EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Reporting Emission Data, Emission Fees, and Process Information.	11/20/14	1/15/16 *[Insert* ***Federal Register*** **citation]**.	Section (3)(A), Emissions Fees, has been updated from $40 to $48 per ton of air pollution emitted annually, effective January 1, 2016.
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PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding new paragraph (ee) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Missouri

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(ee) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Reporting Emission Data, Emission Fees, and Process Information'' on March 16, 2015. The state effective date is November 20, 2014. This revision is effective March 15, 2016.

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[FR Doc. 2016–00191 Filed 1–14–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 262, 264, and 265

RIN 0970—AC56

Temporary Assistance for Needy Families (TANF) Program, State Reporting On Policies and Practices To Prevent Use of TANF Funds in Electronic Benefit Transfer Transactions in Specified Locations

AGENCY: Office of Family Assistance (OFA), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule makes regulatory changes to the Temporary Assistance for Needy Families (TANF) regulations to require states, subject to penalty, to maintain policies and practices that prevent TANF funded assistance from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. This rule implements provisions of Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

DATES: *Effective Date:* Provisions of this final rule become effective January 15, 2016.

Compliance Date: For states, the District of Columbia, and territories (hereafter referred to as states), HHS will determine compliance with provisions in this final rule through review and approval of reports that states submit annually. Initial reports describing the policies and practices states implemented were due on February 22, 2014. All states submitted reports by this deadline. Hereafter, states will submit reports describing the policies and practices required by 45 CFR 264.60 and Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 in the Annual Report on TANF and maintenance-of-effort (MOE) Programs in accordance with 45 CFR 265.9(b)(10). As provided at 45 CFR 265.10, this report is due by November 14 of each fiscal year, which is the same time as the fourth quarter TANF data report, as provided in 45 CFR 265.4.

FOR FURTHER INFORMATION CONTACT: Rebecca Shwalb, Office of Family Assistance, 202–260–3305 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

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I. Background

Authorized by title IV–A of the Social Security Act, TANF is a block grant that provides states, territories, and tribes federal funds to design and operate a program to accomplish the purposes of TANF. The purposes are to: (1) Assist needy families so that children can be cared for in their own homes or in the homes of relatives; (2) reduce the dependency of needy parents by promoting job preparation, work, and marriage; (3) prevent out-of-wedlock pregnancies; and (4) encourage the formation and maintenance of two-parent families. In addition to federal TANF block grant funds, each state must spend a certain minimum amount of non-federal funds to help eligible families in ways that further a TANF purpose. This is referred to as maintenance-of-effort (MOE).

In general, federal TANF and state MOE funds may be expended on benefits and services targeted to needy families, and activities that aim to prevent and reduce out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families, as well as administrative expenses. In particular, federal TANF and state MOE funds may be expended on ''assistance,'' defined at 45 CFR 260.31(a)(1) as including cash payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.,* food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). Assistance also includes supportive services such as transportation and child care provided to families who are not employed (see 45 CFR 260.31(a)(3)). TANF funds also can be used for a wide range of benefits and services that do not fall within the definition of assistance; such expenditures are considered ''non-assistance.'' This rule pertains only to assistance expenditures.

Based on the most recent information provided to us by states, there are currently four means that states use to provide assistance payments to eligible low-income families with children: Paper checks, Electronic Funds Transfers (EFT), Electronic Benefit Transfer (EBT) cards, and Electronic Payment Cards (EPC). Most states have replaced paper checks with one or more of the other three delivery methods in order to provide benefits in a timelier manner, reduce theft and fraud, and eliminate the need for recipients to pay check-cashing fees. Some states automatically transfer assistance payments directly into a recipient's own private bank account through EFT. However, this option is not available if a recipient does not have access to or qualify for a checking account. Most states load the amount of assistance on EBT cards or EPCs, both of which allow recipients to use a debit-like card to access their benefits through automated teller machines (ATMs) and point-of-sale (POS) devices. EPCs differ from government EBT cards in that they are network-branded (*e.g.,* Visa or MasterCard) prepaid cards that recipients may use virtually anywhere the brand's logo is displayed. EBT cards may be used in fewer locations, as retailers and ATMs must be authorized to accept EBT cards.

Among its provisions, the Middle Class Tax Relief and Job Creation Act of 2012, Public Law (Pub. L.) 112–96, requires states to maintain policies and practices to prevent TANF assistance from being used in any EBT transaction (as defined at 42 U.S.C. 608(a)(12)(B)(iii)) in any liquor store; any casino, gambling casino, or gambling establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

The legislation at Section 4004(b) also imposes a new reporting requirement as well as a new penalty. Each state is required to report annually to the Department of Health and Human Services (HHS) on its implementation of policies and practices related to restricting recipients from using their TANF assistance in EBT transactions at the prohibited locations. HHS will reduce a state's block grant by not more than five percent of the state family assistance grant in fiscal year (FY) 2014 and annually thereafter if the state fails to comply with this reporting requirement or if, based on the information that the state reports, HHS finds that the state has not implemented and maintained the required policies and practices. The statute provides the Secretary of HHS the authority to reduce the amount of the penalty based on the degree of noncompliance of the state.

Finally, states are required under Section 4004(c) of Public Law 112–96 to include in their state TANF plans a statement outlining how they intend to implement policies and procedures to prevent access to assistance through EFTs at casinos, liquor stores, and establishments providing adult-oriented entertainment. The state plan also must include an explanation of how the state will ensure that (1) recipients of the assistance have adequate access to their cash assistance, and (2) recipients of assistance have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges; are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance; and that such information is made publicly available. This rule does not regulate the state plan provisions at Section 4004(c) of Public Law 112–96, but it incorporates the statutory state plan language under the Middle Class Job Creation and Tax Relief Act of 2012. Following publication of the final rule, HHS plans to issue additional guidance regarding the adequate access provision.

II. Notice of Proposed Rulemaking

HHS published a notice of proposed rulemaking (NPRM) (79 FR 7127) on February 6, 2014, to regulate the TANF provisions in Section 4004(a) and (b) of Public Law 112–96. The proposed rule added new penalties for failure to report or adequately demonstrate implementation of the requirements outlined in Public Law 112–96, defined terms relevant to the new requirements, specified when the penalty takes effect, and identified how HHS will determine whether a state warrants a penalty. It also provided details regarding what types of policies and practices HHS would accept as complying with the statutory requirements. In addition to general comments, the NPRM sought input from commenters regarding two specific issues: TANF assistance deposited directly in recipients' bank accounts and accessed with a personal debit card, and internet transactions.

HHS received a total of 28 comments, including comments from six states, seven membership and research/advocacy organizations, and three EBT industry organizations. The remaining commenters were members of the public. We include a detailed summary of comments as well as HHS's responses to comments in Section V of this final rule. Public comments on the proposed rule are available for review on *www.regulations.gov.*

III. Overview of Final Rule

The final rule amends the TANF program regulations in the following three ways: (1) It adds a requirement to implement policies and practices to prevent TANF assistance from being used in any electronic benefit transfer transaction in any: liquor store; any casino, gambling casino or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, (2) it adds a requirement to report on policies and practices in an annual report, and

(3) it adds a penalty for failure to report on implementation and maintenance of these policies and practices. In response to comments on the proposed rule, we have made changes in the final rule where appropriate to address policy and other concerns raised by commenters, as well as to incorporate suggested clarifications and improvements. In this section, we provide an overview of the final rule and generally describe major changes in response to comments. A more detailed summary of comments in each area and reason for changes is included in the section-by-section discussion of comments later in this final rule.

(1) When incorporating the requirement at 45 CFR 264.60 to implement policies and practices to prevent TANF assistance from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, we mirror the statutory language at Section 4004(a) of Public Law 112–96. The preambles to the NPRM and the final rule provide details on the types of policies and practices HHS would accept as complying with the statutory requirements, and identify those that do not. In doing so, we identify that different approaches may be acceptable depending on the method of delivery (EBT, EPC, or direct deposit). We also correct an error we made in the NPRM suggesting that bank identification number (BIN) blocking was a potential approach to preventing TANF assistance from being used in POS terminals in the specified locations. Finally, we reiterate that states have a responsibility to develop appropriate policies for preventing TANF cash assistance administered by state programs from being used at any of the three types of businesses, including those located on tribal land. In general, we have provided flexibility in meeting the statutory and regulatory requirements so that states may develop cost-effective implementation strategies that fit within the existing structures of state operations.

We also have added the relevant accompanying definitions to the TANF regulations at 45 CFR 264.0. Regarding the definitions of the three types of establishments, we have made some changes to those we proposed in the NPRM. For example, we are striking from our definition of ''retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment,'' the language, ''such an establishment that prohibits the entrance of minors under the age specified by state law.'' Commenters noted that local ordinances, rather than state law, apply to such establishments, and can vary considerably from jurisdiction to jurisdiction. Since we are no longer expanding upon the statutory definition, we have deleted the definition of ''retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment'' from § 264.0. Rather, we encourage states to exercise the flexibility provided by the statute to build on the required restrictions with respect to these establishments, consistent with state and local policies. Furthermore, in response to comments suggesting we quantify the term ''primarily'' in the definitions for ''casino, gambling casino, or gaming establishment'' and ''liquor store,'' we will defer to states' reasonable interpretation of the law. Additionally, we interpret Congress's use of ''liquor'' to refer to alcoholic beverages broadly, rather than a narrow definition that excludes alcoholic beverages such as beer and wine.

We are clarifying that the broad definition of ''electronic benefit transfer transaction'' includes transactions using or accessing TANF funds in private bank accounts because those funds may be accessed by a TANF recipient in a manner that the statutory definition specifies, *i.e.,* through use of a credit or debit card, ATM, point-of-sale terminal, or an online system for the withdrawal of funds or the processing of a payment. We subsequently discuss, see the discussion of § 264.60, examples of policies and practices that HHS considers acceptable with regard to personal accounts and debit cards. We reiterate that the language used demonstrates that Congress intended to apply the requirements in Public Law 112–96 to EPCs. At the same time, we agree with all commenters that Congress did not intend to apply the requirements to internet transactions, pointing to language in the statute such as ''establishment,'' ''store,'' ''located in a place,'' and ''transactions in.''

(2) In order to add the requirement to report on relevant policies and practices to the TANF regulations, we are amending 45 CFR parts 262, 264, and 265. The regulations at 45 CFR 262.3 and 264.61 tie the reporting requirement to the penalty specified at 45 CFR 262.1(a)(16). We reiterate that we are requiring an annual EBT report in order to determine whether states have maintained the required policies and practices in each fiscal year following FY 2014. One commenter suggested that the statute does not provide authority for annual reporting, maintaining that the statute obligates HHS to impose a penalty only if a state fails to submit one required report; that state would be subject to a penalty for FY 2014 (for its failure to report by February 22, 2014) and each fiscal year until it submits a report. We disagree with this interpretation and do not believe that it comports with the statute.

In response to suggestions for ways to ease the reporting burden, we have incorporated this reporting requirement in the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b)(10), rather than requiring the submission of a separate EBT report. Accordingly, we are amending the regulation at 45 CFR 265.9(b).

We continue to require that the reports address specific areas that will allow us to determine whether states have implemented policies and practices that comply with the statutory requirements. The NPRM identified these areas as follows: Identifying locations; methods to prevent use of TANF assistance via EBT transactions in restricted locations; monitoring; and enforcement of compliance. With this final rule, we are providing clearer descriptions of the type of information we are requesting. For example, we have amended the request for information on ''monitoring,'' to ''ongoing monitoring to ensure policies are being carried out as intended,'' and instead of ''enforcement of compliance,'' this component should read ''responding to findings of non-compliance or program ineffectiveness.'' This way, we do not imply that specific practices, such as monitoring of transaction reports, are required. At the same time, we would like reports to describe how states will review and evaluate the policies and practices implemented, and correct for non-compliance and ineffectiveness. In sum, in 45 CFR 265.9(b)(10), the four areas we are requiring states to address in their reports are: (1) Procedures for preventing the use of TANF assistance via electronic benefit transfer transactions in any liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; (2) how the state identifies the locations specified in the statute; (3) procedures for ongoing monitoring to ensure policies are being carried out as intended; and (4) how the state

responds to findings of non-compliance or program ineffectiveness. Finally, we have reduced the burden hour estimate described in the Paperwork Reduction Act section of this final rule, as initial reports have been submitted and subsequent reports should not be as time-consuming.

(3) We are amending 45 CFR 262.1 and 264.61 to add the penalty for failure to report or demonstrate implementation and maintenance of these policies and practices. At 45 CFR 262.62, we specify that this penalty will be imposed for FY 2014 and each succeeding fiscal year in which a state fails to submit a report that demonstrates it has implemented and maintained the relevant policies and practices. Even though one commenter suggested that this approach exceeds our statutory authority, we maintain that the statute allows HHS to impose a penalty in ''each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices.'' Furthermore, in response to commenters' recommendations, we have added language to the regulation related to reducing the penalty based on the degree of noncompliance. We also clarify in the regulations that states are not held responsible for individuals' fraudulent activities, as provided by the statute.

IV. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services (HHS) by the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96), Section 408 of the Social Security Act (42 U.S.C. 608), Section 409 of the Social Security Act (42 U.S.C. 609), and Section 1102 of the Social Security Act (42 U.S.C. 1302), which authorizes the Secretary to make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of functions under the Act.

The statute at 42 U.S.C. 617 limits the authority of the federal government to regulate state conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the legislation includes a TANF penalty, HHS has the authority to regulate in this instance.

V. Section-by-Section Discussion of Comments and Regulatory Provisions

Part 262—Accountability Provisions—General

The final rule in part 262 adds new penalties for failure to report or adequately implement the new requirements outlined in Public Law 112–96, specifies when a penalty takes effect, and identifies the reporting form that HHS will use to determine whether a state warrants a penalty.

Section 262.1 What penalties apply to States?

Sec. 4004(b) of Public Law 112–96 at Sec. 409(a)(16) of the Social Security Act (the Act) creates a new TANF penalty. As provided in the statute, the penalty will be imposed if a state fails to report to HHS its implementation of the policies and practices to prevent assistance provided under the state program funded under this part from being used in any electronic benefit transfer transaction in: (i) Any liquor store; (ii) any casino, gambling casino, or gaming establishment; or (iii) any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. Furthermore, HHS may impose a penalty if it determines, based on the information provided in a state report, that the state has not demonstrated that it has implemented and maintained such policies and practices. This penalty may be imposed for FY 2014 and each succeeding fiscal year in which a state does not demonstrate that it has implemented and maintained such policies and practices. If HHS determines that the state should be subject to a penalty, it will reduce the state family assistance grant in the succeeding fiscal year by five percent, or a lesser amount based on the degree of noncompliance. States should note that the regulations at 45 CFR 262.4 through 262.7, concerning the processes for appealing a penalty, presenting a reasonable cause justification, and submitting a corrective compliance plan, apply to the new penalty added to 45 CFR 262.1.

Accordingly, this final rule adds paragraph (i) to § 262.1(a)(16) to provide that a penalty of not more than five percent of the adjusted State Family Assistance Grant (SFAG) will be applied for failure to report annually as part of the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b)(10), on the state's implementation of policies and practices related to these prohibited EBT transactions. The final rule also adds paragraph (a)(16)(ii) to provide that a penalty likewise will be applied for FY 2014 and each succeeding fiscal year if the state does not demonstrate that it has implemented and maintained such policies and practices. Note that if a state fails to submit a report for a fiscal year and, when it ultimately submits a report, also fails to demonstrate its implementation of policies and practices, the combined penalty will not exceed five percent of its adjusted SFAG. Conforming changes have been made at § 262.1(c)(2) to add reference to the penalties in paragraphs (a)(16)(i) and (ii).

Comment: A few commenters remarked on the penalty calculation, suggesting that the rule mirror the statute's allowance for the Secretary to reduce penalties based on the degree of noncompliance and clarify that states are not responsible for fraudulent activity by any individual receiving TANF assistance in an attempt to circumvent the policies and practices required by section 608(a)(12). Further, commenters were concerned that the proposed rule does not adequately explain how the ''degree of noncompliance'' will be determined or how it would be translated into the penalty amount.

Response: While we included language related to reducing the penalty based on the degree of noncompliance and clarifying that states are not held responsible for individuals' fraudulent activities in the preamble of the NPRM, we agree that this language should also be added to the regulation. We have added language in §§ 262.1(a)(16) and 264.61 to address the statutory provisions. At the same time, we note that while states are not held responsible for an individual's fraudulent activities, reoccurring fraudulent activity could be an indication of deficiencies in a state's policies and practices and should be addressed.

When determining ''degree of noncompliance'' with respect to reports submitted after the deadline, the Secretary may take into account factors such as the length of time a report was late and any extenuating circumstances that may have caused late reporting. When determining ''degree of noncompliance'' with respect to inadequate policies and practices, the Secretary may consider the steps taken to develop policies to comply with the requirements (even if not fully implemented), whether there are procedures related to identifying some or all of the types of locations specified in the statute, whether procedures take into account transactions at both ATMs and POS terminals, and whether the

state provides information for some or all of the components required in the annual report (described later in this preamble).

Comment: One individual commented that imposing a penalty will be counterproductive because financial sanctions may inhibit a state's ability to implement EBT policies and practices, suggesting we increase the compliant states' block grants, provided that they consult and provide technical assistance to non-compliant states.

Response: The statute requires a penalty for failure to meet the requirements of the statute; however, before we impose a financial penalty, states may request reasonable cause or submit a corrective compliance plan in response to a penalty, as provided at sections 409(b) and (c) of the Social Security Act. We do not have the authority to increase compliant states' block grants.

Section 262.2 When do the TANF penalty provisions apply?

The final rule amends § 262.2 to add new paragraph (e) indicating that the penalty for failure to report on how the state is implementing and maintaining policies and practices to prevent assistance from being used in electronic benefit transfer transactions in specified locations will be imposed for FY 2014 and each succeeding fiscal year in which the state does not demonstrate it has implemented and maintained the policies and practices in accordance with 45 CFR 264.60.

Comment: One state commented that the statute does not require an annual reporting requirement. Rather, the commenter argued the statute required HHS to impose a penalty on an annual basis on states that had not submitted a report by February 22, 2014, and each subsequent year it had still not submitted a report. In other words, if a state submitted its initial report that describes the policies it implemented and how it will maintain them, it had met the requirements of the law and can no longer be subject to a penalty. On the other hand, a state that did not submit the initial report by February 22, 2014, would be subject to a penalty for FY 2014, as well as each fiscal year until it submits a report.

Response: We do not agree with this interpretation and do not believe that the statutory requirements, particularly the requirement that states demonstrate that they are implementing and maintaining the relevant policies and practices, can be met through a one-time report. The statute provides that HHS shall impose a penalty in ''each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices.'' Through these reports, we must assess whether states are implementing and maintaining EBT policies and practices to determine whether or not we should impose a penalty.

Section 262.3 How will we determine if a State is subject to a penalty?

This final rule amends § 262.3 by adding a new paragraph (g) to specify that in order to determine if a state is subject to a penalty under 45 CFR 262(a)(16)(i) and (ii), HHS will use the submission of the initial report that was due by February 22, 2014, and beginning in FY 2015, the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b)(10). We are amending the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b) in order to include reporting for electronic benefit transfer transaction policies and practices. The Annual Report on TANF and MOE Programs at 45 CFR 265.9(b) is due at the same time as the fourth quarter TANF data report, within 45 days following the end of the fourth quarter. Note that this reporting requirement is distinct from the provisions of Public Law 112–96 related to additional state plan requirements (see Sec. 4004(c)).

Comment: We received a number of comments raising concerns about a separate annual electronic benefit transfer transaction report requirement. They argued this requirement places an undue reporting burden on states and contradicts the intent of the statute. One commenter believed that because the statute requires states to describe their EBT policies and practices in the state plan, they will already be providing consistent reports on implementation, and should not be required to submit an additional report. A number of states recommended we use the state plan or the Annual Report on TANF and MOE programs as the reporting mechanism.

Response: We agree that the Annual Report is an effective reporting mechanism and will ease the reporting burden on states. As described below, with this final rule, we are amending § 265.9(b) of the TANF regulations to add to the annual report a section for states to describe their policies and practices related to electronic benefit transfer transactions.

Part 264—Other Accountability Provisions

Subpart A—What specific rules apply for other program penalties?

The final part 264 explains in further detail what HHS expects of states when implementing the new requirements of Public Law 112–96 by specifying the policies and practices required, providing relevant definitions, and addressing consequences if a state fails to meet the requirement.

Section 264.0 What definitions apply to this part?

In order to clarify the types of locations where states are required to prohibit the use of TANF assistance via electronic benefit transfer transactions and to ensure that the policies and practices are applied consistently between states, we are amending § 264.0(b) to define the terms included in Section 4004 of Public Law 112–96. The following is a discussion of the definitions of the terms in alphabetical order.

Casino, Gambling Casino, or Gaming Establishment: As we mentioned in the NPRM, the statute provides exclusions to the phrase ''casino, gambling casino, or gaming establishment,'' but does not provide a further definition. One such exclusion refers to establishments that offer casino, gambling, or gaming activities incidental to the principal purpose of the business. With this exclusion in mind, we proposed to interpret the statutory reference to ''casino, gambling casino, or gaming establishment'' to mean an establishment with a primary purpose of accommodating the wagering of money. Based on the statutory definition provided, this does not include a grocery store which also offers, or is located within the same building or complex as a, casino, gambling, or gaming activities, or any other establishments where such activities are incidental to the principal purpose of the business. We are not making any changes to this proposed definition in this final rule.

Comment: Generally, commenters agreed with our definition, but also provided suggestions to address specific concerns. For example, one state and one advocacy organization stated the definition does not address co-joined businesses such as a hotel, grocery store, or restaurant connected to or within the casino. In order to clarify the definition and ensure that it could not be interpreted broadly, one commenter recommended that we add language that prohibits the entrance of minors under the age specified by state law, similar to

that in the proposed definition of ''Retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.''

Response: We disagree that language that related to prohibiting the entrance of minors under the age specified by state law is necessary, and we do not believe it solves the problem the commenters identified. The law addresses co-joined businesses by excluding from the definition a grocery store which also offers, or is located within the same building or complex as a casino, gambling, or gaming activities. We defer to a state's reasonable interpretation of the statute, to determine what other types of establishments that the statute excludes from the definition of ''casino, gambling casino, or gaming establishment,'' including co-joined businesses.

Comment: One state is concerned with the phrase, ''an establishment with a primary purpose of accommodating the wagering of money.'' The regulatory definition does not quantify what ''primarily'' means. Because this is one area where regulations could provide consistency between states, it recommends establishing criteria states can apply in making this determination.

Response: We defer to states' reasonable interpretations on this part of the definition. States may have different approaches of determining whether a business satisfies this standard, and we do not find it necessary to draw a line, or to impose uniformity here, while we provide flexibility in other areas.

Electronic Benefit Transfer Transactions: The final rule will incorporate the statutory definition of ''electronic benefit transfer transaction,'' which is ''the use of a credit or debit card service at an automated teller machine, point-of-sales terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service.''

Comment: Our NPRM noted the broad nature of this language and that questions had been raised about whether it includes TANF assistance deposited directly by a state into a recipient's bank account (*i.e.,* via EFT) and accessed with a personal debit card. We requested comments related to whether states and banks have, or reasonably could have, the capacity to apply the EBT transaction restrictions to assistance funds deposited in private bank accounts and to monitor whether recipients use such funds in a prohibited manner. We received many comments responding to this request, all of which were in agreement that the requirements should not be applied to personal debit cards, supporting their recommendations with information pertaining to the following: (1) Infeasibility, (2) negative consequences that would result from applying the requirements to personal debit cards, and (3) Congressional intent.

Although one commenter acknowledged that it may be theoretically possible for a deposit account to consist of a sub-account for TANF funds and a subaccount for all other funds, all agreed that implementing such a requirement would be practically infeasible. If implemented, the banks would face requirements to identify customers who receive cash benefits, determine the dollars in a checking or savings account that are ''TANF'' dollars versus wages or other income from the state, such as child support. Requiring the entire United States banking system to develop the appropriate capabilities (TANF funds recipients could have deposit accounts at any of the nearly 7,000 banks and thousands more credit unions in the U.S.) would result in an extraordinary burden and high costs. While one commenter stated that the banks would need to develop the ability to monitor where funds are used, as there is no current mechanism for a state to monitor the use of such funds, another stated that current bank infrastructure could not support identification of individual retailers. Commenters emphasized that the capacity and infrastructure to apply the requirements to personal bank accounts/debit cards simply do not exist at this point, and the costs that would need to be devoted to this effort would not outweigh the benefit.

A few commenters maintained that because states could not actually implement procedures in order to comply with this requirement, they would have to discontinue the option of direct deposit. One commenter maintained that even if states provided the option of direct deposit, the difficulties with applying the statutory requirement to TANF assistance in personal bank accounts would provide disincentives for banks to work with TANF customers. Commenters argued these would be unfortunate consequences of this legislation because there are many benefits of being ''banked'' (*e.g.,* the ability to avoid unnecessary fees for accessing benefits and paying bills, promoting savings and financial management, permitting TANF recipients to build a credit history, etc.). Commenters emphasized that diminishing the ability of TANF recipients to establish and maintain bank accounts conflicts with the broader TANF goals of promoting work and self-sufficiency, and that HHS should be encouraging states to provide benefits through direct deposit, not discouraging it.

Finally, a number of commenters maintained that Congress did not intend to include transactions with personal debit cards within the definition of ''electronic benefit transfer transaction'' in Public Law 112–96, and that only accounts established by a government agency were intended to fall within Congress's definition of EBT systems.

Ultimately, all commenters recommended that the restrictions not extend to TANF funds deposited into private bank accounts. One advocacy group recommended that if, in the future, there is sufficient evidence that TANF assistance recipients' use of bank accounts to purchase prohibited goods and services threatens the integrity of the TANF program, any new expansion of the current restrictions should be added only within the context of a full TANF reauthorization.

Response: HHS considered all of the comments received. The broad statutory definition of ''electronic benefit transfer transaction,'' applies to TANF funds deposited in private bank accounts because the funds can be accessed using a credit or debit card, ATM, point-of-sale terminal, or an online system for the withdrawal of funds or the processing of a payment. However, HHS recognizes that TANF recipients may have private bank accounts that include TANF funds as well as income from other sources, including earnings from employment, refundable tax credits for working families, and child support. Because there is currently no feasible way to distinguish TANF funds from other sources in a private bank account, states are responsible for implementing policies and practices that apply to transactions using or accessing TANF funds directly deposited in private bank accounts, only in cases where TANF is the sole source of funds in those accounts. Further, given the current state of technology, we have concluded that there is no feasible enforcement mechanism for funds in private bank accounts, and therefore the state may meet the requirements of this regulation by providing notice to recipients that they cannot access TANF funds from private bank accounts at a prohibited location.

Comment: One state maintained that the definition of ''electronic benefit transfer transaction'' should not include EPCs, which the state described as ''non-government issued, payee owned, pre-paid debit card loaded via 'electronic funds transfer.''' The

commenter maintained that only accounts established by a government agency were intended to fall within Congress's definition of EBT systems.

Response: HHS disagrees with the state's reading of the statute, given the definition of ''electronic benefit transfer transaction'' is so broad, as discussed above.

Comment: We received many comments regarding whether or not internet transactions should be included in the definition of ''electronic benefits transfer transaction.'' All commenters agreed that the regulations should not extend to internet transactions, particularly at this time. A few commenters noted that language in the statute, such as ''establishment,'' ''store,'' ''located in a place,'' and ''transaction in,'' suggests that the intent of Congress was to prevent TANF benefits from being used at certain physical locations. One commenter stated that the term ''online system'' in the definition of ''electronic benefit transfer transaction'' is vague because one may interpret it as payments made in near real time, such as the use of debit cards for purchases at a merchant location, or as the purchase of goods and services over the internet. The commenter argued most consumers understand ''online system'' to include purchases of goods and services via the internet, but suggests that we clarify this in the regulation. Another commenter argued that Congress intended to create an enforceable approach by limiting transactions to physical locations. While this comment did not object on principal to regulating internet transactions, it, along with responses from other commentators, explained that the logistics of applying this restriction to internet transactions would be unfeasible. Some comments suggested that the restrictions should apply if and when states can feasibly monitor such transactions and/or when data shows that online TANF assistance spending on prohibited goods and services becomes a major problem.

Response: We agree the terms ''establishment,'' ''store,'' ''located in a place,'' and ''transaction in'' point to Congress's intent to apply the requirements only to physical locations and not internet transactions. Therefore, the regulations do not apply to web-based transactions. If the technology allows, a state has the flexibility to restrict internet transactions with EBT cards, but federal law does not require it.

Liquor Store: The final rule will incorporate the statutory definition of ''liquor store,'' which is ''any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).''

Comment: Five commenters commented on the definition of ''liquor store,'' with most supporting the approach of mirroring the definition in the statute. We also received a few recommendations for clarifying the definition. For example, one state highlighted the fact that the regulatory definition does not quantify what ''primarily'' means, and that this is one area where regulations could provide consistency between states by establishing certain criteria states can apply in making this determination.

Response: Regarding the recommendation to quantify what ''primarily'' means, just as in the definition of ''casino, gambling casino, or gaming establishment,'' we defer to states' reasonable interpretations on this part of the definition. States may have different ways of determining whether a business satisfies this standard, and we do not find it necessary to draw a line, or to impose uniformity here, while we provide flexibility in other areas.

Comment: A few commenters pointed out that ''liquor'' has a very specific definition that sets it apart from other types of alcoholic beverages such as beer and wine. The commenters maintained that since the term ''liquor'' is used instead of ''alcohol,'' places that sell beer and wine only do not fall under this definition. They recommended that states should be given the flexibility to implement the definition in a way that best suits their state and local laws and population.

Response: We disagree and continue to interpret Congress's use of ''liquor'' to refer to alcohol broadly, including beer and wine, so that the term ''liquor store'' is inclusive of locations that serve primarily alcoholic beverages.

Retail Establishment which Provides Adult-Oriented Entertainment in which Performers Disrobe or Perform in an Unclothed State for Entertainment: In the NPRM we proposed to clarify the intended locations to which restrictions apply, by adding ''such an establishment that prohibits the entrance of minors under the age specified by state law'' to the statutory definition. However, after considering the comments received and for the reasons discussed in the response below, we have decided against adding this language to the statutory definition. Since we are no longer expanding upon the statutory definition, we are not including this term in the list of definitions at 45 CFR 264.0 of the final regulation.

Comment: Seven commenters commented on the proposed definition of ''retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.'' Only one commenter believed that it accurately described the types of locations where Congress intended to restrict access, and provided states with sufficient clarity to implement these provisions. All other commenters expressed concern about the statement we proposed to add to the statutory definition. They believed the proposed regulation expands the scope of prohibited establishments as it might be read to include book stores or establishments that serve liquor by the drink, and maintained that the statutory wording is clear and should be retained. Some comments also noted that not all states have a state law establishing entrance restrictions based on age with respect to places that provide entertainment where performers disrobe or perform in an unclothed state. In many states, local ordinances rather than state law apply to such establishments, and can vary considerably from jurisdiction to jurisdiction.

Response: While we disagree that the addition of ''such an establishment that prohibits the entrance of minors under the age specified by state law'' expands the scope of prohibited establishments, we understand it can be problematic given the variation among states regarding whether state laws or local ordinances apply to these types of establishments. We are therefore removing this language and encourage states to exercise the flexibility provided by the statute to build on the required restrictions, with respect to any of these types of establishments, consistent with state and local policies. The term ''retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment'' itself is descriptive and specific, so we have decided it is not necessary to add a definition at § 264.0.

Comment: One commenter noted that we interpreted the statutory definition as applying beyond live entertainment, specifically to theaters and cinemas where state law prohibits entrance to minors under the age specified by state law. This commenter recommended that the restriction be limited to establishments that provide live entertainment.

Response: We disagree that the statute applies only to establishments that provide live adult entertainment. We see no reason to exclude stores and theaters that exclusively or primarily sell or feature adult-oriented videos and movies.

Section 264.60 What policies and practices must a State implement to prevent assistance from being used in electronic benefit transfer transaction in locations prohibited by the Social Security Act?

This final rule adds § 264.60 under subpart A, which requires states to implement policies and practices to prevent assistance (defined at § 260.31(a)) provided with federal TANF or state TANF MOE funds from being used in any electronic benefit transfer transaction in any: (a) Liquor store; (b) casino, gambling casino or gaming establishment; or (c) retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. The NPRM often used the phrase ''policies and procedures'' in the discussion of this section. The final rule revises the language, instead referring to ''policies and practices,'' in order to mirror the statutory language. As we proposed in the NPRM, HHS will accept any reasonable approaches that further these goals and comply with the statutory and regulatory requirements. States' policies and practices must prohibit the use of TANF funds at the specified locations, while ensuring reasonable access to cash assistance, as directed by Congress.

Comment: We received several comments from states supporting our statements in the NPRM that states would have ''flexibility in determining appropriate policies and practices'' and that we would accept ''any reasonable approaches'' states use to implement the transaction restrictions. For example, one commenter commented that we should not use our authority within this law to restrict state flexibility without a compelling reason, and that we should make reasonable choices that help promote employment and economic self-sufficiency (to the extent that the ambiguity in the statutory language allows). Additionally, a few commenters argued that as technology evolves rapidly, regulations should allow room for approaches that have not been developed at this time. On the other hand, a few commenters stated that we should ''provide more of a standard so that there is more consistency in the calculation and then the implementation of the penalties.'' One advised that an over-arching framework for implementing the restrictions in the law should be shaped by the goals of TANF, and that we should avoid overly-broad interpretations of the law that would undercut rather than further the Congressional intent to bolster public confidence in TANF's program integrity. Another suggested that the proposed rule needs to be more stringent.

Response: We believe that, given the various types of systems states use to deliver TANF assistance, it is important to provide states flexibility to implement policy and practices that comply with these statutory and regulatory requirements. Our intention is to inform states of their options while ensuring they fulfill the provisions of the law. These options include: Requiring that third-party processor agreements include language related to the TANF prohibitions; requiring retailers to meet certain eligibility criteria in order to accept EBT cards or EPCs; reviewing and revising state licensing requirements for casinos, liquor stores, and adult entertainment venues to include conditions for license issuance related to restricting TANF benefit use; amending or creating new educational materials for cardholders and retailers; pre-screening retailers prior to authorizing them to accept EBT cards; engaging EBT vendors to determine possible procedures for identifying electronic benefit transfer transactions with TANF assistance at prohibited locations; requiring cardholders to agree in writing not to use TANF assistance at prohibited locations as a condition of receipt; engaging relevant business owners, for example through the appropriate state licensing agencies, and instructing retailers to refuse EBT cards or EPCs at their locations; requiring that relevant business owners or ATM owners post a notification that EBT cards or EPCs may not be used for purchases or cash withdrawal at prohibited locations. While states may impose sanctions, assign a protective payee, or impose a conciliation process for individuals found in violation, the statute does not require that states do so.

In their initial reports, a few states described procedures that involve informing recipients and/or owners of the restricted businesses of the rules (*e.g.,* via letter, flyer, or brochure; posting information on TANF and regulatory agencies' Web sites; displaying posters that detail the EBT restrictions in relevant establishments or local welfare offices), without taking additional actions that aim to ensure the relevant parties are complying with the policy. Absent final rules, ACF accepted such approaches as complying with the statutory requirements. However, with the publication of this final rule, we clarify that notification approaches are only sufficient in situations where further action is not feasible, such as in the case of TANF funds accessed from private bank accounts or TANF funds used in other states. Where possible, we expect states to implement procedures that enforce policies, and take corrective actions when instances of non-compliance or ineffectiveness are identified.

Comment: One state pointed out that § 264.60 leaves out the key words ''as necessary'' following the phrase, ''states are required to implement policies and practices.'' Another state suggested replacing the word ''use'' with ''access'' in the proposed § 264.60 heading and elsewhere in the narrative to carry a clearer meaning.

Response: We agree that the words ''as necessary'' should be added to the regulation in order to be consistent with the statute. Regarding the proposed language change from ''use'' to ''access,'' the statute itself refers to ''use in electronic benefit transfer transaction.'' We think the best approach is to track the statutory language as much as possible. Therefore, we maintain the current text.

Comment: A few commenters expressed concern with approaches that focus on penalizing individuals rather than preventing transactions in the first place, as they do not further public support for the program and place too much of the burden for compliance on recipients. Yet another commenter stated that we should not encourage states to have vendors post public signs because they unfairly stigmatize and shame public benefits recipients. These commenters suggested that we indicate to states that if a non-systemic approach to preventing TANF EBT use at prohibited locations (*e.g.,* centralized electronic blocking of prohibited transactions) is not reasonably effective, then compliance actions will require a more systemic approach to prevention. They also argued that we should stress that prevention rather than severity of penalties furthers the goal of the legislation.

Response: We appreciate this suggestion, and while we encourage comprehensive policies and practices that involve more than one method of preventing TANF EBT use at prohibited locations (*e.g.,* notices to merchants coupled with monitoring of transaction records), we do not prescribe one specific approach or set of approaches. The intent of the law is to prevent transactions in the designated locations, and there is good reason to believe that

prevention cannot be achieved by placing the entire burden on the individual. At the same time, given the broad discretion that states have under TANF, we do not believe that there is a basis for us to require any specific approach so long as a state's approach is reasonable.

We do encourage states to periodically evaluate the effectiveness of their policies and practices, and adapt or revise them as necessary. In doing so, they maintain the flexibility afforded by the regulation to implement either systemic or non-systemic approaches. We have suggested a number of options for how states may structure policies. We require states to describe how they plan to correct for non-compliance and ineffectiveness in the annual report.

Comment: Two commenters stated that bank identification number (BIN) blocking at the point of sale cannot be done systematically as of now, though they do point out it is possible at ATMs. One of these commenters also suggested that we require that a TANF agency or its EBT vendor notify relevant merchants that they must contact the third party processor (that routes electronic transactions through the commercial debit and credit networks) with which they have a processing agreement and request that the third party processor disable or remove EBT access from their (the relevant merchant's) account. Further, the commenter suggested that we require merchants to have their processors send the merchant category code in the authorization message when an EBT card is swiped at the point of sale, and the TANF agency or its EBT vendor could then make a decision to approve or decline the transaction based on the merchant category code. Yet another commenter suggested that it would be easiest for states to require that all existing ATMs be reprogrammed and merchants would then have to apply to determine if they could be authorized to use EBT funds.

Response: We apologize for our error in stating that a state may systematically prevent transactions via BIN blocking at the point of sale. Additionally, we appreciate these commenters' suggestions for ways states may comply with the statute, but note that, as we explained above, we do not prescribe any one approach for states to implement. Again, states may develop approaches that are cost effective and fit within the existing structure of state operations, yet at the same time meet the requirements of the law.

Comment: One state recommended that we identify and address the differences between EBT and EPC when discussing the options for complying with the requirements, in particular with respect to the four components of reports. Specifically, HHS should acknowledge that EPC and EBT cards are subject to different federal laws and regulations, as well as industry and network standards depending on the type of card, then discuss options and any unique limitations or issues for policies and procedures related to each type of card within each component.

Response: We understand the unique challenges associated with EPCs, and we have been mindful of limitations as we have reviewed state reports. For example, we are aware that banking and privacy laws prevent states from receiving transaction information that would allow them to track the places where individuals redeem their benefits (with very limited exceptions). The Privacy Act of 1974 (at 5 U.S.C. 552a) protects individuals' information maintained by federal agencies and the federal Right to Financial Privacy Act (at 12 U.S.C. 3401) protects personal and financial information of bank customers from disclosure to governmental agencies by banks and their agents. We are mindful of the limitations and will take them into consideration as we review state reports. States that use EPCs described in their initial reports policies and practices including: Blocking certain merchant category classification codes so as to prohibit the usage of the cards in businesses meeting the definition within the law; conducting outreach to businesses to educate impacted vendors and retailors on the prohibition; ensuring recipients are aware of the prohibition by informing applicants and re-applicants through notification; and assigning a protective payee to cases where it comes to the attention of the county eligibility worker or the TANF program administrator that an adult member of the household has demonstrated inappropriate use of funds. Regarding monitoring procedures, in its initial EBT transaction report submitted by the February 22, 2014 deadline, one state described a process for sending an electronic file to IRS approximately once a month for all new and current recipients in order to identify any gambling winnings claimed on tax returns; this information is used as a lead to determine possible fraud. Another state's EBT transaction report explained that the state TANF program receives a monthly Program Market Segment Report from the financial institution that issues the state's EPCs. The Program Market Segment Report displays merchant category codes, the cardholder count that completed a transaction at each type of business, the number of transactions completed, the percent of the total transactions by merchant category code, and the transaction amount by merchant category code. This information allows the state to monitor card and transaction activity.

Comment: One state commented that states that have commingled funds in EBT accounts, such as child support funds, should not be required to restrict access to non-TANF programs. One state suggested that regulations should allow flexibility in this area and allow states to define policies and practices that restrict TANF but allow access for the other cash program benefits comingled with the TANF funds in the EBT accounts.

Response: We agree that states have flexibility to define policies and practices that restrict TANF but allow access to the other cash program benefits that may be on a benefit card. We emphasize that the statutory restriction here solely applies to TANF assistance, not to child support funds or to other family benefits or resources other than TANF assistance.

Comment: A few commenters expressed concern that certain terms in the NPRM indicated we would not support state flexibility, namely ''consistently applied,'' ''required to block,'' and ''adequately implement.'' The commenters suggested that using such terms may lead states to feel compelled to adopt specific suggestions. A few commenters requested that we not include a specific list of four required reporting components (which are identifying locations; methods to prevent use of TANF assistance via EBT transactions in restricted locations; monitoring; and enforcement of compliance) in regulations, as doing so limits flexibility.

Response: It was not our intention to limit state flexibility or be overly prescriptive, but rather to ensure that we receive complete reports describing the procedures states have chosen to implement to comply with the statutory requirements. We maintain that for states to demonstrate that they are implementing the required policies and practices, their implementation strategies must address all four components identified. At the same time, states have flexibility within each category with respect to the specific policies and practices they choose to implement. For further information on this topic, see the discussion related to § 265.9 below, which explains our actions in relation to this issue. As

stated there, we are revising the text of the four components, but not eliminating the requirement.

Comment: We received a few comments responding to suggestions presented in the NPRM for how states can identify locations specified in the law. In particular, one state seems to believe that we proposed requiring states to maintain a list of the establishments subject to the restrictions, and for state TANF agencies to provide a separate and additional notification to impacted merchants. The state recommended that we allow states to comply with the requirements of Public Law 112–96 by requiring the appropriate state licensing agency to notify the entities that license businesses that are subject to the prohibitions, through broader public notice of the requirements for such locations to restrict access, by conducting periodic targeted reviews of EBT transactions, by following up on suspect locations, and by establishing appropriate penalties for the venues violating the restrictions. Additionally, one commenter warned against relying on internet searches, and suggested that states attempt to work through national associations of these businesses and their state affiliates.

Response: We did not intend to imply that we are requiring a particular method for identifying locations subject to the requirements. Similarly, we do not require states to maintain a list of affected businesses. We want states to describe their processes for how they identify locations subject to these requirements in their reports. However, because the method or combination of methods states use for identifying locations depends on the policies and practices they implement, states should have flexibility in deciding how best to do so. For example, if a state's policy involves monitoring transaction reports, ''identifying locations'' could mean developing criteria for being able to recognize on the transaction reports that a transaction occurred at one of the three types of locations (*e.g.,* what words or data elements do reviewers look for?). A state that blocks access at certain locations should describe its procedures for determining which locations should be blocked. Other ways states may identify locations subject to the TANF statutory requirements include working with entities that license businesses or national associations of these businesses and their state affiliates, using merchant category codes, or having states apply for an authorization to accept a state's benefit card based on the percentage of their gross revenue that is derived from the sale of alcoholic beverages, legalized games of chance, sexually oriented materials, coin-operated amusement machines, etc.

Comment: We received one comment in relation to preventing access to TANF cash assistance by state programs at any type of business specified in the law that is located on tribal land. This commenter believed we inappropriately overstepped tribal authority because we ''extended'' the requirements to tribal programs.

Response: We reiterate that we are not extending the requirements to tribal TANF programs. We agree that Congress did not apply these requirements to TANF assistance administered by a tribal TANF program. However, states do have a responsibility to develop appropriate policies for preventing TANF cash assistance administered *by state programs* from being used at any of the three types of businesses, including those located on tribal land, to the extent practicable. As we stated in the NPRM, we encourage states to work with tribes to try to prevent state TANF assistance from being used at the prohibited locations on sovereign tribal land. We would consider it sufficient for states to provide notice to recipients that the prohibition of use extends to tribal lands.

Comment: We received two comments related to whether a state should be responsible for restricting use of its TANF assistance in another state. Both maintained that it would be too challenging and costly for states to attempt to block transactions in businesses located in other states and recommended that we not require states to restrict transactions at locations outside their borders. At the same time, Illinois pointed out that this would not prevent states from reviewing and following up on cardholders' out-of-state spending of TANF benefits in the three restricted types of businesses.

Response: We did not include a discussion of this issue in the preamble of the NPRM, and think it is important to provide clarity in the final rule. States are responsible for restricting transactions using state-provided assistance at prohibited locations whether or not the transaction occurs within the state. We recognize the infeasibility of restricting transactions in other states; and, therefore, the agency would consider providing a notice to recipients to be sufficient implementation of a policy or practice with respect to out-of-state transactions.

Comment: We received a few comments regarding access and fees, raising concerns about protections for those living in isolated areas and noted that the regulations do not provide any exceptions or guidelines about how states may ensure access to cash assistance. Further, they highlighted that the statute's requirement to ensure access to cash assistance and minimal fees may benefit recipients, as the yearly amount of surcharges associated with cash assistance withdrawals is extraordinarily high. To minimize fees, they suggested that states allow a certain number of free withdrawals per month or eliminate withdrawal surcharges. One commenter suggested that the regulations should require states to allow TANF recipients to choose between benefits via direct deposit or an EBT card. It also suggested that the regulations should specify the ways in which states may implement guaranteed, surcharge free transactions (*e.g.,* free ATM balance inquiries and surcharge subsidies), and HHS should provide technical assistance to states about promising practices for guaranteeing access.

Response: We believe it is critical that states take steps to ensure access to cash assistance and minimize, or eliminate, fees for families who are working toward self-sufficiency. We strongly encourage states to develop strategies to ensure adequate access to benefits, such as guaranteeing a minimum number of free cash withdrawals per month or providing new options for cash assistance withdrawal in isolated areas. We will continue to work with states on an individual basis regarding these strategies.

Finally, we want to reiterate that while one of the new state plan requirements at Sec. 4004(c) of Public Law 112–96 conveys a clear emphasis that states ensure adequate access to cash assistance for recipients, this language does not provide states the option to avoid imposing a restriction at an ATM or POS terminal located in any of the three types of specified businesses in order to ensure adequate access. Rather, it conveys a responsibility for states to take corrective actions to increase locations where TANF recipients may access their cash assistance if they find that there are an insufficient number of access points in a geographic area.

Section 264.61 What happens if a state fails to report or demonstrate it has implemented and maintained the policies and practices required in § 264.60 of this subpart?

We are adding a § 264.61 to address the penalty associated with the new requirements. Under paragraph (a), HHS will impose a penalty of not more than five percent of a state's adjusted SFAG

for failure to submit annually a report demonstrating the state's implementation of policies and practices to prevent EBT use in the locations specified in Public Law 112–96. Under paragraph (b), HHS will impose a penalty of not more than five percent of a state's adjusted SFAG each fiscal year succeeding FY 2014 in which the state does not demonstrate it has implemented and maintained the required policies and practices. Note that we have revised the phrasing we used in the NPRM for the title of this section in order to clarify that the penalty will be imposed for a state's failure to demonstrate in the report its implementation and maintenance of policies and practices, rather than a failure to implement and maintain the policies and practices.

In order to meet this requirement, states' reports must fully explain the policies and practices that are being implemented and maintained. Note that if a state submits a late report and once submitted, also fails to demonstrate its implementation of policies and practices, the combined penalty will not exceed five percent of its adjusted SFAG. Any deficiencies that arise with respect to a state's reporting of its EBT policies and practices in the Annual Report (*i.e.,* for failure to submit a complete or timely report) will not trigger a separate penalty under 45 CFR 262.1(a)(3) or 265.8.

All penalties will be imposed in accordance with 45 CFR part 262, which provides states with procedures for appealing a penalty, and submitting a reasonable cause justification or corrective compliance plan.

Furthermore, Sec. 409(a)(16)(C) of the Act, as amended by Sec. 4004(b) of Public Law 112–96 provides HHS the discretion to reduce the penalty amount based on the degree of noncompliance of the state. Sec. 409(a)(16)(C) of the Act, as amended by Sec. 4004(b) of Public Law 112–96, also specifies that ''Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by Sec. 408(a)(12) shall not trigger a state penalty under subparagraph (A);'' as such, HHS will not base any penalty on such information. We have added paragraphs (c) and (d) in this section of the regulation, incorporating these two provisions of the statute.

Please see discussion after 45 CFR 262.1 for comments and responses related to these penalty provisions.

Part 265—Data Collection and Reporting Requirements

Section 265.9—What information must the state file annually?

In response to comments expressing concern over the burden of having a separate annual report due on February 22 of each fiscal year, we are amending § 265.9, by adding paragraph (b)(10) to state that in accordance with §§ 264.60 and 264.61, a report of policies and practices to prevent assistance (defined at § 260.31(a)) provided with federal TANF or state TANF MOE funds from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. In an effort to receive reports that demonstrate whether states have implemented and maintained the required policies and practices, we are revising the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b). In doing so, we will require states to complete four sections, specifying: (1) Procedures for preventing the use of TANF assistance via electronic benefit transfer transactions in any liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; (2) how the state identifies the locations specified in the statute; (3) procedures for ongoing monitoring to ensure policies are being carried out as intended; and (4) how the state plans to respond to findings of non-compliance or program ineffectiveness. We believe that for states to demonstrate that they are implementing the required policies and practices, their implementation strategies must address all four components identified. At the same time, states have flexibility within each category with respect to the specific policies and practices they choose to implement.

Comment: We received several comments responding to the expectation that states establish and report annually on policies and practices in four specific areas identified in the NPRM, namely: (1) Identifying locations; (2) preventing the use of TANF assistance via EBT transactions; (3) monitoring; and (4) enforcement of compliance. While two commenters agreed with our proposed framework and believed it would support the integrity of the program, other commenters argued that following this requirement would be labor intensive, cost prohibitive, and contrary to the philosophy of state flexibility in a block grant program. Some argued that states should have the flexibility to develop policies and practices best suited to them, which might not match the four stated areas. One state argued that requiring that reports address these four areas exceeded statutory authority and suggested that the four specific areas serve as suggestions for state policy rather than requirements. This commenter further suggested that we could require states to report on all four specified components, but allow states to determine whether to establish policies in these areas or not. If a state chose not to, it would assert that in the report. One commenter characterized these four specific components as requirements beyond those in the statute, and that they should not be made mandatory.

Response: We disagree with the suggestion that requiring this reporting exceeds statutory authority, as the statute provides us the authority to reduce a state's block grant if the ''Secretary determines, *based on the information provided in State reports,* that any State has not implemented and maintained such policies and practices.'' We are requiring the four areas in the reports, but are changing the descriptions of the third and fourth to be clearer about what these terms mean. Instead of ''monitoring,'' the third component should read ''ongoing monitoring to ensure policies are being carried out as intended;'' and instead of ''enforcement of compliance,'' the fourth component should read ''plans to respond to findings of non-compliance and/or program ineffectiveness.'' This way, we do not imply that specific practices, such as monitoring of transaction reports, are required. At the same time, reports must describe how states will review and evaluate the policies and practices implemented, and correct any particular aspects that are not leading to the intended results.

Comment: Two commenters argued that states should be required to publish their annual reports online, in order to make this information publicly available. Commenters also argued that we should encourage information sharing among states by establishing venues for the exchange of information about program costs and successes.

Response: We are not requiring states to publish their annual TANF and MOE reports online, but encourage states to do so. States also have many existing means to share information with each other, and we support states continuing to do so. ACF's Office of Family

Assistance will explore the feasibility of posting these reports on their Web site.

VI. Paperwork Reduction Act

This rule establishes new information collection requirements in §§ 262.3(g) and 265.9(b)(10) of the TANF regulations. This collection is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). We did not receive any public comments on the specific burden hour estimate identified in the proposed rule. The information collection requirements, as described below, are identical to those contained in the proposed rule (OMB control number 0970–0437). However, now that the initial reporting due February 22, 2014, has passed, we have reduced the burden hour estimate by half. We also note that we will incorporate this reporting requirement into the Annual Report on TANF and MOE Programs under 45 CFR 265.9(b), and will obtain OMB approval for a standard form before the next information collection is due. The annual report is due at the same time as the fourth quarter TANF data report, or within 45 days following the end of the fourth quarter.

As required by the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507, ACF will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned a clearance number.

Requirement	Number of respondents	Yearly submittals	Average burden per respondent (hours)	Total burden hours
Annual reporting on policies and practices to prevent TANF assistance from being used in electronic benefit transfer transactions in liquor stores; casinos, gambling casinos, or gaming establishments; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment	54	1	20	1,080

We estimate the costs of implementing these requirements will be approximately $54,000 annually. We calculated this estimate by multiplying 1,080 hours by $50 (average cost per hour).

VII. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final regulation will not result in a significant impact on a substantial number of small entities. We note that any impact on businesses emanates from statutory mandate and the policies that states adopt in implementing the statutory requirement.

In order to address potential concerns of the types of establishments specified in the statute, as well as state EBT vendors, HHS has drafted the regulation in a manner that minimizes the impact on businesses, including small businesses, by providing states flexibility when implementing policies and practices that comply with the new requirements. In particular, states have the flexibility to implement approaches that do not place significant burden or impose large costs on their EBT vendors, small businesses, or any particular party. Therefore, any costs resulting from policies under which states require action by small entities, including small businesses, are the result of choices states make when implementing the statutory requirements.

The direct primary impact of this final regulation is on state governments. State governments are not considered small entities under the Act.

VIII. Regulatory Impact Analysis

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the criteria for a significant regulatory action under E.O. 12866 and has been reviewed by OMB. For the reasons set forth below, ACF does not believe the impact of this regulatory action would be economically significant and that the annual cost would fall below the $100 million threshold.

Costs. We received a few comments regarding the costs associated with the implementation of the regulation. Individual commentators raised general concerns about the regulation's cost/benefit ratio and the impact on TANF spending. A few commenters expressed concern that states will reallocate TANF money from direct services to resources for implementing this regulation.

Commenters also noted that the regulation's benefits do not outweigh its costs, as implementation costs are so large and the percentage of TANF cash assistance recipients using EBT cards on prohibited transactions is so small. One of these commenters noted that some states have considered ending EBT programs and reinstating paper checks to exempt themselves from the regulatory requirements. They suggested increasing state flexibility in implementing the regulation by removing the four components that states must include in their implementation report listed in the proposed provision at 45 CFR 262.3(g).

We understand that this regulation will impose new costs on states. In response to this issue, we have provided flexibility in meeting the regulatory requirements so that states may develop cost-effective implementation strategies that fit within the existing structure of state operations. In general, the costs associated with implementation, and the parties that bear these costs, largely depend on the policies and practices a state chooses to in enact order to comply with the statutory requirements.

Nevertheless, regardless of the approach a state may take when implementing policies in order to comply with the statute and regulations, there will be, at a minimum, administrative costs for the state agency responsible for administering the TANF benefits. We recognize that states will spend funds on the following types of costs to implement the changes in order to complete the annual progress report to ACF:

- Costs to identify the prohibited locations;
- Costs to modify existing tracking of recipient use of electronic benefits and/or electronic banking;
- Costs to monitor recipient use of electronic benefit transfers;
- Costs to investigate and follow up on violations of electronic benefit transfers;
- Cost to process and respond to appeals.

With regard to the reporting requirement, based on our estimate described under the Paperwork Reduction Act section of this preamble, the total costs for all states to comply with this requirement would fall well below the $100 million threshold. We will not remove the four components of the report, as commenters recommended. We do agree that the language in the components should be clarified (see discussion of regulation at § 265.9, above). It was not our intention to limit state flexibility or be overly prescriptive. The report components we have identified reflect general elements of all policies and practices that reflect full compliance with the statute, not specific policies and practices. As demonstrated by the initial reports states submitted in response to the statutory requirement, a majority of states have implemented sufficient policies and practices that take into account each of these components. Furthermore, by identifying these components in a standard form, we are ensuring that states take a comprehensive approach to composing their policies and practices, and that ACF receives complete reports describing the procedures states have chosen to implement.

Additionally, the statutory requirements and regulation provide potential benefits that coincide with the goal of financial responsibility. For example, the policies and practices that states implement may result in reductions in inappropriate expenditures of government funds, and emphasize to recipients that they should ensure assistance is spent only on basic needs. There may also be opportunities to educate recipients on financial management and on ways to minimize access fees.

Need for the Regulation: These regulations incorporate statutory changes to the TANF program enacted in the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96). This regulation is limited to the penalty provisions of Section 4004 of Public Law 112–96. Because states have a range of systems for disbursement of assistance, and a number of questions have arisen regarding the applicability and requirements of the statutory language, HHS has published this regulation in order to clarify for states the information they should submit in order to avoid a penalty.

IX. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any federal mandate that may result in the expenditure by state, tribal, and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. HHS has determined that this rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

For more detail regarding estimated costs, see the section containing the Regulatory Impact Analysis.

X. Congressional Review

This regulation is not a major rule as defined in the Congressional Review Act or CRA (5 U.S.C. Chapter 8). The CRA defines a major rule as one that has resulted or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. HHS has determined that this final rule does not meet any of these criteria. For more detail regarding estimated costs, see the section containing the Regulatory Impact Analysis.

XI. Executive Order 13132

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications as defined in the Executive Order. Consistent with Executive Order 13132, HHS specifically requested comments from state and local government officials in the proposed rule regarding federalism implications; we did not receive any comments in response to this specific solicitation.

XII. 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. The Department has concluded that this final rule does not have a negative impact on family well-being, but rather that it will have positive benefits. The statutory requirements and regulations promote the goal of financial responsibility, helping to ensure that families are using their TANF assistance for basic needs. States also may incorporate within their policies and practices opportunities to educate recipients on budgeting, and their state plans must include an explanation of how the state will ensure that recipients have access to using or withdrawing assistance with minimal fees.

List of Subjects in 45 CFR Parts 262, 264, and 265

Administrative practice and procedures, Day care, Employment, Grant programs-social programs, Loan programs-social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

Dated: January 11, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children, and Families.

Approved: January 11, 2016.

Sylvia M. Burwell,

Secretary.

For the reasons set forth in the preamble, parts 262, 264, and 265 of 45 CFR are amended as follows:

PART 262—ACCOUNTABILITY PROVISIONS-GENERAL

■ 1. The authority citation for 45 CFR part 262 is revised to read as follows:

Authority: 31 U.S.C. 7501 *et seq.;* 42 U.S.C. 606, 609, and 610; Sec. 7102, Pub. L. 109–171, 120 Stat. 135; Sec. 4004, Pub. L. 112–96, 126 Stat. 197.

■ 2. Amend § 262.1 by adding paragraph (a)(16) and revising paragraph (c)(2) to read as follows:

§ 262.1 What penalties apply to states?

(a) * * *

(16)(i) A penalty of not more than five percent of the adjusted SFAG (in accordance with § 264.61(a) of this chapter), for failure to report annually on the state's implementation and maintenance of policies and practices required in § 264.60 of this chapter.

(ii) A penalty of not more than five percent of the adjusted SFAG (in accordance with § 264.61(b) of this chapter), for FY 2014 and each succeeding fiscal year in which the state does not demonstrate that it has implemented and maintained policies

and practices required in § 264.60 of this chapter.

(iii) The penalty under paragraphs (a)(16)(i) and (ii) of this section may be reduced based on the degree of noncompliance of the state.

(iv) Fraudulent activity by any individual receiving TANF assistance in an attempt to circumvent the policies and practices required by § 264.60 of this chapter shall not trigger a state penalty under paragraphs (a)(16)(i) and (ii) of this section.

* * * * *

(c) * * *

(2) We will take the penalties specified in paragraphs (a)(3) through (6) and (8) through (16) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

* * * * *

■ 3. Amend § 262.2 by adding paragraph (e) to read as follows:

§ 262.2 When do the TANF penalty provisions apply?

* * * * *

(e) In accordance with § 264.61(a) and (b) of this chapter, the penalty specified in § 262.1(a)(16) will be imposed for FY 2014 and each succeeding fiscal year.

■ 4. Amend § 262.3 by adding paragraph (g) as follows:

§ 262.3 How will we determine if a State is subject to a penalty?

* * * * *

(g) To determine if a State is subject to a penalty under § 262.1(a)(16), we will use the information provided in annual state reports at § 265.9(b)(10) of this chapter, in accordance with Section 409(a)(16) of the Social Security Act.

PART 264—OTHER ACCOUNTABILITY PROVISIONS

■ 5. The authority citation for 45 CFR part 264 is revised to read as follows:

Authority: 31 U.S.C. 7501 *et seq.;* 42 U.S.C. 608, 609, 654, 1302, 1308, and 1337.

■ 6. Amend § 264.0(b) by adding definitions for ''Casino, gambling casino, or gaming establishment''; ''Electronic benefit transfer transaction''; and ''Liquor store'' in alphabetical order to read as follows:

§ 264.0 What definitions apply to this part?

* * * * *

(b) * * *

Casino, gambling casino, or gaming establishment means an establishment with a primary purpose of accommodating the wagering of money. It does not include:

(i) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(ii) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

* * * * *

Electronic benefit transfer transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

* * * * *

Liquor store means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of Section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).

* * * * *

■ 7. Add §§ 264.60 and 264.61 to subpart A to read as follows:

§ 264.60 What policies and practices must a state implement to prevent assistance use in electronic benefit transfer transactions in locations prohibited by the Social Security Act?

Pursuant to Section 408(a)(12) of the Act, states are required to implement policies and practices, as necessary, to prevent assistance (defined at § 260.31(a) of this chapter) provided with federal TANF or state TANF MOE funds from being used in any electronic benefit transfer transaction in any: liquor store; casino, gambling casino or gaming establishment; or retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

§ 264.61 What happens if a state fails to report or demonstrate it has implemented and maintained the policies and practices required in § 264.60?

(a) Pursuant to Section 409(a)(16) of the Act and in accordance with 45 CFR part 262, a penalty of not more than five percent of the adjusted SFAG will be imposed for failure to report by February 22, 2014 and each succeeding fiscal year on the state's implementation of policies and practices required in § 264.60. The penalty will be imposed in the succeeding fiscal year, subject to § 262.4(g) of this chapter.

(b) Pursuant to Section 409(a)(16) of the Act and in accordance with 45 CFR part 262, a penalty of not more than five percent of the adjusted SFAG will be imposed for FY 2014 and each succeeding fiscal year in which the state fails to demonstrate the state's implementation of policies and practices required in § 264.60. The penalty will be imposed in the succeeding fiscal year subject to § 262.4(g) of this chapter.

(c) A penalty applied under paragraphs (a) and (b) of this section may be reduced based on the degree of noncompliance of the state.

(d) Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by § 264.60 shall not trigger a state penalty under paragraphs (a) and (b) of this section.

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

■ 8. The authority citation for 45 CFR part 265 continues to read as follows:

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613; Pub. L. 109–171.

■ 9. Amend § 265.9 by adding paragraphs (b)(10) and (11) to read as follows

§ 265.9 What information must a State file annually?

* * * * *

(b) * * *

(10) A comprehensive description of the state's policies and practices to prevent assistance (defined at § 260.31(a) of this chapter) provided with federal TANF or state TANF MOE funds from being used in any electronic benefit transfer transaction in any: liquor store; casino, gambling casino or gaming establishment; or retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. Reports must address:

(i) Procedures for preventing the use of TANF assistance via electronic benefit transfer transactions in any liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment;

(ii) How the state identifies the locations specified in the statute;

(iii) Procedures for ongoing monitoring to ensure policies are being carried out as intended; and

(iv) How the state responds to findings of non-compliance or program ineffectiveness.

(11) The state's TANF Plan must describe how the state will:

(i) Implement policies and procedures as necessary to prevent access to assistance provided under the State

program funded under this part through any electronic fund transaction in an automated teller machine or point-of-sale device located in a place described in section 408(a)(12) of the Act, including a plan to ensure that recipients of the assistance have adequate access to their cash assistance; and

(ii) Ensure that recipients of assistance provided under the State program funded under this part have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available.

* * * * *

[FR Doc. 2016–00608 Filed 1–13–16; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 13–229, FCC 15–103]

Amendment of the Commission's Rules To Facilitate the Use of Vehicular Repeater Units

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements certain changes to the rules governing six remote control and telemetry channels in the VHF band. We will allow the licensing and operation of vehicular repeater systems (VRS) and other mobile repeaters on these channels. In addition, we revise and update the technical rules for these channels to allow greater use of VRS systems while providing protection for incumbent telemetry users who rely on these frequencies for control of critical infrastructure systems.

DATES: Effective March 15, 2016, except for the addition of § 90.175(b)(4), containing new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, which will become effective after such approval, on the effective date specified in a notice that the Commission publishes in the **Federal Register** announcing such approval and effective date.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428. For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in PS Docket No. 13–229, FCC 15–103, released on August 10, 2015 and *Clarification Order* in PS Docket No. 13–229, FCC 15–165, released on December 11, 2015. These documents are available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of these documents are also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. 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 & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

In 2013, the Commission's *Notice of Proposed Rulemaking* (*NPRM*) sought comment on whether to make additional spectrum available to support mobile repeater capability. The Commission declined to seek comment on VRS operations on nine channels in the 170–172 MHz band, but proposed to allow mobile repeater use on six telemetry channels in the 173 MHz band. In addition, the Commission sought comment on whether other spectrum bands or frequencies could also be used for public safety mobile repeater operations; whether to allow Industrial/Business use of mobile repeater stations on these channels; whether to impose bandwidth restrictions on these frequencies; whether frequency coordination could protect telemetry users from interference; whether to allow wide-area mobile repeater operations on these frequencies; and whether to allow VRS units to exceed the 2 watt power limit that applies to these channels.

In the *Report and Order* the Commission decides to allow all users of these channels—including telemetry licensees—to operate using 11.25 kHz bandwidth. In addition, we will make these six telemetry channels co-primary with adjacent channel land mobile operations and remove the restrictions on omni-directional antennas, fixed station power limits and antenna heights for telemetry stations. The Commission also decides that the only way to accommodate both telemetry and VRS on these frequencies is through frequency coordination to both ensure geographic separation as well as minimizing the risk of commingling voice and data operations. However, since no party provided the Commission with a specific coordination protocol, it directs the coordinator community to develop a consensus protocol for VRS coordination. The Commission also decides to only allow area-wide or state-wide authorizations on a secondary basis. The Commission imposes loading requirements for licensees seeking to license mobile repeaters on these frequencies. The Commission allows VRS to operate with 5 watts ERP but declines to increase the 2-watt power limit for telemetry and remote control use. As a result of our decision to allow the licensing of VRS units on these frequencies, we dismiss as moot several requests for waiver filed during the pendency of this rulemaking. On December 11, 2015, the Commission released a *Clarification Order to ensure that the Commission's rules aligned with the text of the August Report and Order.*

Procedural Matters

A. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix B of the Report and Order.

B. Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

The actions taken in the Report and Order in PS Docket No. 13–229 have been analyzed with respect to the Paperwork Reduction Act of 1995, Pub.