact within the CCDF program.

However, to make the costs of the rule concrete, we provide analysis on the economic impact of the rule if the child care caseload were to remain constant. While we recognize that there may be a decrease in caseload due to the financial realities of the new requirements, applying that decrease in caseload to this analysis would only lessen the estimated cost, which would result in a probable underestimate. While the costs estimated in this analysis represent the costs required, (regardless of who pays for the requirement) to meet the new requirements for the current caseload of 1.4 million children, it is not, and should not be interpreted as, our projection of future caseload.

Overall, based on our analysis, annualized costs associated with these provisions, averaged over a ten year window, are $256 million and the annualized amount of transfers is approximately $840 million (both estimated using a 3 percent discount rate), which amounts to a total annualized impact of $1.10 billion. Of that amount, $1.09 billion is directly attributable to the statute, with only an annualized cost of $1.6 million (or less than 1% of the total estimated impact) attributable to discretionary provisions of this proposed regulation. While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this NPRM, we do conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation on the impact of each of the provisions is available below.

1. Health and Safety Provisions

Per the new requirements in the CCDBG Act, this proposed rule includes several provisions focused on improving the health and safety of child care. We estimated costs associated with the following three requirements: Monitoring and inspections at § 98.42; comprehensive background checks at § 98.43; and health and safety training at § 98.41(a)(2).

Implementation costs of health and safety provisions, specifically the start-up costs, in the proposed rule will depend primarily on the number of child care providers in a State and current State practice in areas covered by the proposed rule. We used data from the FY 2014 ACF–800 administrative data report to estimate that approximately 269,000 providers caring for children receiving CCDF subsidies would be subject to CCDF health and safety requirements. In addition to these CCDF providers, this analysis also includes approximately 110,000 licensed providers who are not currently receiving CCDF subsidies but would be subject to the background check and certain reporting requirements.

These figures exclude relative care providers since States may exempt these providers from CCDF health and safety requirements. According to OCC's 2014 administrative data, there are approximately 115,000 relative care providers receiving CCDF assistance. States vary widely on what they require of relatives, with 18 States/Territories requiring that relative providers meet all health and safety requirements, 4 exempting relatives for all requirements, and 34 indicating that relative providers were exempt from some but not all requirements.

It is difficult to forecast State behavior in response to new requirements since Lead Agencies have the option to exempt relatives from these requirements. Even those States that currently apply requirements to relatives may keep those requirements at current levels rather than expanding to meet new requirements. To provide a general estimate of potential costs, if States were to apply half of all the new health and safety requirements to half of the current number of relative providers, the annualized cost (using a 3% discount rate) would be approximately $30 million (averaged over a 10 year window). However, since applying the new requirements to relatives is not a legal requirement, we are not including costs associated with relative providers in the accounting statement for this regulatory impact analysis. We do request comment on the extent to which Lead Agencies anticipate applying new requirements to relative providers.

It should be noted that, based on a longitudinal analysis of OCC's administrative data, the number of child care providers serving CCDF children has declined by nearly 50 percent between 2004 and 2014, an average decrease of 4 percent per year. The greatest decline occurred in settings legally operating without regulation, specifically family child care; however, both regulated and license-exempt child care centers also saw declines. This analysis is based on current provider counts, but assuming that the number of CCDF providers will continue to steadily decrease, this estimate of the number of providers, and resulting costs associated with implementing health and safety provisions, may be an overestimate.

Many States' licensing requirements for child care providers already meet or exceed components of the minimal health and safety requirements for CCDF providers in this proposed rule. For example, training in first-aid and CPR and background checks are commonly included as part of State licensing, with approximately 40 States already meeting this requirement for licensed providers (centers, group home, and family child care).

Many licensed CCDF providers already meet many of the other health and safety requirements as well. For example, more than 40 States already require annual monitoring of all their licensed providers, with even more already requiring pre-inspections of their licensed providers. In the case of licensed centers, more than 45 States already require pre-inspections. For those States whose licensing requirements do not meet CCDF health and safety requirements, there will be costs incurred. However, the largest cost will be incurred for those CCDF providers that are currently exempt from State licensing that are not relatives—approximately 85,000 providers nationally. (Table 2 below provides a national picture of the types of CCDF providers.) We used an expanded State-by-State version of this table to estimate costs for meeting health and safety requirements. As stated above, the proposed rule allows States to exempt relatives from health and safety requirements, including background checks, health and safety training, and monitoring. Therefore, ACF did not attribute any cost associated with these requirements to relative CCDF providers, though we welcome comment on predicted State policies in this area.

TABLE 2—SUMMARY OF CCDF PROVIDERS (FY2014) *

| Licensed CCDF providers | | | CCDF providers legally operating without regulation (license-exempt) | | | | | Total |
|---|---|---|---|---|---|---|---|---|
| Centers | Family home | Group home | Child's home (in-home) | | Family and group home | | Centers | |
| | | | Relative | Non-relative | Relative | Non-relative | | |
| 81,352 | 70,165 | 32,130 | 38,670 | 27,739 | 77,958 | 50,330 | 7,355 | 385,699 |

* Source: ACF–800, Report 13.

It should be noted that we include group home providers in this analysis because our current data includes a separate category for group homes. However, the proposed rule would remove ''group home child care provider'' from our definitions and data reporting, so group homes would no longer be included in the data going forward. In the future, according to the proposed rule, those providers currently designated as group home providers would now fall into the category of ''family child care providers''

*Monitoring and pre-inspections.* The CCDBG Act requires that States conduct monitoring visits for all CCDF providers including all license exempt providers (except, at Lead Agency option, those that serve relatives). While States must begin monitoring no later than November 19, 2016, the full cost of this requirement will not be in effect until 2017. Therefore, we are projecting some period of phase-in, with 25% of providers subject to monitoring in 2015 and an additional 50% (a total of 75%) subject to monitoring requirements in 2016. The costs of these requirements will be fully realized from 2017 on.

The CCDBG Act specified different monitoring requirements for providers who are licensed and providers who are license-exempt.

- *For Licensed Child Care Providers*—States must conduct one pre-licensure inspection for health, safety, and fire standards and at least annual, unannounced inspections.

- *For License-Exempt Providers (except, at Lead Agency option, those serving relatives)*—States must conduct at least annual inspections for compliance with health, safety, and fire standards at a time determined by the State.

For this estimate, if a State reported that they conduct at least one annual monitoring visit for licensed child care providers (pre-licensure inspections are discussed separately below), we assumed no additional cost for those providers because it met or exceeded the frequency required by the statute and proposed rule. The majority of States already monitor licensed CCDF

providers annually (more than 40 across all settings—centers, family child care, and group homes). A subset of States that currently have annual monitoring requirements do not conduct unannounced visits. However, we did not assign a cost for States changing their policy from announced to unannounced monitoring. We acknowledge that there may be an administrative cost to such a change, but for the purposes of this estimate, we consider that to be included in the overall administrative cost allocation discussed below. However, we welcome public comment on specific costs associated with moving from announced to unannounced inspections.

This cost estimate takes into account three major components of the new monitoring requirements: (1) Annual monitoring, (2) Pre-inspections, and (3) a Hotline for parental complaints.

The annual monitoring estimate includes the following variables analyzed on a State-by-State basis:

- Current State Practice: We collected State-level data from the 2014–15 CCDF State plans and the *NARA 2011–13 Child Care Licensing Study* to determine which States already met annual inspection requirements. Data was collected for the following settings: Licensed CCDF providers (family, group home, and centers) and license-exempt CCDF providers (non-relative).
- Current Provider Counts: Using 2014 CCDF administrative data, we collected the number of providers within each setting for each State.

Using these data we arrived at an estimate of the number of providers within each State that would newly require an annual monitoring visit. We then estimated the number of new licensing inspectors and supervisors that would be required to monitor the projected number of providers newly subject to monitoring, based on a projected caseload of child care providers for each licensing staff. To estimate the actual cost, we calculated the cost of employing (salary and overhead) the estimated number of necessary new licensing staff (inspectors and supervisors).

The CCDBG Act requires States to have a ratio of licensing inspectors to child care providers and facilities that is sufficient to conduct effective inspections on a timely basis, but there is no federally required ratio. The current range of annual caseloads per licensing inspector is large, from 1:33 to 1:231. We used the following range to estimate the impact:

- Lower bound: 50th percentile of current licensing caseloads (weighted by the number of providers in each State), which produced an adjusted caseload of 1:126 providers per monitoring staff.
- Upper bound: A 1:50 ratio of providers to monitoring staff, as recommended by the National Association of Regulatory Administration.

Our final cost estimate represents the midpoint between the lower and upper bound estimate. To calculate the number of required supervisory staff, we assumed a ratio of one supervisor per seven monitoring staff, which is the current average across States as reported in the *NARA 2011–13 Child Care Licensing Study.*

To generate the actual cost associated with this staffing increase, we multiplied the number of new staff by salary and overhead costs for full-time equivalent (FTE) staff based on Bureau of Labor Statistics (BLS) data from the *National Occupation and Wage Estimates* from May 2013. The same FTE costs were applied to all States. The salary applied was $42,690 for each monitoring line staff (see Community and Social Service Specialists, All Other: Code 21–1099) and $65,750 for each supervisor (see Social and Community Service Managers: Code 11–9151), which was then multiplied by 2 to account for benefits and overhead. (Data from the Bureau of Economic Analysis's *National Income and Product Accounts* shows that in 2013, wages and salaries are approximately 50 percent of total compensation.). Using this methodology, the estimated present value cost of meeting this annual monitoring requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $1.2 billion. The annualized money cost of meeting the monitoring requirements is $137 million, also estimated using a 3 percent discount rate.

We anticipate that annual monitoring in States could result in additional follow-up visits, which can be expected if problems were identified in the initial visit. Because we do not have data on this with which to estimate potential impacts, we welcome comment on the percentage of providers that would require a follow-up visit as a result of new annual monitoring visits.

Opportunity costs for the monitoring requirements account for the fact that to successfully pass a monitoring visit, there would presumably be a number of administrative costs (in terms of time; an opportunity cost) for providers and caregivers. For example, providers must read the new rules, change their current practices to comply, and obtain and track paperwork to make sure they are in compliance. For the purposes of this following analysis, we made several assumptions about the amount of time required to prepare for and comply with the monitoring requirement, but we welcome comment on these assumptions. To calculate the opportunity cost of these visits, we assumed that time spent doing administrative tasks equals the length of the monitoring visit plus an additional 1.5 and 2.0 hours of preparation per hour of the visit, for family child care and center providers respectively.

Based on one State reporting that their monitoring visits for licensure took between 2.5 and 5 hours, we used 2.5 hours as the basis for our lower bound and 4 hours as the basis for our upper bound. We used 4 hours instead of 5 for our upper bound estimate because 5 hours is the amount reported for a licensing visit, but what is required in the proposed rule is generally much less extensive than what is generally required for licensure. As such, our lower bound estimate uses 6.25 and 7.5 hours of preparation for family child care and center providers, respectively, and our upper bound uses 10 and 12 hours of preparation for family child care and center providers, respectively. According to BLS, for child care workers, one hour equals $18.80 after accounting for benefits and overhead (we include overhead because administrative preparation time occurs during work hours). We estimated the opportunity cost of preparation time for monitoring to be an average of $5.2 million annually (estimated using a 3% discount rate) during the two-year phase-in period (assumes States begin to ramp-up monitoring, but not fully implemented) and an annualized opportunity cost of $9.5 million (estimated using a 3% discount rate) over the entire 10 year window. Note that the phase-in period discussed here covers a two year period and is different from the phase in period in the table below, which shows a phase-in period of 5 years (after which *all* requirements would be fully implemented).

Some proportion of providers will require remedial work to meet CCDF health and safety requirements after an annual visit. For example, a provider may be out of compliance with building safety or not have up-to-date immunization records, and costs in terms of time as well as material resources would be necessary to come into compliance. However, it is difficult to quantify these effects because the specific remediation required will vary by provider and other circumstances. Therefore, we did not attempt to monetize the cost of providers' remediation efforts. In addition, there are also benefits to be reaped (in terms

of child health and safety) as providers makes changes to come into compliance with health and safety requirements as a result of this rule, but that are not quantified in this analysis.

Next we estimate cost of pre-licensure inspections required by the CCDBG Act. This requirement, as proposed, applies only to licensed CCDF providers. Using the same methodology that we used for annual monitoring, we determined how many States already met this requirement and used CCDF administrative data to determine the number of licensed CCDF providers (by setting type) that did not previously but would now require pre-licensure visits. The proposed rule allows States to grandfather all existing providers—thus there is no start-up cost or backlog of providers that need a pre-inspection. There are not good data to estimate how many new providers a State would need to pre-inspect on an annual basis, but anecdotal evidence suggests the number is relatively small. Of the States that do not currently require pre-inspections (1 for centers, 6 for group homes, and 7 for family child care), we estimated (based on information shared by a few States) that a lower bound of five percent of family child care and four percent of center care would be new each year (lower bound). For the upper bound, we estimate that 12 percent of family child care and 7 percent of child care centers would be new each year.

Using a caseload of 88 providers per monitoring staff (the midpoint of the 50th percentile of current caseload data and the recommended caseload of 50:1), and using the same salary and benefits data as the monitoring estimates, the estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $6 million. Ongoing average annual pre-inspection costs are estimated to be approximately $1 million (estimated using a 3% discount rate), but would not begin until 2017.

Monetized caregiver time to prepare for pre-inspections is considered an opportunity cost and is estimated to be approximately $200,000 annually, a relatively small amount because this only applies to new licensed providers in the few States that don't already require pre-licensure inspections. Though some of the opportunity cost would be incurred prior to the actual inspection visit, for the purposes of this estimate, we considered all costs for pre-inspections as beginning after the end of the phase-in period. We used the same methodology used to calculate annual inspections to determine the opportunity cost of pre-inspections.

However, recognizing that preparing for an initial licensing inspection may require additional time, we used the midpoint of the estimate time for an annual visit and doubled it for an estimated 16.25 hours for family child care and group homes and 19.5 hours for centers. Again, we welcome comment on these assumptions if there is additional data on the amount of time required to prepare for and participate in an inspection.

This cost analysis also includes the ''parental complaint hotline'' as part of the monitoring requirements. Per the CCDBG Act, the proposed rule would require at § 98.32(a) Lead Agencies to establish or designate a hotline or similar reporting method for parents to submit complaints about child care providers. Lead Agencies have flexibility in how they implement this requirement, including whether the system is telephonic or through a similar reporting process, whether the hotline is toll-free, and whether the hotline is managed at the State or local level. Based on an examination of several States that already have comparable hotlines in place, this estimate for the parental complaint hotline includes multiple components that might be associated with the implementation and maintenance of a telephonic hotline.

These components include the one-time purchase of an automatic call distribution (ACD) system at $45,000; the use of a digital channel on a T1 line ranging from $204 to $756 per year; 2,000 minutes of incoming call time at $0.06 per minute; and salary and benefits for one FTE to manage the hotline at $67,000. States vary in how they collect parental complaints. According to an analysis of the FY 2014–2015 CCDF Plans and review of State child care and licensing Web sites, 18 States/Territories have a parental complaint hotline that covers all CCDF providers, 22 States/Territories have a parental complaint hotline that covers some child care providers, and 16 States/Territories do not have a parental complaint hotline. (Note that unlike the other health and safety provisions, this estimate does include Territories).

States that had hotlines for both licensing and CCDF were considered as meeting the full requirement for a parental complaint hotline and had no additional costs. States that only had one hotline (*e.g.,* only for licensed providers) were considered as partially meeting the requirement for the hotline and had 0.5 FTEs applied. The full amount was applied to States that did not have anything in place that met the requirements of the hotline.

We used a range of options to estimate the impact of the parental complaint hotline requirement based on the cost of the TI line and whether the hotline is toll-free and chose the mid-point as the primary estimate. Using this methodology, the estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $16.6 million. Average annual costs during the phase-in period are estimated to be approximately $2.6 million during the first year (different than the phase-in figure in Table 3 below) and an average of $1.8 million for each year after. The estimate assumed slightly higher startup costs during the first year because States and Territories may need to purchase and install an ACD system.

TABLE 3—ESTIMATED IMPACTS OF MONITORING PROVISIONS

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized cost (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs** *($ in millions)* | | | | | | | | |
| Annual monitoring | 123.4 | 154.3 | 138.9 | 136.9 | 134.1 | 1,388.7 | 1,202.5 | 1,007.8 |
| Preinspection new facilities | 0.5 | 0.9 | 0.7 | 0.7 | 0.7 | 7.3 | 6.2 | 5.1 |
| Hotline | 2.0 | 1.8 | 1.9 | 1.9 | 1.9 | 18.8 | 16.6 | 14.3 |
| *Subtotal* | *125.9* | *157.0* | *141.5* | *139.5* | *136.7* | *1,414.7* | *1,225.3* | *1,027.2* |

TABLE 3—ESTIMATED IMPACTS OF MONITORING PROVISIONS—Continued
[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized cost (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Opportunity Costs** *($ in millions)* | | | | | | | | |
| Annual monitoring | 8.5 | 10.7 | 9.6 | 9.5 | 9.3 | 95.9 | 83.0 | 69.6 |
| Preinspection new facilities | 0.1 | 0.2 | 0.2 | 0.2 | 0.2 | 1.9 | 1.6 | 1.3 |
| *Subtotal* | *8.7* | *10.9* | *9.8* | *9.6* | *9.4* | *97.7* | *84.6* | *70.9* |
| Total | 134.6 | 167.9 | 151.2 | 149.1 | 146.1 | 1,512.5 | 1,309.9 | 1,098.1 |

*Comprehensive background checks.* The CCDBG Act added a new section at 658H on requirements for comprehensive, criminal background checks that draw on federal and State information sources. The CCDBG Act outlines five components of a criminal background check, which we restate in § 98.43 of the proposed rule. There are several aspects of the background check requirements that must be taken into account in a cost estimate. This includes the background checks for existing child care staff members (who do not already have them), the new federal requirement that child care staff members receive a background check every five years, background checks for family members living in family child care homes, and checks with other States if a child care staff member has lived in another State. This cost estimate does not take into account the cost of the requirement at § 98.43(b)(2) for a search of the National Crime Information Center. ACF is currently in discussions with the FBI to determine the logistics behind States meeting this requirement. We welcome comment on the cost of meeting this requirement.

Similar to the methodology used for monitoring, the first step of the cost estimate was to determine current State practice. We used CCDF 2014–15 State Plan data (which included State-by-State data on four distinct background check components organized by provider type) to determine which States already met certain components of the background check requirement. After identifying the areas where States would need to implement new requirements we applied the provider counts to determine the number of child care staff members that would need to meet these new background check requirements.

Because our administrative data on the number of CCDF providers represent the number of child care programs serving CCDF children, not the individual child care staff members in these settings that would need to receive a background check, we estimate the number of individual child care staff members that would be affected by this provision by applying a multiplier to each provider type (centers, family home, and group home).

We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks. It is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be allowed the same appeals process as employees.

To generate an estimated number of staff per child care center, we used data from the *National Survey of Early Care and Education (NSECE),* which indicated that the median number of children per center nationally is approximately 50. We then used the following data sources: (1) ACF–801 CCDF administrative data, which provides a detailed breakdown of the number of CCDF children by age group; and (2) *Caring for our Children,* which has a recommended staff-child ratio for centers by age group. (*Caring for Our Children's* recommended staff-child ratios are an overestimate because not all States have adopted the standard.) Using these figures, a weighted average was generated that takes into account the national age-distribution of CCDF children served and recommended child-staff ratios for an average center. This resulted in a baseline multiplier of 11 staff members per child care center receiving CCDF-funded subsidies, 8 of whom are caregivers and 3 are additional staff members or individuals who may have unsupervised contact with children.

We estimated the number of other adult household members residing in family child care homes (persons other than the caregiver) and relevant staff members and added this to our cost estimate. We assumed each family child care and group home provider had an average of 1 additional household member. (This assumption is informed by consultation with State administrators, who stated that most frequently there is 1 other adult over the age of 18 in a family child care home that must undergo a background check).

Using these multipliers, we estimated the cost for background checks for staff members newly subject to the requirements. This includes both the cost of obtaining the background check and the opportunity cost for child care staff members to meet the required components. The opportunity cost represents the value of time (measured as foregone earnings) of child care staff members during the time, they spend to complete a background check.

Many States already require some, if not most, of the background check components. To determine the existing need, we compared the requirements described in this proposed rule against current background check requirements, as reported in the CCDF 2014–2015 Plans. According to the FY 2014–2015 CCDF Plans, nearly 30 States require that licensed child care center staff undergo a State criminal background check that includes a fingerprint. More States already have requirements for a State criminal background check without a fingerprint, but for this estimate, we only counted States that required a fingerprint as meeting the requirement. For licensed centers, more than 40 already require an FBI fingerprint check, nearly all already require a check with a child abuse and neglect registry, and more than 35 require a check with a sex offender registry. Nearly 30 States require licensed family child providers to have a State criminal background check that includes a fingerprint, more than 40 already require an FBI fingerprint check, more than 30 require a check with the child abuse and neglect registry, and

more than 35 require a check against a sex offender registry.

Fewer States meet the background check requirements for unlicensed CCDF providers. According to our State Plan data, only fewer than 25 States already have FBI fingerprint check requirements in place for its unlicensed providers and only six require those providers to have a State background check that includes a fingerprint.

Using this data, we identified gaps in existing State policies as compared to the newly-required background check components. These gaps were matched with CCDF ACF–800 administrative data showing the number of providers per setting type by State, and then using the methodology above calculated the number of child care staff members requiring background checks.

As mentioned above, there are two costs of a background check: the fee to conduct the check and the time it takes for individuals to get the check. With regard to the fee, Lead Agencies have flexibility to determine who pays for background checks. According to the FY 2014–2015 CCDF Plans, more than States require the child care provider to pay for the background check, approximately 10 States indicated the cost was split, and fewer than 10 States indicated they pay the fees associated with the cost of conducting a background check. However, regardless of how costs are assigned, an impact analysis must include the overall monetary and opportunity cost impacts.

In their CCDF Plans, Lead Agencies described their costs associated with conducting background checks, including cost information on individual components of the background check. This information, combined with information we received from the FBI regarding costs of FBI fingerprint checks, was used to derive an estimated average cost of each background check component for a total of $55 for each set of four background checks. We applied this cost (or a partial cost) to the number of individuals in need of some or all of the background check components, determined after identifying State-by-State practices for different types of providers.

Next, we estimated the average annual ongoing cost of administering background checks to new child care staff members (as opposed to start-up costs associated with bringing existing staff members into compliance). Child care provider departure rates cited in the literature vary widely from as low as 10 percent to 20 percent (*The Early Childhood Care and Education Workforce: Challenges and Opportunities,* Institute of Medicine and the National Research Council, 2012). We used these as the lower and upper bounds, respectively for our estimated turnover rate. We then reduced this estimate by another 10 percent to account for the fact that the law requires some portability of background checks for certain staff members in a State, meaning that if a staff member has already passed a background check within the past five years, then that individual is not required to get another background check when changing employment from one child care provider to another.

Based on this approach, the estimated present value cost of meeting these background check requirements (for existing and new providers) over the 10 year period examined in this rule, using a 3% discount rate, is approximately $58.6 million. ACF estimated that during the three year phase-in period background check fees would have an average annual money cost of $10.8 million (also estimated using a 3% discount rate), as States bring existing providers into compliance. (Note again that this phase-in period is different than the five year period indicated in the table below). We estimate the average annual ongoing money costs associated with background checks for new staff members of approximately $4 million (estimated using a 3% discount rate).

The CCDBG Act requires that all child care staff members receive a background check every five years. Through the 2014–15 CCDF State Plans, States report on how frequently licensed providers are required to receive each component of the background check. This data was available both by individual background check component and by provider type. If a State already required that a particular background check be renewed every five years (or more frequently), we did not include it in this cost estimate. While we know that States have similar policies in place for unlicensed providers, we do not have data for this subset of the provider population. Therefore, we considered the renewal of background checks for unlicensed providers to be a fully new cost to all States, understanding that this is more likely than not an overestimate.

Since not all background checks will be conducted in the same year, we spread these costs evenly over a five year period to show that the costs would not be incurred all at once. We recognize that in practice these costs may not be evenly distributed over the five year period, depending on how States choose to conduct background checks during the initial implementation period. However, any uneven distribution of costs over time only negligibly affects the total dollar amount. The estimated present value cost of renewing background checks for all individuals over the 10 year period examined in this rule, using a 3% discount rate, is approximately $55.4 million, with the average annual ongoing money costs of this five year renewal requirement (once it begins in year six of the ten year window) to be $13.6 million. However, since provider counts have been in steady decline (as discussed earlier), this may be an over-estimate.

Another feature of the background check requirement is that States are required to check the State-based criminal, sex offender, and child abuse and neglect registries for any States where an individual resided during the preceding five years. To estimate how many individuals would require an additional State background check, we used data from the U.S. Census Bureau, which conducts a Current Population Survey that includes data on Migration and Geographic Mobility (*Current Population Survey Data on Migration/ Geographic Mobility,* U.S. Census Bureau). Mobility data on *employed* individuals (inclusive of all races and genders) ages 25 to 64 show an out of State mobility rate of approximately two percent. Given that this data measures mobility in a given year and our requirement is for a five year window, we use a 10% mobility rate for this calculation. We assume that 10% of all child care staff members will require a check with another State and assign a prorated cost of the background checks minus the FBI check accordingly. We estimate the average annual ongoing money costs of this requirement to check other States to be less than a million dollars.

Next, we monetized child care staff member time spent obtaining a comprehensive background check such as completing paperwork or other activities necessary to complete the check. We assumed that a check of the child abuse neglect registry takes 30 minutes, and that the other three components of a comprehensive background check take 1 hour combined (or 20 minutes each) for a total of 1.5 hours. We also assumed that each hour is worth $12.80, assuming $10 per hour for a child care staff member multiplied by 1.28 to account for benefits. (*Employer Cost for Employee Compensation database,* Bureau of Labor Statistics, adjusted to reflect the number of child care providers that are self-employed) ACF estimated average annual opportunity costs (using a 3% discount rate) for all the background

check components of $6.3 million during the 3 year phase in period and an annualized cost of $7.1 million over the 10 year window.

More extensive background checks will lead to greater numbers of job applicants and other associated people being flagged as risky, thus leading to additional types of cost. For example, a hiring search would need to be extended if the otherwise top candidate is revealed by a background check to be unsuitable to work with children. These costs that result from background checks are correlated with benefits; indeed, if this category of costs is zero, then the background check provisions of this proposed rule would have no benefits. However, due to lack of data, we have not attempted to quantify either this type of costs or the associated benefits and request comments that could inform such quantification.

TABLE 4—ESTIMATED IMPACTS OF BACKGROUND CHECK PROVISIONS

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs ($ in millions)** | | | | | | | | |
| Background Checks | 8.4 | 4.5 | 6.5 | 6.7 | 6.9 | 64.6 | 58.6 | 52.2 |
| Background Check Renewals | 0.0 | 13.6 | 6.8 | 6.3 | 5.7 | 68.1 | 55.4 | 42.6 |
| Background Checks with Other States | 0.5 | 0.8 | 0.7 | 0.6 | 0.6 | 6.5 | 5.7 | 4.8 |
| *Subtotal* | *8.9* | *18.9* | *14.0* | *13.6* | *13.2* | *139.2* | *119.7* | *99.6* |
| **Opportunity Costs ($ in millions)** | | | | | | | | |
| Background Checks | 5.8 | 3.1 | 4.4 | 4.6 | 4.8 | 44.0 | 40.3 | 35.9 |
| Background Check Renewals | 0.0 | 4.4 | 2.2 | 2.0 | 1.8 | 22.1 | 18.0 | 13.8 |
| Background Checks with Other States | 0.5 | 0.4 | 0.5 | 0.5 | 0.5 | 4.7 | 4.1 | 3.6 |
| *Subtotal* | *6.3* | *7.9* | *7.1* | *7.1* | *7.1* | *71.2* | *62.4* | *53.3* |
| Total | 15.2 | 26.8 | 21.1 | 20.7 | 20.3 | 210.4 | 182.1 | 152.9 |

*Caregiver, teacher and director training.* The CCDBG Act and this proposed rule require Lead Agencies to establish training requirements for caregivers, teachers, and directors of CCDF providers. The Act (section 658E(c)(2)(I)) and the proposed rule (§ 98.41(a)(1)) require pre-service or orientation training and on-going training in health and safety topics, including first aid and CPR, safe sleep practices, and other specified areas. In addition, the law (section 658E(c)(2)(G)) and proposed rule (§ 98.44) require training and professional development, including training on child development.

For this analysis, we estimated costs in the following areas: current number of CCDF caregivers, teachers, and directors (using FY 2014 data) to meet new pre-service or orientation training requirements; on-going training for caregivers, teachers, and directors (which includes new incoming caregivers); and pre-service or orientation training for new caregivers, teachers, and directors.

To establish a baseline, ACF used information reported by States in their FY 2014–2015 CCDF Plans and information from the *2011–13 Child Care Licensing Study* to determine—for each of the training areas—which trainings were already required by State policy for the following providers: centers, family homes, and group homes. The available data allowed us to distinguish between requirements for licensed providers and unlicensed providers, allowing us to further refine the cost estimate. Once current requirements for each State were identified, we were able to determine which new trainings would be required, and then apply the cost of receiving the balance of trainings.

We reviewed the health and safety training delivery models in multiple States with a range of available training requirements to get a better sense of the range of costs for training. We found a wide range, from training provided at no-cost, to training packages that cost up to $170. Using these figures as a basis, a lower bound of $60 and an upper bound of $140 was established for the total training package per caregiver. This range is informed by the fact that many no-cost online training courses have already been developed, and thus are truly no cost, but even States taking advantage of no-cost online trainings would most likely have to use additional trainings with costs associated in order to meet all the requirements.

Training costs were broken into three components: first-aid & CPR training, child development training, and then a package of all other basic health and safety requirements. For the purposes of this estimate, we created these groupings to better reflect the available cost information that we gathered through our research. First-aid and CPR are the most commonly offered trainings, so their costs were easier to identify. We separated child development training from the rest of the package to reflect the fact that the delivery of trainings in this area are more likely to be tied to broader on-going professional development curricula or programs, and may have a higher cost. Breaking the trainings down in this way allowed us to apply a pro-rated amount, based on what was currently required by States.

This training requirement only applies to child care providers receiving CCDF subsidies. However, as with the background check estimate, another factor in the calculation was the number of caregivers, teachers and directors per provider that would need to receive the training, since the ACF–800 data captures the number of child care providers serving CCDF children not individual caregivers, teachers, or directors in these settings that would need to receive training. To compensate we applied a multiplier to each setting type (centers, family home, and group home). We used the same methodology described in the background check section above (based on data from the NSECE, ACF–801, and *Caring for our*

*Children* child-staff ratios), to create a weighted average of nine caregivers/teachers/directors per child care center. Unlike the background check requirement, the training would only apply to those providing care for children. For family child care homes, we estimate that one caregiver per site would be required to receive training, and two caregivers per group home.

Next, we assumed that some caregivers, teachers, and directors may already have training in some of the topics, though they were not previously required, and reduced the total estimate by 10 percent. After applying these assumptions, to gaps in current State practice, we were able to estimate the present value cost of compliance with the new pre-service and orientation training requirement. A basic explanation of the calculation is ''the number of trainings required for compliance (by State and by provider type) multiplied by number of individuals trained multiplied by the cost per training (up to $140 per individual). We also assumed that some portion of individuals will have already received trainings that could apply to the new requirements, so we reduced the final estimate by ten percent. Using a 3% discount rate, the estimated cost is approximately $61 million over the 10 year period examined in this rule, or an annualized value of $7 million. We estimated that during the phase-in period, the required pre-service or orientation health and safety training has an average annual money cost of $18.8 million for the initial two year phase-in period and $3.0 million in subsequent years. The increased cost in the initial years is due to the high cost of bringing current providers into compliance during the phase-in period while in subsequent years, the pre-service and orientation trainings would only apply to new providers. To estimate the ongoing cost of providing health and safety training in the required topic areas pursuant to the CCDBG Act to newly entering caregivers, teachers, and directors of CCDF providers who would not otherwise have been required to receive training, we had to predict turnover within the provider population. We took the midpoint of the turnover number we used for background checks—15 percent. Since, according to the NSECE, many caregivers new to a care setting are not new to the profession, we further reduced that estimate by 20 percent to account for the fact that some new caregivers, teachers, and directors will be coming from other CCDF care settings, and thus bring their training credentials with them. (*Number and Characteristics of Early Care and Education (ECE) Teachers and Caregivers: Initial Findings from the National Survey of Early Care and Education (NSECE),* OPRE Report #2013–38)

To generate a cost of ongoing training, based on anecdotal evidence from State administrators, we assumed that ongoing trainings (*e.g.,* maintaining competencies and certificates) would be the equivalent of approximately 20% of the total cost of pre-service and orientation training to the entire CCDF provider population and used that as our annual estimate. The estimated present value cost of renewing background checks for all individuals of ongoing training for existing providers over the 10 year period examined in this rule, using a 3% discount rate, is approximately $54 million. We estimated that on an ongoing basis, average annualized money costs for training would be $6.2 million (estimated using a 3% discount rate).

Next we monetized caregiver/teacher/director time spent completing the requisite health and safety trainings. *The National Center on Child Care Professional Development Systems and Workforce Initiatives* funded by ACF reported that the training topics together would require a minimum of 20 hours. However, most caregivers will require only a subset of the training topics (*e.g.,* SIDS training is only for caregivers that serve infants; transportation and child passenger safety is only as applicable). Using that as a baseline, for the purposes of this calculation we used a lower bound estimate of 15 hours and an upper bound of 30 hours to complete the required trainings. We used the midpoint of these two estimates for the final estimate. We assumed that each hour of staff time equals $12.80, the same as we did for background checks ($10 for child care caregivers multiplied by 1.28 to account for benefits, but not overhead). (*Employer Cost for Employee Compensation database,* Bureau of Labor Statistics, adjusted to reflect the number of child care providers that are self-employed) We then applied a 10 percent reduction to account for caregivers who have fulfilled some training requirements that were not previously required. Using these assumptions, during the initial two year phase-in period (different than the 5 year phase-in period indicated in the table below) the average annual opportunity cost of monetized caregiver time on trainings is estimated to be approximately $63.2 million. The average annual opportunity cost after full implementation (years 3 and on) is estimated to be $25.4 million.

TABLE 5—ESTIMATED IMPACTS OF TRAINING PROVISIONS

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs ($ in millions)** | | | | | | | | |
| Pre-Service & Orientation | 9.8 | 3.5 | 6.6 | 7.0 | 7.5 | 66.4 | 61.4 | 56.0 |
| On-going (existing providers) | 5.6 | 7.0 | 6.3 | 6.2 | 6.1 | 62.9 | 54.4 | 45.5 |
| *Subtotal* | *15.4* | *10.5* | *12.9* | *13.2* | *13.6* | *129.3* | *115.8* | *101.5* |
| **Opportunity Costs ($ in millions)** | | | | | | | | |
| Pre-Service & Orientation | 27.8 | 10.0 | 18.9 | 19.9 | 21.2 | 189.2 | 174.9 | 159.5 |
| On-going (existing providers) | 15.9 | 19.9 | 17.9 | 17.6 | 17.3 | 179.2 | 155.0 | 129.7 |
| *Subtotal* | *43.8* | *29.9* | *36.8* | *37.6* | *38.5* | *368.4* | *329.9* | *289.2* |
| Total | 59.2 | 40.4 | 49.7 | 50.7 | 52.1 | 497.7 | 445.7 | 390.7 |

*Administrative and information technology (IT) startup.* Compliance with these health and safety provisions will require States to incur administrative costs and develop or expand their information technology systems and capacity. Given that there will be significant variation at the State level on these costs, rather than attempt to quantify the related costs for each provision, we applied a percentage of the total health and safety money costs (minus the hotline for parental complaints) to estimate the costs of both administrative and IT/infrastructure costs. This analysis assumes 5 percent for administrative costs and an additional 5 percent for IT/Infrastructure costs. Since the annualized amount of all total health and safety money costs (minus the hotline for parental complaint) is approximately $165 million, five percent of that would be approximately $8.3 million per year (using a 3% discount rate).

Our 5 percent estimate for Administrative costs is based on Sec. 658E(c)(3)(C) of the Act, which places a 5 percent limit on administrative costs, ''Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter.''

The 5 percent estimate for IT/Infrastructure costs is based on OCC's expenditure data (ACF–696), which shows that Lead Agencies reported using a total of $68 million or approximately 1 percent of expenditures on computer information systems. Given the expected increase in IT costs associated with implementing the new rule, including possible costs associated with consultation, we increased that to 5 percent, which we considered a reasonable estimate given current expenditure levels.

The estimated present value cost of both administrative costs and IT/Infrastructure costs over the 10 year period examined in this rule, using a 3% discount rate, is $72.4 million for each. This amounts to an annualized cost of approximately $8.3 million each for administrative and IT/Infrastructure costs.

TABLE 6—ESTIMATED IMPACTS OF HEALTH AND SAFETY PROVISIONS

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs ($ in millions)** | | | | | | | | |
| Monitoring | 125.9 | 157.0 | 141.5 | 139.5 | 136.7 | 1,414.7 | 1,225.3 | 1,027.2 |
| Background Checks | 9.0 | 18.9 | 13.9 | 13.6 | 13.3 | 139.2 | 119.7 | 99.6 |
| Training | 15.4 | 10.5 | 12.9 | 13.2 | 13.5 | 129.3 | 115.8 | 101.5 |
| Admin | 7.5 | 9.2 | 8.3 | 8.2 | 8.1 | 83.4 | 72.4 | 60.9 |
| IT & Infrastructure | 7.5 | 9.2 | 8.3 | 8.2 | 8.1 | 83.4 | 72.4 | 60.9 |
| *Subtotal* | *165.3* | *205.0* | 185.1 | *182.9* | *179.9* | 1,851.6 | *1,606.8* | *1,351.1* |
| **Opportunity Cost ($ in millions)** | | | | | | | | |
| Monitoring | 8.7 | 10.9 | 9.8 | 9.6 | 9.4 | 97.7 | 84.6 | 70.9 |
| Background Checks | 6.3 | 7.9 | 7.1 | 7.1 | 7.1 | 71.1 | 62.4 | 53.3 |
| Training | 43.8 | 29.9 | 36.8 | 37.6 | 38.5 | 368.4 | 330.0 | 289.3 |
| *Subtotal* | *58.8* | *48.7* | *53.7* | *54.3* | *55.0* | *537.2* | *477.0* | *413.5* |
| Total | 224.1 | 253.7 | 238.8 | 237.2 | 234.9 | 2,388.8 | 2,083.8 | 1,764.6 |

2. Consumer Education Provisions

The CCDBG Act and the proposed rule includes several provisions related to improving transparency for parents and helping them to make better informed child care choices. Some of these provisions may require new investments by the States, Territories, and Tribes, including a consumer education Web site at § 98.33(a) and a consumer statement at § 98.33(d). Greater discussion of each of the provisions can be found at Subpart D. All costs associated with implementation of consumer education requirements are considered money costs (as opposed to opportunity costs) since they would involve an actual money transaction.

*Consumer education Web site.* The proposed rule, per the CCDBG Act, would amend paragraph (a) of § 98.33 to require Lead Agencies to create a consumer-friendly and easily accessible Web site as part of their consumer education activities. The Web site must at a minimum include five main components: (1) Lead Agency policies and procedures, (2) provider-specific information for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), (3) aggregate number of deaths, serious injuries, and instances of substantiated child abuse in child care settings each year for eligible providers, (4) referral to local child care resource and referral organizations, and (5) directions on how parents can contact the Lead Agency, or its designee, and other programs to help the parent understand information included on the Web site. We established our estimate based on current State practice and the market price of building a Web site that fulfills the requirements in this proposed rule.

ACF conducted a comprehensive review of State Web sites and found 35 States and Territories already have Web sites that meet at least some of the new requirements. Based on an analysis of current State consumer education Web sites, we assumed that any of the States that did not meet any of the new requirements would have all new costs. For States that met some of the requirements, we determined the percentage of work needed for the Web site to meet the requirements and multiplied the percentage of work needed by the cost estimate for building

and implementing a consumer education Web site. Components of a Web site that we looked for and included in our estimate were: The scope of the Web site in terms of which providers were included (*e.g.,* whether it included licensed providers and unlicensed CCDF providers); health and safety requirements; posting the date of last inspection, including any history of violations or compliance actions taken against a provider; posting provider-specific information about the number of serious injuries and fatalities that occurred while in their care; information on the quality of the provider; and aggregate data on number of fatalities, serious injuries, and substantiated cases of child abuse that occurred in child care. From this review, we determined the amount of work needed for all States and Territories to build and implement the requirements of the consumer education Web site. We also consulted several organizations familiar with building Web sites to establish an upper and lower bounds for the estimate based on the proposed rule that covered the full range of implementation, from planning and initial set-up to beta testing. The upper and lower bound estimates include features that would make the Web site more user-friendly but may not be included in the proposed rule, including advanced search functions, such as a map feature, to make it easier for parents to find care.

Building and implementing a new Web site would require some start-up costs, so the cumulative estimated costs are higher during the initial five-year phase-in period. We established a lower bound estimate to include the web developer costs of planning, creating supporting documentation, site and infrastructure set-up, static page creation, initial data imports, the creation of basic and advanced search functions and data management systems, and testing. The upper bound adds development and improvement activities to modernize the Web site as technologies change. Ongoing annual costs include quality control and maintenance, providing customer support, and monthly data updates to the Web site. All of these estimates include salaries and overhead for the Web site developers and staff, weighted by the number of CCDF providers in each State.

Based on our research, we used the same salary and overhead information ($67,000 for line staff) for all States. However, we believe that there will be different levels of effort depending on the number of providers in a State, so we assumed different FTEs based on the total number of child care providers in a State: States with more than 8,000 providers (3.0 FTE), states with between 3,000 and 8,000 providers (2.50 FTE), and States with less than 3,000 providers (2.0 FTE). 11 States had over 8,000 providers; 16 States and Territories had between 3,000 and 8,000 providers; and 29 States and Territories had fewer than 3,000 providers.

Over the five-year phase-in period, we estimated an average annual money cost (estimated using a 3% discount rate) for just the building and maintenance of Web sites of $12.8 million and ongoing money costs of $11.8 million annually.

The proposed consumer education Web site would require a list of available providers and provider-specific monitoring reports, including any corrective actions taken. The costs associated with collecting the information necessary to provide this information on the Web site is included in other parts of this RIA. For example, this RIA includes an estimate for the cost of implementing proposed monitoring and inspection requirements. There may also be effort associated with translating information from monitoring and inspection reports for an online format. However, since the monitoring cost assumes the full salary for monitoring staff and supervisors, we believe that it is reasonable to assume that the duties of these employees would include processing licensing information/findings.

However, one of the proposed components of the consumer education Web site at § 98.33(a)(2)(ii) is information about the quality of the provider as determined by the State through a quality rating and improvement system (QRIS) or other transparent system of quality indicators, if the information is available for the provider. For Lead Agencies that do not currently have a means for differentiating quality of care, there may be new money costs associated with creating the system of quality indicators necessary to obtain quality information on providers. Therefore, we are incorporating the cost of implementing a system of quality indicators into the cost estimate for the consumer education Web site.

In order to estimate the costs of implementing the transparent system of quality indicators for the consumer education Web site, we modeled a sample system of quality indicators using the QRIS Cost Estimation Model (developed by the National Center on Child Care Quality Improvement funded by ACF). Costs were associated with the following components included in the cost estimation model: Quality assessment, monitoring and administration, and data and other systems administration. For each State, we identified the components of the sample system of quality indicators that each individual State or territory was missing. Costs were applied only in the areas that were lacking for States and territories with partial compliance. States and territories not meeting any of the components of the model had all new costs associated with each component. Using information from the CCDF FY 2014–2015 State Plans and the National Center on Child Care Quality Improvement, ACF determined which States had a system for differentiating the quality of care available in the state, which States could then use to provide information on the consumer education Web site. In order for States to be considered as already meeting this requirement, the State needed to have reported having a means for measuring and differentiating quality between child care providers. ACF recommends this system be a QRIS that meets high quality benchmarks, but as this NPRM does not propose requiring a QRIS, we counted other systems of quality indicators, such as tiered reimbursement based on quality, as meeting the proposed components of the consumer Web site. More than 45 States have sufficient means for differentiating quality and therefore we assumed no cost for those States.

ACF estimates that during the five-year phase-in period the total national cost associated with implementing transparent systems of quality indicators has an average annual cost of $2.2 million. This estimate has been added to the cost of designing and implementing the consumer education Web site, with an estimated present value cost over the 10 year period examined in this rule, using a 3% discount rate, of $116.4 million, with an annualized cost of $13.3 million.

*Consumer statement.* The proposed rule at § 98.33(d) would require Lead Agencies to provide parents receiving CCDF subsidies with a consumer statement that includes information specific to the child care provider they select. The consumer statement must include health and safety, licensing or regulatory requirements met by the provider, the date the provider was last inspected, any history of violations, and any voluntary quality standards met by the provider. It also must disclose the number for the hotline for parents to submit complaints about child care providers, as well as contact information for local resource and referral agencies or other community-based supports that can assist parents in

finding and enrolling in quality child care.

The information included in the consumer statement overlaps with much of the information required on the consumer education Web site. In their FY 2014–2015 CCDF Plans, 42 States and Territories report using their Web sites to convey consumer education information to parents about how their child care certificate permits them to choose from a variety of child care categories. Since many States and Territories are already using their Web sites to make available provider-specific information, we assume they would use their Web sites to begin building consumer statements. We assumed the consumer education Web site already includes the majority of information required in the consumer statement, including, if available, information about provider quality. However, Lead Agencies may have costs to pay for updates to their Web sites, including compiling information on the hotline and creating printable forms for hard copies of the consumer statement, if desired. This estimate also takes into account the number of providers in each State or Territory. During the five-year phase-in period, we estimated an average annual cost of the consumer statement provisions to be approximately $1 million and an average ongoing cost of $775,000 annually.

TABLE 7—ESTIMATED IMPACTS OF CONSUMER EDUCATION PROVISIONS

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs ($ in millions)** | | | | | | | | |
| Consumer education website | 12.8 | 11.8 | 12.3 | 12.4 | 12.5 | 123.0 | 108.6 | 93.6 |
| Consumer statement | 1.0 | 0.8 | 0.9 | 0.9 | 0.9 | 8.8 | 7.8 | 6.8 |
| Total | 13.8 | 12.6 | 13.2 | 13.3 | 13.4 | 131.8 | 116.4 | 100.4 |

3. Increased Average Subsidy per Child

The reauthorized statute and this proposed rule include several policies aimed at increasing access to quality care for low-income children, as well as creating a fairer system for child care providers. As Lead Agencies implement these new policies, we expect that there will be an increase in the amount paid to child care providers, representing a budget impact on Lead Agencies. While we expect these changes to cause an increase in payments, we lack data on the amounts associated with each of these policies, and request comments about whether Lead Agencies expect these policies to cause an increase in the subsidy payment rates.

We expect the following policies and practices to impose budget impacts on Lead Agencies:

- Setting payment rates based on the most recent market rate survey and at least at a level to cover health, safety, and quality requirements in the NPRM, and that provide families receiving CCDF subsidies access to care of comparable quality to care available to families with incomes above 85 percent State Median Income. Lead Agencies must also take into consideration the cost of providing higher quality child care services (§ 98.45(f));
- Delinking provider payments from a child's occasional absences by either paying based on a child's enrollment, providing full payment if a child attends at least 85 percent of authorized time, or providing full payment if a child is absent for five or fewer days in a month (§ 98.45(m)(2)); and,
- Adopting the generally-accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time) and paying for mandatory fees that the provider charges to private-paying parents (§ 98.45(m)(3)).

Lead Agencies are required to implement each of these policies; however, several of them have a few options from which Lead Agencies may choose. We do not know which options Lead Agencies will choose, and therefore are not certain of which policies will impose budget impacts on which Lead Agencies. These impacts will also vary by Lead Agency depending on how many of the policies the Lead Agency adopted prior to this NPRM. We request comment on how Lead Agencies may choose to implement these different payment policies and practices.

Because of the multiple policy options available to Lead Agencies and limited data on the effects of individual policies, it is difficult to estimate new impacts associated with each policy listed. However, we recognize that implementing these new policies will impact Lead Agency budgets and contribute to an increase in the amount of cost per child of child care assistance per child. Therefore, despite our uncertainty regarding specific effects, we would be overlooking a potentially significant new impact if we did not include an analysis of payment policies and practices in this RIA.

These payment policies and practices will each have varying effects, but once they are put together, one likely outcome is an increase in the average annual subsidy amount per child. Therefore, in order to estimate the possible payment effects associated with these policies, we are bundling them together and estimating their total impact on the average annual subsidy per child. The actual impact will depend on how many of the policies the Lead Agency currently has in place and how the Lead Agency chooses to implement these new policies.

The average annual subsidy rate per child in FY 2013 was $4,735. This amount is the starting point for our estimate. The average annual subsidy rate per child has historically increased each year. Therefore, we have built in a 2.59% increase for each of the ten years included in this cost estimate. This increase represents the historical increases in the average annual subsidy per child that were used to estimate the rate at which the subsidy would increase without this NPRM.

This subsidy amount, including the increase that would be expected to happen regardless of reauthorization and this NPRM, provides the baseline for our ten year estimate. This average represents all settings, all types of care, all ages, and all localities, which masks great variation across the States/

Territories based on different costs of living or the higher costs associated with providing care to infants and toddlers. For example, the highest average annual subsidy per child paid by a State/Territory was $8,244 in FY 2013, while the lowest average annual subsidy per child paid by a State/Territory was $2,100. States/Territories with subsidy payments substantially lower than the average subsidy payment are likely to see higher increases in the subsidy rate than States/Territories with subsidy payments closer to the average.

To calculate the impacts, we estimated a phased-in increase in the average annual subsidy per child above the baseline, which includes the expected increase in the average annual subsidy per child regardless of this proposed rule. We expect that there will be a phase-in of the subsidy increase as Lead Agencies phase-in the new policies in reauthorization and this NPRM. The phase-in is expected from FY 2016 to FY 2018, with the increase in the subsidy being $165 in FY 2016, $265 in FY 2017, and $515 in FY 2018. This represents the increase on top of the regular annual average subsidy per child, and not the estimated subsidy itself. Following the new market rate survey or alternative methodology that may lead to setting higher payment rates, we estimate the subsidy would increase by $765 in FY 2019, and stay steady in FY 2020 and FY 2021. With the new market rate survey or alternative methodology in FY 2022, we expect an additional increase in the subsidy of $1,015, and estimate the subsidy will stay steady in FY 2023 and FY 2024.

These estimated increases to average annual subsidy are based on our assumptions about how quickly Lead Agencies may implement the policies, and the reality that the average annual subsidy will likely grow incrementally. Because of limited data, we chose to estimate a modest increase to the average annual subsidy per child. However, given the uncertainty regarding exactly how much the average annual subsidy per child may increase each year, we request comments and estimates regarding these new costs and how they may impact the subsidy rate in each State/Territory.

The estimated increases included in this RIA are not recommendations for what ACF believes to be appropriate levels to set rates in States/Territories and should not be considered as the amount needed to provide an acceptable level of health and safety, or to provide high quality care. As mentioned earlier in this NPRM, ACF is very concerned about States'/Territories' current low payment rates. As stated earlier in this NPRM, ACF continues to stand behind the 75th percentile of current market rates, which remains an important benchmark for gauging equal access for children receiving CCDF-funded child care.

The per child calculations used here are not recommendations for a per child subsidy, but rather represent an estimated cost of increasing the current national average annual subsidy per child as a result of these new policies. This is likely an underestimate of the payment amounts necessary to raise provider payment rates to a level that supports access to high quality child care for low-income children. We welcome comments on what provider payment rates may be necessary to support high quality child care.

To calculate the estimated total increase in the average annual subsidy per child and the impacts associated with the new payment policies in this NPRM, we multiplied the estimated increase in the average annual subsidy per child (described above) by the FY 2013 CCDF caseload of 1.4 million children. Based on this formula, we estimate the average annual impact to be $437 million during the initial five year period, with the estimated present value over the full ten year period of $844.9 million (estimated using a 3% discount rate).

As discussed above, there is a high level of uncertainty associated with this estimate. However, not including an estimate of the Lead Agency budget impacts associated with these policies would overlook significant policies in the legislation and this NPRM and fail to give an accurate picture of the costs associated with them. We appreciate any comments that provide additional information about State/Territory practice and costs associated with the proposed policies that could help to refine this analysis.

OMB Circular A–4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. The increases in subsidy payments just described impose budget impacts on Lead Agencies, but from a society-wide perspective, they only generate costs to the extent that they lead to new resources being devoted to quantity or quality of child care. Although we acknowledge this potential increase in resource use, for the technical purposes of this regulatory impact analysis, we will refer to the estimated subsidy payment impacts as transfers from Lead Agencies to entities bearing the existing cost burden (mostly child care providers who typically have low earnings), rather than societal costs.

*Supply building.* This estimate takes into account costs associated with developing the supply of child care, which may include financial incentives and the use of grants and contracts to stabilize and/or target the supply of child care. For the purposes of this analysis, we are estimating the cost of grants and contracts, because the proposed rule at § 98.16(i)(1) requires Lead Agencies to describe how they will address supply shortages through the use of grants or contracts in their CCDF Plans. The proposed rule at § 98.50(b)(3) requires States and Territories to use some grants or contracts to provide direct services based on consideration of supply shortages of high quality care. Based on the FY 2014–2015 CCDF Plans, we identified States and Territories that currently make some use of grants and contracts, and those that do not. If a State currently uses grants or contracts, the State is already in compliance, and there is no cost associated with implementing this provision. Seventeen States, two Territories, and the District of Columbia currently use grants or contracts for direct services. For States without grants or contracts, there are two administrative costs: (1) The cost of identifying or analyzing supply shortages; and (2) the cost of awarding, overseeing and monitoring the grants or contracts. The value of the subsidy is not included as a cost since, in the absence of grants or contracts, the services would have been delivered through an alternate mechanism (*e.g.,* certificates or vouchers). This value is more appropriately considered as a potential transfer. ACF has no information with which to calculate the value of potential transfers associated with the legislation and regulations. Building the supply of high quality care will require paying increased subsidy amounts, but this is addressed separately in the section above on *Increased Average Subsidy per Child.*

ACF estimated that money costs associated with implementing the provisions at §§ 98.16(i)(1) and 98.50(b)(3) are approximately $4.0 million on average over the phase-in period (which for this particular provision is three years, which is different than the phase-in period in the table below) and $7.0 million on average thereafter. During the phase-in period, we expect the costs of these provisions to depend on State assessment of supply gaps and costs associated with implementing the infrastructure necessary to manage the grants and contracts. As an ongoing cost, we

assumed that small States would have 50 contracted sites, medium States would have 100 contracted sites, and large States would have 150 contracted sites. The estimate also assumes identification or analysis of supply shortages is ongoing and occurs every two years. States have readily-available supply data from market rate surveys, child care resource and referral agencies, and other sources, so the cost of analysis is relatively low if done in-house using existing data.

While using grants and contracts can build supply by providing stable payment and practices, there are other methods for building the supply quality child care. These include funding for start-up costs and financial incentives via attractive subsidy rates and Lead Agencies will be encouraged to consider a range of options for addressing supply shortages in their State.

TABLE 8—ESTIMATED IMPACTS OF INCREASED SUBSIDY AND SUPPLY BUILDING

[$ in millions]

| | Phase-in annual average (years 1–5) | Ongoing annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Transfers from Lead Agencies to Child Care Providers ($ in millions)** | | | | | | | | |
| Increased Subsidy | 478.8 | 1,281.0 | 880.0 | 839.1 | 786.1 | 8,799.0 | 7,372.4 | 5,907.7 |
| **Money Costs ($ in millions)** | | | | | | | | |
| Supply Building | 5.1 | 6.8 | 6.0 | 5.8 | 5.7 | 59.5 | 51.3 | 42.9 |
| Total (Transfers and Costs) | 483.9 | 1,287.8 | 885.9 | 844.9 | 791.8 | 8,858.5 | 7,423.7 | 5,950.6 |

*B. Analysis of Benefits*

The changes made by the CCDBG Act and the proposed rule have three primary beneficiaries: Children in care funded by CCDF (currently 1.4 million), their families who need the assistance to work, pursue education or to go to school/training, and the roughly 415,000 child care providers that care for and educate these children. But the effect of these changes will go far beyond those children who directly participate in CCDF and will accrue benefits to children, families, and society at large. Many providers who serve children receiving CCDF subsidies also serve private-paying families, and all children in the care of these providers will be safer because of the new CCDF health and safety requirements. Further, the requirements for background checks and monitoring extend beyond just CCDF providers. The public at large also benefits when there is stable, high quality child care in cost savings due to greater family work stability; lower rates of child morbidity and injury; fewer special education placements and less need for remedial education; reduced juvenile delinquency; and higher school completion rates.

In 2012, approximately 60 percent of children age 5 and younger not enrolled in kindergarten were in at least one weekly non-parental care arrangement. (U.S. Department of Education, *Early Childhood Program Participation,* from the National Household Education Surveys Program of 2012, August 2013). We know that many child care arrangements are low quality and lack basic safeguards. A 2006 study conducted by the National Institute of Child Health and Development (NICHD) found that, ''most child care settings in the United States provide care that is ''fair'' (between ''poor'' and ''good'') and fewer than 10 percent of arrangements were rated as providing very high quality child care.'' (U.S. Department of Health and Human Services, National Institutes of Health, *Study of Early Child Care and Youth Development,* 2006) More recently, both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care settings. (HHS Office of the Inspector General, *Child Care and Development Fund: Monitoring of Licensed Child Care Providers,* OEI–07–10–00230, November 2013) (*Early Alert Memorandum Report: License-Exempt Child Care Providers in the Child Care and Development Fund Program,* HHS OIG, 2013). (Government Accountability Office, *Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities,* GAO–11–757, 2011) We also know from a growing body of research that in addition to the importance of quality to health and safety on a child's immediate and long term future health, quality is important for children's long term success in school and in life (as described elsewhere in this section).

While there are many benefits to children, families, providers and society from affordable, higher quality child care, there are challenges to quantifying their impact. CCDF provides flexibility to States, Territories, and Tribes in setting health and safety standards, eligibility, payment rates, and quality improvements. As a result, there is much variation in CCDF programs across States. Therefore, we do not have a strong basis for estimating the magnitude of the benefits of the CCDBG Act and the proposed rule in dollar amounts. While we are not quantifying benefits in this analysis, we welcome comment on ways to measure the benefit that the Act and the proposed rule will have on children, families, child care providers, and the public.

As shown in the discussion below, there is evidence that the CCDBG Act and proposed rule's improvements to health and safety, quality of children's experiences, and stability of assistance for parents and providers will have a significant positive return on the public's investment in child care. We discuss these benefits as ''packages'' of improvements: (1) Health and safety; (2) consumer information and education; (3) family work stability; (4) child outcomes; and (5) provider stability.

1. Health and Safety

One of the most substantial changes made by this proposed rule is a package of health and safety improvements, including health and safety requirements in specific topic areas, health and safety training, background checks, and monitoring and pre-inspections.

*Health and Safety Requirements.* The CCDBG Act requires Lead Agencies to set requirements in baseline areas of

health and safety, such as CPR and first aid, and safe sleeping practices for infants. At their core, health and safety standards in this proposed rule are intended to make child care safer and thus lower the risk of harm to children.

The CCDBG Act and the proposed rule are expected to lead to a reduction in the risk of child morbidity and injuries in child care. The most recent study on fatalities occurring in child care found 1,326 child deaths from 1985 through 2003. The study also showed variation in fatality rates based on strength of licensing requirements and suggested that licensing not only raises standards of quality, but serves as an important mechanism for identifying high-risk facilities that pose the greatest risk to child safety. (Dreby, J., Wrigley, J., Fatalities and the Organization of Child Care in the United States, 1985–2003, American Sociological Review, 2005) ACF collects data about the number of child care injuries and fatalities through the Quality Performance Report (QPR) in the CCDF Plan (ACF–118). In 2014, there were 93 child deaths in child care based on data reported by 50 States and Territories. The number of serious injuries to children in child care in 2014 was 11,047, with 35 States and Territories reporting.

Various media outlets have also conducted investigations of unsafe child care and deaths of children. In Minnesota, the Star Tribune in Minneapolis reported in a series of articles in 2012 that the number of children dying in child care facilities ''had risen sharply in the past five years, from incidents that include asphyxia, sudden infant death syndrome (SIDS) and unexplained causes.'' The report found 51 children died in Minnesota over the five-year period. (Star Tribune, *The Day Care Threat,* 2012) In Indiana, an investigation by the Indianapolis Star found, ''21 deaths at Indiana day cares from 2009 to June 2013, and 10 more child deaths have since been reported.'' (Indianapolis Star, *How Safe are Indiana Day Cares,* 2013) Indiana recently passed legislation that raises standards for child care programs. In Kansas, the high incidence of fatalities prompted the Kansas legislature to implement new procedures to guide investigations of serious injury or sudden, possibly unexplained deaths in child care, particularly infants. (Kansas Blue Ribbon Panel on Infant Mortality, *Road Map for Preventing Infant Mortality in Kansas,* 2011) The case of Lexie Engelman was a rally cry of advocates for better health and safety requirements. The 13-month old child suffered fatal injuries in a registered family child care home in 2004 due to lack of supervision. As a result, Kansas enacted new protections such as requiring all providers to be licensed and regularly inspected, training for providers, and new rules of supervision. Since implementing ''Lexie's Law,'' Kansas jumped from 46th to 3rd in the Child Care Aware of America annual ranking of State policies, and State officials have been able to use data to target regulatory action and provide information to the public in a much more timely way. State officials report that more stringent regulations have greatly enhanced State capacity to protect children.

With respect to morbidity, 20 percent of SIDS deaths occur while children are in child care. (Moon, R.Y., Sprague, B.M., and Patel, K.M., *Stable Prevalence but Changing Risk Factors for Sudden Infant Death Syndrome in Child Care Settings in 2001,* 2005) Many of these deaths are preventable by safe sleep practices. Local review teams in one State found that 83 percent of SIDS deaths could have been prevented. (Arizona Child Fatality Review Program, *Twentieth Annual Report,* November 2013) As part of health and safety training requirements, the CCDBG Act and proposed rule require that caregivers, teachers, and directors serving CCDF children receive training in safe sleep practices. According to the FY 2014–2015 CCDF Plans, approximately 27 States and Territories already have safe sleep and SIDS prevention pre-service training requirements for child care centers, and 26 States and Territories have SIDS prevention pre-service training requirements for family child care homes. Requiring the remaining States and Territories to have safe sleep training for child care providers will likely help change provider practice and lower the risk of SIDS-related deaths for infants.

*Health and Safety Training.* The proposed rule codifies the requirement of the CCDBG Act that CCDF caregivers, teachers, and directors undergo a pre-service or orientation training, as well as receive ongoing training, in the health and safety standards. The proposed rule also adds child development as a required topic for required training, consistent with the professional development and training provisions of the law. Knowledge of child development is important to understanding and implementing safety and health practices and conditions. Training in health and safety standards, particularly prevention of SIDS, should reduce child fatalities and injuries in child care. For example, the rate of SIDS in the U.S. has been reduced by more than 50 percent since the campaign in the early 1990s by the American Academy of Pediatrics on safe sleep practices with infants. (National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development. Back to Sleep Public Education Campaign) Only 24 States currently require pre-service or orientation training to include SIDS prevention.

*Background Checks.* The new background check requirements are expected to prevent individuals with criminal records from working for child care providers. Data from two States show that 5 to 10 percent and 3 to 4 percent, respectively, of background checks result in criminal record ''hits'' that disqualify the provider. To the extent that these individuals would have otherwise worked in child care settings, thereby increasing the risk of maltreatment or injury to a child, we assume that background checks yield a positive benefit for child health and safety. That is, background checks serve a real purpose in preventing a small proportion of potentially dangerous individuals from providing care to children.

*Monitoring.* The CCDBG Act and this proposed rule require States to conduct monitoring visits for all child care providers, including license-exempt providers (except, at the Lead Agency option, those that serve relatives). Licensed providers must receive a pre-licensure inspection and annual, unannounced inspections. License-exempt CCDF providers (except at the Lead Agency option those that serve relatives) must have annual inspections for health, safety and fire standards. Currently, 15 States do not conduct a licensing pre-inspection visit of family child care; 12 States do not conduct pre-inspections on group homes; and one State does not pre-inspect child care centers. Nineteen States do not inspect family child care providers each year, 22 States do not conduct annual visits for group homes, and 10 States do not visit child care centers on an annual basis. It is reasonable to expect that more stringent health and safety standards and their enforcement through pre-inspections and annual licensing inspections will result in fewer serious injuries and child fatalities in child care.

*Child Abuse Reporting and Training.* Nationally, there are approximately 12.5 million children in child care settings. With a rate of over 10 children per thousand being victims of substantiated abuse or neglect, there are over 100,000 children estimated to be victims of

abuse in child care settings. This proposed rule contains a number of provisions designed to prevent child abuse and neglect. Under the CCDBG Act and this proposed rule, Lead Agencies must certify that child care caregivers, teachers, and directors comply with child abuse reporting requirements of the Child Abuse Prevention and Treatment Act. The proposed rule also requires training on ''recognition and reporting of suspected child abuse and neglect'', which would equip caregivers, teachers, and directors with training necessary to report potential abuse and neglect. The rule also requires training in child development for CCDF caregivers, teachers, and directors. From a protection standpoint, research has shown that improving parental understanding of child development reduces the incidence of child abuse and neglect cases. (Daro, D. and McCurdy, K., *Preventing Child Abuse and Neglect: Programmatic Interventions,* Child Welfare, 1994) (Reppucci, N., Britner, P., and Woodard, J., *Preventing Child Abuse and Neglect Through Parent Education,* Child Welfare, 1997) To the extent that this training would have a similar effect on caregivers, teachers, and directors of CCDF providers, we expect there to be some decrease in child abuse within child care settings.

In addition to the tragedy of injuries and fatalities in child care, there are tangible costs such as medical care, a parent's absence from work to tend to an injured child, the loss for the family, and loss of lifetime potential earnings for society. According to the 2014 Quality Performance Report, there were 11,407 injuries (defined as needing professional medical attention) and 93 fatalities reported in child care. We believe these numbers are lower than the actual incidences because some Lead Agencies have difficulty accessing this information collected by other agencies.

2. Consumer Information and Education

As one research study said, ''Child care markets would work more effectively if parents had access to more information about program quality and help finding a suitable situation. This would cut the cost of searching for care and increase the likelihood of more comparison shopping by parents.'' (Helburn, S. and Bergmann, B., *America's Child Care Problem: The Way Out,* 2002) The CCDBG Act and proposed rule require the Lead Agency to provide consumer education to parents of eligible children, the general public, and child care providers. This includes a consumer-friendly and easily accessible Web site about relevant Lead Agency processes and provider-specific information. The CCDBG Act and the proposed rule also require a range of information for parents, including the availability of child care services and other assistance for which they might be eligible, best practices relating to child development, how to access developmental screening, and policies on social-emotional behavioral health and expulsion. The proposed rule also requires a consumer statement for families receiving subsidies. Taken together, these provisions should improve parents' ability to make fully informed choices about child care arrangements.

The consumer education package also provides benefits to parents in regards to the value of their time. Most parents want to know about health and safety records, licensing compliance, and quality ratings when deciding on a child care provider. However, this research can be very time consuming because of barriers to accessing the information needed to make a fully informed decision. For example, while all Lead Agencies must make substantiated complaints available to the public, some States previously required that people go to a government office during regular business hours to access these records. It is not reasonable to expect a parent who is working to take that time to navigate these bureaucratic requirements.

The proposed rule's package of consumer education provisions, including the consumer-friendly Web site, addresses the aforementioned information barrier by helping to provide parents with important resources in a manner that fits their needs.

3. Family Work Stability/Improved Labor Force Productivity

The CCDBG Act and the proposed rule promote continuity of care in the CCDF program through family-friendly policies—it requires Lead Agencies to implement minimum 12-month eligibility redetermination periods, ensures that parents who lose their jobs do not immediately lose their subsidy, minimizes requirements for families to report changes in circumstances, and provides more flexibility to serve vulnerable populations, such as children experiencing homelessness, without regard to income or work requirements.

*Benefits to employers.* There is a strong relationship between the stability of child care and the stability of the workforce for employers. The cost to businesses of employee absenteeism due to disruptions in child care is estimated to be $3 billion annually. (Shellenback, K., *Child Care & Parent Productivity: Making the Business Case,* Cornell University: Ithaca, NY. 2004) The eligibility provisions of the CCDBG Act and this proposed rule will allow parents to work for longer stretches without interruptions to their child care subsidy, and will benefit parents by limiting disruptions to their child care arrangements. These policies in turn also provide benefits to employers seeking to maintain a stable workforce.

Studies show a relationship between child care instability and employers' dependability of a stable workforce. In one study, 54 percent of employers reported that child care services had a positive impact on employee absenteeism, reducing missed workdays by as much as 20 to 30 percent. (Friedman, D.E., *Child Care for Employees' Kids,* Harvard Business Review, 1986) In addition, 63 percent of employees surveyed at American Business Collaboration (ABC) companies in 10 communities across the country reported improved productivity when a parent was using high quality dependent care, and 40 percent of employees reporting spending less time worrying about their families, 35 percent were better able to concentrate on work, and 30 percent had to leave work less often to deal with family situations. (Abt Associates, *National Report on Work and Family,* 2000) A 2010 study examined the impact of child care subsidy receipt by New York City employees and employees of subcontracted agencies in the health care sector. The study looked at the variables of attendance, work performance, productivity, and retention of employees. Results showed that subsidy receipt had a positive impact on work performance; whereas, the loss of the subsidy had a negative effect. After the subsidy period ended and parents were faced with less stable child care arrangements, participants self-reported a decrease in their work performance and in their work productivity coupled with an increase in tardiness and work/family conflict. (Wagner, K.C., *Working Parents for a Working New York Study,* Cornell and New York Child Care Coalition, 2010)

*Benefits to parents.* The lack of reliable and dependable child care arrangements negatively affects parents' income, hours worked, work performance, and advancement opportunities. To the extent that these new requirements will reduce barriers to retaining child care assistance for CCDF families, the new rule will

mitigate some of the disruption currently experienced by low-income families. Studies have shown that many parents face child care issues that can disrupt work, impacting both the parent and their employers. One researcher, using data from the Survey of Income and Program Participation (SIPP), found that 9–12 percent of families reported losing work hours as a result of child care disruptions. (Boushey, H., *Who Cares? The Child Care Choices of Working Mothers, Center for Economic and Policy Research Data,* 2003) Another study showed that 29 percent of parents experienced a breakdown in their child care arrangement in the last 3 months. (Bond, J., Galinsky, E., and Swanberg, J., *The 1997 National Study of the Changing Workforce,* 1998)

These child care disruptions can negatively impact parental employment. For example, a survey of over 200 mothers working in the restaurant industry in five cities: Chicago, Washington, DC, Detroit, Los Angeles, and New York found that instability in child care arrangements negatively affected their ability to work desirable shifts or to move into better paying positions at the restaurant. More than half of the mothers surveyed lacked alternative child care options, which could lead to being late or having to leave early from work if there was a problem with their child care. (Restaurant Opportunities Centers United, et al., *The Third Shift: Child Care Needs And Access For Working Mothers In Restaurants,* Restaurant Opportunities Centers United, 2013)

4. Child Outcomes and Human Capital Development

Beyond implementing health and safety standards, the CCDBG Act states that two of the purposes of the grants are improving child development of participating children and increasing the number and percentage of low-income children in high-quality child care settings. This proposed rule places significant emphasis on policies that support those goals.

*Child care continuity.* The eligibility and redetermination provisions benefit children as well as parents and employers. Continuity in child care arrangements can have a positive impact on a child's cognitive and socio-emotional development. (Raikes, H. *Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting,* Young Children 51, no. 5, 1996) Young children need to have secure relationships with their caregivers in order to thrive. (Schumacher, R. and Hoffmann, E., *Continuity of Care: Charting Progress for Babies in Child Care Research-Based Rationale,* 2008) Children with fewer changes in child care arrangements are less likely to exhibit behavior problems. (de Schipper, J.C., Van Ijzendoorn, M. & Tavecchio, L., *Stability in Center Day Care: Relations with Children's Well-being and Problem Behavior in Day Care,* Social Development, 2004) Conversely, larger numbers of changes have been linked to less outgoing and more aggressive behaviors among four- and five-year-old children. (Howes, C. & Hamilton, *C.E., Children's Relationships with Caregivers: Mothers and Child Care Teachers,* Child Development, 1992) Continuity of care policies support children's ability to develop nurturing, responsive, and continuous relationships with their caregivers. For school-age children, continuity of care is important because it provides additional exposure to programming that can lead to improved school attendance and academic outcomes. (Welsh, M. Russell, C., Willimans, I., *Promoting Learning and School Attendance through After-School Programs,* Policy Studies Associates, 2002.)

*Child care quality beyond health and safety.* Health and safety form the foundation of quality but are not sufficient for high quality development and learning experiences. When children have high quality early care and education, there are benefits to the child and to society. (Yoshikawa, H., et al., *Investing in Our Future: The Evidence Base on Preschool Education,* 2013) The North Carolina Abecedarian Project demonstrated both categories of benefits. The Project enrolled very low-income children from infancy to kindergarten in full day, full year child care with high quality staff, environments, and curricula. A longitudinal study following them through age 21 found significant returns on the investment in terms, such as greater school readiness that led to fewer special education and remedial education placements, higher rates of high school completion and jobs, fewer teen pregnancies, and lower rates of juvenile delinquency. (Masse, Leonard N. and Barnett, Steven W., *A Benefit Cost Analysis of the Abecedarian Early Childhood Intervention,* National Institute for Early Education Research; New Brunswick, NJ). Other cost-benefit analyses of other publicly funded preschool programs with similarly high quality standards, such as the Chicago Child Parent Centers, demonstrated a high return to society on the public investment. (''Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers.'' Educational Evaluation and Policy Analysis, 24(4): 267–303.)

Recognizing the importance of quality as well as access, the CCDBG Act and this proposed rule promote efforts to improve the quality of child care. Chief among these changes is the increased portion of the grant that a Lead Agency must use, at a minimum, for quality improvements. The reauthorized Act increases the prior minimum four percent quality spending requirement to nine percent over time. It also requires States to invest in quality by spending an additional 3 percent for infant and toddler quality. States use the quality dollars for a range of activities that benefit children and providers assisted with CCDF funds and for early childhood systems as a whole, such as State early learning guidelines, professional development, technical assistance such as coaching and mentoring as part of the quality rating and improvement system, scholarships for postsecondary education, and upgrades to materials and equipment.

A critical element in the quality of child care is the knowledge and skill of the child care workforce. The CCDBG Act and the proposed rule emphasize the importance of States creating and supporting a progression of professional development, starting with pre-service, and which may include postsecondary education. Quality professional development is critical to creating a workforce that can support children's readiness for success in school and in later years.

States have a variety of ways to build the supply of high quality care including financial incentives and the use of grants and contracts. The CCDBG Act requires the Plan to provide assurances that parents of eligible children who receive or are offered child care assistance are given the option of enrolling with a provider that has a grant or contract or a child care certificate. Without limiting or discouraging the use of certificates to provide assistance to families, the proposed rule does note the role that grants or contracts can play in building the supply and quality of child care, particularly in underserved areas and for special populations. Currently 20 States are using grants or contracts along with certificates as part of a mixed funding system. Some provide grants or contracts to increase the supply of providers serving children with special needs, infants and toddlers, school-age children, or underserved geographic areas. Other States are providing grants or contracts to providers that meet and sustain higher standards of quality.

As detailed above, there is a growing amount of evidence and recognition that children who experience high quality early childhood programs are more likely to be better prepared in language, literacy, math and social skills when they enter school, and that these may have lasting positive impacts through adulthood. Because of the strong relationship between early experiences and later success, investments in improving the quality of early childhood and before- and after-school programs can pay large dividends.

5. Provider Stability

The CCDBG Act and proposed rule include provisions to strengthen the stability of providers serving CCDF-assisted children. Studies that have interviewed child care providers participating in the subsidy system have shown the importance of policies that improve and stabilize payments to the providers. (Sandstrom, H, Grazi, J., and Henly, J.R., *Clients' Recommendations for Improving the Child Care Subsidy Program,* Urban Institute: Washington, DC, 2015; Adams, G., Snyder, Katherine, and Tout, Kathryn, *Essential But Often Ignored: Child care providers in the subsidy system,* Urban Institute: Washington, DC 2003; Oliveira, Peg, The Child Care Subsidy Program Policy and Practice: *Connecticut Child Care Providers Identify the Problems,* Connecticut Voices for Children, 2006)

In addition to rates that reflect the cost of providing quality services, the manner in which providers are paid is important to the stability of the child care industry. Provider instability has a domino effect that can lead to parent employment instability, an outcome that undercuts the CCDBG Act's core principle of ensuring that CCDF children have equal access to child care that is comparable to non-CCDF families.

The CCDBG Act and the proposed rule require Lead Agencies to pay providers in a timely manner based on generally accepted payment practices for non-CCDF providers. Lead Agencies also must de-link provider payments from children's absences to the extent practicable. Child care providers have many fixed costs, such as salaries, utilities, rent or mortgage.

Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the full payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research has also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies. Thus, lack of timely payments and rules on payments that lead to disincentives to taking children with chronic illnesses or other reasons for absences undercut the equal access provision. By addressing these issues, these provisions of the law and proposed rule will provide increased stability and benefits for CCDF providers and the families they serve.

*Market Rate or Alternative Methodology.* The child care market often does not reflect the actual costs of providing child care, let alone the higher costs of quality child care. Financial constraints of low-income parents prevent child care providers from setting their prices to fully cover the cost of care (National Women's Law Center, *Building Blocks: State Child Care Assistance Policies,* 2015; Child Care Aware, *Parents and the High Cost of Child Care,* 2014. Currently, relative to the cost of providing quality care, CCDF subsidy payment rates are low in many States.

A report from the National Women's Law Center on State subsidy policies states that, ''only one state had reimbursement rates at the federally recommended level in 2014, a slight decrease from the three states with rates at the recommended level in 2013, and a significant decrease from the twenty-two states with rates at the recommended level in 2001. Thirty-seven States had higher reimbursement rates for higher-quality providers in 2014—an increase from thirty-three states in 2013. However, in more than three-quarters of these states, even the higher rates were below the federally recommended level in 2014.'' (Turning the Corner: State Child Care Policies 2014. Schulman, K. and Blank, H. National Women's Law Center, Washington, DC 2014) The CCDBG Act and the proposed rule require Lead Agencies to set provider payment rates based on the current, valid market rate survey or alternative methodology. To allow for equal access, the rule proposes that Lead Agencies set base payment rates sufficient to support implementation of the health, safety and quality requirements in the NPRM. Establishing base rates at these levels is important to ensure that providers have the resources they need to meet minimum requirements and that providers are not discouraged from serving CCDF children. With subsidy payments higher than the aforementioned base rate, providers can exceed the minimum requirements of health and safety and quality. In doing so, more providers will be able to serve CCDF-assisted children and more quality providers may decide to participate in the subsidy system—giving parents more choices for their children's care. Currently there has been a downward trend in the number of CCDF providers, and providing for a stronger base rate will help mitigate this effect.

*C. Distributional Effects*

As part of our regulatory analysis, we considered whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. In order to implement the requirements of the CCDBG Act and the NPRM, States may have to make key decisions about the allocation of resources, and some may shift priorities during the start-up phase and possibly continuing in later years once the State is fully implementing these requirements. The true impact partially depends on the overall funding level. The President's FY2016 Budget request includes additional funding to help States implement the policies required by the reauthorized CCDBG Act and this proposed rule, as well as significant new resources across a ten year period to expand access to child care assistance for all eligible families with children under age four years of age. If funding increases sufficiently, both quality and access could be improved.

While, depending on State behavior, there may be some distributional effect related to any cost, below is a discussion of two policy areas that represent specific distributional effects. The first—changes to subsidy policy required by the CCDBG Act—may result (depending on how the State chooses to implement the policy) in families receiving subsidies for a longer period of time, while other families may not be able to access subsidies (absent an increase in funding for the CCDF program). The second area—increased statutory quality spending requirements—may result in a change in which families receive benefits, or how they receive them, by shifting resources away from direct services to quality spending.

*Minimum 12-month eligibility and related provisions.* In order to reduce administrative burden and to improve the stability and continuity of care in the CCDF program, the CCDBG Act and this proposed rule at §§ 98.20 and 98.21 require Lead Agencies to adopt a number of eligibility policies, including

a 12-month minimum period for families to recertify their eligibility. This package of eligibility policies will allow families to maintain their eligibility regardless of temporary changes in work or training/education status or income changes (as long as income remains below 85% of State Median Income). Subsidy receipt is also predictive of more stable child care arrangements. (Brooks, et. al., Impacts of child care subsidies on family and child well-being, Early Childhood Research Quarterly, 2002) Stability of child care arrangements can affect children's healthy development, especially for vulnerable children who may be at special risk of poor developmental outcomes. (Adams, G., and Rohacek, M., *Child Care Instability: Definitions, Context and Policy Implications,* Urban Institute, 2010) Prior to reauthorization, about half the States had eligibility periods less than 12 months—typically providing only six months of eligibility—and families churned on and off the caseload.

Based on qualitative research and discussions with CCDF participants, we expect that longer eligibility periods, and the related policies in the Act and this rule, will increase the average length of time that participating families receive child care subsidies. As part of this RIA, we used CCDF administrative data to model the policy change in the Act and proposed rule wherein all States would have a minimum of 12-month eligibility periods, to predict whether CCDF families would have longer participation durations and whether there would be any impact on the unduplicated number of families receiving CCDF assistance. The calculations in this estimate are informed by a demonstration project that randomly assigned working Illinois families with moderate incomes (*i.e.,* above the normal eligibility thresholds) to one of three groups. (Michalopoulos, C., Lundquist, E., and Castells, N., *The Effects of Child Care Subsidies for Moderate Income Families in Cook County, Illinois,* MDRC, 2010) Although two of the three groups were both eligible for child care subsidies, one of the groups required recertification every six-months and the other required recertification every 12-months. Over a 24-month follow-up period, the families assigned to 12-month recertification periods received child care subsidies an average of 2.5 months more than families assigned to 6-month recertification periods.

We also examined a ''natural experiment'' in Georgia, which changed its recertification period from six months to 12 months in April 2009. A preliminary analysis found that families had longer spell lengths after the policy change than families that entered care before the policy change. Although it is uncertain what the driving factor for this was, these findings from Georgia support the hypothesis that longer recertification periods increase the number of months that recipient families participate in the program.

Assuming that States will maintain their average monthly caseloads once they implement the 12-month recertification periods, but will serve fewer unique children over that time period because of longer subsidy participation durations, we estimated the number of families that could be impacted at current funding levels. Decreased churn would not decrease the amount of assistance given, but may result in a decrease in the total number of families served over the course of a given year. We used disaggregated CCDF administrative data from FY 2010 (to determine the ratio between unique annual counts and average monthly caseloads) and average monthly caseload totals from FY 2012 (which showed 609,800 children being served in an annual month in the 25 States with eligibility periods less than 12 months). With this data, we estimated the unique caseload size of each State in FY 2012, which is the last year for which we have caseload estimates and documentation of policies (which showed 1,053,773 unique children received services at some point during the year in the 25 States). Based on these assumptions and using the results from the Illinois study to estimate the impact on length of subsidy receipt, we estimate that the reduction in unique children served in a given year after the policy change will be approximately 162,000 children.

*Increase in Quality Set-aside.* As discussed above in the analysis of benefits, the increased quality set-aside and the new infant and toddler set-aside required in reauthorization will benefit children and, when coupled with training and higher rates, child care providers. Lead Agencies are not required to use quality funds to support the quality of care for only CCDF children. Thus, quality investments often support the entire child care system in the State, especially because of the high investments in licensing, training, and quality rating and improvement systems. Therefore, these increased investments will have an impact broader than families receiving CCDF assistance, and will continue to improve the quality of care available to all children, regardless of subsidy receipt.

We do not expect the increase the quality set-aside to have a significant impact on caseload, particularly since the majority of states are already spending more than the new 9% quality set-aside requirement (see Table 9 below). Others will have time to phase-in the increases and will likely use these additional increases to cover several of the new health and safety and professional development requirements. Therefore, any caseload impact would have already been included in the costs associated with those provisions. However, we recognize some Lead Agencies will have to reallocate funds currently being used for other activities, including direct services, so we are discussing possible distributional effects here. Currently, about 12 percent of CCDF expenditures are spent on quality improvement activities, including targeted funds included in appropriations. This amount is equivalent to the full percentage to be set aside for the quality and infant and toddler set-asides in FY 2020, once fully phased-in. Therefore, we do not expect a significant change in the national percentage of funds spent on quality activities, including those targeted at infants and toddlers. However, this is a national figure and may not provide a complete picture of how many States and Territories might have to adjust their quality expenditures to meet new requirements.

Using FY 2011 CCDF expenditure data, we did an analysis of the number of States and Territories that will have to increase their quality expenditures in order to meet the requirements in the CCDBG Act and incorporated into this proposed rule at § 98.50(b)(1). (Note: Compliance with spending requirements is determined after a full grant award is complete. States and Territories have three years to complete their grant awards. Therefore, the most recent award year for which we have data is FY 2011.) We included regular quality expenditures as well as the amount of funds spent for the ''quality expansion'' and ''school-age/resource and referral'' targeted funds. The infant and toddler targeted funds were not included in this analysis because they have now been incorporated into the statute. Instead, we have a separate analysis of the new infant and toddler set-aside below. Below is a summary of the number of States and Territories at different amounts of quality expenditures:

TABLE 9—QUALITY EXPENDITURES

| % Quality expenditures (FY 2013) | Number of states and territories |
|---|---|
| <7% | 5 |
| 7% (effective FY 2016 and FY 2017) | 5 |
| 8% (effective FY 2018 and FY 2019) | 7 |
| 9% (effective FY 2020 and succeeding years) | 4 |
| >9% | 35 |

Based on this data, 39 States will not have to adjust the percent of funds they expend on quality activities, while five States and Territories will have to increase the percent of funds they spend on quality activities by FY 2016. For the other States and Territories, it varies when each will need to change the amount they spend on quality activities—10 States will have to adjust by FY 2018 to meet the eight percent requirement; and 17 States will have to adjust by FY 2020 to meet the nine percent requirement.

In addition to the primary set-aside for quality activities, this NPRM incorporates at § 98.50(b)(2) a new requirement of the CCDBG Act that, beginning in FY 2017 and each succeeding fiscal year, Lead Agencies must expend at least three percent of their full awards (including discretionary, mandatory, and federal and State matching funds) on activities that relates to the care of infants and toddlers. Since FY 2001, federal appropriations law has included a requirement for Lead Agencies to spend a certain amount of discretionary funds on activities to improve the quality of care for infants and toddlers. In FY 2015, this set-aside was $102 million. The new three percent reservation represents an increase to about $237 million based on FY 2011 State and Territory expenditures.

Lead Agencies do not currently report how much of their general quality funds are spent on activities targeted to improving care for infants and toddlers. Therefore, we only have the amount of targeted funds they spent on infant and toddler activities, which for all but five States and Territories is below the new three percent requirement. The increase necessary ranges from State to State, from $38,000 for Idaho to $21 million for New York. The average increase will be $2.5 million per State. However, as these estimates do not include any regular quality funds currently used to improve the quality of care for infants and toddlers, they are likely overestimating the required increases for the majority of States and Territories.

*D. Analysis of Regulatory Alternatives*

In developing this proposed rule, we considered alternative ways to meet the purposes of the reauthorized CCDBG Act. There are areas of the CCDBG Act that we are interpreting and proposing to clarify through this rule. Our interpretation of the law remains within the legal parameters of the statute and is consistent with the goals and purposes of the law. Below we include a discussion of areas that we clarified through the proposed rule: Background checks for regulated and registered providers and background checks for non-caregivers.

For the purposes of this analysis, we are discussing the costs, benefits, and potential caseload impacts related to meeting these new requirements. However, it is particularly difficult to predict caseload impact due to a variety of unknown factors, including future federal funding levels. Even if we were to assume level federal funding, States could allocate new funds, redirect current quality spending (*e.g.,* by changing quality activities to focus on health & safety), shift costs to parents or providers, or use a combination of these approaches to pay for new requirements. The caseload estimates in the following discussion are based on the assumption that the entire cost of meeting this requirement are covered by redistributing funds that would otherwise be used for direct services. Therefore, these caseload impact figures should be considered upper bound estimates and are mostly likely significant overestimates.

*Background Checks for Regulated and Registered Providers:* At § 98.43(a)(1)(i), we propose to apply the requirements to all child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services. This language includes all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of those related to all children in their care).

The alternative to this policy would be to limit background checks to only providers receiving CCDF assistance. While we acknowledge that others may interpret the statute differently; however, we firmly believe that there is justification for applying this requirement in the broadest terms for two important reasons. First, it is our strong belief that all parents using child care deserve this basic protection of knowing that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children.

Second, limiting those child care providers who are subject to background checks, has the potential to severely restrict parental choice and equal access for CCDF children. If all child care providers are not subject to comprehensive background checks, providers could opt to not serve CCDF children thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the CCDBG Act and would not serve to advance the important goal of serving more low-income children in high quality care.

Choosing this would present additional costs to the alternative of limiting background checks to only CCDF providers. The cost of the background check requirement for only CCDF providers would be approximately $11.9 million per year (estimated using a 3% discount rate). Using the methodology discussed in detail in the background check section of the preamble, we estimate the additional cost of requiring background checks of all licensed and regulated providers, rather than just those who are eligible to deliver CCDF services, to be approximately $1.7 million annually (estimated using a 3% discount rate), which would amount to an upper bound caseload impact of about 300 fewer children served per year.

*Background Checks for Non-Caregivers:* The law defines a child care staff member as someone (unless they are related to *all* children in care) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks. The alternative to this would be to not require background checks of other individuals living in the family child care home. However, we chose this policy because it is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be allowed the same appeals process as employees.

More than forty States require some type of background check of family members 18 years of age or older that

reside in the family child care home (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012).

While the total cost of the background check requirement is approximately $13.6 million, we can isolate the costs of applying the background checks to non-caregiver individuals, we estimate the cost to be approximately $3 million annually (estimated using a 3% discount rate), which would amount to a upper bound caseload impact of approximately 550 fewer children served per year.

*E. Break Even Analysis for Reductions in Injuries and Deaths*

This section estimates the potential benefits associated with the elimination of injuries and deaths in child care settings in the United States, and the proportion of fatalities and injuries, which, if eliminated by the provisions discussed here, would justify their costs on their own. Standard methods are used to monetize the value of these potential benefits. Although children receiving subsidies through the Child Care and Development Fund (CCDF) are the individuals that will likely benefit most from the rule's overall health and safety provisions, we conduct this break even analysis using data on children in all child care settings since children in non-CCDF arrangements will directly benefit from the extension of background check requirements and may see additional benefits as a result of other health and safety and quality provisions in the proposed rule. As described above, the primary regulatory alternative in implementing health and safety provisions would be to restrict background checks provisions. Therefore, this analysis discusses the costs and benefits of the proposed rule relative to that alternative.

The benefits estimated for this analysis are derived from voluntary data reporting on fatalities and injuries in the child care setting to ACF in a Quality Performance Report (QPR). These figures are supplemented by data from several other sources. Although many States contribute data to the QPR report, data on fatalities and injuries is not available for all States. To estimate fatalities and injuries in the child care setting at the national level in 2014 using the QPR data, we impute estimated fatalities and injuries for States with incomplete reports. For States with no reported data for 2014, we assume that the injury or fatality rate per provider is equal to the average injury or fatality rate per provider across States with available 2014 data.

To monetize benefits from reductions in injury rates, we rely on data on the cost of injury from the Centers for Disease Control (CDC). In particular, we use CDC data to calculate the cost of non-fatal injuries resulting in emergency room treatment and/or hospitalization for children age 12 and under, which includes medical costs as well as lost productivity costs for caretakers, based on 2012 data.[1] After adjusting for inflation using the Gross Domestic Product (GDP) deflator from the Bureau of Economic Analysis (BEA), the cost per injury for children age 12 and under is $8,095 in 2014 dollars. The benefit of a reduction in the injury rate, then, is the reduction in the medical costs and productivity losses associated with the reduction in injuries. Note that this does not include the dollar value of any changes in health status for the injured individuals, which implies that these estimates understate the value of reductions in injuries in the child care setting. Based on QPR data, we estimate that there were 18,209 injuries in child care settings in 2014. To calculate the monetary value of a reduction in the injury rate in child care settings due to this rule, we multiplied the expected number of avoided injuries in each year by the value of eliminating each injury. For simplicity, we assume that the number of prevented injuries is the same in each year after implementation of the requirements, and that the cost of injury, in 2014 dollars, is constant over time. This method implies that the present value of eliminating all injuries in the child care setting over the period examined in this rule, using a 3% discount rate, is approximately $1.30 billion.

To monetize the value of reductions in mortality rates, we use estimates of the number of child fatalities in child care settings and information on the value of a statistical life for children. The number of child fatalities in the child care setting is estimated by combining two numbers: (1) The number of fatalities due to Sudden Infant Death Syndrome (SIDS), and (2) the number of fatalities due to causes other than SIDS. These two numbers are estimated separately because SIDS is one type of fatality that is likely to be impacted by the health and safety provisions in the law and because the Centers for Disease Control (CDC)[2] publishes accurate estimates for this type of death.[3] According to CDC, there were 1,563 deaths due to SIDS in 2011. Research from a study in 2000 estimated that 14.8 percent[4] of SIDS fatalities took place in a family child care or a child care center. After applying the 14.8 percent to the 1,563 SIDS deaths, we estimate that the number of SIDS deaths in child care settings were 231 in 2014.

The number of non-SIDS deaths in 2014 is estimated based on QPR data. Information on cause of death were reported for 18 deaths in the 2014 QPR data, of which 5 were due to SIDS and 13 were due to other causes. Based on this information, we estimate that 72 percent of deaths in child care settings reported in QPR data were due to causes other than SIDS. After adding the 82 fatalities from non-SIDS as reported in the QPR data to the 231 fatalities from SIDS, we arrive at a sum of 313 fatalities in child care settings.

A 2010 study estimates that the value of a statistical life for children to be $12–15 million.[5] After taking the mean of this range and adjusting it for inflation using the GDP deflator, we arrive at $14.5 million in 2014 dollars per fatality. For simplicity, we assume that the potential number of lives saved is the same in each year after implementation of the requirements. We follow Department of Transportation (DOT) guidance[6] to adjust the value of a statistical life for real income growth, increasing it by 1.07 percent each year. To calculate the dollar value of reductions in mortality, we calculate the number of statistical lives saved, and multiply that number by the relevant value of a statistical life. This method implies that the present value of eliminating all deaths in the child care setting over the period examined in this rule, using a 3 percent discount rate, is approximately $44.4 billion.

Next, we estimate the proportion of fatalities and injuries which, if

[1] CDC provided updated estimates of the cost of injury based on Cost of Injury Reports 2005 and 2012 data on non-fatal injuries. For more information, see *http://www.cdc.gov/injury/wisqars/cost/cost-learn-more.html.*

[2] For more information, see *http://wonder.cdc.gov.*

[3] Our review of the QPR data conclude that the number of deaths and injuries reported are likely to be undercounts because some states do not collect data from some types of child care providers.

[4] Moon, Rachel Y., Kantilal M. Patel, and Sarah J. McDermott Shaefer. ''Sudden infant death syndrome in child care settings.'' *Pediatrics* 106.2 (2000): 295–300.

[5] Hammitt, James K., and Kevin Haninger. ''Valuing fatal risks to children and adults: Effects of disease, latency, and risk aversion.'' *Journal of Risk and Uncertainty* 40.1 (2010): 57–83 (estimate derived using stated-preference surveys inquiring about willingness to pay to reduce risks to one's child).

[6] For more information, see *http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance.doc.*

eliminated by these provisions that extend background checks would justify their costs on their own. Based on the assumptions and methodologies described above, the present value of the injury and mortality rate reduction benefits of the rule, using a 3% discount rate, would equal the costs of these provisions if fatalities and injuries were reduced by less than 1 percent over the period examined in this rule. Note that this does not include other benefits associated with this rule.

*F. Accounting Statement—Table of Quantified Money Costs and Opportunity Costs*

As required by OMB Circular A–4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this proposed rule.

TABLE 10—QUANTIFIED MONEY COSTS, OPPORTUNITY COSTS, AND TRANSFERS

[$ in millions]

| | Phase-in annual average (years 1–5) | On-going annual average (years 6–10) | Annualized (over 10 years) | | | Total (over 10 years) | | |
|---|---|---|---|---|---|---|---|---|
| | | | Undiscounted | Discounted | | Undiscounted | Discounted | |
| | | | | 3% | 7% | | 3% | 7% |
| **Money Costs ($ in millions)** | | | | | | | | |
| Health and Safety: | | | | | | | | |
| *Monitoring* | 125.9 | 157.0 | 141.5 | 139.5 | 136.7 | 1,414.7 | 1,225.3 | 1,027.2 |
| *Bkgd Checks* | 9.0 | 18.9 | 13.9 | 13.6 | 13.3 | 139.2 | 119.7 | 99.6 |
| *Training* | 15.4 | 10.5 | 12.9 | 13.2 | 13.5 | 129.3 | 115.8 | 101.5 |
| *Admin** | 7.5 | 9.2 | 8.3 | 8.2 | 8.1 | 83.4 | 72.4 | 60.9 |
| *IT and Infra-structure** | 7.5 | 9.2 | 8.3 | 8.2 | 8.1 | 83.4 | 72.4 | 60.9 |
| Consumer Education: | | | | | | | | |
| *Website* | 12.8 | 11.8 | 12.3 | 12.4 | 12.5 | 123.0 | 108.6 | 93.6 |
| *Statement* | 1.0 | 0.8 | 0.9 | 0.9 | 0.9 | 8.8 | 7.8 | 6.8 |
| Supply Building | 5.1 | 6.8 | 6.0 | 5.8 | 5.7 | 59.5 | 51.3 | 42.9 |
| Money Costs Total | 184.2 | 224.2 | 204.1 | 201.8 | 198.8 | 2,041.3 | 1,773.3 | 1,493.4 |
| **Opportunity Costs ($ in millions)** | | | | | | | | |
| Health and Safety: | | | | | | | | |
| *Monitoring* | 8.7 | 10.9 | 9.8 | 9.6 | 9.4 | 97.7 | 84.6 | 70.9 |
| *Bkgd Checks* | 6.3 | 7.9 | 7.1 | 7.1 | 7.1 | 71.1 | 62.4 | 53.3 |
| *Training* | 43.8 | 29.9 | 36.8 | 37.6 | 38.5 | 368.4 | 330.0 | 289.3 |
| Opportunity Costs Total | 58.8 | 48.7 | 53.7 | 54.3 | 55.0 | 537.2 | 477.0 | 413.5 |
| Cost Total | 243.0 | 272.9 | 257.8 | 256.1 | 253.8 | 2,578.5 | 2,250.3 | 1,906.9 |
| **Transfers ($ in millions)** | | | | | | | | |
| Increased Subsidy | 478.8 | 1,281.0 | 879.9 | 839.1 | 786.1 | 8,799.0 | 7,372.4 | 5,907.7 |
| Transfers Total | 478.8 | 1,281.0 | 879.9 | 839.1 | 786.1 | 8,799.0 | 7,372.4 | 5,907.7 |
| **Grand Total ($ in millions)** | | | | | | | | |
| *Costs and Transfers* | *721.8* | *1,553.9* | *1,137.7* | *1,095.2* | *1,039.9* | *11,377.5* | *9,622.7* | *7,814.6* |

* Administrative and IT/Infrastructure costs are only applied to Health and Safety requirements. Other costs have administrative costs already built into their cost estimates.

## XII. Executive Order 13132; Federalism Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations.

*Consultations with State and local officials.* After passage of the CCDBG Act of 2014, the Office of Child Care (OCC) in the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to better understand the implications of its provisions. OCC created a reauthorization page on its Web site to provide public information and a specific email address to submit general questions. OCC received approximately 650 questions and comments through this email address, webinars, inquiries to regional offices, and meetings with grantees. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, State, and local stakeholders regarding the law, held webinars and gave presentations at national conferences. Participants included State human services agencies, child care providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school-age child care providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and National Head Start Association members. In addition, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the law and to gather input from federal grantees with responsibility for operating the CCDF program. In addition, ACF reviewed the records of comments received after issuing a now withdrawn NPRM for CCDF in May 2013 prior to passage of the CCDBG Act of 2014 by Congress. Many, but not all, of the key

components of the Act are in alignment with provisions included in that NPRM.

*Nature of concerns and the need to issue this proposed rule.* State, Territorial and Tribal CCDF Lead Agencies want to provide family-friendly child care assistance and support increased quality of child care services, but are concerned about the cost of the proposed rule and need for grantee flexibility. While noting that this proposed rule implements a law that was enacted by Congress and signed by the President, we seriously considered these views in developing the proposed rule. We also completed a Regulatory Impact Analysis to fully assess costs and benefits of the new requirements. We recognize that a number of the new regulatory provisions will require some State, territory, and Tribal child care agencies to re-direct CCDF funds to implement specific provisions.

*Extent to which we meet those concerns.* The federal government provides annually to States, Territories, and Tribes $5.3 billion in annual funding to implement the CCDF program. Further, in large part, the changes included in the Act and this proposed rule are based upon practices already implemented by many States. Finally, in several areas, the proposed rule increases the flexibility available to States, Territories, and Tribes in administering the program (*e.g.,* waiving family copayments, defining protective services).

## XIII. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires federal agencies to determine whether a regulation may negatively impact family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This rule will not have a negative impact on the autonomy or integrity of the family as an institution. Accordingly, we conclude that it is not necessary to prepare a family policymaking assessment. In fact, the proposed rule will have positive benefits by improving health and safety protections and the quality of care that children receive, as well as improving transparency for parents about the child care options available to the so they can make more informed child care decisions. This rule also increases continuity of care and stability through family-friendly practices.

## XIV. Executive Order 13175 on Consultation with Indian Tribes

Executive Order 13175 requires agencies to consult with Tribal leaders and Tribal officials early in the process of developing regulations and prior to the formal promulgation of the regulations. Agencies also must include a Tribal impact statement, which includes a description of the agency's prior consultation with Tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met. ACF is committed to continued consultation and collaboration with Tribes, and this proposed rule meets the requirements of Executive Order 13175. The discussion of subpart I in section IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach on this proposed rule.

## List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

**Mark H. Greenberg,**

*Acting Assistant Secretary for Children and Families.*

Approved: October 28, 2015.

**Sylvia M. Burwell,**

*Secretary.*

For the reasons set forth in the preamble, we propose to amend part 98 of 45 CFR as follows:

## PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

**Authority:** 42 U.S.C. 618, 9858.

■ 2. Revise § 98.1 to read as follows:

### § 98.1 Purposes.

(a) The purposes of the CCDF are:

(1) To allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that State;

(2) To promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs;

(3) To encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) To assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) To assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) To improve child care and development of participating children; and

(7) To increase the number and percentage of low-income children in high-quality child care settings.

(b) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

(1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Improve the quality and supply of child care and before- and after-school care services that meet applicable requirements and promote child development and learning and family economic stability;

(4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;

(5) Design flexible programs that provide for the changing needs of recipient families and engage families in their children's development and learning;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers,

and directors to increase their effectiveness in supporting children's development and learning and strengthen the child care workforce.

■ 3. Amend § 98.2 by:

■ a. Revising the definitions of *Categories of care, Eligible child, Eligible child care provider, Family child care provider, Lead Agency, Programs,* and *Sliding fee scale*;

■ b. Removing the definition of *Group home child care provider*; and

■ c. Adding in alphabetical order the definitions of *Child experiencing homelessness, Child with a disability, Director, English learner,* and *Teacher.*

The revisions and additions read as follows:

**§ 98.2 Definitions.**

* * * * *

*Categories of care* means center-based child care, family child care, and in-home care;

* * * * *

*Child experiencing homelessness* means a child who is homeless as defined in section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a);

*Child with a disability* means:

(1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); or

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

* * * * *

*Director* means a person who has primary responsibility for the daily operations management for a child care provider, which may be a family child care home, and which may serve children from birth to kindergarten entry and children in school-age child care;

* * * * *

*Eligible child* means an individual:

(1) Who is less than 13 years of age;

(2) Whose family income does not exceed 85 percent of the State median income for a family of the same size, and whose family assets do not exceed $1,000,000 (as certified by a member of such family); and

(3) Who—

(i) Resides with a parent or parents who are working or attending a job training or educational program; or

(ii) Is receiving, or needs to receive, protective services and resides with a parent or parents not described in paragraph (3)(i) of this definition;

*Eligible child care provider* means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

*English learner* means an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) or section 637 of the Head Start Act (42 U.S.C. 9832);

* * * * *

*Family child care provider* means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

* * * * *

*Lead Agency* means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

* * * * *

*Programs* refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.51;

* * * * *

*Sliding fee scale* means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(k);

* * * * *

*Teacher* means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care and may be a family child care provider;

* * * * *

■ 4. Amend § 98.10 by revising the introductory text and paragraphs (d) and (e) and adding paragraph (f) to read as follows:

**§ 98.10 Lead Agency responsibilities.**

The Lead Agency (which may be an appropriate collaborative agency), or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant), shall:

* * * * *

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Consult, collaborate, and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).

■ 5. Amend § 98.11 by adding a sentence to the end of paragraph (a)(3) and revising paragraph (b)(5) to read as follows:

**§ 98.11 Administration under contracts and agreements.**

(a) * * *

(3) * * * The contents of the written agreement may vary based on the role the agency is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) * * *

(5) Oversee the expenditure of funds by subgrantees and contractors, in accordance with 75 CFR parts 351 through 353;

* * * * *

■ 6. Amend § 98.12 by revising paragraph (c) to read as follows:

**§ 98.12 Coordination and consultation.**

* * * * *

(c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

■ 7. Amend § 98.14 by revising paragraphs (a)(1) introductory text, (a)(1)(C), and (a)(1)(D) and adding paragraphs (a)(1)(E), (F), (G), (H), (I), (J), (K), (L), and (M), (a)(3) and (4), and (d) to read as follows:

**§ 98.14 Plan process.**

* * * * *

(a)(1) Coordinate the provision of services funded under this part with other Federal, State, and local child care and early childhood development programs (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

* * * * *

(C) Public education (including agencies responsible for pre-kindergarten services, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

(D) Providing Temporary Assistance for Needy Families;

(E) Child care licensing;

(F) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*);

(G) State Advisory Council on Early Childhood Education and Care (designated or established pursuant to the Head Start Act (42 U.S.C. 9831 *et seq.*)) or similar coordinating body;

(H) Statewide after-school network or other coordinating entity for out-of-school time care (if applicable);

(I) Emergency management and response;

(J) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766);

(K) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(L) Medicaid authorized by title XIX of the Social Security Act; and

(M) Mental health services.

* * * * *

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

* * * * *

(d) Make the Plan and any Plan amendments publicly available.

■ 8. Amend § 98.15 by:

■ a. Revising paragraph (a)(6);

■ b. Adding paragraphs (a)(7), (8), (9), (10), and (11); and

■ c. Revising paragraph (b).

The revisions and additions read as follows:

**§ 98.15 Assurances and certifications.**

(a) * * *

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.55(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF.

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m).

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) Any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies for their use in administering child care or related programs.

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(G);

(2) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(3) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(4) It will collect and disseminate to parents of eligible children, the general public and, where applicable, child care providers, consumer education information that will promote informed child care choices, information on access to other programs for which families may be eligible, and information on developmental screenings, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public through a consumer-friendly and easily accessible Web site the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

(6) There are in effect licensing requirements applicable to child care services provided within the State, pursuant to § 98.40;

(7) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(8) In accordance with § 98.42(a), procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements;

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's, or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

(11) Payment rates for the provision of child care services, in accordance with § 98.45, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

■ 9. Revise § 98.16 to read as follows:

**§ 98.16 Plan provisions.**

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

(c) The assurances and certifications listed under § 98.15;

(d)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.55(f);

(e) A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14;

(f) A description of the public hearing process, pursuant to § 98.14(c);

(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.46:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) In loco parentis;

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phaseout for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete eligibility redetermination, pursuant to § 98.21(d);

(5) Limiting any requirements to report changes in circumstances in accordance with § 98.21(e);

(6) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and

(7) Other policies and practices such as timely eligibility determination and processing of applications;

(i) For child care services pursuant to § 98.50:

(1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants and contracts. The description should identify shortages in the supply of high quality child care providers, including for specific localities and populations, list the data sources used to identify shortages, and explain how grants or contracts for direct services will be used to address such shortages;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iii);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(5) Any additional eligibility criteria, priority rules, and definitions established pursuant to § 98.20(b);

(j) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase

parental choice, and to improve the quality of child care, pursuant to § 98.53;

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(k). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);

(m) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors;

(n) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;

(o) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including of description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;

(p) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;

(q) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(r) Payment rates and a summary of the facts, including a biennial local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.45;

(s) A detailed description of the State's hotline for complaints, its process for responding to complaints, how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(t) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(u) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(v) Pursuant to § 98.33(e), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(w)(1) When any Matching funds under § 98.55(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.55(c)(1), or for more than 10% of the funds available at § 98.55(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the Lead Agency's strategies (which may include alternative payment rates to child care providers, the provision of direct grants or contracts, offering child care certificates, or other means) to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours;

(y) A description of how the Lead Agency prioritizes increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(z) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(aa) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(bb) A description of payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent

practicable, and to reflect generally-accepted payment practices;

(cc) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verity eligibility, pursuant to § 98.68;

(dd) A description of how the Lead Agency will provide outreach and services to eligible families with limited English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(ee) A description of policies on suspension and expulsion of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v);

(ff) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with § 98.42(b)(4);

(gg) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(hh) A description of how the Lead Agency will respond to complaints submitted through the national hotline and Web site, required in the CCDBG Act of 2014 (Section 658L(b)(2)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers; and

(ii) Such other information as specified by the Secretary.

■ 10. Amend § 98.17 by revising paragraph (a) to read as follows:

**§ 98.17 Period covered by Plan.**

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of three years.

* * * * *

■ 11. Amend § 98.18 by revising paragraph (b) to read as follows:

**§ 98.18 Approval and disapproval of Plans and Plan amendments.**

* * * * *

(b) *Plan amendments.* (1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided to affected parties (*i.e.,* parents and child care providers) of substantial changes in the program that adversely affect income eligibility, payment rates, and/or sliding fee scales.

* * * * *

■ 12. Add § 98.19 to subpart B to read as follows:

**§ 98.19 Requests for temporary relief from requirements.**

(a) The Secretary may waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act, provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) Types of waivers include:

(1) *Transitional and legislative waivers.* Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial, or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a one-year initial period;

(iii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension,

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) *Waivers for extraordinary circumstances.* States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

(i) Limited to an initial period of no more than 2 years from the date of approval;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;

(iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) Within 90 days after receipt of the waiver request or, if additional follow-up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) *Termination.* The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) *Renewal.* The Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) *Restrictions.* The Secretary may not:

(1) Permit Lead Agencies to alter the eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

■ 13. Amend § 98.20 by:

■ a. Revising paragraphs (a) and (b) introductory text; and

■ b. In paragraph (b)(2), removing ''Subpart D; or'' and adding in its place ''subpart D of this part;'';

■ c. In paragraph (b)(3):

■ i. Removing ''§ 98.44'' and adding ''§ 98.46'' in its place; and

■ ii. Removing the period at the end of the paragraph and adding ''; or'' in its place; and

■ d. Adding paragraphs (b)(4) and (c).

The revisions and additions read as follows:

**§ 98.20 A child's eligibility for child care services.**

(a) In order to be eligible for services under § 98.50, a child shall, at the time of eligibility determination or redetermination:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2)(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed $1,000,000 (as certified by such family member); and

(3)(i) Reside with a parent or parents who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

(B) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

* * * * *

(4) Impact eligibility other than at the time of eligibility determination or redetermination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. 1601 *et seq.,* only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

■ 14. Add § 98.21 to subpart C to read as follows:

**§ 98.21 Eligibility determination processes.**

(a) A Lead Agency shall redetermine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

(1) During the period of time between redeterminations, if the child met all of the requirements in § 98.20(a) on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) Any student holiday or break for a parent participating in training or education;

(D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education;

(E) Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency;

(F) Any change in age, including turning 13 years old during the eligibility period; and

(G) Any change in residency within the State, Territory, or Tribal service area.

(2) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at the same level for a period of not less than three months after such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

(3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(2) of this section.

(4) Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.

(b) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phaseout by implementing two-tiered eligibility thresholds.

(1) This can be accomplished either by:

(i) Establishing the second tier of eligibility at 85 percent of SMI for a family of the same size and considering children to be eligible (pursuant to paragraph (a) of this section) if their parents, at the time of redetermination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially quality for assistance, but does not exceed the second eligibility threshold; or

(ii) Using the approach specified in paragraph (b)(1)(i) of this section but

only for a limited period of not less than an additional 12 months.

(2) Lead Agencies may gradually adjust co-pay amounts for families that are determined eligible under the conditions described in paragraph (b) of this section to help families transition off of child care assistance.

(c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.

(d) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

(e) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month period, and describe efforts to ensure such requirements do not impact continuity for eligible families between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any requirement for parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (*e.g.,* only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (*e.g.,* phone, email, online forms, extended submission hours) to accommodate the needs of working parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(2) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(f) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(g) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

■ 15. Amend § 98.30 by revising paragraphs (e)(1), (f) introductory text, and (f)(2) and adding paragraphs (g) and (h) to read as follows:

**§ 98.30 Parental choice.**

* * * * *

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Family child care; and

(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

* * * * *

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.45, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

* * * * *

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; or

* * * * *

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality, such as those identified in a quality improvement system or other transparent system of quality indicators.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high quality child care.

■ 16. Revise § 98.31 to read as follows:

**§ 98.31 Parental access.**

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description in the Plan of such procedures.

■ 17. Revise § 98.32 to read as follows:

**§ 98.32 Parental complaints.**

The State shall:

(a) Establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers;

(b) Maintain a record of substantiated parent complains;

(c) Make information regarding such parental complaints available to the public on request; and

(d) The Lead Agency shall provide a detailed description in the Plan of how such record is maintained and is made available.

■ 18. Revise § 98.33 to read as follows:

**§ 98.33 Consumer and provider education.**

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site that ensures the widest possible access to

services for families who speak languages other than English and persons with disabilities, including:

(1) Lead Agency processes, including:

(i) The process for licensing child care providers pursuant to § 98.40;

(ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42:

(iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and

(iv) The offenses that prevent individuals from serving as child care providers.

(2) Provider-specific information for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including:

(i) A localized list of child care providers, differentiating between licensed and license-exempt providers, searchable by zip code;

(ii) The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider;

(iii) Results of monitoring and inspection reports for child care providers, including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand. Such results shall include:

(A) Information on the date of such inspection;

(B) Information on corrective action taken by the State and child care provider, where applicable; and

(C) A minimum of 5 years of results, where available.

(iv) The number of serious injuries and deaths of children that occurred while in the care of the provider.

(3) Aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

(4) Referrals to local child care resource and referral organizations.

(5) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the Web site.

(b) Certify that it will collect and disseminate, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the Web site at § 98.33(a), to parents of eligible children and the general public, and where applicable providers, information about:

(1) The availability of the full diversity of child care services to promote informed parental choice, including information about:

(i) the availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.,* 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*)

(iv) Research and best practices concerning children's development, and meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social-emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies on suspension and expulsion of children birth to age five in child care and other early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(2) [Reserved]

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and education, including:

(1) Information on existing resources and services the State can make available in conducting developmental screenings and providing referrals to services when appropriate for children who receive assistance under this part, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in paragraph (c)(1) of this section to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(e) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) ''Appropriate child care'';

(ii) ''Reasonable distance'';

(iii) ''Unsuitability of informal child care'';

(iv) ''Affordable child care arrangements'';

(3) The clarification that assistance received during the time an eligible

parent receives the exception referred to in paragraph (e) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

(f) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (e) of this section.

■ 19. § Amend 98.40 by redesignating paragraph (a)(2) as (a)(3), revising newly redesignated paragraph (a)(3), and adding paragraph (a)(2) to read as follows:

**§ 98.40 Compliance with applicable State and local regulatory requirements.**

(a) * * *

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

* * * * *

■ 20. Revise § 98.41to read as follows:

**§ 98.41 Health and safety requirements.**

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services, for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(*1*) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles).

(*2*) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(*3*) Children whose parents object to immunization on religious grounds.

(*4*) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(*1*) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(*2*) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(*3*) Lead Agencies must coordinate with licensing agencies and other relevant State and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome and abusive head trauma;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) First aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to promoting the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

■ 21. Revise § 98.42 to read as follows:

**§ 98.42 Enforcement of licensing and health and safety requirements.**

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities:

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety, (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, from the term ''child care providers.'' If the Lead Agency chooses to exclude these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

§§ 98.43 through 98.47 [Redesignated as §§ 98.45 through 98.49]

■ 22. Redesignate §§ 98.43 through 98.47 of subpart E as §§ 98.45 through 98.49.

■ 23. Add § 98.43 to subpart E to read as follows:

**§ 98.43 Criminal background checks**

(a)(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:

(i) Child care provider means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual age 18 and older (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository using fingerprints;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)(1) A child care staff member shall be ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of:

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory Web site described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received a background check described in paragraph (b) of this section:

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after the provider has submitted such a request if the staff member is supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within 5 years of the request.

(e)(1) *Background check results.* The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report; and

(iii) The appeals process is completed in a timely manner for each child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) The State or Territory must ensure that its policies and procedures under § 98.43, including the process by which a child care provider or other State may submit a background check request, are published in the Web site of the State or Territory as described in § 98.33(a) and the Web site of local lead agencies.

(h)(1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the

rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

■ 24. Add § 98.44 to subpart E to read as follows:

**§ 98.44 Training and professional development.**

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training providers in aligning training opportunities with the State's framework;

(3) To the extent practicable, addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Is conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (*i.e.,* to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation, training in health and safety standards, addressing each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and, at the Lead Agency option, in § 98.41(a)(1)(xii), and child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning) appropriate to the age of children served;

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors that:

(i) Maintains and updates health and safety training standards described in Sec. 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1)(xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517));

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

■ 25. Amend newly redesignated § 98.45 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as (g) through (i);

■ c. Revising newly redesignated paragraphs (g) and (i); and

■ d. Adding paragraphs (c), (d), (e), (f), (j), (k), (l), and (m).

The revisions and additions read as follows:

**§ 98.45 Equal access.**

* * * * *

(b) The Lead Agency shall provide in the Plan a summary of the data and facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers is made available;

(2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;

(3) How base payment rates support health, safety, and quality in accordance with paragraphs (f)(1)(i) and (f)(2)(ii) of this section;

(4) How payment rates provide parental choice for families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;

(5) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section;

(6) How copayments based on a sliding fee scale are affordable, as stipulated at paragraph (k) of this section;

(7) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

(8) How and on what factors the Lead Agency differentiates payment rates; and

(9) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.

(c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:

(1) A statistically valid and reliable survey of the market rates for child care services (that also includes information on the extent to which child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices); or

(2) An alternative methodology, such as a cost estimation model, that has been:

(i) Proposed by the Lead Agency in accordance with uniform procedures and timeframes established by ACF; and

(ii) Approved in advance by ACF.

(d) The market rate survey or alternative methodology must reflect variations by geographic location, category of provider, and age of child.

(e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:

(1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and

(2) Organizations representing child care caregivers, teachers, and directors.

(f) After conducting the market rate survey or alternative methodology, the Lead Agency must:

(1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report.

(i) The report must indicate the estimated price or cost of care necessary to support child care providers' implementation of the health, safety, and quality requirements at §§ 98.41 through 98.44, including any relevant variation by geographic location, category of provider, or age of child.

(ii) [Reserved]

(2) Set payment rates for CCDF assistance:

(i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;

(ii) With base payment rates established at least at a level sufficient to support implementation of health, safety and quality requirements in accordance with paragraph (f)(1)(i) of this section;

(iii) That provides parental choice to families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;

(iv) Taking into consideration the cost of providing higher quality child care services; and

(v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(g) A Lead Agency may not establish different payment rates based on a family's eligibility status, such as TANF status.

* * * * *

(i) Nothing in this section shall be construed to create a private right of action if the Lead Agency acted in accordance with the Act and this part.

(j) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

(1) Geographic location of child care providers (such as location in an urban or rural area);

(2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);

(3) Whether child care providers provide services during the weekend or other non-traditional hours; or

(4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

(k) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF child care services that:

(1) Helps families afford child care and enables choice of a range of child care options;

(2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part;

(4) Allows for co-payments to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the Lead Agency.

(l) Lead Agencies must have a policy that prohibits child care providers of services for which assistance is provided under the CCDF from charging parents additional mandatory fees above the family co-payment determined in accordance with the sliding fee scale.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices for CCDF child care providers that:

(1) Ensure timeliness of payment by either:

(i) Paying prospectively prior to the delivery of services; or

(ii) Paying within no more than 21 days of the receipt of invoice for services.

(2) To the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. A Lead Agency must describe its approach in the State Plan, including justification for an alternative approach that is not one of the following:

(i) Paying based on a child's enrollment rather than attendance;

(ii) Providing full payment if a child attends at least 85 percent of the authorized time; or

(iii) Providing full payment if a child is absent for five or fewer days in a month.

(3) Reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency provides evidence in the Plan that such practices are not generally-accepted in the State or service area):

(i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(ii) Paying for mandatory fees that the provider charges to private-paying parents, such as fees for registration:

(4) Ensure child care providers receive payment for any services in accordance with a payment agreement or authorization for services;

(5) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment;

(6) Include timely appeal and resolution processes for any payment inaccuracies and disputes.

■ 26. Revise newly redesignated § 98.46 to read as follows:

**§ 98.46 Priority for child care services.**

(a) Lead Agencies shall give priority for services provided under § 98.50(a) to:

(1) Children of families with very low family income (considering family size);

(2) Children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and

(3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

■ 27. Revise § 98.50 to read as follows:

**§ 98.50 Child care services.**

(a) Direct child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.45(k);

(3) Using funding methods provided for in § 98.30 which must include some use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of shortages in the supply of high quality care described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

(4) Based on the priorities in § 98.46.

(b) Of the aggregate amount of funds expended (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching Funds):

(1) No less than seven percent in fiscal years 2016 and 2017, eight percent in fiscal years 2018 and 2019, and nine percent in fiscal year 2020 and each succeeding fiscal year shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent in fiscal year 2017 and each succeeding fiscal year shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the Lead Agency from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(f); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.54.

(e) Not less than 70 percent of the Mandatory and Federal and State share of Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act;

(2) Are attempting through work activities to transition off such assistance program; and

(3) Are at risk of becoming dependent on such assistance program.

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section the Lead Agency shall spend a substantial portion funds to provide direct child care services to low-income families who are working or attending training or education.

(h) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

§§ 98.51 through 98.55 [Redesignated as §§ 98.53 through 98.57]

■ 28. Redesignating §§ 98.51 through 98.55 of subpart F as §§ 98.53 through 98.57.

■ 29. Add § 98.51 to subpart F to read as follows:

**§ 98.51 Services for children experiencing homelessness.**

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible:

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination.

(ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part; and

(2) [Reserved]

(b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and

(c) Specific outreach to families experiencing homelessness.

■ 30. Add § 98.52 to subpart F to read as follows:

**§ 98.52 Child care resource and referral system.**

(a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:

(1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);

(3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, *et seq.*), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(5) Work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

■ 31. Revise newly redesignated § 98.53 to read as follows:

**§ 98.53 Activities to improve the quality of child care.**

(a) The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to § 98.50(b) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to increase the number of low-income children in high-quality child care:

(1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:

(i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

(A) Relate to the use of scientifically-based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity; and

(B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;

(ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;

(iii) Including effective behavior management strategies and training, including positive behavior interventions and support models for birth to school-age or age-appropriate, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;

(iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;

(vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid, or other resources, that would assist these individuals in pursuing relevant postsecondary education, such as programs providing scholarships and compensation improvements for education attainment and retention.

(2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.

(3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:

(i) Support and assess the quality of child care providers in the State, Territory, or Tribe;

(ii) Build on licensing standards and other regulatory standards for such providers;

(iii) Be designed to improve the quality of different types of child care providers and services;

(iv) Describe the safety of child care facilities;

(v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the rating of the program in which the child is enrolled;

(vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:

(i) Establishing or expanding high-quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;

(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:

(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and

(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431. *et seq.*);

(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and

(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.

(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(b) Pursuant to § 98.16(j), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other set-asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).

(f) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:

(1) An assurance that the State was in compliance with requirements at § 98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;

(2) A description of the activities carried out under this section to comply with § 98.50(b);

(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures; and

(4) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible.

■ 32. Amend newly redesignated § 98.54 by:

■ a. Revising paragraphs (a) introductory text and (a)(6);

■ b. Redesignating paragraphs (b) and (c) as (c) and (d);

■ c. Revising newly redesignated paragraph (d); and

■ d. Adding paragraphs (b) and (e).

The revisions and additions read as follows:

**§ 98.54 Administrative costs.**

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.55(b), shall be expended for administrative activities. These activities may include but are not limited to:

* * * * *

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination and redetermination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

* * * * *

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described in this section shall be counted towards the five percent limit.

■ 33. Amend newly redesignated § 98.55 by revising paragraphs (e)(2)(iv), (f), (g)(2), and (h)(2) to read as follows:

**§ 98.55 Matching fund requirements.**

* * * * *

(e) * * *

(2) * * *

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to § 98.55(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

* * * * *

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

(g) * * *

(2) Family contributions to the cost of care as required by § 98.45(k).

(h) * * *

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(w), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

* * * * *

■ 34. Amend newly redesignated § 98.56 by adding a sentence to the end of paragraph (b)(1) and revising paragraphs (d) and (e) to read as follows:

**§ 98.56 Restrictions on the use of funds.**

* * * * *

(b) * * * (1) * * * Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited.

* * * * *

(d) *Sectarian purposes and activities.* Funds provided under grants or contracts to providers may not be

expended for any sectarian purpose or activity, including sectarian worship or instruction. Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

■ 35. Amend § 98.60 by:

■ a. Revising paragraphs (b) introductory text, (b)(1), (d)(2)(i), (d)(4)(ii), (d)(6) introductory text, and (h);

■ b. Redesignating paragraph (d)(7) as (d)(8); and

■ c. Adding paragraph (d)(7).

The revisions and addition read as follows:

**§ 98.60 Availability of funds.**

* * * * *

(b) Subject to the availability of appropriations, in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold a portion of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll-free hotline and Web site;

* * * * *

(d) * * *

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.55 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

* * * * *

(4) * * *

(ii) If there is no applicable State or local law, the regulation at 45 CFR 75.2, Expenditures and Obligations.

* * * * *

(6) In instances where the Lead Agency issues child care certificates, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

* * * * *

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

* * * * *

(h) Repayment of loans made to child care providers as part of a quality improvement activity pursuant to § 98.53, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

* * * * *

■ 36. Amend § 98.61 by revising paragraph (c) introductory text and adding paragraph (f) to read as follows:

**§ 98.61 Allotments from the Discretionary Fund.**

* * * * *

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

* * * * *

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

■ 37. Amend § 98.63 by revising paragraphs (b) and (c) to read as follows:

**§ 98.63 Allotments from the Matching Fund.**

* * * * *

(b) For purposes of this section, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and Web site and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this section are available pursuant to the requirements at § 98.55(c).

■ 38. Amend § 98.64 by revising paragraph (c)(1) to read as follows:

**§ 98.64 Reallotment and redistribution of funds.**

* * * * *

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.55(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term ''State'' means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

* * * * *

■ 39. Amend § 98.65 by revising paragraphs (a) and (g) and adding paragraphs (h) and (i) to read as follows:

**§ 98.65 Audits and financial reporting.**

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with 45 CFR part 75, subpart F, and the Single Audit Act Amendments of 1996.

* * * * *

(g) Lead Agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) funds:

(1) Child care administration;

(2) Quality activities, including any sub-categories of quality activities as required by ACF;

(3) Direct services;

(4) Non-direct services, including:

(i) Establishment and maintenance of computerized child care information systems;

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(5) Such other information as specified by the Secretary.

(i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

■ 40. Add § 98.68 to subpart G to read as follows:

**§ 98.68 Program integrity.**

(a) Lead Agencies are required to describe in their Plan effective internal controls that are in place to ensure integrity and accountability in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk; and

(3) Regular evaluation of internal control activities.

(b) Lead Agencies are required to describe in their Plan the processes that are in place to:

(1) Identify fraud or other program violations, which may include, but are not limited to the following:

(i) Record matching and database linkages;

(ii) Review of attendance and billing records;

(iii) Quality control or quality assurance reviews; and

(iv) Staff training on monitoring and audit processes.

(2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and redetermination. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1):

(1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and

(2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

■ 41. Amend § 98.71 by:

■ a. Revising paragraphs (a)(1), (2), and (13) and (c);

■ b. Redesignating paragraphs (a)(15) and (b)(5) as (a)(21) and (b)(6);

■ c. Removing the word ''and'' from the end of paragraphs (a)(14) and (b)(4); and

■ d. Adding paragraphs (a)(15), (16), (17), (18), (19), and (20) and (b)(5).

The revisions and additions read as follows:

**§ 98.71 Content of reports.**

(a) * * *

(1) The total monthly family income and family size used for determining eligibility;

(2) Zip code of residence of the family and zip code of the location of the child care provider;

* * * * *

(13) Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

* * * * *

(15) Whether the family is homeless;

(16) Whether the parent(s) are in the military service;

(17) Whether the child has a disability;

(18) Primary language spoken at home;

(19) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);

(20) Indicator of the quality of the child care provider; and

* * * * *

(b) * * *

(5) The number of child fatalities by type of care; and

* * * * *

(c) A Tribal Lead Agency's annual report, as required in § 98.70(c), shall include such information as the Secretary shall require.

■ 42. Amend § 98.80 by revising paragraphs (a) and (c)(1) and (2) and removing paragraph (f) to read as follows:

**§ 98.80 General procedures and requirements.**

* * * * *

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

(1) Large allocations;

(2) Medium allocations; and

(3) Small allocations.

* * * * *

(c) * * *

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium;

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age;

* * * * *

■ 43. Amend § 98.81 by revising paragraphs (b) introductory text, (b)(1), (5), and (6), and (c) and adding paragraph (b)(9) to read as follows:

**§ 98.81 Application and Plan procedures.**

* * * * *

(b) Tribal Lead Agencies with large and medium allocations shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

* * * * *

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(6) The Plan is not subject to the following requirements:

(i) A definition of very low income at § 98.16(g)(8);

(ii) A description at § 98.16(i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(iii) The description of the market rate survey or alternative methodology at § 98.16(r);

(iv) The licensing requirements applicable to child care services at § 98.15(b)(6); and

(v) The early learning and developmental guidelines requirement at § 98.15(a)(9).

* * * * *

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2); or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

■ 44. Revise § 98.82 to read as follows:

**§ 98.82 Coordination.**

(a) Tribal applicants shall coordinate the development of the Plan and the provision of services as required by §§ 98.12 and 98.14 and:

(1) To the maximum extent feasible, with the Lead Agency in the State or

States in which the applicant will carry out the CCDF program; and

(2) With other Federal, State, local, and tribal child care and childhood development programs.

(b) [Reserved]

■ 45. Amend § 98.83 by:

■ a. Revising paragraphs (b), (c)(1), and (d);

■ b. Redesignating paragraphs (g) and (h) as (h) and (i), paragraph (e) as (g), and paragraph (f) as (e);

■ c. Revising newly redesignated paragraphs (e), (g), (h), and (i); and

■ d. Adding paragraph (f).

The revisions and additions read as follows:

**§ 98.83 Requirements for tribal programs.**

* * * * *

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation.

(c) * * *

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their three-year CCDF Plan; and

* * * * *

(d)(1) Tribal Lead Agencies shall not be subject to:

(i) The requirement to have licensing applicable to child care services at § 98.40;

(ii) The requirement to produce a consumer education Web site at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (e), but may do so using methods other than a Web site;

(iii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a);

(iv) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(v) The requirement to use some grants or contracts for the provision of direct services at § 98.50(a)(3);

(vi) The requirement for a training and professional development framework at § 98.44(a);

(vii) The requirements about Mandatory and Matching Funds at § 98.50(e);

(viii) The requirement to complete the quality progress report at § 98.53(f);

(ix) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(x) The Matching fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the requirement at § 98.43(a)(2)(ii)(C) to conduct comprehensive criminal background checks on other individuals residing in a family child care home, unless the Tribal Lead Agency describes an alternative background check approach for such individuals in its Plan and provides adequate justification for the approach.

(e) Tribal Lead Agencies with medium and small allocations shall not be subject to the requirement for certificates at § 98.30(a) and (d).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) If providing direct services:

(i) The health and safety requirements described in § 98.41;

(ii) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(iii) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(2) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.50(b) and 98.53;

(3) The use of funds requirements at § 98.56 and cost allocation requirement at § 98.57;

(4) The financial management requirements at subpart G of this part that are applicable to Tribes;

(5) The reporting requirements at subpart H of this part that are applicable to Tribes;

(6) The 15 percent limitation on administrative activities at § 98.83(h);

(7) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(8) Any other requirement established by the Secretary.

(g) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (h) of this section or the quality expenditure requirement at § 98.53(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(h) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under paragraph (g) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(i)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (i)(1) of this section is subject to the actual availability of the appropriation.

■ 46. Amend § 98.84 by adding a sentence at the end of paragraph (b)(3) and paragraphs (b)(3)(i) and (ii) and revising paragraphs (d)(1), (2), (3), (4), (5), and (6) to read as follows:

**§ 98.84 Construction and renovation of child care facilities.**

* * * * *

(b) * * *

(3) * * * The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

* * * * *

(d) * * *

(1) Federal share requirements and use of property requirements at 45 CFR75.318;

(2) Transfer and disposition of property requirements at 45 CFR 75.318(c);

(3) Title requirements at 45 CFR 75.318(a);

(4) Cost principles and allowable cost requirements at subpart E of this part;

(5) Program income requirements at 45 CFR 75.307;

(6) Procurement procedures at 45 CFR 75.326 through 75.335; and

* * * * *

■ 47. Amend § 98.92 by revising paragraph (a)(1) and adding paragraphs (b)(3) and (4) to read as follows:

**§ 98.92 Penalties and sanctions.**

(a) * * *

(1) The Secretary will disallow any improperly expended funds;

* * * * *

(b) * * *

(3)(i) A penalty of not more than five percent of the funds allotted under § 98.61 (*i.e.,* the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4)(i) A penalty of not more than five percent of the funds allotted under § 98.61 (*i.e.,* the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory, or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

* * * * *

**§ 98.93 [Amended]**

■ 48. Amend § 98.93, in paragraph (b), by removing '', 370 L'Enfant Promenade, SW., Washington, DC 20447''.

■ 49. Amend § 98.100 by adding a sentence at the end of paragraph (d)(2) and revising paragraph (e) to read as follows:

**§ 98.100 Error Rate Report.**

* * * * *

(d) * * *

(2) * * * Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a).

(e) *Costs of Preparing the Error Rate Report*—Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to § 98.54(a).

■ 50. Amend § 98.102 by revising paragraph (a)(5) and adding paragraph (c) to read as follows:

**§ 98.102 Content of Error Rate Reports.**

(a) * * *

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

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Part III

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Notice

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–HQ–ES–2015–0135; FF09E21000 FXES11190900000 156]**

## Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of review.

**SUMMARY:** In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, and by allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

This CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates, to assign a listing priority number (LPN) to each species, and to determine whether a species should be removed from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms) for each candidate species.

This CNOR changes the LPN for two candidates and removes two species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 60.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2014, through September 30, 2015.

Moreover, we request any additional status information that may be available for the candidate species identified in this CNOR.

**DATES:** We will accept information on any of the species in this Candidate Notice of Review at any time.

**ADDRESSES:** This notice is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/endangered/what-we-do/cnor.html.* Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Branch of Communications and Candidate Conservation, Falls Church, VA (see address under **FOR FURTHER INFORMATION CONTACT**), or on our Web site (*http://ecos.fws.gov/tess_public/reports/candidate-species-report*). Please submit any new information, materials, comments, or questions of a general nature on this notice to the Falls Church, VA, address listed under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Endangered Species Coordinator in the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.** Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate Regional Office listed below under Request for Information in **SUPPLEMENTARY INFORMATION.** General information we receive will be available at the Branch of Communications and Candidate Conservation, Falls Church, VA (see address under **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Communications and Candidate Conservation, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

We request additional status information that may be available for any of the candidate species identified in this CNOR. We will consider this information to monitor changes in the status or LPN of candidate species and to manage candidates as we prepare listing documents and future revisions to the notice of review. We also request information on additional species to consider including as candidates as we prepare future updates of this notice.

### Candidate Notice of Review

*Background*

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), requires that we identify species of wildlife and plants that are endangered or threatened based on the best available scientific and commercial information. As defined in section 3 of the ESA, an endangered species is any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal for listing as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions. We may identify a species as a candidate for listing after we have conducted an evaluation of its status—either on our own initiative, or in response to a petition we have received. If we have made a finding on a petition to list a species, and have found that listing is warranted but precluded by other higher priority listing actions, we will add the species to our list of candidates.

We maintain this list of candidates for a variety of reasons: (1) To notify the public that these species are facing threats to their survival; (2) to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; (3) to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; (4) to request input from interested parties to help us identify those candidate species that may not require protection under the ESA, as well as additional species that may require the ESA's protections; and (5) to request necessary information for setting priorities for preparing listing proposals. We encourage collaborative

conservation efforts for candidate species, and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed under Request for Information or visit our Web site, *http://www.fws.gov/endangered/what-we-do/cca.html.*

*Previous Notices of Review*

We have been publishing CNORs since 1975. The most recent was published on December 5, 2014 (79 FR 72450). CNORs published since 1994 are available on our Web site, *http://www.fws.gov/endangered/what-we-do/cnor.html.* For copies of CNORs published prior to 1994, please contact the Branch of Communications and Candidate Conservation (see **FOR FURTHER INFORMATION CONTACT** section, above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Section 4(h)(3) of the ESA (16 U.S.C. 1533(h)(3)) requires the Secretary to establish guidelines for such a priority-ranking system. As explained below, in using this system, we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. For all candidate species, the threats are of sufficiently high magnitude to put them in danger of extinction, or make them likely to become in danger of extinction in the foreseeable future. But for species with higher-magnitude threats, the threats have a greater likelihood of bringing about extinction or are expected to bring about extinction on a shorter timescale (once the threats are imminent) than for species with lower-magnitude threats. Because we do not routinely quantify how likely or how soon extinction would be expected to occur absent listing, we must evaluate factors that contribute to the likelihood and time scale for extinction. We therefore consider information such as: (1) The number of populations or extent of range of the species affected by the threat(s), or both; (2) the biological significance of the affected population(s), taking into consideration the life-history characteristics of the species and its current abundance and distribution; (3) whether the threats affect the species in only a portion of its range, and, if so, the likelihood of persistence of the species in the unaffected portions; (4) the severity of the effects and the rapidity with which they have caused or are likely to cause mortality to individuals and accompanying declines in population levels; (5) whether the effects are likely to be permanent; and (6) the extent to which any ongoing conservation efforts reduce the severity of the threat(s).

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent,'' and is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority-ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS).

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threats are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (*i.e.,* a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have sufficient information to prepare a proposed rule for listing because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the 1983 guidance is available on our Web site at: *http://www.fws.gov/endangered/esa-library/pdf/1983_LPN_Policy_FR_pub.pdf.* Information on the LPN assigned to a particular species is summarized in this CNOR, and the species assessment for each candidate contains the LPN chart and a rationale for the determination of the magnitude and immediacy of threat(s) and assignment of the LPN.

To the extent this revised notice differs from all previous animal, plant, and combined candidate notices of review for native species or previous 12-month warranted-but-precluded petition findings for those candidate species that were petitioned for listing, this notice supercedes them.

*Summary of This CNOR*

Since publication of the previous CNOR on December 5, 2014 (79 FR 72450), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with higher priorities (*i.e.,* species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk.

In addition to reviewing candidate species since publication of the last CNOR, we have worked on findings in response to petitions to list species, and on proposed and final determinations for rules to list species under the ESA. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see *Preclusion and Expeditious Progress,* below, for details).

Based on our review of the best available scientific and commercial information, with this CNOR, we change the LPN for two candidates and remove two species from candidate status. Combined with the other decisions published separately from this CNOR, a total of 60 species (18 plant and 42 animal species) are now candidates awaiting preparation of rules proposing their listing. These 60 species, along with the 71 species currently proposed for listing (including 1 species proposed for listing due to similarity in appearance), are included in Table 1.

Table 2 lists the changes from the previous CNOR, and includes 55 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those

categories. This includes 31 species for which we published a final listing rule, 20 candidate species for which we published separate not-warranted findings and removed them from candidate status, 1 species for which we published a withdrawal of a proposed rule, 1 species for which we published a separate candidate removal, and the 2 species in this notice that we have determined do not meet the definition of an endangered species or threatened species and therefore do not warrant listing. We have removed these species from candidate status in this CNOR.

**New Candidates**

We have not identified any new candidate species through this notice but identified one species—the Sierra Nevada DPS of the red fox—as a candidate on October 8, 2015, as a result of a separate petition finding published in the **Federal Register** (80 FR 60989).

**Listing Priority Changes in Candidates**

We reviewed the LPNs for all candidate species and are changing the number for the following species discussed below.

*Flowering Plants*

*Dichanthelium hirstii* (Hirst Brothers' panic grass) — The following summary is based on information initially provided in the May 11, 2004, petition and updated information contained in our files. *Dichanthelium hirstii* is a perennial grass that produces erect, leafy, flowering stems from May to October. The species occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats, and is known to occur at only three sites in New Jersey, one site in Delaware, two sites in North Carolina, and one site in Georgia. Six of the extant *D. hirstii* populations are located on public land and one is on private land.

At each site the species is threatened by encroachment of woody and herbaceous vegetation, competition from rhizomatous perennials, fluctuations in hydrology, and threats associated with small population number and size; sites in New Jersey are threatened by illegal off-road vehicle use. Given the naturally fluctuating number of plants found at each site, and the isolated nature of the wetlands (limiting dispersal opportunities), even small changes in the species' habitat could result in local extirpation. Loss of any known sites would constitute a significant contraction of the species' range. An increase in regional precipitation patterns causing long-term flooding in the species' coastal plain pond habitat is recent and coincides with a precipitous decline in population size in New Jersey and first-time absence of the population in Delaware. Therefore, we are changing the immediacy of threats from nonimminent to imminent and, consequently, the LPN of the species from a 5 to a 2.

*Pinus albicaulis* (Whitebark pine) — The following summary is based on information in our files and in the petition received on December 9, 2008. Whitebark pine is a hardy conifer found at alpine tree line and subalpine elevations in Washington, Oregon, Nevada, California, Idaho, Montana, and Wyoming, and in British Columbia and Alberta, Canada. In the United States, approximately 96 percent of land where the species occurs is federally owned or managed, primarily by the U.S. Forest Service. Whitebark pine is a slow-growing, long-lived tree that often lives for 500 and sometimes more than 1,000 years. It is considered a keystone, or foundation, species in western North America, where it increases biodiversity and contributes to critical ecosystem functions.

The primary threat to the species is from disease in the form of the nonnative white pine blister rust and its interaction with other threats. Whitebark pine also is currently experiencing mortality from predation by the native mountain pine beetle (*Dendroctonus ponderosae*), but the current epidemic appears to be subsiding. We also anticipate that continuing environmental effects resulting from climate change will result in direct habitat loss for whitebark pine. Models predict that suitable habitat for whitebark pine will decline precipitously within the next 100 years. Past and ongoing fire suppression is also negatively affecting populations of whitebark pine through direct habitat loss. Additionally, environmental changes resulting from changing climatic conditions are acting alone and in combination with the effects of fire suppression to increase the frequency and severity of wildfires. Lastly, the existing regulatory mechanisms are inadequate to address the threats presented above.

As the mountain pine beetle epidemic appears to be subsiding, we no longer consider this threat to be having the high level of impact that was seen in recent years. However, given projected warming trends, we expect that conditions will remain favorable for epidemic levels of mountain pine beetle into the foreseeable future. The significant threats from white pine blister rust, fire, and fire suppression, and environmental effects of climate change remain on the landscape. However, the overall magnitude of threat to whitebark pine is somewhat diminished given the current absence of epidemic levels of mountain pine beetle, and because of this, individuals with genetic resistance to white pine blister rust likely have a higher probability of survival. Survival and reproduction of genetically resistant trees are critical to the persistence of the species given the imminent, ubiquitous presence of white pine blister rust on the landscape. Overall, the threats to the species are ongoing, and therefore imminent, and are now moderate in magnitude. Thus, we have changed the LPN for whitebark pine from a 2 to an 8.

**Candidate Removals**

As summarized below, we have evaluated the threats to the following species and considered factors that, individually and in combination, currently or potentially could pose a risk to the species and their habitats. After a review of the best available scientific and commercial data, we conclude that listing these species under the Endangered Species Act is not warranted because these species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their respective ranges. Therefore, we no longer consider them to be candidate species for listing. We will continue to monitor the status of these species and to accept additional information and comments concerning this finding. We will reconsider our determination in the event that we gather new information that indicates that the threats are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized here.

*Crustaceans*

Anchialine pool shrimp (*Metabetaeus lohena*)—*Metabetaeus lohena* is a species of shrimp belonging to the family Alpheidae. At the time *M. lohena* became a candidate, it was considered to be an endemic shrimp to the Hawaiian Islands, restricted to small anchialine habitats that were thought to have imminent threats. Though the total number of occupied pools in Hawaii is not known, *M. lohena* has recently been observed in at least 35 anchialine pools and pool groups on the islands of Hawaii, Maui, and Oahu. Many of these pools are located within protected habitat on State (*e.g.,* Manuka and Ahihi-Kinau Natural Area Reserves) and Federal land (*e.g.,* Volcanoes National Park and Pearl Harbor National Wildlife Refuge).

New information has extended the range and habitat of *Metabetaeus lohena* to include Rapa Nui (Easter Island), Chile, where it is was recently identified in an anchialine pool and coastal shallow water wells. A specimen found in Ambon Bay (Maluku Islands, Indonesia) was also identified as *M. lohena;* however, this determination remains uncertain because the specimen reviewed was highly degraded. The discovery of at least one, and perhaps two, populations so distant from the Hawaiian Islands suggests that *M. lohena* has greater dispersal capabilities than previously known and the species has recently been observed naturally recolonizing restored anchialine habitats in the Hawaiian Islands. The survey effort for this species outside of Hawaii and Rapa Nui has not provided information about population levels in those areas.

Our review of the best available scientific information indicates that *Metabetaeus lohena* exists across a much greater area than was previously believed, has greater dispersal ability than previously known, can naturally recolonize restored habitats, and largely exists in protected areas where it is known to occur. Given this recent information, we find that the best available information indicates that the species is not likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range.

Anchialine pool shrimp (*Palaemonella burnsi*)—*Palaemonella burnsi* is a species of shrimp belonging to the family Palaemonidae. At the time that *P. burnsi* became a candidate, it was considered to be an endemic shrimp to the Hawaiian Islands, restricted to small anchialine habitats that were thought to have imminent threats. Though the total number of occupied pools in Hawaii is not known, *P. burnsi* has recently been observed in anchialine pools and pool groups on the islands of Hawaii and Maui. Many of these pools are located within protected habitat on State (*e.g.,* Manuka and Ahihi-Kinau Natural Area Reserves) and Federal land (*e.g.,* Kaloko-Honokohau National Historic Park).

New information has revealed that *Palaemonella burnsi* occurs in Kume-jima in the Ryuku archipelago, Japan, where it is was recently identified in coral reef flats. The discovery of an additional population in non-anchialine habitat so distant from the Hawaiian Islands suggests that *Palaemonella burnsi* exists across a much greater area than was previously believed, is not restricted to anchialine habitats, and largely exists in protected areas where it is known to occur. Given this recent information, we find that the best available information indicates that the species is not likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range.

**Petition Findings**

The ESA provides two mechanisms for considering species for listing. One method allows the Secretary, on the Secretary's own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this authority through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. The CNOR serves several purposes as part of the petition process: (1) In some instances (in particular, for petitions to list species that the Service has already identified as candidates on its own initiative), it serves as the initial petition finding; (2) for candidate species for which the Service has made a warranted-but-precluded petition finding, it serves as a ''resubmitted'' petition finding that the ESA requires the Service to make each year; and (3) it documents the Service's compliance with the statutory requirement to monitor the status of species for which listing is warranted but precluded, and to ascertain if they need emergency listing.

First, the CNOR serves as an initial petition finding in some instances. Under section 4(b)(3)(A), when we receive a petition to list a species, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make, within 12 months of the receipt of the petition, and publish one of three possible findings (a ''12-month finding''):

(1) The petitioned action is not warranted;

(2) The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the ESA govern further procedures, regardless of whether we issued the proposal in response to a petition); or

(3) The petitioned action is warranted, but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals to determine whether any species is endangered or threatened, and (b) expeditious progress is being made to add qualified species to the Lists. We refer to this third option as a ''warranted-but-precluded finding.''

We define ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 5, 1996). The standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

Therefore, all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings. Nevertheless, if we receive a petition to list a species that we have already identified as a candidate, we review the status of the newly petitioned candidate species and through this CNOR publish specific section 4(b)(3) findings (*i.e.,* substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition. In this CNOR, we are making a substantial 90-day finding and a warranted but precluded 12-month petition finding for *Streptanthus bracteatus* (bracted twistflower). This species was added to the candidate list on October 26, 2011, and we received a petition to list this species on August 5, 2014. We have identified the candidate species for which we received petitions by the code ''C*'' in the category column on the left side of Table 1 below.

Second, the CNOR serves as a ''resubmitted'' petition finding. Section 4(b)(3)(C)(i) of the ESA requires that when we make a warranted-but-precluded finding on a petition, we treat the petition as one that is resubmitted on the date of the finding. Thus, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the ESA at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual findings for petitioned candidate species through the CNOR. These annual findings supercede any findings from previous CNORs and the initial 12-month

warranted-but-precluded finding, although all previous findings are part of the administrative record for the new finding, and we may rely upon them or incorporate them by reference in the new finding as appropriate.

Third, through undertaking the analysis required to complete the CNOR, the Service determines if any candidate species needs emergency listing. Section 4(b)(3)(C)(iii) of the ESA requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, we will make prompt use of the emergency listing authority under section 4(b)(7). For example, on August 10, 2011, we emergency listed the Miami blue butterfly (76 FR 49542). We have been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms constitute the Service's system for monitoring and making annual findings on the status of petitioned species under sections 4(b)(3)(C)(i) and 4(b)(3)(C)(iii) of the ESA.

A number of court decisions have elaborated on the nature and specificity of information that we must consider in making and describing the petition findings in the CNOR. The CNOR that published on November 9, 2009 (74 FR 57804), describes these court decisions in further detail. As with previous CNORs, we continue to incorporate information of the nature and specificity required by the courts. For example, we include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, below, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species only, and we explain the priority system and why the work we have accomplished has precluded action on listing candidate species.

In preparing this CNOR, we reviewed the current status of, and threats to, the 56 candidates for which we have received a petition to list and the 3 listed species for which we have received a petition to reclassify from threatened to endangered, where we found the petitioned action to be warranted but precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species, has been, for the preceding months, and continues to be, precluded by higher-priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of, and threats to, petitioned candidate or listed species for which we published findings, under section 4(b)(3)(B) of the ESA, in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species. However, for some of these species, we are currently engaged in a thorough review of all available data to determine whether to proceed with a proposed listing rule; this review may result in us concluding that listing is no longer warranted.

The immediate publication of proposed rules to list these species was precluded by our work on higher-priority listing actions, listed below, during the period from October 1, 2014, through September 30, 2015. Below we describe the actions that continue to preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to, and remove species from, the Lists. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency list a species under section 4(b)(7) of the ESA.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why each of these candidates warrants listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: *http://ecos.fws.gov/tess_public/reports/candidate-species-report.* As described above, under section 4 of the ESA, we identify and propose species for listing based on the factors identified in section 4(a)(1)—either on our own initiative or through the mechanism that section 4 provides for the public to petition us to add species to the Lists of Endangered or Threatened Wildlife and Plants under the ESA.

**Preclusion and Expeditious Progress**

To make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals and (2) that expeditious progress is being made to add qualified species to either of the lists and to remove species from the lists (16 U.S.C. 1533(b)(3)(B)(iii)).

*Preclusion*

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions—(1) The amount of resources available for completing the listing function, (2) the estimated cost of completing the proposed listing, and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

*Available Resources*

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program. This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the ESA (for example, recovery

functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, since FY 2002, the Service's budget has included a subcap for critical habitat designations for already-listed species to ensure that some funds within the spending cap for listing are available for completing Listing Program actions other than critical habitat designations for already-listed species (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session. June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually all of the funds within the critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the funds within the critical habitat subcap were available for other listing activities. In some FYs since 2006, we have not needed to use all of the funds within the critical habitat to comply with court orders, and we therefore could use the remaining funds within the subcap towards additional proposed listing determinations for high-priority candidate species. In other FYs, while we did not need to use all of the funds within the critical habitat subcap to comply with court orders requiring critical habitat actions, we did not use the remaining funds towards additional proposed listing determinations, and instead used the remaining funds towards completing the critical habitat determinations concurrently with proposed listing determinations; this allowed us to combine the proposed listing determination and proposed critical habitat designation into one rule, thereby being more efficient in our work. In FY 2015, based on the Service's workload, we were able to use some of the funds within the critical habitat subcap to fund proposed listing determinations.

For FY 2012, Congress also put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service does not need to use all of the funds within either subcap, we are able to use the remaining funds for completing proposed or final listing determinations. In FY 2015, based on the Service's workload, we were able to use some of the funds within the foreign species subcap and the petitions subcap to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the three subcaps, and the amount of funds needed to complete court-mandated actions within those subcaps, Congress and the courts have in effect determined the amount of money available for listing activities nationwide. Therefore, the funds in the listing cap—other than those within the subcaps needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2015, on December 16, 2014, Congress passed a Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), which provided funding through September 30, 2015, at the same level as FY 2014. In particular, it included an overall spending cap of $20,515,000 for the listing program. Of that, no more than $1,504,000 could be used for listing actions for foreign species, and no more than $1,501,000 could be used to make 90-day or 12-month findings on petitions. The Service thus had $ 12,905,000 available to work on proposed and final listing determinations for domestic species. In addition, if the Service had funding available within the critical habitat, foreign species, or petition subcaps after those workloads had been completed, it could use those funds to work on listing actions other than critical habitat designations or foreign species.

*Costs of Listing Actions.* The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed listing rule with proposed critical habitat, $345,000; and for a final listing rule with final critical habitat, $305,000.

*Prioritizing Listing Actions.* The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) essential litigation-related, administrative, and listing program-management functions; (3) section 4 (of the ESA) listing and critical habitat actions with absolute statutory deadlines; and (4) section 4 listing actions that do not have absolute statutory deadlines. In the last few years, the Service received many new petitions and a single petition to list 404 species, significantly increasing the number of actions within the second category of our workload—actions that have absolute statutory deadlines. As a result of the petitions to list hundreds of species, we currently have over 500 12-month petition findings yet to be initiated and completed.

An additional way in which we prioritize work in the section 4 program is application of the listing priority guidelines (48 FR 43098; September 21, 1983). Under those guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus), a species, or a part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1

would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species. In addition to prioritizing species with our 1983 guidance, because of the large number of high-priority species we have had in the recent past, we had further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species had the highest priority to receive funding to work on a proposed listing determination and we used this to formulate our work plan for FYs 2010 and 2011 that was included in the MDL Settlement Agreement (see below), as well as for work on proposed and final listing rules for the remaining candidate species with LPNs of 2 and 3.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the ESA and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court order or court-approved deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. It is therefore important that we be as efficient as possible in our listing process. As we implement our listing work plan and work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest priority species. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

*Listing Program Workload.* Each FY we determine, based on the amount of funding Congress has made available within the Listing Program spending cap, specifically which actions we will have the resources to work on in that FY. We then prepare Allocation Tables that identify the actions that we are funding for that FY, and how much we estimate it will cost to complete each action; these Allocation Tables are part of our record for this notice and the listing program. Our Allocation Table for FY 2012, which incorporated the Service's approach to prioritizing its workload, was adopted as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (''MDL Litigation''), Document 31–1 (D.D.C. May 10, 2011) (''MDL Settlement Agreement'')). The requirements of paragraphs 1 through 7 of that settlement agreement, combined with the work plan attached to the agreement as Exhibit B, reflected the Service's Allocation Tables for FY 2011 and FY 2012. In addition, paragraphs 2 through 7 of the agreement require the Service to take numerous other actions through FY 2017—in particular, complete either a proposed listing rule or a not-warranted finding for all 251 species designated as ''candidates'' in the 2010 candidate notice of review (''CNOR'') before the end of FY 2016, and complete final listing determinations for those species proposed for listing within the statutory deadline (usually one year from the proposal). Paragraph 10 of that settlement agreement sets forth the Service's conclusion that ''fulfilling the commitments set forth in this Agreement, along with other commitments required by court orders or court-approved settlement agreements already in existence at the signing of this Settlement Agreement (listed in Exhibit A), will require substantially all of the resources in the Listing Program.'' As part of the same lawsuit, the court also approved a separate settlement agreement with the other plaintiff in the case; that settlement agreement requires the Service to complete additional actions in specific fiscal years—including 12-month petition findings for 11 species, 90-day petition findings for 478 species, and proposed listing determinations or not-warranted findings for 40 species.

These settlement agreements have led to a number of results that affect our preclusion analysis. First, the Service has been, and will continue to be, limited in the extent to which it can undertake additional actions within the Listing Program through FY 2017, beyond what is required by the MDL Settlement Agreements. Second, because the settlement is court-approved, two broad categories of actions now fall within the Service's highest priority (compliance with a court order): (1) The actions required to be completed in FY 2015 by the MDL Settlement Agreements; and (2) completion, before the end of FY 2016, of proposed listings or not-warranted findings for most of the candidate species identified in this CNOR (in particular, for those candidate species that were included in the 2010 CNOR). Therefore, each year, one of the Service's highest priorities is to make steady progress towards completing by the end of 2017 proposed and final listing determinations for the 2010 candidate species—based on the Service's LPN prioritization system, preparing multi-species actions when appropriate, and taking into consideration the availability of staff resources.

Based on these prioritization factors, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all precluded by higher priority listing actions, including listing actions with deadlines required by court-orders and court-approved settlement agreements and listing actions with absolute statutory deadlines. We provide tables in the *Expeditious Progress* section, below, identifying the listing actions that we completed in FY 2015, as well as those we worked on but did not complete in FY 2015.

*Expeditious Progress*

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resources available for delisting, which

is funded by a separate line item in the budget of the Endangered Species Program. During FY 2015, we completed a delisting rule for one species.) As discussed below, given the limited resources available for listing, we find that we made expeditious progress in adding qualified species to the Lists in FY 2015.

We provide below tables cataloguing the work of the Service's Listing Program in FY 2015. This work includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that warrant listing; (2) undertaking the evaluation of the best available scientific data about those species and the threats they face, and preparing proposed and final listing rules; and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. After taking into consideration the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we made expeditious progress to add qualified species to the Lists in FY 2015.

First, we made expeditious progress in the third and final step: Listing qualified species. In FY 2015, we resolved the status of 31 species that we determined, or had previously determined, qualified for listing. Moreover, for 31 species, the resolution was to add them to the Lists, most with concurrent designations of critical habitat, and for 1 species we published a withdrawal of the proposed rule. We also proposed to list an additional 67 qualified species, most with concurrent critical habitat proposals.

Second, we are making expeditious progress in the second step: working towards adding qualified species to the Lists. In FY 2015, we worked on developing proposed listing rules or not-warranted 12-month petition findings for 28 species (most of them with concurrent critical habitat proposals). Although we have not yet completed those actions, we are making expeditious progress towards doing so.

Third, we are making expeditious progress in the first step towards adding qualified species to the Lists: Identifying additional species that qualify for listing. In FY 2015, we completed 90-day petition findings for 67 species and 12-month petition findings for 27 species.

Our accomplishments this year should also be considered in the broader context of our commitment to reduce the number of candidate species for which we have not made final determinations whether or not to list. On May 10, 2011, the Service filed in the MDL Litigation a settlement agreement that put in place an ambitious schedule for completing proposed and final listing determinations at least through FY 2016; the court approved that settlement agreement on September 9, 2011. That agreement required, among other things, that for all 251 species that were included as candidates in the 2010 CNOR, the Service submit to the **Federal Register** proposed listing rules or not-warranted findings by the end of FY 2016, and for any proposed listing rules, the Service complete final listing determinations within the statutory time frame. Paragraph 6 of the agreement provided indicators that the Service is making adequate progress towards meeting that requirement—which included: Completing proposed listing rules or not-warranted findings for at least 200 species by the end of FY 2015. The Service has completed proposed listing rules or not-warranted findings for 220 of the 2010 candidate species, as well as final listing rules for 143 of those proposed rules, and is therefore is making adequate progress towards meeting all of the requirements of the MDL settlement agreement. Both by entering into the settlement agreement and by making adequate progress towards making final listing determinations for the 251 species on the 2010 candidate list, the Service is making expeditious progress to add qualified species to the lists.

The Service's progress in FY 2015 included completing and publishing the following determinations:

2015 Completed Listing Actions

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 10/24/2014 | Threatened Species Status for Dakota Skipper and Endangered Species Status for Poweshiek Skipperling. | Final Listing Endangered and Threatened | 79 FR 6367–63748. |
| 11/20/2014 | Threatened Species Status for Gunnison sage-grouse. | Final Listing Threatened | 79 FR 69192–69310. |
| 12/11/2014 | Threatened Species Status for the Rufa Red Knot. | Final Listing Threatened | 79 FR 73706–73748. |
| 12/31/2014 | 90-day finding on Monarch Butterfly and California Gnatcatcher. | 90-day petition finding Substantial | 79 FR 78775–78778. |
| 4/2/2015 | Threatened Species Status for the Northern Long-eared Bat with 4(d) Rule. | Final Listing Threatened | 80 FR 17974–18033. |
| 4/7/2015 | Endangered Species Status for the Big Sandy Crayfish and the Guyandotte River Crayfish. | 12-month petition finding Warranted Proposed Listing Endangered. | 80 FR 18711–18739. |
| 4/7/2015 | 12-Month Finding on a Petition To List Humboldt Marten as an Endangered or Threatened Species. | 12-month petition finding Not warranted | 80 FR 18742–18772. |
| 4/10/2015 | 90-Day Findings on Ten Petitions (Clear Lake hitch, Mojave shoulderband snail, Northern spotted owl, Relict dace, San Joaquin Valley giant flower-loving fly, Western pond turtle, Yellow-cedar, Egyptian tortoise, Golden conure, Long-tailed chinchilla). | 90-day petition finding Substantial | 80 FR 19259–19263. |
| 4/23/2015 | Withdrawal of the Proposed Rule To List the Bi-State Distinct Population Segment of Greater Sage-Grouse and Designate Critical Habitat. | Proposed Rule Withdrawal | 80 FR 22828–22866. |
| 6/23/2015 | 12-Month Finding on a Petition to List Leona's Little Blue Butterfly as Endangered or Threatened. | 12-month petition finding Not warranted | 80 FR 35916–35931. |

2015 COMPLETED LISTING ACTIONS—Continued

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 6/30/2015 | 90-day petition findings on 31 species | 90-day petition finding Substantial and not substantial (not substantial for Gray Wolf, Blue Ridge gray-cheeked salamander, California giant salamander, Caddo Mountain salamander, Colorado checkered whiptail, the DPS of Wild Horse, Olympic torrent salamander, Pigeon Mountain salamander, Weller's salamander and wingtail crayfish; substantial for alligator snapping turtle, Apalachicola kingsnake, Arizona toad, Blanding's turtle, Cascade Caverns salamander, Cascades frog, Cedar Key mole skink, foothill yellow-legged frog, gopher frog, green salamander, Illinois chorus frog, Kern Canyon slender salamander, Key ringneck snake, Oregon slender salamander, Relictual slender salamander, Rim Rock crowned snake, Rio Grande cooter, silvery phacelia, spotted turtle, southern hog-nosed snake, and western spadefoot toad). | 80 FR 37568– 37579 |
| 9/15/2015 | 12-Month Finding on a Petition to List the New England Cottontail as an Endangered or Threatened Species. | 12-month petition finding Not warranted Notice candidate removal. | 80 FR 55286–55304. |
| 9/15/2015 | Threatened Species Status for *Platanthera integrilabia* (White Fringeless Orchid). | Proposed Listing Threatened | 80 FR 55304–55321. |
| 9/18/2015 | 90-Day Findings on 25 Petitions | 90-day petition finding Substantial and not substantial (not substantial for Cahaba pebblesnail and the Stephens' kangaroo rat; substantial for Blue Calamintha bee, California spotted owl, Cascade torrent salamander, Columbia torrent salamander, Florida pine snake, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, northern bog lemming, Panamint alligator lizard, Peaks of Otter salamander, rusty-patched bumblebee, Shasta salamander, short-tailed snake, southern rubber boa, regal fritillary, Tinian monarch, tricolored blackbird, tufted puffin, Virgin River spinedace, wood turtle, and the Yuman desert fringe-toed lizard). | 80 FR 56423–56432. |
| 9/29/2015 | Endangered Species Status for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), and *Linum arenicola* (Sand Flax), and Threatened Species Status for *Argythamnia blodgettii* (Blodgett's Silverbush). | Proposed Listing Endangered and Threatened | 80 FR 58535–58567. |
| 9/30/2015 | Endangered Status for 49 Species from the Hawaiian Islands. | Proposed Listing Endangered | 80 FR 58820–58909. |
| 9/30/2015 | Threatened Species Status for the Eastern Massasauga Rattlesnake. | Proposed Listing Threatened | 80 FR 58688–58701. |
| 9/30/2015 | Threatened Species Status for the Elfinwoods Warbler with 4(d) Rule. | Proposed Listing Threatened | 80 FR 58674–58688. |
| 10/1/2015 | Endangered Status for 16 Species and Threatened Status for 7 Species in Guam and the Commonwealth of the Northern Mariana Islands. | Final Listing Endangered and Threatened | 80 FR 59423–59497. |
| 10/2/2015 | 12-Month Finding on a Petition to List Greater Sage-grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species. | 12-month petition finding Not warranted Notice Candidate removal. | 80 FR 59857–59942. |
| 10/6/2015 | 12-Month Finding on a Petition to List the Sonoran Desert Tortoise as an Endangered or Threatened Species. | 12-month petition finding Not warranted Notice Candidate removal. | 80 FR 60321–60335. |
| 10/6/2015 | Proposed Threatened Species Status for Suwannee Moccasinshell. | Proposed Listing Threatened | 80 FR 60335–60348. |
| 10/6/2015 | Endangered Species Status for *Trichomanes punctatum* ssp. *floridanum* (Florida Bristle Fern. | Final Listing Endangered | 80 FR 60439–60465. |

2015 COMPLETED LISTING ACTIONS—Continued

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 10/6/2015 | Threatened Species Status for Black Pinesnake With 4(d) Rule. | Final Listing Threatened | 80 FR 60467–60489. |
| 10/7/2015 | Threatened Species Status for the Headwater Chub and a Distinct Population Segment of the Roundtail Chub. | Proposed Listing Threatened | 80 FR 60753–60783. |
| 10/8/2015 | 12-Month Findings on Petitions To List 19 Species as Endangered or Threatened Species. | 12-month petition finding Not warranted Notice Candidate removal. | 80 FR 60834–60850. |
| 10/8/2015 | 12-Month Finding on a Petition To List Sierra Nevada Red Fox as an Endangered or Threatened Specie. | 12-month petition finding Not warranted and warranted but precluded. | 80 FR 60989–61028. |
| 10/8/2015 | Threatened Species Status for the Kentucky Arrow Darter. | Proposed Listing Threatened | 80 FR 60961–60988. |
| 10/13/2015 | Proposed Endangered Status for Five Species from American Samoa. | Proposed Listing Endangered | 80 FR 61567–61607. |

Our expeditious progress also included work on listing actions that we funded in previous fiscal years and in FY 2015, but did not complete in FY 2015. For these species, we have completed the first step, and have been working on the second step, necessary for adding species to the Lists. These actions are listed below. All the actions in the table are being conducted under a deadline set by a court through a court order or settlement agreement with the exception of the 90-day petition finding for the Miami tiger beetle.

ACTIONS FUNDED IN PREVIOUS FYS AND FY 2015 BUT NOT YET COMPLETED

| Species | Action |
|---|---|
| **Actions Subject to Court Order/Settlement Agreement** | |
| Washington ground squirrel | Proposed listing. |
| Xantus's murrelet | Proposed listing. |
| Four Florida plants (Florida pineland crabgrass, Florida prairie clover, pineland sandmat, and Everglades bully) | Proposed listing. |
| Black warrior waterdog | Proposed listing. |
| Black mudalia | Proposed listing. |
| Highlands tiger beetle | Proposed listing. |
| Sicklefin redhorse | Proposed listing. |
| Texas hornshell | Proposed listing. |
| Guadalupe fescue | Proposed listing. |
| **Actions Subject to Statutory Deadline** | |
| Miami Tiger Beetle | 90-day petition finding. |

We also funded work on resubmitted petitions findings for 56 candidate species (species petitioned prior to the last CNOR). We did not include an updated assessment form as part of our resubmitted petition findings for the 56 candidate species for which we are preparing either proposed listing determinations or not warranted 12-month findings. However, for the resubmitted petition findings, in the course of preparing proposed listing determinations or 12-month not warranted findings, we continue to monitor new information about their status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the well-being of any of these candidate species; see summaries below regarding publication of these determinations (these species will remain on the candidate list until a proposed listing rule is published). Because the majority of these petitioned species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program, so we continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

During FY 2015, we also funded work on resubmitted petition findings for petitions to uplist three listed species (one grizzly bear population, Delta smelt, and *Sclerocactus brevispinus* (Pariette cactus)), for which we had previously received a petition and made a warranted-but-precluded finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the ESA, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

Although we have not been able to resolve the listing status of many of the candidates, we continue to contribute to

the conservation of these species through several programs in the Service. In particular, the Candidate Conservation Program, which is separately budgeted, focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, local governments, private landowners, and private conservation organizations) to address the threats to candidate species and other species at risk. We are currently working with our partners to implement voluntary conservation agreements for more than 110 species covering 6.1 million acres of habitat. In some instances, the sustained implementation of strategically designed conservation efforts have culminated in making listing unnecessary for species that are candidates for listing or for which listing has been proposed (see *http://ecos.fws.gov/tess_public/reports/non-listed-species-precluded-from-listing-due-to-conservation-report*).

**Findings for Petitioned Candidate Species**

Below are updated summaries for petitioned candidates for which we published findings under section 4(b)(3)(B). In accordance with section 4(b)(3)(C)(i), we treat any petitions for which we made warranted-but-precluded 12-month findings within the past year as having been resubmitted on the date of the warranted-but-precluded finding. We are making continued warranted-but-precluded 12-month findings on the petitions for these species (for 12-month findings on resubmitted petitions for species that we determined no longer meet the definition of ''endangered species'' or ''threatened species,'' see summaries above under Candidate Removals).

*Mammals*

Peñasco least chipmunk (*Tamias minimus atristria*)—The following summary is based on information contained in our files. Peñasco least chipmunk is endemic to the White Mountains, Otero and Lincoln Counties, and the Sacramento Mountains, Otero County, New Mexico. The Peñasco least chipmunk historically had a broad distribution throughout the Sacramento Mountains within ponderosa pine forests. The last verification of persistence of the Sacramento Mountains population of Peñasco least chipmunk was in 1966, and the subspecies appears to be extirpated from the Sacramento Mountains. The only remaining known distribution of the least chipmunk is restricted to open, high-elevation talus slopes within a subalpine grassland that is located in the Sierra Blanca area of the White Mountains in Lincoln and Otero Counties, New Mexico.

The Peñasco least chipmunk faces threats from present or threatened destruction, modification, and curtailment of its habitat from the alteration or loss of mature ponderosa pine forests in one of the two historically occupied areas. The documented decline in occupied localities, in conjunction with the small numbers of individuals captured, is linked to widespread habitat alteration. Moreover, the highly fragmented nature of its distribution is a significant contributor to the vulnerability of this subspecies and increases the likelihood of very small, isolated populations being extirpated. As a result of this fragmentation, even if suitable habitat exists (or is restored) in the Sacramento Mountains, the likelihood of natural recolonization of historical habitat or population expansion from the White Mountains is extremely remote. Considering the high magnitude and immediacy of these threats to the subspecies and its habitat, and the vulnerability of the White Mountains population, we conclude that the least chipmunk is in danger of extinction throughout all of its known range now or in the foreseeable future.

The one known remaining extant population of Peñasco least chipmunk in the White Mountains is particularly susceptible to extinction as a result of small, reduced population sizes and its isolation. Because of the reduced population size and lack of contiguous habitat adjacent to the extant White Mountains population, even a small impact on the White Mountains could have a very large impact on the status of the species as a whole. As a result of its restricted range, apparent small population size, and fragmented historical habitat, the White Mountains population is inherently vulnerable to extinction due to effects of small population sizes (*e.g.,* loss of genetic diversity). These impacts are likely to be seen in the population at some point in the foreseeable future, but do not appear to be affecting this population currently, as it appears to be stable at this time. Therefore, we conclude that the threats to this population are of high magnitude, but not imminent. Therefore, we assign an LPN of 6 to the subspecies.

Washington ground squirrel (*Urocitellus washingtoni*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Red tree vole, north Oregon coast DPS (*Arborimus longicaudus*)—The following summary is based on information contained in our files and in our initial warranted-but-precluded finding, published in the **Federal Register** on October 13, 2011 (76 FR 63720). Red tree voles are small, mouse-sized rodents that live in conifer forests and spend almost all of their time in the tree canopy. They are one of the few animals that can persist on a diet of conifer needles, which is their principal food. Red tree voles are endemic to the humid, coniferous forests of western Oregon (generally west of the crest of the Cascade Range) and northwestern California (north of the Klamath River). The north Oregon coast DPS of the red tree vole comprises that portion of the Oregon Coast Range from the Columbia River south to the Siuslaw River. Red tree voles demonstrate strong selection for nesting in older conifer forests, which are now relatively rare across the range of the DPS; they avoid nesting in younger forests.

Although data are not available to rigorously assess population trends, information from retrospective surveys indicates red tree voles have declined in the range of the DPS and are largely absent in areas where they were once relatively abundant. Older forests that provide habitat for red tree voles are limited and highly fragmented, while ongoing forest practices in much of the population's range maintain the remnant patches of older forest in a highly fragmented and isolated condition. Modeling indicates that 11 percent of the range currently contains tree vole habitat, largely restricted to the 22 percent of the population's range that is under Federal ownership.

Existing regulatory mechanisms on State and private lands are inadequate to prevent continued harvest of forest stands at a scale and extent that would be meaningful for conserving red tree

voles. Biological characteristics of red tree voles, such as small home ranges, limited dispersal distances, and low reproductive potential, limit their ability to persist in areas of extensive habitat loss and alteration. These biological characteristics also make it difficult for the tree voles to recolonize isolated habitat patches. Due to the species' reduced distribution, the red tree vole is vulnerable to random environmental disturbances that may remove or further isolate large blocks of already limited habitat, and to extirpation from such factors as lack of genetic variability, inbreeding depression, and demographic stochasticity. Although the entire population is experiencing threats, the impact is less pronounced on Federal lands, where much of the red tree vole habitat remains. Hence, the magnitude of these threats is moderate to low. The threats are imminent because habitat loss and reduced distribution are currently occurring within the range of the DPS. Therefore, we have retained an LPN of 9 for this DPS.

Pacific walrus (*Odobenus rosmarus divergens*)—The following information is based on information in our files and our warranted-but-precluded 12-month petition finding published on February 10, 2011 (76 FR 7634). The Pacific walrus uses sea ice over the continental shelf waters of the northern Bering and Chukchi Seas for a number of important behaviors. Sea ice is optimal habitat for females and young animals year round, but most males remain in the Bering Sea even when ice is absent. Unlike seals, which can remain in the water for extended periods, walrus must haul out onto ice or land periodically to rest. The Pacific walrus is a traditional and important source of food and products to native Alaskans, especially those living on Saint Lawrence Island, and to native Russians.

Annually, females and young animals, as well as some males, migrate up to 1,500 km (932 mi) between winter breeding areas in the sub-Arctic (northern Bering Sea) and summer foraging areas in the Chukchi Sea. Historically, the females and calves remained on pack ice over the continental shelf of the Chukchi Sea throughout the summer, using it as a platform for resting after making shallow foraging dives for invertebrates on the sea floor. Sea ice also provides isolation from disturbance and predators. Since 1979, the extent of summer Arctic sea ice has declined. The lowest records of minimum sea ice extent occurred from 2007 to 2014. Based on the best scientific information available, we anticipate that sea ice will retreat northward off the Chukchi continental shelf for 1 to 5 months every year in the foreseeable future.

When ice in the Chukchi Sea melts beyond the limits of the continental shelf (and the ability of the walrus to obtain food), thousands of female and young walruses congregate at coastal haulouts. Although coastal haulouts have historically provided a place to rest, the aggregation of so many animals at this time of year has increased in the last 7 years. Not only are the number of animals more concentrated at coastal haulouts than on widely dispersed sea ice, but also the probability of disturbance from humans and terrestrial animals is much higher. Disturbances at coastal haulouts can cause stampedes, leading to mortalities and injuries. In addition, there is also concern that the concentration of animals will cause local prey depletion, leading to longer foraging trips, increased energy costs, and potential effects on female condition and calf survival. These effects may lead to a population decline.

We recognize that Pacific walruses face additional stressors from ocean warming, ocean acidification, disease, oil and gas exploration and development, increased shipping, commercial fishing, and subsistence harvest, but subsistence harvest is the only threat that could contribute to finding the species to be in danger of extinction throughout all or a significant portion of its range, or likely to become so in the foreseeable future. We found that subsistence harvest will contribute to putting the species in danger of extinction if the population declines but harvest levels remain the same. Because the threat of sea ice loss is not having significant population-level effects currently, but is projected to, we determined that the magnitude of this threat is moderate, not high. Because both the loss of sea ice habitat and the ongoing practice of subsistence harvest are presently occurring, these threats are imminent. Thus, we assigned an LPN of 9 to this subspecies.

*Birds*

Spotless crake, American Samoa DPS (*Porzana tabuensis*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Red-crowned parrot (*Amazona viridigenalis*)—The following summary is based on information contained in the notice of 12-month finding (October 6, 2011, 76 FR 62016), scientific reports, journal articles, and newspaper articles, and also, to a large extent, on communication with the U.S. Fish and Wildlife Service (Service), Gulf Coast Prairie Landscape Conservation Cooperative, Texas Parks and Wildlife Department, The Nature Conservancy, Rio Grande Joint Venture, World Birding Center, University of Texas-Brownsville, and Rio Grande Birding Festival biologists. Currently, there are no changes to the range or distribution of the red-crowned parrot. The red-crowned parrot is nonmigratory, and occurs in fragmented isolated habitat in the Mexican States of Veracruz, San Luis Potosi, Nuevo Leon, Tamaulipas, and northeast Queretaro. In the United States, it occurs in the State of Texas, in Mission, McAllen, Pharr, and Edinburg in Hidalgo County, and in Brownsville, Los Fresnos, San Benito, and Harlingen in Cameron County. Feral populations may also exist in southern California, Puerto Rico, Hawaii, and Florida, and escaped birds have been reported in central Texas. The species is nomadic during the winter (nonbreeding) season when large flocks range widely to forage, moving tens of kilometers during a single flight in Mexico.

As of 2004, half of the native population is believed to be found in the United States. Within Texas, the species is thought to move between urban areas in search of food and other available resources. The results of two seasons of monitoring the species' use of revegetated habitat, native habitat, and urban habitats within the Rio Grande

corridor found that the red-crowned parrot occurred exclusively in urban habitats in the Texas Lower Rio Grande Valley during the breeding season. Systematic annual monitoring of red-crowned parrot populations in the Lower Rio Grande Valley, Texas, has not been undertaken, although there are numerous reported sightings and anecdotal observations of the bird and its behavior, abundance, nesting, or threats. An iNaturalist project was created for the parrot in early 2015, as an initial step in developing an annual monitoring program that will gather data on distribution, numbers, nesting, and foraging habitat from academics, conservation organizations, and citizen scientists. Monitoring efforts for the red-crowned parrot in Mexico are unknown, although a proposal has been developed to create a conservation plan and begin a monitoring program in central Tamaulipas (if funding is found).

Conservation efforts include a project that was initiated by the Service and the Rio Grande Joint Venture in the Lower Rio Grande Valley to understand and compare how birds are using revegetated tracts of land versus native refuge tracts and urban habitats, including the effect of previous flooding and projections of how climate change may affect the distribution of birds in the Lower Rio Grande Valley. A final report for this project showed red-crowned parrots using only urban habitats during the breeding season, but it is hoped that some of the revegetation efforts, as well as conservation of existing native tracts of land, will provide habitat in the future once the trees have matured. Because loss of nesting habitat is a concern for the species in southern Texas, two projects, one in Weslaco and one in Harlingen, Texas, were initiated in 2011, to provide nest boxes in palms for the red-crowned parrot. As of March 2013, these nest sites had not been used, although red-crowned parrots had actively traveled throughout the area during the prior spring, summer, and fall months.

The primary threats within Mexico and Texas remain habitat destruction and modification from logging, deforestation, conversion of suitable habitat, and urbanization, as well as trapping and illegal trade of the parrots. Multiple laws and regulations have been passed to control illegal trade, but they are not adequately enforced. In addition, existing regulations do not adequately address the habitat threats to the species. Thus, the inadequacy of existing regulations and their enforcement continue to threaten the red-crowned parrot. However, at least four city ordinances have been established in South Texas prohibiting malicious acts (injury, mortality) to birds and their habitat. A new effort in 2015 is under way to gain recognition for the species as indigenous in Texas; a classification that would afford State protection. Disease and predation still do not threaten the species. Pesticide exposure is not known to affect the red-crowned parrot. Threats to the species are extensive and are imminent and, therefore, we have determined that a LPN of 2 remains appropriate for the species.

Sprague's pipit (*Anthus spragueii*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Reptiles*

Louisiana pine snake (*Pituophis ruthveni*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Gopher tortoise, eastern population (*Gopherus polyphemus*)—The following summary is based on information in our files. The gopher tortoise is a large, terrestrial, herbivorous turtle that reaches a total length up to 15 inches (in) (38 centimeters (cm)), and typically inhabits the sandhills, pine/scrub oak uplands, and pine flatwoods associated with the longleaf pine (*Pinus palustris*) ecosystem. A fossorial animal, the gopher tortoise is usually found in areas with well-drained, deep, sandy soils; open tree canopy; and diverse, abundant herbaceous groundcover.

The gopher tortoise ranges from extreme southern South Carolina south through peninsular Florida, and west through southern Georgia, Florida, southern Alabama, and Mississippi, into extreme southeastern Louisiana. The eastern population of the gopher tortoise in South Carolina, Florida, Georgia, and Alabama (east of the Mobile and Tombigbee Rivers) is a candidate species; the western population of gopher tortoise—which is found in Alabama (west of the Mobile and Tombigbee Rivers), Mississippi, and Louisiana—is federally listed as threatened.

The primary threat to the gopher tortoise is habitat fragmentation, destruction, and modification (either deliberately or from inattention), including conversion of longleaf pine forests to incompatible silvicultural or agricultural habitats, urbanization, shrub and hardwood encroachment (mainly from fire exclusion or insufficient fire management), construction of solar farms, and establishment and spread of invasive species. Other threats include disease, predation (mainly on nests and young tortoises), and inadequate regulatory mechanisms, specifically those needed to protect and enhance relocated tortoise populations in perpetuity. The magnitude of threats to the eastern population of gopher tortoise is moderate to low, since the population extends over a broad geographic area and conservation measures are in place in some areas. However, since the eastern population is currently being affected by a number of threats, including destruction and modification of its habitat, disease, predation, exotics, and inadequate regulatory mechanisms, these threats are imminent. Thus, we have continued to assign a LPN of 8 for this species.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Amphibians*

Relict leopard frog (*Lithobates onca*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Striped newt (*Notophthalmus perstriatus*)—The following summary is based on information contained in our files. The striped newt is a small salamander that inhabits ephemeral ponds surrounded by upland habitats of high pine, scrubby flatwoods, and scrub. Longleaf pine–turkey oak stands with intact ground cover containing wiregrass are the preferred upland habitat for striped newts, followed by scrub, then flatwoods. Life-history stages of the striped newt are complex, and include the use of both aquatic and terrestrial habitats throughout their life cycle. Striped newts are opportunistic feeders that prey on a variety of items such as frog eggs, worms, snails, fairy shrimp, spiders, and insects (adult and larvae) that are of appropriate size. They occur in appropriate habitats from the Atlantic Coastal Plain of southeastern Georgia to the north-central peninsula of Florida and through the Florida panhandle into portions of southwest Georgia, upward to Taylor County in western Georgia. Prior to 2014, there was thought to be a 125-km (78-mi) separation between the western and eastern portions of the striped newt's range. However, the discovery of five adult striped newts in Taylor County, Florida, represents a significant possible range connection. In addition to the newts discovered in Taylor County, Florida, researchers also discovered 15 striped newts (14 paedomorphs and 1 non-gilled adult) in a pond in Osceola County, Florida, which represents a significant range extension to the south.

The historical range of the striped newt was likely similar to the current range. However, loss of native longleaf habitat, fire suppression, and the natural patchy distribution of upland habitats used by striped newts have resulted in fragmentation of existing populations. Other threats to the species include disease, drought, and inadequate regulatory mechanisms. Overall, the magnitude of the threats is moderate and imminent. Therefore, we assigned a LPN of 8 to the newt. However, due to recent information that suggests the striped newt is likely extirpated from Apalachicola National Forest, the LPN may warrant changing to a lower number in the future.

Berry Cave salamander (*Gyrinophilus gulolineatus*)—The following summary is based on information in our files. The Berry Cave salamander is recorded from Berry Cave in Roane County; from Mud Flats, Aycock Spring, Christian, Meades Quarry, Meades River, Fifth, and The Lost Puddle caves in Knox County; from Blythe Ferry Cave in Meigs County; and from an unknown cave in Athens, McMinn County, Tennessee. In May of 2014, the species was also discovered in an additional cave, Small Cave, in McMinn County. These cave systems are all located within the Upper Tennessee River and Clinch River drainages. Viable populations are known to occur in Berry and Mudflats caves.

Ongoing threats to Berry Cave salamanders include lye leaching in the Meades Quarry Cave as a result of past quarrying activities, the possible development of a roadway with potential to impact the recharge area for the Meades Quarry Cave system, urban development in Knox County, water quality impacts despite existing State and Federal laws, and hybridization between spring salamanders and Berry Cave salamanders in Meades Quarry Cave. These threats, coupled with confined distribution of the species and apparent low population densities, are all factors that leave the Berry Cave salamander vulnerable to extirpation. We have determined that the Berry Cave salamander faces ongoing, and therefore imminent. The threats to the salamander are moderate in magnitude because, although some of the threats to the species are widespread, the salamander still occurs in several different cave systems, and existing populations appear stable. We continue to assign this species a LPN of 8.

Black Warrior waterdog (*Necturus alabamensis*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Fishes*

Arkansas darter (*Etheostoma cragini*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Pearl darter (*Percina aurora*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Sicklefin redhorse (*Moxostoma* sp.)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Longfin smelt (*Spirinchus thaleichthys*), Bay-Delta DPS— The following summary is based on information contained in our files and the petition we received on August 8, 2007. On April 2, 2012 (77 FR 19756), we determined that the longfin smelt

San Francisco Bay–Delta distinct population segment (Bay-Delta DPS) was warranted for listing as an endangered or threatened species under the ESA. Longfin smelt measure 9–11 cm (3.5–4.3 in) standard length. Longfin smelt are considered pelagic and anadromous, although anadromy in longfin smelt is poorly understood, and certain populations in other parts of the species' range are not anadromous and complete their entire life cycle in freshwater lakes and streams. Longfin smelt usually live for 2 years, spawn, and then die, although some individuals may spawn as 1- or 3-year-old fish before dying. In the Bay-Delta, longfin smelt are believed to spawn primarily in freshwater in the lower reaches of the Sacramento River and San Joaquin River.

Longfin smelt numbers in the Bay-Delta have declined significantly since the 1980s. Abundance indices derived from the Fall Midwater Trawl (FMWT), Bay Study Midwater Trawl (BSMT), and Bay Study Otter Trawl (BSOT) all show marked declines in Bay-Delta longfin smelt populations from 2002 to 2012. Longfin smelt abundance over the last decade is the lowest recorded in the 40-year history of CDFG's FMWT monitoring surveys.

The primary threat to the DPS is from reduced freshwater flows. Freshwater flows, especially winter-spring flows, are significantly correlated with longfin smelt abundance —longfin smelt abundance is lower when winter-spring flows are lower. The long-term decline in abundance of longfin smelt in the Bay-Delta has been partially attributed to reductions in food availability and disruptions of the Bay-Delta food web caused by establishment of the nonnative overbite clam and likely by increasing ammonium concentrations. The threats remain high in magnitude, since they pose a significant risk to the DPS throughout its range. The threats are ongoing, and thus are imminent. Thus, we are maintaining an LPN of 3 for this population.

*Clams*

Texas fatmucket (*Lampsilis bracteata*)—The following summary is based on information contained in our files. The Texas fatmucket is a large, elongated freshwater mussel that is endemic to central Texas. Its shell can be moderately thick, smooth, and rhomboidal to oval in shape. Its external coloration varies from tan to brown with continuous dark brown, green-brown, or black rays, and internally it is pearly white, with some having a light salmon tint. This species historically occurred throughout the Colorado and Guadalupe-San Antonio River basins but is now known to occur only in nine streams within these basins in very limited numbers. All existing populations are represented by only one or two individuals and are not likely to be stable or recruiting.

The Texas fatmucket is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels. This species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas fatmucket and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the extinction of the Texas fatmucket in the foreseeable future.

The threats to the Texas fatmucket are high in magnitude, because habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fatmucket and profoundly affect its survival and recruitment. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Remaining populations are small, isolated, and highly vulnerable to stochastic events, which could lead to extirpation or extinction. These threats are imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Texas fatmucket populations are very small and vulnerable to extirpation, which increases the species' vulnerability to extinction. Based on imminent, high-magnitude threats, we maintained an LPN of 2 for the Texas fatmucket.

Texas fawnsfoot (*Truncilla macrodon*)—The following summary is based on information contained in our files. The Texas fawnsfoot is a small, relatively thin-shelled freshwater mussel that is endemic to central Texas. Its shell is long and oval, generally free of external sculpturing, with external coloration that varies from yellowish- or orangish-tan, brown, reddish-brown, to smoky-green with a pattern of broken rays or irregular blotches. The internal color is bluish-white or white and iridescent posteriorly. This species historically occurred throughout the Colorado and Brazos River basins and is now known from only five locations. The Texas fawnsfoot has been extirpated from nearly all of the Colorado River basin and from much of the Brazos River basin. Of the populations that remain, only three are likely to be stable and recruiting; the remaining populations are disjunct and restricted to short stream reaches.

The Texas fawnsfoot is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels, as well as by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas fawnsfoot and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the extinction of the Texas fawnsfoot in the foreseeable future.

The threats to the Texas fawnsfoot are high in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fawnsfoot and profoundly affect its survival and recruitment. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Remaining populations are small, isolated, and highly vulnerable to stochastic events. These threats are imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation has already occurred and will continue as the human population continues to grow in central Texas. The small Texas fawnsfoot populations are at risk of extirpation, which increases the species' vulnerability to extinction. Based on imminent, high-magnitude threats, we assigned the Texas fawnsfoot an LPN of 2.

Texas hornshell (*Popenaias popei*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice.

However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Golden orb (*Quadrula aurea*)—The following summary is based on information contained in our files. The golden orb is a small, round-shaped freshwater mussel that is endemic to central Texas. This species historically occurred throughout the Nueces-Frio and Guadalupe-San Antonio River basins and is now known from only nine locations in four rivers. The golden orb has been eliminated from nearly the entire Nueces-Frio River basin. Four of these populations appear to be stable and are reproducing, and the remaining five populations are small and isolated and show no evidence of recruitment. It appears that the populations in the middle Guadalupe and lower San Marcos Rivers are likely connected. The remaining extant populations are highly fragmented and restricted to short reaches.

The golden orb is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels. The species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the golden orb and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the golden orb becoming in danger of extinction in the foreseeable future.

The threats to the golden orb are moderate in magnitude. Although habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the golden orb and are likely to be exacerbated by climate change, which will increase the frequency and magnitude of droughts, four large populations remain, including one that was recently discovered, suggesting that the threats are not high in magnitude. The threats from habitat loss and degradation are imminent because habitat loss and degradation have already occurred and will likely continue as the human population continues to grow in central Texas. The three smaller golden orb populations are vulnerable to extirpation, which increases the species' vulnerability to extinction. Based on imminent, moderate threats, we maintain an LPN of 8 for the golden orb.

Smooth pimpleback (*Quadrula houstonensis*)—The following summary is based on information contained in our files. The smooth pimpleback is a small, round-shaped freshwater mussel that is endemic to central Texas. This species historically occurred throughout the Colorado and Brazos River basins and is now known from only nine locations. The smooth pimpleback has been eliminated from nearly the entire Colorado River and all but one of its tributaries, and has been limited to the central and lower Brazos River drainage. Five of the populations are represented by no more than a few individuals and are small and isolated. Six of the existing populations appear to be relatively stable and recruiting.

The smooth pimpleback is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels. The species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation, and isolation, and the anticipated threat of nonnative species. Threats to the smooth pimpleback and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the smooth pimpleback becoming in danger of extinction in the foreseeable future.

The threats to the smooth pimpleback are moderate in magnitude. Although habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the smooth pimpleback and may be exacerbated by climate change, which will increase the frequency and magnitude of droughts, several large populations remain, including one that was recently discovered, suggesting that the threats are not high in magnitude. The threats from habitat loss and degradation are imminent because they have already occurred and will continue as the human population continues to grow in central Texas. Several smooth pimpleback populations are quite small and vulnerable to extirpation, which increases the species' vulnerability to extinction. Based on imminent, moderate threats, we maintain an LPN of 8 for the smooth pimpleback.

Texas pimpleback (*Quadrula petrina*)—The following summary is based on information contained in our files. The Texas pimpleback is a large freshwater mussel that is endemic to central Texas. This species historically occurred throughout the Colorado and Guadalupe-San Antonio River basins, but it is now known to only occur in four streams within these basins. Only two populations (Concho River and San Saba River) appear large enough to be stable with recruitment, although evidence of recruitment is limited in the Concho River population. The remaining two populations are represented by one or two individuals and are highly disjunct.

The Texas pimpleback is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels. This species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change (which will increase the frequency and magnitude of droughts), population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas pimpleback and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the Texas pimpleback becoming in danger of extinction in the foreseeable future.

The threats to the Texas pimpleback are high in magnitude, because habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread

throughout the entire range of the Texas pimpleback and profoundly affect its survival and recruitment. The only remaining populations are small, isolated, and highly vulnerable to stochastic events, which could lead to extirpation or extinction. The threats are imminent because habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Based on imminent, high-magnitude threats, we assigned the Texas pimpleback an LPN of 2.

*Snails*

Black mudalia (*Elimia melanoides*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Magnificent ramshorn (*Planorbella magnifica*)—Magnificent ramshorn is the largest North American air-breathing freshwater snail in the family Planorbidae. It has a discoidal (*i.e.,* coiling in one plane), relatively thin shell that reaches a diameter commonly exceeding 35 mm and heights exceeding 20 mm. The great width of its shell, in relation to the diameter, makes it easily identifiable at all ages. The shell is brown colored (often with leopard like spots) and fragile, thus indicating it is adapted to still or slow flowing aquatic habitats. The magnificent ramshorn is believed to be a southeastern North Carolina endemic. The species is known from only four sites in the lower Cape Fear River Basin in North Carolina. Although the complete historical range of the species is unknown, the size of the species and the fact that it was not reported until 1903 suggest that the species may have always been rare and localized.

Salinity and pH are major factors limiting the distribution of the magnificent ramshorn, as the snail prefers freshwater bodies with circumneutral pH (*i.e.,* pH within the range of 6.8–7.5). While members of the family Planorbidae are hermaphroditic, it is currently unknown whether magnificent ramshorns self-fertilize their eggs, mate with other individuals of the species, or both. Like other members of the Planorbidae family, the magnificent ramshorn is believed to be primarily a vegetarian, feeding on submerged aquatic plants, algae, and detritus.

While several factors have likely contributed to the possible extirpation of the magnificent ramshorn in the wild, the primary factors include loss of habitat associated with the extirpation of beavers (and their impoundments) in the early 20th century, increased salinity and alteration of flow patterns, and increased input of nutrients and other pollutants. The magnificent ramshorn appears to be extirpated from the wild due to habitat loss and degradation resulting from a variety of human-induced and natural factors. The only known surviving individuals of the species are presently being held and propagated at a private residence, a lab at North Carolina (NC) State University's Veterinary School, and the NC Wildlife Resources Commission's Watha State Fish Hatchery. While efforts have been made to restore habitat for the magnificent ramshorn at one of the sites known to have previously supported the species, all of the sites continue to be affected or threatened by the same factors (*i.e.,* salt water intrusion and other water quality degradation, nuisance aquatic plant control, storms, sea level rise, etc.) believed to have resulted in extirpation of the species from the wild. Currently, only three captive populations exist: A single robust captive population of the species comprised of approximately 900+ adults, one with approximately 200+ adults, and one population of 50+ small individuals. Although the robust captive population of the species has been maintained since 1993, a single catastrophic event, such as a severe storm, disease, or predator infestation affecting this captive population, could result in the near extinction of the species. Therefore, we assigned an LPN of 2 to this species.

Huachuca springsnail (*Pyrgulopsis thompsoni*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Insects*

Hermes copper butterfly (*Lycaena hermes*)—Hermes copper butterfly primarily occurs in San Diego County, California, and a few records of the species have been documented in Baja California, Mexico. The species inhabits coastal sage scrub and southern mixed chaparral and is dependent on its larval host plant, *Rhamnus crocea* (spiny redberry), to complete its lifecycle. Adult Hermes copper butterflies lay single eggs on spiny redberry stems where they hatch and feed until pupation occurs at the base of the plant. Hermes copper butterflies have one flight period occurring in mid-May to early-July, depending on weather conditions and elevation. We estimate there were at least 59 known separate historical populations throughout the species' range since the species was first described. Of the 59 known Hermes copper butterfly populations, 21 are extant, 27 are believed to have been extirpated, and 11 are of unknown status.

Primary threats to Hermes copper butterfly are megafires (large wildfires), and small and isolated populations. Secondary threats include increased wildfire frequency that results in habitat loss, and combined impacts of existing development, possible future (limited) development, existing dispersal barriers, and fragmentation of habitat. Hermes copper butterfly occupies scattered areas of sage scrub and chaparral habitat in an arid region susceptible to wildfires of increasing frequency and size. The likelihood that individuals of the species will be burned as a result of catastrophic wildfires, combined with the isolation and small size of extant populations makes Hermes copper butterfly particularly vulnerable to population extirpation rangewide. Overall, the threats that Hermes copper butterfly faces are high in magnitude because the major threats (particularly mortality due to wildfire and increased wildfire frequency) occur throughout all of the species' range and are likely to result in mortality and population-level impacts to the species. The threats are nonimminent overall because the impact of wildfire to Hermes copper butterfly and its habitat occurs on a sporadic basis and we do not have the ability to predict when wildfires will occur. This species faces high-magnitude nonimminent threats; therefore, we assigned this species a LPN of 5.

Puerto Rican harlequin butterfly (*Atlantea tulita*)—The following

summary is based on information in our files and in the petition we received on February 29, 2009. The Puerto Rican harlequin butterfly is endemic to Puerto Rico, and one of the four species endemic to the Greater Antilles within the genus Atlantea. This species occurs within the subtropical moist forest life zone in the northern karst region (*i.e.,* the municipality of Quebradillas) of Puerto Rico, and in the subtropical wet forest (*i.e.,* Maricao Commonwealth Forest, municipality of Maricao). The Puerto Rican harlequin butterfly has only been found utilizing *Oplonia spinosa* (prickly bush) as its host plant (*i.e.,* plant used for laying the eggs, also serves as a food source for development of the larvae).

The primary threats to the Puerto Rican harlequin butterfly are development, habitat fragmentation, and other natural or manmade factors such as human-induced fires, use of herbicides and pesticides, vegetation management, and climate change. These factors would substantially affect the distribution and abundance of the species, as well as its habitat. In addition, the lack of effective enforcement makes the existing policies and regulations inadequate for the protection of the species' habitat. These threats are imminent because known populations occur in areas that are subject to development, increased traffic, and increased road maintenance and construction. The threats are high in magnitude, because they cause direct population-level impacts during all life stages. These threats are expected to continue and potentially increase in the foreseeable future. Therefore, we assign a LPN of 2 to the Puerto Rican harlequin butterfly.

Clifton Cave beetle (*Pseudanophthalmus caecus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Icebox Cave beetle (*Pseudanophthalmus frigidus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule or not-warranted finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Louisville Cave beetle (*Pseudanophthalmus troglodytes*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Tatum Cave beetle (*Pseudanophthalmus parvus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Rattlesnake-master borer moth (*Papaipema eryngii*)—Rattlesnake-master borer moths are obligate residents of undisturbed prairie remnants, savanna, and pine barrens that contain their only food plant—rattlesnake-master (*Eryngium yuccifolium*). The rattlesnake-master borer moth is known from 16 sites in 5 States: Illinois, Arkansas, Kentucky, Oklahoma, and North Carolina. Currently 12 of the sites contain extant populations, 3 contain populations with unknown status, and 1 contains a population that is considered extirpated.

Although the rattlesnake-master plant is widely distributed across 26 States and is a common plant in remnant prairies, it is a conservative species, meaning it is not found in disturbed areas, and occurs in low densities. The habitat range for the rattlesnake-master borer moth is very narrow and appears to be limiting for the species. The ongoing effects of habitat loss, fragmentation, degradation, and modification from agriculture, development, flooding, invasive species, and secondary succession have resulted in fragmented populations and population declines. Rattlesnake-master borer moths are affected by habitat fragmentation and population isolation. Almost all of the sites with extant populations of the rattlesnake-master borer moth are isolated from one another, with the populations in Kentucky, North Carolina, and Oklahoma occurring within a single site for each State, thus precluding recolonization from other populations. These small, isolated populations are likely to become unviable over time due to lower genetic diversity which reduces their ability to adapt to environmental change, effects of stochastic events, and inability to recolonize areas where they are extirpated.

Rattlesnake-master borer moths have life-history traits that make them more susceptible to outside stressors. They are univoltine (having a single flight per year), do not disperse widely, and are monophagous (have only one food source). The life history of the species makes it particularly sensitive to fire, which is the primary practice used in prairie management. The species is only safe from fire once it bores into the root of the host plant, which makes adult, egg, and first larval stages subject to mortality during prescribed burns and wildfires. Fire and grazing cause direct mortality to the moth and destroy food plants if the intensity, extent, or timing is not carefully managed. Although fire management is a threat to the species, lack of management is also a threat, and at least one site has become extirpated likely because of the succession to woody habitat. The species is sought after by collectors and the host plant is very easy to identify, making the moth susceptible to collection, and thus many sites are kept undisclosed to the public.

Existing regulatory mechanisms provide protection for 12 of the 16 sites containing rattlesnake-master borer moth populations. Illinois' endangered species statute provides regulatory mechanisms to protect the species from potential impacts from actions such as development and collection on the 10 Illinois sites; however, illegal

collections of the species have occurred at two sites. A permit is required for collection by site managers within the sites in North Carolina and Oklahoma. The rattlesnake-master borer moth is also listed as endangered in Kentucky by the State's Nature Preserves Commission; however, at this time the Kentucky legislature has not enacted any statute that provides legal protection for species that are State listed as threatened or endangered. There are no statutory mechanisms in place to protect the populations in North Carolina, Arkansas, or Oklahoma.

Some threats that the rattlesnake-master moth faces are high in magnitude, such as habitat conversion and fragmentation, and population isolation. These threats with the highest magnitude occur in many of the populations throughout the species' range, but although they are likely to affect each population at some time, they are not likely to affect all of the populations at any one time. Other threats, such as agricultural and nonagricultural development, mortality from implementation of some prairie management tools (such as fire), flooding, succession, and climate change, are of moderate to low magnitude. For example, the life history of rattlesnake-master borer moths makes them highly sensitive to fire, which can cause mortality of individuals through most of the year and can affect entire populations. Conversely, complete fire suppression can also be a threat to rattlesnake-master borer moths as prairie habitat declines and woody or invasive species become established such that the species' only food plant is not found in disturbed prairies. Although these threats can cause direct and indirect mortality of the species, they are of moderate or low magnitude because they affect only some populations throughout the range and to varying degrees. Overall, the threats are moderate. The threats are imminent because they are ongoing; every known population of rattlesnake-master borer moth has at least one ongoing threat, and some have several working in tandem. Thus, we assigned a LPN of 8 to this species.

Stephan's riffle beetle (*Heterelmis stephani*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Arapahoe snowfly (*Arsapnia arapahoe*)—The following summary is based on information contained in our files. This insect is a winter stonefly associated with clean, cool, running waters. Adult snowflies emerge in late winter from the space underneath stream ice. Until 2013, the Arapahoe snowfly had been confirmed in only two streams (Elkhorn Creek and Young Gulch), both of which are small tributaries of the Cache la Poudre River in the Roosevelt National Forest, Larimer County, Colorado. However, the species has not been identified in Young Gulch since 1986; it is likely that either the habitat became unsuitable or other unknown causes extirpated the species. Habitats at Young Gulch were further degraded by the High Park Fire in 2012, and potentially by a flash flood disaster in September 2013. New surveys completed in 2013 and 2014 identified the Arapahoe snowfly in seven new localities, including Elkhorn Creek, Sheep Creek (a tributary of the Big Thompson River), Central Gulch (a tributary of Saint Vrain Creek), and Bummer's Gulch, Martin Gulch, and Bear Canyon Creek (tributaries of Boulder Creek in Boulder County). However, numbers of specimens collected at each location were extremely low. These new locations occur on Forest Service land, Boulder County Open Space, and private land. We note that the scientific name for Arapahoe snowfly has changed from *Capnia arapahoe* to *Arsapnia arapahoe* due to recent genetic analyses.

Climate change is a threat to the Arapahoe snowfly, and modifies its habitats by reducing snowpacks, altering streamflows, increasing water temperatures, fostering mountain pine beetle outbreaks, and increasing the frequency of destructive wildfires. Limited dispersal capabilities, a restricted range, dependence on pristine habitats, and a small population size make the Arapahoe snowfly vulnerable to demographic stochasticity, environmental stochasticity, and random catastrophes. Furthermore, regulatory mechanisms appear inadequate to reduce these threats, which may act cumulatively to affect the species. The threats to the Arapahoe snowfly are high in magnitude because they occur throughout the species' limited range. However, the threats are nonimminent. While limited dispersal capabilities, restricted range, dependence on pristine habitats, and small population size are characteristics that make this species vulnerable to stochastic events and catastrophic events (and potential impacts from climate change), these events are not currently occurring and increased temperatures will adversely affect the species in the future. Therefore, we have assigned the Arapahoe snowfly an LPN of 5.

Meltwater lednian stonefly (*Lednia tumana*)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. This species is an aquatic insect in the order Plecoptera (stoneflies). Stoneflies are primarily associated with clean, cool streams and rivers. Eggs and nymphs (juveniles) of the meltwater lednian stonefly are found in high-elevation alpine and subalpine streams, most typically in locations closely linked to glacial runoff. The species is generally restricted to streams with mean summer water temperature less than 10 °C (50 °F). The only known meltwater lednian stonefly occurrences are within Glacier National Park (NP), Montana.

Climate change, and the associated effects of glacier loss (with glaciers predicted to be gone by 2030)—including reduced streamflows, and increased water temperatures—are expected to significantly reduce the occurrence of populations and extent of suitable habitat for the species in Glacier NP. In addition, the existing regulatory mechanisms are not adequate to address these environmental changes due to global climate change. We determined that the meltwater lednian stonefly was a candidate for listing in a warranted-but-precluded 12-month petition finding published on April 5, 2011 (76 FR 18684). We have assigned the species an LPN of 5, based on three criteria: (1) The high magnitude of threat, which is projected to substantially reduce the amount of suitable habitat relative to the species' current range; (2) the low immediacy of the threat based on the lack of documented evidence that climate change is affecting stonefly habitat; and (3) the taxonomic status of the species, which is a full species.

Highlands tiger beetle (*Cicindela highlandensis*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-

month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Flowering Plants*

*Artemisia borealis* var. *wormskioldii* (northern wormwood)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Astragalus microcymbus* (Skiff milkvetch)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. Skiff milkvetch is a perennial forb that dies back to the ground every year. It has a very limited range and a spotty distribution within Gunnison and Saguache Counties in Colorado, where it is found in open, park-like landscapes in the sagebrush-steppe ecosystem on rocky or cobbly, moderate-to-steep slopes of hills and draws.

The most significant threats to skiff milkvetch are recreation, roads, trails, and habitat fragmentation and degradation. Existing regulatory mechanisms are not adequate to protect the species from these threats. Recreational impacts are likely to increase, given the close proximity of skiff milkvetch to the town of Gunnison and the increasing popularity of mountain biking, motorcycling, and all-terrain vehicles. Furthermore, the Hartman Rocks Recreation Area draws users, and contains over 40 percent of the skiff milkvetch units. Other threats to the species include residential and urban development; livestock, deer, and elk use; climate change; increasing periodic drought; nonnative, invasive cheatgrass; and wildfire. The threats to skiff milkvetch are moderate in magnitude, because, while serious and occurring rangewide, they do not collectively result in population declines on a short time scale. The threats are imminent, because the species is currently facing them in many portions of its range. Therefore, we have assigned skiff milkvetch an LPN of 8.

*Astragalus schmolliae* (Chapin Mesa milkvetch)—The following summary is based on information provided by Mesa Verde National Park and Colorado Natural Heritage Program, contained in our files, and in the petition we received on July 30, 2007. Chapin Mesa milkvetch is a narrow endemic perennial plant that grows in the mature pinyon-juniper woodland of mesa tops on Chapin Mesa in the Mesa Verde National Park and in the adjoining Ute Mountain Ute Tribal Park in southern Colorado. The species was previously known by the common name Schmoll's milkvetch, but we have adopted the newly accepted common name Chapin Mesa milkvetch in this document.

The most significant threats to the species are degradation of habitat by fire, followed by invasion by nonnative cheatgrass and subsequent increase in fire frequency. These threats currently affect about 40 percent of the species' entire known range. Cheatgrass is likely to increase given its rapid spread and persistence in habitat disturbed by wildfires, fire and fuels management, development of infrastructure, and the inability of land managers to control it on a landscape scale. Other threats to Chapin Mesa milkvetch include fires, fire break clearings, and drought, and existing regulatory mechanisms are not adequate to address these threats. The threats to the species overall are imminent and moderate in magnitude, because the species is currently facing them in many portions of its range, but the threats do not collectively result in population declines on a short time scale. Therefore, we have assigned Chapin Mesa milkvetch an LPN of 8.

*Boechera pusilla* (Fremont County rockcress)—The following summary is based on information in our files and in the petition received on July 24, 2007. Fremont County rockcress is a perennial herb that occupies sparsely vegetated, coarse granite soil pockets in exposed granite-pegmatite outcrops, with slopes generally less than 10 degrees, at an elevation between 2,438 and 2,469 m (8,000 and 8,100 ft). The only known population of Fremont County rockcress is located in Wyoming on lands administered by the Bureau of Land Management in the southern foothills of the Wind River Range. The population is made up of at least 8 subpopulations. Fremont County rockcress is likely restricted in distribution by the limited occurrence of pegmatite (a very coarse-grained rock formed from magma or lava) in the area. The specialized habitat requirements of Fremont County rockcress have allowed the plant to persist without competition from other herbaceous plants or sagebrush-grassland species that are present in the surrounding landscape.

Fremont County rockcress has a threat that is not identified, but that is indicated by the small and overall declining population size. Although the threat is not fully understood, we know it exists as indicated by the declining population. The overall population size may be declining from a variety of unknown causes, with drought or disease possibly contributing to the trend. The downward trend may have been leveled off somewhat recently, but without improved population numbers, the species may reach a population level at which other stressors become threats. We are unable to determine how climate change may affect the species in the future. To the extent that we understand the species, other potential habitat-related threats have been removed through the implementation of Federal regulatory mechanisms and associated actions. Overutilization, predation, and the inadequacy of regulatory mechanisms are not viewed as threats to the species. The threats that Fremont County rockcress faces are moderate in magnitude, primarily because of the recent leveling off of the population decline. The threat to Fremont County rockcress is imminent, because we have evidence that the species is currently facing a threat indicated by a reduced population size. The threat appears to be ongoing, although we are unsure of the extent and timing of its effects on the species. Thus, we have assigned *B. pusilla* an LPN of 8.

*Chamaesyce deltoidea* ssp. *pinetorum* (Pineland sandmat)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Chorizanthe parryi* var. *fernandina* (San Fernando Valley spineflower)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough

review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Cirsium wrightii* (Wright's marsh thistle)—The following summary is based on information from the 12-month warranted-but-precluded finding published November 4, 2010 (75 FR 67925), as well as any new information gathered since then. Wright's marsh thistle is a flowering plant in the sunflower family. It is prickly with short black spines and a 3-to 8-foot (ft) (0.9- to 2.4-meter (m)) single stalk covered with succulent leaves. Flowers are white to pale pink in areas of the Sacramento Mountains, but are vivid pink in all the Pecos Valley locations. There are eight general confirmed locations of Wright's marsh thistle in New Mexico: Santa Rosa, Guadalupe County; Bitter Lake National Wildlife Refuge, Chaves County; Blue Spring, Eddy County; La Luz Canyon, Karr Canyon, Silver Springs, and Tularosa Creek, Otero County; and Alamosa Creek, Socorro County. Wright's marsh thistle has been extirpated from all previously known locations in Arizona, and was misidentified and likely not ever present in Texas. The status of the species in Mexico is uncertain, with few verified collections.

Wright's marsh thistle faces threats primarily from natural and human-caused modifications of its habitat due to ground and surface water depletion, drought, invasion of *Phragmites australis,* and from the inadequacy of existing regulatory mechanisms. The species occupies relatively small areas of seeps, springs, and wetland habitat in an arid region plagued by drought and ongoing and future water withdrawals in the surrounding watershed. The species' highly specific requirements of saturated soils with surface or subsurface water flow make it particularly vulnerable.

Long-term drought, in combination with ground and surface water withdrawal, pose a current and future threat to Wright's marsh thistle and its habitat. In addition, we expect that these threats will likely intensify in the foreseeable future. However, the threats are moderate in magnitude because the majority of the threats (habitat loss and degradation due to alteration of the hydrology of its rare wetland habitat), while serious and occurring rangewide, do not at this time collectively and significantly adversely affect the species at a population level. All of the threats are ongoing and therefore imminent. Thus, we continue to assign an LPN of 8 to Wright's marsh thistle.

*Dalea carthagenensis* ssp. *floridana* (Florida prairie-clover)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Dichanthelium hirstii* (Hirst Brothers' panic grass)—See above summary under Listing Priority Changes in Candidates.

*Digitaria pauciflora* (Florida pineland crabgrass)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Eriogonum soredium* (Frisco buckwheat)—The following summary is based on information in our files and the petition we received on July 30, 2007. Frisco buckwheat is a narrow endemic perennial plant restricted to soils derived from Ordovician limestone outcrops. The range of the species is less than 5 sq mi (13 sq km), with four known populations. All four populations occur exclusively on private lands in Beaver County, Utah, and each population occupies a very small area with high densities of plants. Available population estimates are highly variable and inaccurate due to the limited access for surveys associated with private lands.

The primary threat to Frisco buckwheat is habitat destruction from precious metal and gravel mining. Mining for precious metals historically occurred within the vicinity of all four populations. Three of the populations are currently in the immediate vicinity of active limestone quarries. Ongoing mining in the species' habitat has the potential to extirpate one population in the near future and extirpate all populations in the foreseeable future. Ongoing exploration for precious metals and gravel indicate that mining will continue, but it will take time for the mining operations to be put into place. This will result in the loss and fragmentation of Frisco buckwheat populations over a longer time scale. Other threats to the species include nonnative species in conjunction with surface disturbance from mining activities. Existing regulatory mechanisms are inadequate to protect the species from these threats. Vulnerabilities of the species include small population size and climate change. The threats that Frisco buckwheat faces are moderate in magnitude, because while serious and occurring rangewide, the threats do not significantly reduce populations on a short time scale. The threats are imminent, because three of the populations are currently in the immediate vicinity of active limestone quarries. Therefore, we have assigned Frisco buckwheat an LPN of 8.

*Festuca ligulata* (Guadalupe fescue)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a thorough review of all available data and expect to publish either a proposed listing rule or a 12-month not warranted finding prior to making the next annual resubmitted petition 12-month finding. In the course of preparing a proposed listing rule or not warranted petition finding, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under section 4(b)(7) in the case of an emergency posing a significant risk to the species.

*Lepidium ostleri* (Ostler's peppergrass)—The following summary is based on information in our files and the petition we received on July 30, 2007. Ostler's peppergrass is a long-lived perennial herb in the mustard family that grows in dense, cushion-like tufts. Ostler's peppergrass is a narrow endemic restricted to soils derived from Ordovician limestone outcrops. The range of the species is less than 5 sq mi (13 sq km), with only four known populations. All four populations occur exclusively on private lands in the southern San Francisco Mountains of

Beaver County, Utah. Available population estimates are highly variable and inaccurate due largely to the limited access for surveys associated with private lands.

The primary threat to Ostler's peppergrass is habitat destruction from precious metal and gravel mining. Mining for precious metals historically occurred within the vicinity of all four populations. Three of the populations are currently in the immediate vicinity of active limestone quarries, but mining is only currently occurring in the area of one population. Ongoing mining in the species' habitat has the potential to extirpate one population in the future. Ongoing exploration for precious metals and gravel indicate that mining will continue, but will take time for the mining operations to be put into place. This will result in the loss and fragmentation of Ostler's peppergrass populations over a longer time scale. Other threats to the species include nonnative species, vulnerability associated with small population size, and climate change. Existing regulatory mechanisms are inadequate to protect the species from these threats. The threats that Ostler's peppergrass faces are moderate in magnitude, because, while serious and occurring rangewide, the threats do not collectively result in significant population declines on a short time scale. The threats are imminent because the species is currently facing them across its entire range. Therefore, we have assigned Ostler's peppergrass an LPN of 8.

*Pinus albicaulis* (whitebark pine)—See above summary under Listing Priority Changes in Candidates.

*Solanum conocarpum* (marron bacora)—The following summary is based on information in our files and in the petition we received on November 21, 1996. *Solanum conocarpum* is a dry-forest shrub in the island of St. John, U.S. Virgin Islands. Its current distribution includes eight localities in the island of St. John, each ranging from 1 to 144 individuals. The species has been reported to occur on dry, poor soils. It can be locally abundant in exposed topography on sites disturbed by erosion, areas that have received moderate grazing, and around ridgelines as an understory component in diverse woodland communities. A habitat suitability model suggests that the vast majority of *Solanum conocarpum* habitat is found in the lower elevation coastal scrub forest. Efforts have been conducted to propagate the species to enhance natural populations, and planting of seedlings has been conducted in the island of St. John.

*Solanum conocarpum* is threatened by the lack of natural recruitment, absence of dispersers, fragmented distribution, lack of genetic variation, climate change, and habitat destruction or modification by exotic mammal species. These threats are evidenced by the reduced number of individuals, low number of populations, and lack of connectivity between populations. Overall, the threats are of high magnitude because they are leading to population declines for a species that already has low population numbers and fragmented distribution; the threats are also ongoing and therefore imminent. Therefore, we assigned a LPN of 2 to *Solanum conocarpum.*

*Streptanthus bracteatus* (bracted twistflower)—The following summary is based on information obtained from our files, on-line herbarium databases, surveys and monitoring data, seed collection data, and scientific publications. Bracted twistflower, an annual herbaceous plant of the Brassicaceae (mustard family), is endemic to a small portion of the Edwards Plateau of Texas. The Texas Natural Diversity Database, as revised on April 12, 2012, lists 16 element occurrences (EOs; *i.e.,* populations) that were documented from 1989 to 2010 in five counties. Currently, nine EOs remain with intact habitat, two EOs are partially intact, two are on managed rights-of-way, and three sites have been developed and the populations are presumed extirpated. Only seven of the nine intact EOs and portions of two EOs are in protected natural areas. Four extant EOs are vulnerable to development and other impacts. Five EOs have been partially or completely developed, including two EOs that were destroyed in 2012 and 2013, respectively.

The continued survival of bracted twistflower is imminently threatened by habitat destruction from urban development, severe herbivory from dense herds of white-tailed deer and other herbivores, and the increased density of woody plant cover. Additional ongoing threats include erosion and trampling from foot and mountain-bike trails, a pathogenic fungus of unknown origin, and inadequate protection by existing regulations. Furthermore, due to the small size and isolation of remaining populations, and lack of gene flow between them, several populations are now inbred and may have insufficient genetic diversity for long-term survival. Bracted twistflower populations often occur in habitats that also support the endangered golden-cheeked warbler, but the two species may require different vegetation management. Bracted twistflower is potentially threatened by as-yet unknown impacts of climate change. The Service has established a voluntary memorandum of agreement with Texas Parks and Wildlife Department, the City of Austin, Travis County, the Lower Colorado River Authority, and the Lady Bird Johnson Wildflower Center to protect bracted twistflower and its habitats on tracts of Balcones Canyonlands Preserve. Overall, the threats to bracted twistflower are of moderate magnitude because most of the populations occur on protected land where the threats will be managed through the MOA. The threats are ongoing and, therefore, imminent. We maintain a LPN of 8 for this species.

*Trifolium friscanum* (Frisco clover)—The following summary is based on information in our files and the petition we received on July 30, 2007. Frisco clover is a narrow endemic perennial herb found only in Utah, with five known populations restricted to sparsely vegetated, pinion-juniper sagebrush communities and shallow, gravel soils derived from volcanic gravels, Ordovician limestone, and dolomite outcrops. The majority (68 percent) of Frisco clover plants occur on private lands, with the remaining plants found on Federal and State lands.

On the private and State lands, the most significant threat to Frisco clover is habitat destruction from mining for precious metals and gravel. Active mining claims, recent prospecting, and an increasing demand for precious metals and gravel indicate that mining in Frisco clover habitats will increase in the foreseeable future, likely resulting in the loss of large numbers of plants. Other threats to Frisco clover include nonnative, invasive species in conjunction with surface disturbance from mining activities. Existing regulatory mechanisms are inadequate to protect the species from these threats. Vulnerabilities of the species include small population size and climate change. The threats to Frisco clover are moderate in magnitude because, while serious and occurring rangewide, they are not acting independently or cumulatively to have a highly significant negative impact on its survival or reproductive capacity. For example, although mining for precious metals and gravel historically occurred throughout Frisco clover's range, and mining operations may eventually expand into occupied habitats, there are no active mines within the immediate vicinity of any known population. The threats are imminent because the species is currently facing them across

its entire range. Therefore, we have assigned Frisco clover an LPN of 8.

**Petitions To Reclassify Species Already Listed**

We previously made warranted-but-precluded findings on three petitions seeking to reclassify threatened species to endangered status. The taxa involved in the reclassification petitions are one population of the grizzly bear (*Ursus arctos horribilis*), delta smelt (*Hypomesus transpacificus*), and *Sclerocactus brevispinus* (Pariette cactus). Because these species are already listed under the ESA, they are not candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms or 5-year review documents also constitute the findings for the resubmitted petitions to reclassify these species. Our updated assessments for these species are provided below. We find that reclassification to endangered status for one grizzly bear ecosystem population, delta smelt, and *Sclerocactus brevispinus* are all currently warranted but precluded by work identified above (see *Findings for Petitioned Candidate Species,* above). One of the primary reasons that the work identified above is considered to have higher priority is that the grizzly bear population, delta smelt, and *Sclerocactus brevispinus* are currently listed as threatened, and therefore already receive certain protections under the ESA. In accordance with our regulations at 50 CFR 17.31 and 50 CFR 17.71, respectively, these wildlife and plant species are protected by the take prohibitions under section 9. It is therefore unlawful for any person, among other prohibited acts, to take (*i.e.,* to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity) any of these wildlife species. In addition, it is unlawful under section 9 for any person, among other prohibited acts, to remove or reduce to possession any of these listed plants from an area under Federal jurisdiction (50 CFR 17.61). Other protections that apply to these threatened species even before we complete proposed and final reclassification rules include those under section 7(a)(2) of the ESA, whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Grizzly bear (*Ursus arctos horribilis*)—North Cascades ecosystem population (Region 6)—Since 1990, we have received and reviewed five petitions requesting a change in status for the North Cascades grizzly bear population (55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 43856, August 18, 1993; 63 FR 30453, June 4, 1998). In response to these petitions, we determined that grizzly bears in the North Cascade ecosystem warrant a change to endangered status. In 2015, we continue to find that reclassifying this population as endangered is warranted but precluded, and we continue to assign a LPN of 3 for the uplisting of the North Cascades population based on high magnitude threats, including very small population size, incomplete habitat protection measures (motorized access management), and population fragmentation resulting in genetic isolation. The threats are high in magnitude because the limiting factor for this population is human-caused mortality and extremely small population size and as human populations continue to grow, it is inevitable that this will put additional pressures on grizzly bear populations. The threats are ongoing, and thus imminent. However, higher priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying grizzly bears in this ecosystem. Furthermore, proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species (*i.e.,* candidate species), since species currently listed as threatened are already afforded the protection of the ESA and the implementing regulations. We continue to monitor this population and will change its status or implement an emergency uplisting if necessary. In 2014, the National Park Service and the Service initiated an environmental impact statement process to evaluate recovery options in the North Cascades. We expect it to take 3 years to complete and evaluate a variety of alternatives, including population augmentation.

Delta smelt (*Hypomesus transpacificus*) (Region 8) (see 75 FR 17667, April 7, 2010, for additional information on why reclassification to endangered is warranted but precluded)—The following summary is based on information contained in our files. In April 2010, we completed a 12-month finding for delta smelt in which we determined that a change in status from threatened to endangered was warranted, although precluded by other high priority listing actions. The primary rationale for reclassifying delta smelt from threatened to endangered was the significant declines in delta smelt abundance that have occurred since 2001. Delta smelt abundance, as indicated by the Fall Mid-Water Trawl survey, was exceptionally low between 2004 and 2010, increased during the wet year of 2011, and decreased again to a very a low levels in 2012, 2013 and 2014.

The primary threats to the delta smelt are direct entrainments by State and Federal water export facilities, summer and fall increases in salinity and water clarity resulting from decreases in freshwater flow into the estuary, and effects from introduced species. Ammonia in the form of ammonium may also be a significant threat to the survival of the delta smelt. Additional potential threats are predation by striped and largemouth bass and inland silversides, contaminants, and small population size. Existing regulatory mechanisms have not proven adequate to halt the decline of delta smelt since the time of listing as a threatened species.

However, higher-priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying the delta smelt. Furthermore, proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species (*i.e.,* candidate species), since species currently listed as threatened are already afforded the protection of the ESA and the implementing regulations.

As a result of our analysis of the best available scientific and commercial data, we have retained the recommendation of uplisting the delta smelt to an endangered species with a LPN of 2, based on high magnitude and imminent threats. The magnitude of the threats is high, because the threats occur rangewide and result in mortality or significantly reduce the reproductive capacity of the species and they are, in some cases (*i.e.,* nonnative species), considered irreversible. Threats are imminent because they are ongoing.

*Sclerocactus brevispinus* (Pariette cactus) (Region 6) (see 72 FR 53211, September 18, 2007, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted but precluded)—Pariette cactus is restricted to clay badlands of the Uinta geologic formation in the

Uinta Basin of northeastern Utah. The species is restricted to one population with an overall range of approximately 16 mi by 5 mi in extent. The species' entire population is within a developed and expanding oil and gas field. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. The species may be collected as a specimen plant for horticultural use. Recreational off-road vehicle use and livestock trampling are additional potential threats. The species is currently federally listed as threatened (44 FR 58868, October 11, 1979; 74 FR 47112, September 15, 2009). The threats are of a high magnitude, because any one of the threats has the potential to severely affect the survival of this species, a narrow endemic with a highly limited range and distribution. Threats are ongoing and, therefore, are imminent. Thus, we assigned an LPN of 2 to this species for uplisting. However, higher-priority listing actions, including court-approved settlements, court-ordered and statutory deadlines for petition findings and listing determinations, emergency listing determinations, and responses to litigation, continue to preclude reclassifying the Pariette cactus. Furthermore, proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species (*i.e.,* candidate species), since species currently listed as threatened are already afforded the protection of the ESA and the implementing regulations.

**Current Notice of Review**

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists). This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants, and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species, plus species currently proposed for listing under the ESA. We emphasize that in this notice we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see the *Findings for Petitioned Candidate Species* section for additional information).

The ''Priority'' column indicates the LPN for each candidate species, which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct information, comments, or questions (see addresses under Request for Information at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are those we included either as proposed species or as candidates in the previous CNOR (published December 5, 2014, at 79 FR 72450) that are no longer proposed species or candidates for listing. Since December 5, 2014, we listed 31 species, withdrew 1 species from proposed status, and removed 23 species from the candidate list. The first column indicates the present status of each species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list, because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list, because we have withdrawn the proposed listing.

The second column indicates why the species is no longer a candidate or proposed species, using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient that the species is a candidate for listing (for reasons other than that conservation efforts have removed or reduced the threats to the species).

F—Species whose range no longer includes a U.S. territory.

I—Species for which the best available information on biological vulnerability and threats is insufficient to support a conclusion that the species is a threatened species or an endangered species.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.
M—Species we mistakenly included as candidates or proposed species in the last notice of review.
N—Species that are not listable entities based on the ESA's definition of ''species'' and current taxonomic understanding.
U—Species that are not subject to the degree of threats sufficient to warrant issuance of a proposed listing and therefore are not candidates for listing, due, in part or totally, to conservation efforts that remove or reduce the threats to the species.
X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

**Request for Information**

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit information, materials, or comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486 (303/236–7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199 (907/786–3505).

Region 8. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825 (916/414–6464).

We will provide information received to the Region having lead responsibility for each candidate species mentioned in the submission. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing under section 4(b)(7) of the ESA is appropriate). Information and comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Authority**

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 15, 2015.

**Stephen Guertin,**

*Acting Director, Fish and Wildlife Service.*

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| **MAMMALS** | | | | | | |
| PE | 3 | R1 | *Emballonura semicaudata semicaudata.* | Emballonuridae | Bat, Pacific sheath-tailed (American Samoa DPS). | U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu. |
| C* | 6 | R2 | *Tamias minimus atristriatus.* | Sciuridae | Chipmunk, Peñasco least. | U.S.A. (NM). |

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| PT | 6 | R8 | *Martes pennanti* | Mustelidae | Fisher (west coast DPS) | U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada. |
| C* | 3 | R8 | *Vulpes vulpes necator* | Canidae | Fox, Sierra Nevada red (Sierra Nevada DPS). | U.S.A. (CA, OR). |
| C* | 5 | R1 | *Urocitellus washingtoni* | Sciuridae | Squirrel, Washington ground. | U.S.A. (WA, OR). |
| C* | 9 | R1 | *Arborimus longicaudus* | Cricetidae | Vole, Red (north Oregon coast DPS). | U.S.A. (OR). |
| C* | 9 | R7 | *Odobenus rosmarus divergens.* | Odobenidae | Walrus, Pacific | U.S.A. (AK), Russian Federation (Kamchatka and Chukotka). |
| **BIRDS** | | | | | | |
| C* | 3 | R1 | *Porzana tabuensis* | Rallidae | Crake, spotless (American Samoa DPS). | U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga. |
| PE | 9 | R1 | *Gallicolumba stairi* | Columbidae | Ground-dove, friendly (American Samoa DPS). | U.S.A. (AS), Independent Samoa. |
| PE | 2 | R1 | *Gymnomyza samoensis* | Meliphagidae | Ma'oma'o | U.S.A. (AS), Independent Samoa. |
| C* | 5 | R8 | *Synthliboramphus hypoleucus.* | Alcidae | Murrelet, Xantus's | U.S.A. (CA), Mexico. |
| C* | 2 | R2 | *Amazona viridigenalis* | Psittacidae | Parrot, red-crowned | U.S.A. (TX), Mexico. |
| C* | 8 | R6 | *Anthus spragueii* | Motacillidae | Pipit, Sprague's | U.S.A. (AR, AZ, CO, KS, LA, MN, MS, MT, ND, NE, NM, OK, SD, TX), Canada, Mexico. |
| PE | 3 | R1 | *Oceanodroma castro* | Hydrobatidae | Storm-petrel, band-rumped (Hawaii DPS). | U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan. |
| PT | 11 | R4 | *Dendroica angelae* | Emberizidae | Warbler, elfin-woods | U.S.A. (PR). |
| **REPTILES** | | | | | | |
| PT | 8 | R3 | *Sistrurus catenatus* | Viperidae | Massasauga (= rattlesnake), eastern. | U.S.A. (IA, IL, IN, MI, MN, MO, NY, OH, PA, WI), Canada. |
| C* | 5 | R4 | *Pituophis ruthveni* | Colubridae | Snake, Louisiana pine | U.S.A. (LA, TX). |
| C* | 8 | R4 | *Gopherus polyphemus* | Testudinidae | Tortoise, gopher (eastern population). | U.S.A. (AL, FL, GA, LA, MS, SC). |
| C* | 6 | R2 | *Kinosternon sonoriense longifemorale.* | Kinosternidae | Turtle, Sonoyta mud | U.S.A. (AZ), Mexico. |
| **AMPHIBIANS** | | | | | | |
| C* | 8 | R8 | *Lithobates onca* | Ranidae | Frog, relict leopard | U.S.A. (AZ, NV, UT). |
| C* | 8 | R4 | *Notophthalmus perstriatus.* | Salamandridae | Newt, striped | U.S.A. (FL, GA). |
| C* | 8 | R4 | *Gyrinophilus gulolineatus* | Plethodontidae | Salamander, Berry Cave | U.S.A. (TN). |
| C | 3 | R2 | *Hyla wrightorum* | Hylidae | Treefrog, Arizona (Huachuca/Canelo DPS). | U.S.A. (AZ), Mexico (Sonora). |
| C* | 2 | R4 | *Necturus alabamensis* | Proteidae | Waterdog, black warrior (=Sipsey Fork). | U.S.A. (AL). |
| **FISHES** | | | | | | |
| PT | 8 | R2 | *Gila nigra* | Cyprinidae | Chub, headwater | U.S.A. (AZ, NM). |

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| PT | 9 | R2 | *Gila robusta* | Cyprinidae | Chub, roundtail (Lower Colorado River Basin DPS). | U.S.A. (AZ, CO, NM, UT, WY). |
| C* | 11 | R6 | *Etheostoma cragini* | Percidae | Darter, Arkansas | U.S.A. (AR, CO, KS, MO, OK). |
| PE | 2 | R5 | *Crystallaria cincotta* | Percidae | Darter, diamond | U.S.A. (KY, OH, TN, WV). |
| PT | 2 | R4 | *Etheostoma spilotum* | Percidae | Darter, Kentucky arrow | U.S.A. (KY). |
| C* | 8 | R4 | *Percina aurora* | Percidae | Darter, Pearl | U.S.A. (LA, MS). |
| C* | 5 | R4 | *Moxostoma* sp. | Catostomidae | Redhorse, sicklefin | U.S.A. (GA, NC, TN). |
| C* | 3 | R8 | *Spirinchus thaleichthys* | Osmeridae | Smelt, longfin (San Francisco Bay–Delta DPS). | U.S.A. (AK, CA, OR, WA), Canada. |
| PSAT | N/A | R1 | *Salvelinus malma* | Salmonidae | Trout, Dolly Varden | U.S.A. (AK, WA), Canada, East Asia. |
| **CLAMS** | | | | | | |
| C* | 2 | R2 | *Lampsilis bracteata* | Unionidae | Fatmucket, Texas | U.S.A. (TX). |
| C* | 2 | R2 | *Truncilla macrodon* | Unionidae | Fawnsfoot, Texas | U.S.A. (TX). |
| C* | 8 | R2 | *Popenaias popei* | Unionidae | Hornshell, Texas | U.S.A. (NM, TX), Mexico. |
| PT | — | R4 | *Medionidus walkeri* | Unionidae | Moccasinshell, Suwannee. | U.S.A. (FL, GA). |
| C* | 8 | R2 | *Quadrula aurea* | Unionidae | Orb, golden | U.S.A. (TX). |
| C* | 8 | R2 | *Quadrula houstonensis* | Unionidae | Pimpleback, smooth | U.S.A. (TX). |
| C* | 2 | R2 | *Quadrula petrina* | Unionidae | Pimpleback, Texas | U.S.A. (TX). |
| **SNAILS** | | | | | | |
| C* | 8 | R4 | *Elimia melanoides* | Pleuroceridae | Mudalia, black | U.S.A. (AL). |
| C* | 2 | R4 | *Planorbella magnifica* | Planorbidae | Ramshorn, magnificent | U.S.A. (NC). |
| PE | 2 | R1 | *Eua zebrina* | Partulidae | Snail, no common name | U.S.A. (AS). |
| PE | 2 | R1 | *Ostodes strigatus* | Potaridae | Snail, no common name | U.S.A. (AS). |
| C* | 11 | R2 | *Pyrgulopsis thompsoni* | Hydrobiidae | Springsnail, Huachuca | U.S.A. (AZ), Mexico. |
| **INSECTS** | | | | | | |
| PE | 2 | R1 | *Hylaeus anthracinus* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus assimulans* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus facilis* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus hilaris* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus kuakea* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus longiceps* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| PE | 2 | R1 | *Hylaeus mana* | Colletidae | Bee, Hawaiian yellow-faced. | U.S.A. (HI). |
| C* | 5 | R8 | *Lycaena hermes* | Lycaenidae | Butterfly, Hermes copper | U.S.A. (CA). |
| C* | 2 | R4 | *Atlantea tulita* | Nymphalidae | Butterfly, Puerto Rican harlequin. | U.S.A. (PR). |
| C* | 5 | R4 | *Pseudanophthalmus caecus.* | Carabidae | Cave beetle, Clifton | U.S.A. (KY). |
| C* | 5 | R4 | *Pseudanophthalmus frigidus.* | Carabidae | Cave beetle, icebox | U.S.A. (KY). |
| C* | 5 | R4 | *Pseudanophthalmus troglodytes.* | Carabidae | Cave beetle, Louisville | U.S.A. (KY). |
| C* | 5 | R4 | *Pseudanophthalmus parvus.* | Carabidae | Cave beetle, Tatum | U.S.A. (KY). |
| PE | 8 | R1 | *Megalagrion xanthomelas.* | Coenagrionidae | Damselfly, orangeblack Hawaiian. | U.S.A. (HI). |
| C* | 8 | R3 | *Papaipema eryngii* | Noctuidae | Moth, rattlesnake-master borer. | U.S.A. (AR, IL, KY, NC, OK). |
| C* | 11 | R2 | *Heterelmis stephani* | Elmidae | Riffle beetle, Stephan's | U.S.A. (AZ). |
| C* | 5 | R6 | *Arsapnia (=Capnia) arapahoe.* | Capniidae | Snowfly, Arapahoe | U.S.A. (CO). |

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C* | 5 | R6 | *Lednia tumana* | Nemouridae | Stonefly, meltwater lednian. | U.S.A. (MT). |
| C* | 5 | R4 | *Cicindela highlandensis* | Cicindelidae | Tiger beetle, highlands | U.S.A. (FL). |
| **CRUSTACEANS** | | | | | | |
| C | 8 | R5 | *Stygobromus kenki* | Crangonyctidae | Amphipod, Kenk's | U.S.A. (DC). |
| PE | | R5 | *Cambarus callainus* | Cambaridae | Crayfish, Big Sandy | U.S.A. (KY, VA, WV). |
| PE | | R5 | *Cambarus veteranus* | Cambaridae | Crayfish, Guyandotte River. | U.S.A. (WV). |
| PE | 5 | R1 | *Procaris hawaiana* | Procarididae | Shrimp, anchialine pool | U.S.A. (HI). |
| **FLOWERING PLANTS** | | | | | | |
| PT | 11 | R4 | *Argythamnia blodgettii* | Euphorbiaceae | Silverbush, Blodgett's | U.S.A. (FL). |
| C* | 3 | R1 | *Artemisia borealis var. wormskioldii.* | Asteraceae | Wormwood, northern | U.S.A. (OR, WA). |
| C* | 8 | R6 | *Astragalus microcymbus* | Fabaceae | Milkvetch, skiff | U.S.A. (CO). |
| C* | 8 | R6 | *Astragalus schmolliae* | Fabaceae | Milkvetch, Chapin Mesa | U.S.A. (CO). |
| C* | 8 | R6 | *Boechera* (*Arabis*) *pusilla* | Brassicaceae | Rockcress, Fremont County or small. | U.S.A. (WY). |
| PE | 2 | R1 | *Calamagrostis expansa* | Poaceae | Reedgrass, Maui | U.S.A. (HI). |
| PE | 9 | R4 | *Chamaecrista lineata* var. *keyensis.* | Fabaceae | Pea, Big Pine partridge | U.S.A. (FL). |
| C* | 12 | R4 | *Chamaesyce deltoidea pinetorum.* | Euphorbiaceae | Sandmat, pineland | U.S.A. (FL). |
| PE | 9 | R4 | *Chamaesyce deltoidea serpyllum.* | Euphorbiaceae | Spurge, wedge | U.S.A. (FL). |
| C* | 6 | R8 | *Chorizanthe parryi* var. *fernandina.* | Polygonaceae | Spineflower, San Fernando Valley. | U.S.A. (CA). |
| C* | 8 | R2 | *Cirsium wrightii* | Asteraceae | Thistle, Wright's | U.S.A. (AZ, NM), Mexico. |
| PE | 2 | R1 | *Cyanea kauaulaensis* | Campanulaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Cyperus neokunthianus* | Cyperaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Cyrtandra hematos* | Gesneriaceae | Haiwale | U.S.A. (HI). |
| C* | 3 | R4 | *Dalea carthagenensis* var. *floridana.* | Fabaceae | Prairie-clover, Florida | U.S.A. (FL). |
| C* | 2 | R5 | *Dichanthelium hirstii* | Poaceae | Panic grass, Hirst Brothers'. | U.S.A. (DE, GA, NC, NJ). |
| C* | 5 | R4 | *Digitaria pauciflora* | Poaceae | Crabgrass, Florida pineland. | U.S.A. (FL). |
| C* | 8 | R6 | *Eriogonum soredium* | Polygonaceae | Buckwheat, Frisco | U.S.A. (UT). |
| PE | 2 | R1 | *Exocarpos menziesii* | Santalaceae | Heau | U.S.A. (HI). |
| PE | 2 | R1 | *Festuca hawaiiensis* | Poaceae | No common name | U.S.A. (HI). |
| C* | 11 | R2 | *Festuca ligulata* | Poaceae | Fescue, Guadalupe | U.S.A. (TX), Mexico. |
| PE | 2 | R1 | *Gardenia remyi* | Rubiaceae | Nanu | U.S.A. (HI). |
| PE | 3 | R1 | *Joinvillea ascendens ascendens.* | Joinvilleaceae | Ohe | U.S.A. (HI). |
| PE | 2 | R1 | *Kadua* (=*Hedyotis*) *fluviatilis.* | Rubiaceae | Kampuaa | U.S.A. (HI). |
| PE | 2 | R1 | *Kadua haupuensis* | Rubiaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Labordia lorenciana* | Loganiaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Lepidium orbiculare* | Brassicaceae | Anaunau | U.S.A. (HI). |
| C* | 8 | R6 | *Lepidium ostleri* | Brassicaceae | Peppergrass, Ostler's | U.S.A. (UT). |
| PE | — | R1 | *Lepidium papilliferum* | Brassicaceae | Peppergrass, slickspot | U.S.A. (ID). |
| PE | 5 | R4 | *Linum arenicola* | Linaceae | Flax, sand | U.S.A. (FL). |
| PE | 2 | R1 | *Myrsine fosbergii* | Myrsinaceae | Kolea | U.S.A. (HI). |
| PE | 2 | R1 | *Nothocestrum latifolium* | Solanaceae | Aiea | U.S.A. (HI). |
| PE | 2 | R1 | *Ochrosia haleakalae* | Apocynaceae | Holei | U.S.A. (HI). |
| PE | 2 | R1 | *Phyllostegia brevidens* | Lamiaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Phyllostegia helleri* | Lamiaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Phyllostegia stachyoides* | Lamiaceae | No common name | U.S.A. (HI). |
| C* | 8 | R6 | *Pinus albicaulis* | Pinaceae | Pine, whitebark | U.S.A. (CA, ID, MT, NV, OR, WA, WY), Canada (AB, BC). |
| PT | 8 | R4 | *Platanthera integrilabia* | Orchidaceae | Orchid, white fringeless | U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA). |
| PE | 2 | R1 | *Portulaca villosa* | Portulacaceae | Ihi | U.S.A. (HI). |
| PE | 2 | R1 | *Pritchardia bakeri* | Arecaceae | Loulu (=Loulu lelo) | U.S.A. (HI). |

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| PE | 3 | R1 | *Pseudognaphalium* (=*Gnaphalium*) *sandwicensium* var. *molokaiense*. | Asteraceae | Enaena | U.S.A. (HI). |
| PE | 2 | R1 | *Ranunculus hawaiensis* | Ranunculaceae | Makou | U.S.A. (HI). |
| PE | 2 | R1 | *Ranunculus mauiensis* | Ranunculaceae | Makou | U.S.A. (HI). |
| PE | 2 | R1 | *Sanicula sandwicensis* | Apiaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Santalum involutum* | Santalaceae | Iliahi | U.S.A. (HI). |
| PE | 3 | R1 | *Schiedea diffusa* ssp. *diffusa*. | Caryophyllaceae | No common name | U.S.A. (HI). |
| PE | 2 | R1 | *Schiedea pubescens* | Caryophyllaceae | Maolioli | U.S.A. (HI). |
| PE | 2 | R1 | *Sicyos lanceoloideus* | Cucurbitaceae | Anunu | U.S.A. (HI). |
| PE | 2 | R1 | *Sicyos macrophyllus* | Cucurbitaceae | Anunu | U.S.A. (HI). |
| C | 12 | R4 | *Sideroxylon reclinatum austrofloridense*. | Sapotaceae | Bully, Everglades | U.S.A. (FL). |
| C* | 2 | R4 | *Solanum conocarpum* | Solanaceae | Bacora, marron | U.S.A. (PR). |
| PE | 8 | R1 | *Solanum nelsonii* | Solanaceae | Popolo | U.S.A. (HI). |
| PE | 3 | R1 | *Stenogyne kaalae* ssp. *sherffii*. | Lamiaceae | No common name | U.S.A. (HI). |
| C* | 8 | R2 | *Streptanthus bracteatus* | Brassicaceae | Twistflower, bracted | U.S.A. (TX). |
| C* | 8 | R6 | *Trifolium friscanum* | Fabaceae | Clover, Frisco | U.S.A. (UT). |
| PE | 2 | R1 | *Wikstroemia skottsbergiana*. | Thymelaceae | Akia | U.S.A. (HI). |
| **FERNS AND ALLIES** | | | | | | |
| PE | 2 | R1 | *Asplenium diellaciniatum* | Aspleniaceae | No common name | U.S.A. (HI). |
| PE | 8 | R1 | *Cyclosorus boydiae* | Thelypteridaceae | Kupukupu makalii | U.S.A. (HI). |
| PE | 2 | R1 | *Deparia kaalaana* | Athyraceae | No common name | U.S.A. (HI). |
| PE | 3 | R1 | *Dryopteris glabra* var. *pusilla*. | Dryopteridaceae | Hohiu | U.S.A. (HI). |
| PE | 3 | R1 | *Hypolepis hawaiiensis* var. *mauiensis*. | Dennstaedtiaceae | Olua | U.S.A. (HI). |
| PE | 2 | R1 | *Huperzia* (= *Phlegmariurus*) *stemmermanniae*. | Lycopodiaceae | No common name | U.S.A. (HI). |
| PE | 3 | R1 | *Microlepia strigosa* var. *mauiensis* (= *Microlepia mauiensis*). | Dennstaedtiaceae | No common name | U.S.A. (HI). |

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| **MAMMALS** | | | | | | |
| T | L | R3 | *Myotis septentrionalis* | | Bat, northern long-eared | U.S.A. (AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY); Canada (AB, BC, LB, MB, NB, NF, NS, NT, ON, PE, QC, SK, YT). |
| E | L | R1 | *Emballonura semicaudata rotensis*. | Emballonuridae | Bat, Pacific sheath-tailed (Mariana Islands subspecies). | U.S.A. (GU, CNMI). |
| Rc | U | R5 | *Sylvilagus transitionalis* | Leporidae | Cottontail, New England | U.S.A. (CT, MA, ME, NH, NY, RI, VT). |
| Rc | U | R1 | *Urocitellus endemicus* | Sciuridae | Squirrel, Southern Idaho ground. | U.S.A. (ID). |

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| E | L | R2 | *Canis lupus baileyi* | Canidae | Wolf, Mexican gray | U.S.A. (AZ, NM). |
| **BIRDS** | | | | | | |
| T | L | R5 | *Calidris canutus rufa* | Scolopacidae | Knot, red | U.S.A. (Atlantic coast), Canada, South America. |
| Rc | U | R6 | *Centrocercus urophasianus.* | Phasianidae | Sage-grouse, greater | U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK). |
| Rp | U | R8 | *Centrocercus urophasianus.* | Phasianidae | Sage-grouse, greater (Bi-State DPS). | U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK). |
| Rc | N | R1 | *Centrocercus urophasianus.* | Phasianidae | Sage-grouse, greater (Columbia Basin DPS). | U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK). |
| E | L | R6 | *Centrocercus minimus* | Phasianidae | Sage-grouse, Gunnison | U.S.A. (AZ, CO, NM, UT). |
| **REPTILES** | | | | | | |
| E | L | R1 | *Emoia slevini* | Scincidae | Skink, Slevin's (Guali'ek Halom Tano). | U.S.A. (Guam, Mariana Islands). |
| T | L | R4 | *Pituophis melanoleucus lodingi.* | Colubridae | Snake, black pine | U.S.A. (AL, LA, MS). |
| Rc | A | R2 | *Gopherus morafkai* | Testudinidae | Tortoise, Sonoran desert | U.S.A. (AZ, CA, NV, UT). |
| **AMPHIBIANS** | | | | | | |
| Rc | U | R8 | *Rana luteiventris* | Ranidae | Frog, Columbia spotted (Great Basin DPS). | U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC). |
| **FISHES** | | | | | | |
| Rc | A | R4 | *Etheostoma sagitta* | Percidae | Darter, Cumberland arrow. | U.S.A. (KY, TN). |
| **SNAILS** | | | | | | |
| E | L | R1 | *Samoana fragilis* | Partulidae | Snail, fragile tree | U.S.A. (GU, MP). |
| E | L | R1 | *Partula radiolata* | Partulidae | Snail, Guam tree | U.S.A. (GU). |
| E | L | R1 | *Partula gibba* | Partulidae | Snail, Humped tree | U.S.A. (GU, MP). |
| E | L | R1 | *Partula langfordi* | Partulidae | Snail, Langford's tree | U.S.A. (MP). |
| Rc | U | R2 | *Pyrgulopsis morrisoni* | Hydrobiidae | Springsnail, Page | U.S.A. (AZ). |
| **INSECTS** | | | | | | |
| E | L | R1 | *Hypolimnas octucula mariannensis.* | Nymphalidae | Butterfly, Mariana eight-spot. | U.S.A. (GU, MP). |
| E | L | R1 | *Vagrans egistina* | Nymphalidae | Butterfly, Mariana wandering. | U.S.A. (GU, MP). |
| Rc | A | R4 | *Glyphopsyche sequatchie.* | Limnephilidae | Caddisfly, Sequatchie | U.S.A. (TN). |
| Rc | A | R4 | *Pseudanophthalmus insularis.* | Carabidae | Cave beetle, Baker Station (= insular). | U.S.A. (TN). |
| Rc | A | R4 | *Pseudanophthalmus colemanensis.* | Carabidae | Cave beetle, Coleman | U.S.A. (TN). |
| Rc | A | R4 | *Pseudanophthalmus fowlerae.* | Carabidae | Cave beetle, Fowler's | U.S.A. (TN). |
| Rc | A | R4 | *Pseudanophthalmus tiresias.* | Carabidae | Cave beetle, Indian Grave Point (= Soothsayer). | U.S.A. (TN). |
| Rc | A | R4 | *Pseudanophthalmus inquisitor.* | Carabidae | Cave beetle, inquirer | U.S.A. (TN). |

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table]

| Status | | Lead region | Scientific name | Family | Common name | Historical range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| Rc | A | R4 | *Pseudanophthalmus paulus.* | Carabidae | Cave beetle, Noblett's | U.S.A. (TN). |
| E | L | R1 | *Ischnura luta* | Coenagrionidae | Damselfly, Rota blue | U.S.A. (Mariana Islands). |
| Rc | U | R8 | *Ambrysus funebris* | Naucoridae | Naucorid bug (= Furnace Creek), Nevares Spring. | U.S.A. (CA). |
| T | L | R3 | *Hesperia dacotae* | Hesperiidae | Skipper, Dakota | U.S.A. (MN, IA, IL, SD, ND), Canada. |
| E | L | R3 | *Oarisma poweshiek* | Hesperiidae | Skipperling, Poweshiek | U.S.A. (IA, IL, IN, MI, MN, ND, SD, WI), Canada (MB). |
| | | | **CRUSTACEANS** | | | |
| Rc | I | R1 | *Metabetaeus lohena* | Alpheidae | Shrimp, anchialine pool | U.S.A. (HI). |
| Rc | I | R1 | *Palaemonella burnsi* | Palaemonidae | Shrimp, anchialine pool | U.S.A. (HI). |
| | | | **FLOWERING PLANTS** | | | |
| Rc | U | R8 | *Abronia alpina* | Nyctaginaceae | Sand-verbena, Ramshaw Meadows. | U.S.A. (CA). |
| Rc | U | R6 | *Astragalus anserinus* | Fabaceae | Milkvetch, Goose Creek | U.S.A. (ID, NV, UT). |
| Rc | A | R6 | *Astragalus tortipes* | Fabaceae | Milkvetch, Sleeping Ute | U.S.A. (CO). |
| E | L | R1 | *Bulbophyllum guamense* | Orchidaceae | Cebello halumtano | U.S.A. (Guam, Mariana Islands). |
| Rc | U | R8 | *Calochortus persistens* | Liliaceae | Mariposa lily, Siskiyou | U.S.A. (CA, OR). |
| T | L | R1 | *Cycas micronesica* | Cycadaceae | Fadang | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Dendrobium guamens* | Orchidaceae | No common name | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Eugenia bryanii* | Myrtaceae | No common name | U.S.A. (Guam). |
| E | L | R1 | *Hedyotis megalantha* | Rubiaceae | Paudedo | U.S.A. (Guam). |
| E | L | R1 | *Heritiera longipetiolata* | Malvaceae | Ufa-halomtano | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Maesa walkeri* | Primulaceae | No common name | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Nervilia jacksoniae* | Orchidaceae | No common name | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Phyllanthus saffordii* | Phyllanthaceae | No common name | U.S.A. (Guam). |
| E | L | R1 | *Psychotria malaspinae* | Rubiaceae | Aplokating-palaoan | U.S.A. (Guam). |
| Rc | U | R8 | *Rorippa subumbellata* | Brassicaceae | Cress, Tahoe yellow | U.S.A. (CA, NV). |
| E | L | R1 | *Solanum guamense* | Solanaceae | Bereng-henas halomtano | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Tinospora homosepala* | Menispermaceae | No common name | U.S.A (Guam). |
| T | L | R1 | *Tabernaemontana rotensis.* | Apocynaceae | No common name | U.S.A. (Guam, Mariana Islands). |
| E | L | R1 | *Tuberolabium guamense* | Orchidaceae | No common name | U.S.A. (Guam, Mariana Islands). |
| | | | **FERNS AND ALLIES** | | | |
| E | L | R4 | *Trichomanes punctatum floridanum.* | Hymenophyllaceae | Florida bristle fern | U.S.A. (FL). |

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# FEDERAL REGISTER

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Part IV

## The President

Proclamation 9383—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

Federal Register
Vol. 80, No. 247
Thursday, December 24, 2015

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9383 of December 21, 2015**

## To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

**By the President of the United States of America**

**A Proclamation**

1. In Proclamation 7970 of December 22, 2005, the President designated the Republic of Burundi (Burundi) as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (AGOA) (title I of Public Law 106–200).

2. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)), authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A, if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

3. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that Burundi is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designation of Burundi as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act, effective on January 1, 2016.

4. Schedule XX, as defined by 19 U.S.C. 3501(5), sets forth certain tariff-rate quotas. To implement these tariff-rate quotas, section 404(a) of the Uruguay Round Agreements Act (19 U.S.C. 3601(a)) requires the President ''to take such action as may be necessary to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.''

5. I have determined that, in order to reduce administrative burden and encourage electronic administration of the quota classifications of sugars, syrups, and molasses (sugar), and to avoid the disruption of the orderly marketing of sugar, it is necessary to add additional tariff lines to Chapter 99 of the Harmonized Tariff Schedule (HTS) of the United States as provided for in Annex I of this proclamation.

6. Presidential Proclamation 8294 of September 26, 2008, implemented amendments to the Burmese Freedom and Democracy Act of 2003 (the ''BFDA'') (Public Law 108–61), as amended by section 6(a) of the Tom Lantos Block Burmese JADE Act of 2008 (Public Law 110–286). That proclamation, in part, modified the HTS to include additional U.S. Note 4 to chapter 71 of the HTS, which prohibited the importation of certain goods of Burma. The BFDA, as amended, expired on July 28, 2013.

7. Executive Order 13651 of August 6, 2013, as authorized by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the National Emergencies Act (50 U.S.C. 1601 *et seq.*), prohibits the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma on or after August 7, 2013. I have determined that modifications to additional U.S. Note 4 to chapter 71 of the HTS, as set forth in Annex II, are necessary to account for the expiration of the BFDA and the implementation of Executive Order 13651.

8. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

9. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

10. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

11. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

12. Each year from 2008 through 2014, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

13. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; Proclamation 8770 of December 29, 2011; Proclamation 8921 of December 20, 2012; Proclamation 9072 of December 23, 2013; and Proclamation 9223 of December 23, 2014, modified the HTS to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

14. On December 8, 2015, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2016, to allow for further negotiations on an agreement to replace the 2004 Agreement.

15. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2016, for specified quantities of certain agricultural products of Israel.

16. In Presidential Proclamation 8921 of December 20, 2012, pursuant to section 502(e) of the 1974 Act (19 U.S.C. 2462(e)), I determined that The Federation of Saint Kitts and Nevis had become a high-income country and terminated its designation as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP). General note 4(a) to the HTS erroneously continues to include ''St. Kitts and Nevis'' on the list of Member Countries of the Caribbean Common Market (CARICOM) that are eligible for preferential tariff treatment under the GSP. I have determined that a modification to the HTS is necessary to correct this error and to provide the intended tariff treatment.

17. Presidential Proclamation 8894 of October 29, 2012, implemented the United States-Panama Trade Promotion Agreement with respect to the United

States and, pursuant to the United States-Panama Trade Promotion Agreement Implementation Act (Public Law 112–43, 125 Stat. 497), modified the HTS to include the schedule of duty reductions necessary or appropriate to carry out the United States-Panama Trade Promotion Agreement. Those modifications to the HTS were set out in Publication 4349 of the International Trade Commission (Commission), entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Panama Trade Promotion Agreement,* which was incorporated by reference into Proclamation 8894. Annexes I and II to that publication included technical errors that affected the tariff treatment accorded to certain goods of Panama. I have determined that modifications to the HTS are necessary to correct the technical errors.

18. Presidential Proclamation 8818 of May 14, 2012, implemented the United States-Colombia Trade Promotion Agreement with respect to the United States and, pursuant to the United States-Colombia Trade Promotion Agreement Implementation Act (Public Law 112–42, 125 Stat. 462), modified the HTS to include the schedule of duty reductions necessary or appropriate to carry out the United States-Colombia Trade Promotion Agreement. Those modifications to the HTS were set out in Publication 4320 of the Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Colombia Trade Promotion Agreement,* which was incorporated by reference into Proclamation 8818. Annex II to that publication included a technical error that affected the tariff treatment accorded to certain goods of Colombia. I have determined that modifications to the HTS are necessary to correct the technical error.

19. Presidential Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement with respect to the United States and, pursuant to the United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169, 119 Stat. 3581), modified the HTS to include the schedule of duty reductions necessary or appropriate to carry out the United States-Bahrain Free Trade Agreement. Those modifications to the HTS were set out in Publication 3830 of the Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Bahrain Free Trade Agreement,* which was incorporated by reference into Proclamation 8039. Presidential Proclamation 9223 of December 23, 2014, created a new subheading in chapter 29 of the HTS, but inadvertently omitted the tariff treatment for goods of Bahrain previously accorded to these covered goods under Proclamation 8039. I have determined that modifications to the HTS are necessary to correct the technical error.

20. Presidential Proclamation 8783 of March 6, 2012, implemented the United States-Korea Free Trade Agreement and, pursuant to the United States-Korea Free Trade Agreement Implementation Act (Public Law 112–41, 125 Stat. 428), modified the HTS to include the schedule of duty reductions necessary or appropriate to carry out the United States-Korea Free Trade Agreement. Those modifications to the HTS were set out in Publication 4308 of the Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Korea Free Trade Agreement,* which was incorporated by reference into Proclamation 8783. Annex II to Publication 4308 incorrectly stated certain staged reductions in rates of duty for originating goods of Korea classified in chapter 17 of the HTS. I have determined that modifications to the HTS are necessary to correct the technical errors.

21. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuation, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited

to section 506A(a)(3) of the 1974 Act, 19 U.S.C. 3601(a), 50 U.S.C. 1701 *et seq.,* 50 U.S.C. 1601 *et seq.,* section 4(b) of the USIFTA Act, section 502(e) of the 1974 Act, the United States-Panama Trade Promotion Agreement Implementation Act, the United States-Colombia Trade Promotion Agreement Implementation Act, the United States-Bahrain Free Trade Agreement Implementation Act, the United States-Korea Free Trade Agreement Implementation Act, and section 604 of the 1974 Act, do proclaim that:

(1) The designation of Burundi as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act is terminated, effective on January 1, 2016.

(2) In order to reflect in the HTS that beginning on January 1, 2016, Burundi shall no longer be designated as a beneficiary sub-Saharan African country, general note 16(a) to the HTS is modified by deleting ''Republic of Burundi'' from the list of beneficiary sub-Saharan African countries.

(3) In order to ensure that imports of sugar do not disrupt the orderly marketing of commodities in the United States, the HTS is modified as set forth in Annex I to this proclamation.

(4) In order to implement Executive Order 13651 of August 6, 2013, as authorized by the International Emergency Economic Powers Act and the National Emergencies Act, the HTS is modified as provided in Annex II to this proclamation.

(5) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2016, the HTS is modified as provided in Annex III to this proclamation.

(6)(a) The modifications to the HTS set forth in Annex III to this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2016.

(b) The provisions of subchapter VII of chapter 99 of the HTS, as modified by Annex III to this proclamation, shall continue in effect through December 31, 2016.

(7) In order to make technical corrections necessary to provide the intended tariff treatment to goods of St. Kitts and Nevis in accordance with Presidential Proclamation 8921 of December 20, 2012, the HTS is modified as set forth in Annex IV to this proclamation.

(8) In order to make technical corrections necessary to provide the intended tariff treatment to goods of Panama in accordance with Presidential Proclamation 8894 of October 29, 2012, the HTS is modified as set forth in Annex IV to this proclamation.

(9) In order to make technical corrections necessary to provide the intended tariff treatment to goods of Colombia in accordance with Presidential Proclamation 8818 of May 14, 2012, the HTS is modified as set forth in Annex IV to this proclamation.

(10) In order to make technical corrections necessary to provide the intended tariff treatment to goods of Bahrain in accordance with Presidential Proclamation 8039 of July 27, 2006, the HTS is modified as set forth in Annex IV to this proclamation.

(11) In order to make technical corrections necessary to provide the intended tariff treatment to goods of Korea in accordance with Presidential Proclamation 8783 of March 6, 2012, the HTS is modified as set forth in Annex IV to this proclamation.

(12) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of December, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

Billing code 3295–F6–P

# ANNEX I

## MODIFICATIONS TO THE QUANTITATIVE LIMITATIONS ON THE IMPORTATION OF CERTAIN SUGARS, SYRUPS AND MOLASSES IN THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to certain sugars, syrups and molasses under the terms of additional U.S. note 5 to chapter 17 to the Harmonized Tariff Schedule of the United States (HTS), that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2016, the HTS is hereby modified as follows:

1. Additional U.S. note 5(a)(i) to chapter 17 is modified by inserting after "2106.90.44" the phrase "(under the terms of subheadings 9903.17.01 through 9903.18.10 and applicable note thereto)".

2. Subchapter III of chapter 99 of the HTS is modified by inserting in numerical sequence the following new U.S. note:

"15. (a) The aggregate quantitative limitations that may be established under any of subheadings 9903.17.01 through 9903.17.10 shall apply only to sugar, syrups and molasses that (1) is not eligible for an allocation provided to any specified country or area under the terms of additional U.S. note 5 to chapter 17, and (2) is not eligible to be imported under any quantity that may be reserved for specialty sugars, as defined by the United States Trade Representative, under the terms of subdivision (b) to this note. Such limitations shall apply during any effective period announced in the Federal Register by the United States Trade Representative for such a subheading in any year, during which period only the aggregate quantity of the specified goods shall be allowed entry into the customs territory of the United States. Such limitations shall apply notwithstanding any other quantitative limitations on such goods that may be provided for in the tariff schedule. Any quantity set forth in a notice issued by the United States Trade Representative for any subheading specified herein shall thereby supersede any quantity that may have been announced under additional U.S. note 5 to chapter 17.

(b) The aggregate quantitative limitations that may be established under any of subheadings 9903.17.21 through 9903.17.33 shall apply only to specialty sugars, as defined by the United States Trade Representative, imported during any effective period announced in the Federal Register by the United States Trade Representative for such a subheading in any year, during which period only the aggregate quantity of the specified goods shall be allowed entry into the customs territory of the United States. Such limitations shall apply notwithstanding any other quantitative limitations on such goods that may be provided for in the tariff schedule. Any quantity set forth in such a notice issued by the United States Trade Representative for any subheading specified herein may be allocated among supplying countries and areas and shall thereby supersede any quantity or allocation that may have been announced under additional U.S. note 5 to chapter 17.

(c) The quantitative limitations that may be established under any of subheadings 9903.18.01 through 9903.18.10 shall apply to sugar, syrups and molasses described therein during any effective period announced in the Federal Register by the United States Trade Representative for such a subheading in any year, during which period only the aggregate quantity of the specified goods shall be allowed entry into the customs territory of the United States. Such limitation shall apply notwithstanding any other quantitative limitation on such goods that may be provided for in the tariff schedule and the availability of any quantitative limitation set forth for such goods in chapter 17 or chapter 21 of the tariff schedule or allocation thereof. Any quantity set forth in a notice issued by the United States Trade Representative for any subheading specified herein may be allocated among supplying countries and areas and shall thereby supersede any quantity or allocation that may have been announced under additional U.S. note 5 to chapter 17."

3. The following new subheadings and superior text thereto are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the material inserted in columns entitled "Heading/Subheading", "Article Description", and "Quota Quantity", respectively:

| | | |
|---|---|---|
| | "Sugars, syrups and molasses provided for in subheading 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 or 2106.90.44, under the terms of U.S. note 15 to this subchapter: | |
| | Described in U.S. note 15(a) to this subchapter: | |
| 9903.17.01 | Eligible to be imported under the first quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.02 | Eligible to be imported under the second quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.03 | Eligible to be imported under the third quota period specified in a notice issued by the United States Trade Representative in any 12- | |

| | | |
|---|---|---|
| | month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.04 | Eligible to be imported under the fourth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.05 | Eligible to be imported under the fifth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.06 | Eligible to be imported under the sixth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.07 | Eligible to be imported under the seventh quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.08 | Eligible to be imported under the eighth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |

| | | |
|---|---|---|
| 9903.17.09 | Eligible to be imported under the ninth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.17.10 | Eligible to be imported under the tenth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| | Described in U.S. note 15(b) to this subchapter: | |
| 9903.17.21 | Eligible to be imported under the first quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.17.22 | Eligible to be imported under the second quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.17.23 | Eligible to be imported under the third quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |

| | | |
|---|---|---|
| 9903.17.24 | Eligible to be imported under the fourth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.25 | Eligible to be imported under the fifth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.26 | Eligible to be imported under the sixth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.27 | Eligible to be imported under the seventh quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.28 | Eligible to be imported under the eighth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |

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|---|---|---|
| 9903.17.29 | Eligible to be imported under the ninth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.30 | Eligible to be imported under the tenth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.31 | Eligible to be imported under the eleventh quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.32 | Eligible to be imported under the twelfth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| 9903.17.33 | Eligible to be imported under the thirteenth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | The quantity specified in such notice |
| | Described in U.S. note 15(c) to this subchapter: | |
| 9903.18.01 | Eligible to be imported under the first quota period specified in a notice issued by the United States | |

| | | |
|---|---|---|
| | Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.02 | Eligible to be imported under the second quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.03 | Eligible to be imported under the third quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.04 | Eligible to be imported under the fourth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.05 | Eligible to be imported under the fifth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.06 | Eligible to be imported under the sixth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year | The quantity specified in such notice |
| 9903.18.07 | Eligible to be imported under the | |

| | | | |
|---|---|---|---|
| | : | seventh quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | : The quantity specified in such notice |
| | : | | : |
| 9903.18.08 | : | Eligible to be imported under the eighth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | : The quantity specified in such notice |
| | : | | : |
| 9903.18.09 | : | Eligible to be imported under the ninth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | : The quantity specified in such notice |
| | : | | : |
| 9903.18.10 | : | Eligible to be imported under the tenth quota period specified in a notice issued by the United States Trade Representative in any 12-month period commencing on October 1 in any year..... | : The quantity specified in such notice" |

## ANNEX II
## MODIFICATIONS TO CHAPTER 71 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after Aug. 7, 2013, additional U.S. note 4 to chapter 71 of the Harmonized Tariff Schedule is deleted and replaced with the following text:

"4. Pursuant to Executive Order 13651 of August 6, 2013 (78 F.R. 48793), the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma is prohibited, effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 7, 2013. Except as provided herein, this prohibition shall apply to the following goods:

(a) any jadeite classifiable under heading 7103 of the tariff schedule;

(b) any rubies classifiable under heading 7103; and

(c) any article of jewelry containing jadeite or rubies, the foregoing comprising (A) any article of jewelry classifiable under heading 7113 of the tariff schedule that contains jadeites or rubies, or (B) any article of jadeite or rubies classifiable under heading 7116 of the tariff schedule

Pursuant to such Executive Order, this note shall not apply to such jadeite or rubies mined or extracted from Burma or any articles of jewelry containing such jadeite or rubies that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States."

# ANNEX III

## TEMPORARY EXTENSION OF CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2016 and before the close of December 31, 2016, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2015" and by inserting in lieu thereof "December 31, 2016".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2016 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2016 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2016 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2016 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2016 707,000".

## ANNEX IV

## TO MAKE TECHNICAL RECTIFICATIONS IN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

1. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2014, general note 4(a) to the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting, from the list of Member Countries of the Caribbean Common Market (CARICOM) treated as one country, the country "St. Kitts and Nevis".

2. Effective with respect to goods of Panama, under the terms of general note 35 to the HTS, entered, or withdrawn from warehouse for consumption, on or after October 31, 2012, the HTS is modified as follows:

(a) the rate of duty specified in the "Rates of Duty 1-Special" subcolumn followed by the symbol "PA" in parentheses for subheading 2202.90.28 (as previously proclaimed in Annex II to Proclamation 8894 of October 29, 2012) is modified by deleting the abbreviation "kg" and by inserting in lieu thereof "liter";

(b) subheadings 2207.10.60 and 2207.20.00 are each modified by deleting from the "Rates of Duty 1-Special" subcolumn, for each duty rate shown before the symbol "PA" in parentheses, the subheading number "9822.09.24" and by inserting in lieu thereof "9822.09.26";

(c) with respect to such goods of Panama entered, or withdrawn from warehouse, on or after January 1 and before the close of December 31 in each of the years 2018 and 2019, the rate of duty in the "Rates of Duty 1-Special" subcolumn for each of the subheadings enumerated in the first column below is superseded by the rate enumerated in the columns below "2018" and "2019", respectively:

| Subheading | 2018 | 2019 |
|---|---|---|
| 0711.20.28 | 1.7¢/kg on drained weight | 1.1¢/kg on drained weight |
| 1806.32.16 | 11.1¢/kg + 1.2% | 7.4¢/kg + 0.8% |
| 1806.32.70 | 11.1¢/kg + 1.8% | 7.4¢/kg + 1.2% |
| 1806.90.28 | 11.1¢/kg + 1.8% | 7.4¢/kg + 1.2% |
| 2202.90.28 | 7¢/liter + 4.4% | 4.7¢/liter + 2.9% |
| 2309.90.48 | 24.1¢/kg + 1.9% | 16¢/kg + 1.2% |
| 5101.21.70 | 1.9¢/kg + 1.5% | 1.3¢/kg + 1% |
| 5101.29.70 | 1.9¢/kg + 1.5% | 1.3¢/kg + 1% |
| 5101.30.70 | 1.9¢/kg + 1.5% | 1.3¢/kg + 1% |

3. Effective with respect to goods of Colombia, under the terms of general note 34 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after May 5, 2012, the rate of duty specified in the "Rates of Duty 1-Special" subcolumn followed by the symbol "CO" in parentheses for subheading 9918.04.80 (as previously proclaimed in Annex IIB to

Proclamation 8818 of May 14, 2012) is modified by deleting the abbreviation "kg" and by inserting in lieu thereof "liter";

4. Effective with respect to goods of Bahrain, under the terms of general note 30 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 29, 2015:

(a) subheading 2918.29.06 is modified by inserting in alphabetical sequence in the parenthetical expression following "Free" in the "Rates of Duty 1-Special" subcolumn, the symbol "BH,"; and

(b) the article description for subheading 2918.29.06 is modified to read "1,6-Hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate".

5. Effective with respect to goods of Korea, under the terms of general note 33 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after March 15, 2012, each previously proclaimed rate of duty specified in the "Rates of Duty 1-Special" subcolumn followed by the symbol "KR" in parentheses is modified as follows for the years set forth below:

(a) for subheadings 1701.13.10 and 1701.14.10, for the year 2014, the expression "less 0.01¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.3¢/kg is deleted from each such subheading; and for the year 2015, the expression "less 0.01¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.1¢/kg" is likewise deleted.

(b) for subheadings 1701.13.20 and 1701.14.20—

(i) for the year 2014, the expression "less 0.01¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.6¢/kg" is deleted from each such subheading;

(ii) for the year 2015, the expression "less 0.01¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.5¢/kg" is likewise deleted;

(iii) or the year 2016, the expression "less 0.1¢/kg for each degree (and fractions of a degree in proportion) but not less than 0.4¢/kg" is likewise deleted ;

(c) for subheading 1701.13.20, for the year 2019, such rate of duty is modified by deleting "less", and for the year 2020, such rate of duty is modified by deleting "l" after "kg";

(d) for subheading 1701.14.20, for the year 2017, the "l" after "kg" is deleted, and for the years 2019 and 2020, such rate of duty is modified by deleting "less"; and

(e) for subheading 1701.91.10, for the year 2015, the "l" after "kg" is deleted.

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