
# FEDERAL REGISTER

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OFFICE OF THE FEDERAL REGISTER


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# Presidential Documents

Title 3—

The President

## Proclamation 9214 of November 26, 2014

## Thanksgiving Day, 2014

By the President of the United States of America

A Proclamation

Thanksgiving Day invites us to reflect on the blessings we enjoy and the freedoms we cherish. As we gather with family and friends to take part in this uniquely American celebration, we give thanks for the extraordinary opportunities we have in a Nation of limitless possibilities, and we pay tribute to all those who defend our Union as members of our Armed Forces. This holiday reminds us to show compassion and concern for people we have never met and deep gratitude toward those who have sacrificed to help build the most prosperous Nation on earth. These traditions honor the rich history of our country and hold us together as one American family, no matter who we are or where we come from.

Nearly 400 years ago, a group of Pilgrims left their homeland and sailed across an ocean in pursuit of liberty and prosperity. With the friendship and kindness of the Wampanoag people, they learned to harvest the rich bounty of a new world. Together, they shared a successful crop, celebrating bonds of community during a time of great hardship. Through times of war and of peace, the example of a Native tribe who extended a hand to a new people has endured. During the American Revolution and the Civil War, days of thanksgiving drew Americans together in prayer and in the spirit that guides us to better days, and in each year since, our Nation has paused to show our gratitude for our families, communities, and country.

With God's grace, this holiday season we carry forward the legacy of our forebears. In the company of our loved ones, we give thanks for the people we care about and the joy we share, and we remember those who are less fortunate. At shelters and soup kitchens, Americans give meaning to the simple truth that binds us together: we are our brother's and our sister's keepers. We remember how a determined people set out for a better world—how through faith and the charity of others, they forged a new life built on freedom and opportunity.

The spirit of Thanksgiving is universal. It is found in small moments between strangers, reunions shared with friends and loved ones, and in quiet prayers for others. Within the heart of America's promise burns the inextinguishable belief that together we can advance our common prosperity—that we can build a more hopeful, more just, and more unified Nation. This Thanksgiving, let us recall the values that unite our diverse country, and let us resolve to strengthen these lasting ties.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Thursday, November 27, 2014, as a National Day of Thanksgiving. I encourage the people of the United States to join together—whether in our homes, places of worship, community centers, or any place of fellowship for friends and neighbors—and give thanks for all we have received in the past year, express appreciation to those whose lives enrich our own, and share our bounty with others.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–28494
Filed 12–2–14; 8:45 am]
Billing code 3295–F5

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 145 and 146

[Docket No. APHIS–2011–0101]

RIN 0579–AD83

### National Poultry Improvement Plan and Auxiliary Provisions; Technical Amendment

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In a final rule that was published in the **Federal Register** on July 9, 2014, and effective on August 8, 2014, we amended the provisions of the National Poultry Improvement Plan by, among other things, amending the standards for the U.S. H5/H7 Avian Influenza Monitored classification. In that amendment, we incorrectly indicated that table-egg layer flocks may qualify for U.S. H5/H7 Avian Influenza Monitored status if they meet one of three testing and surveillance requirements, when we should have indicated such flocks must meet all applicable listed testing and surveillance requirements to qualify. This document corrects that error. We are also making several other minor edits for clarity.

**DATES:** Effective December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Denise Brinson, DVM, Director, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

**SUPPLEMENTARY INFORMATION:** The National Poultry Improvement Plan (NPIP, also referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as "U.S. Pullorum-Typhoid Clean" as a condition for participating in the other Plan programs.

The regulations in 9 CFR parts 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

In a final rule [1] published in the **Federal Register** on July 9, 2014 (79 FR 38752–38768, Docket No. APHIS–2011–0101), with an effective date of August 8, 2014, we amended the regulations by, among other things, amending the standards for the U.S. H5/H7 Avian Influenza Monitored classification. Section 146.23(a) provides the U.S. H5/H7 Avian Influenza Monitored classification for table-egg layer pullet flocks and table-egg layer flocks. Prior to the final rule, the introductory text for paragraph (a) addressed the table-egg layer industry generally, including both table-egg layer pullet flocks and table-egg layer flocks. Separate testing requirements were set out for each type of flock in paragraphs (a)(1) and (a)(2), respectively. However, this caused some confusion. Therefore, in the final rule, we reformatted paragraph (a) so that it includes introductory text in paragraphs (a)(1) and (a)(2) that is specific to each type of flock. The testing requirements, which remain the same, were set out for each type of flock using the phrase "A flock will qualify for this classification when the Official State Agency determines that it has met one of the following requirements." While the use of "one of" is appropriate for paragraph (a)(1) as there are only two testing and surveillance options that satisfy the U.S. H5/H7 Avian Influenza Monitored classification, in order for flocks in paragraph (a)(2) to attain U.S. H5/H7 Avian Influenza Monitored classification they must meet the requirements of paragraph (a)(2)(i) and either paragraph (a)(2)(ii) or (a)(2)(iii). Therefore, using "one of" in this case inadvertently removes necessary testing requirements.

To clarify the requirements that must be followed for table-egg layer flocks to qualify as U.S. H5/H7 Avian Influenza Monitored classified, we are amending the introductory text in paragraph (a)(2) to make it clear that table-egg layer flocks must meet the requirements of paragraph (a)(2)(i) and the requirements of either paragraph (a)(2)(ii) or (a)(2)(iii).

Section 145.23(h) sets out requirements for the U.S. Avian Influenza Clean classification for multiplier breeding flocks. The regulations currently state that a flock and the hatching eggs and chicks produced from it will obtain this classification if, along with other requirements, during each 90-day period, all multiplier spent fowl within the flock, up to a maximum of 30, are tested and found negative for avian influenza within 21 days prior to movement to slaughter. In the final rule, we intended to change this requirement to state that such a classification may be obtained when, in addition to other requirements, a sample of at least 11 birds is tested and found negative to avian influenza within 21 days prior to slaughter. We are correcting this unintended omission in this technical amendment.

We are also making several other changes to improve the clarity of the regulations. Section 145.33(l) sets out requirements for the U.S. Avian Influenza Clean classification for multiplier meat-type chicken breeding flocks. However, the introductory text in paragraph (l) inadvertently refers to members of such flocks as "primary breeding chickens." Therefore, we are amending the introductory text in paragraph (l) to replace the word "primary" with the word "multiplier." In paragraph (l)(2) we are also adding the word "serologically" after the word "tested" and the words "for antibodies for avian influenza" after the word "negative." Finally, we are adding the words "for antibodies for avian influenza" after the word "negative" in § 145.83(g)(2). We are making these changes to clarify the nature of the required testing.

[1] To view the final rule and related documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0101.*

**List of Subjects in 9 CFR Parts 145 and 146**

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 145 and 146 as follows:

## PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 1. The authority citation for part 145 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 145.23, paragraph (h)(2) is revised to read as follows:

**§ 145.23 Terminology and classification; flocks and products.**

* * * * *

(h) * * *

(2) A sample of at least 11 birds must be tested and found negative to avian influenza within 21 days prior to slaughter.

* * * * *

■ 3. Section 145.33 is amended in paragraph (l) introductory text, by revising the second sentence after the heading and by revising paragraph (l)(2) to read as follows:

**§ 145.33 Terminology and classification; flocks and products.**

* * * * *

(l) * * * It is intended to determine the presence of avian influenza in multiplier breeding chickens through routine surveillance of each participating breeding flock. * * *

* * * * *

(2) During each 90-day period, all multiplier spent fowl, up to a maximum of 30, must be tested serologically and found negative for antibodies for avian influenza within 21 days prior to movement to slaughter.

* * * * *

**§ 145.83 [Amended]**

■ 4. In § 145.83, paragraph (g)(2) is amended by adding the words "for antibodies for avian influenza" after the word "negative".

## PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

■ 5. The authority citation for part 146 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

**§ 146.23 [Amended]**

■ 6. Section 146.23 is amended as follows:

■ a. In paragraph (a)(2) introductory text, by removing the words "one of".

■ b. In paragraph (a)(2)(i), by adding the words "and either" after the word "disposal;".

Done in Washington, DC, this 26th day of November 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–28439 Filed 12–2–14; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

[Docket No. EERE–2013–BT–TP–0002]

RIN 1904–AC93

## Energy Conservation Program: Test Procedures for Commercial Clothes Washers

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

**ACTION:** Final rule.

**SUMMARY:** On February 11, 2014, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to amend the test procedures for commercial clothes washers (CCWs). That proposed rulemaking serves as the basis for today's action. DOE is issuing a final rule making a technical correction to the certification reporting requirements for CCWs established under the Energy Policy and Conservation Act (EPCA), adopting a new test procedure to be used to determine compliance with any revised energy conservation standards for CCWs, and clarifying the dates for which the current and new test procedures must be used to determine compliance with existing energy conservation standards and any future revised energy conservation standards for CCWs.

**DATES:** The effective date of this rule is January 2, 2015.

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

The docket for this rulemaking can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0002*. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

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

**FOR FURTHER INFORMATION CONTACT:** Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringers@ee.doe.gov*.

Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA"), Pub. L. 94–163, sets forth a variety of provisions designed to improve energy efficiency.[1]

[1] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).

Part C of title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–17, as codified), establishes the "Energy Conservation Program for Certain Industrial Equipment." The program includes CCWs, the subject of today's notice. (42 U.S.C. 6311(1)(H))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those equipment. (42 U.S.C. 6295(s); 6314(d) and 6316(a)) Similarly, DOE must use these test procedures to determine whether the equipment complies with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s) and 6316(a))

The Energy Policy Act of 2005 (EPACT) amended EPCA by adding CCWs as one of the covered equipment types under Part A–1, among other changes. (42 U.S.C. 6311(1)(H)) EPACT established the definition and the first energy conservation standards for CCWs. (42 U.S.C. 6311(21) and 6313(e)(1))

EPACT also directed DOE to conduct two rulemakings to determine whether the established standards for CCWs should be amended. (42 U.S.C. 6313(e)(2)) DOE published its first final rule amending CCW standards on January 8, 2010 ("January 2010 final rule"), which applies to CCWs manufactured on or after January 8, 2013. 75 FR 1122. EPACT required the second final rule to be published by January 1, 2015. (42 U.S.C. 6313(e)(2)(B)(i)) Any amended standards would apply to CCWs manufactured three years after the date on which the final amended standard would be published. (42 U.S.C. 6313(e)(2)(B)(ii)) DOE is currently conducting its second standards rulemaking to satisfy this requirement and published a NOPR on March 4, 2014 (hereafter, the "March 2014 standards NOPR").[2] 79 FR 12303.

The CCW standards established by the January 2010 final rule are based on the MEF and WF metrics as measured using DOE's clothes washer test procedure at 10 Code of Federal Regulations (CFR) part 430, subpart B, appendix J1 ("appendix J1"). On March 7, 2012, DOE published a final rule (hereafter, the "March 2012 final rule") establishing a new clothes washer test procedure at 10 CFR part 430, subpart B, appendix J2 ("appendix J2"). 77 FR 13888. Due to the substantive amendments in appendix J2, the calculated values of MEF and WF in appendix J2 are not equivalent to the calculated values of MEF and WF in appendix J1. Beginning March 7, 2015, manufacturers of residential clothes washers will be required to use appendix J2 to demonstrate compliance with new standards that also become effective on that date. This final rule adopts appendix J2 for CCWs such that manufacturers of commercial clothes washers will be required to use appendix J2 to demonstrate compliance with any future amended standards adopted as part of the current CCW standards rulemaking.

On February 11, 2014, DOE published a NOPR to revise its test procedures and certification reporting requirements for CCWs (hereafter, the "February 2014 NOPR"). 79 FR 8112. DOE proposed amending the certification requirements for CCWs to allow the use of either appendix J1 or appendix J2, in conjunction with conversion equations, to demonstrate compliance with the current energy conservation standards established by the January 2010 final rule. 75 FR 1122; 79 FR 8112, 8113–8114. The proposal included the numerical equations for translating MEF and WF values as measured using appendix J2 into equivalent appendix J1 values. CCW manufacturers using appendix J2 would be required to use the conversion equations to translate the measured efficiency metrics into equivalent appendix J1 values. The use of appendix J2 would be required to demonstrate compliance with any amended energy conservation standards for CCWs to be published in a final rule by January 1, 2015, and the conversion equations would no longer be used at that time.

Today's rule does not adopt the February 2014 NOPR proposal to include numerical equations for translating MEF and WF values as measured using appendix J2 into equivalent appendix J1 values until a final rule amending energy conservation standards is published. Today's rule clarifies that CCW manufacturers must use appendix J1 to demonstrate compliance with the current energy conservation standards. In addition, DOE is adopting appendix J2 for CCWs such that CCW manufacturers must use appendix J2 to demonstrate compliance with any future amended energy conservation standards (to be published in a final rule by January 1, 2015). Today's rule fulfills DOE's obligation to periodically review its test procedures under 42 U.S.C. 6314(a)(1)(A). DOE anticipates that its next evaluation of this test procedure will occur in a manner consistent with the timeline set out in this provision.

## II. Summary of the Final Rule

Manufacturers of CCWs must use appendix J1 to demonstrate compliance with the current standards established by the January 2010 final rule. However, manufacturers of CCWs must use appendix J2 to demonstrate compliance with any amended energy conservation standards that would be published in a final rule by January 1, 2015.

In addition, this final rule amends 10 CFR 431.152 to provide definitions for the appendix J1 and appendix J2 energy and water metrics: (1) IWF, defined as the integrated water factor value calculated using appendix J2; (2) MEF, defined as the modified energy factor value calculated using appendix J1; (3) $MEF_{J2}$, defined as the modified energy factor value calculated using appendix J2; and (4) WF, defined as the water factor value calculated using appendix J1.

DOE also amends the test procedures for CCWs at 10 CFR 431.154 to specify that appendix J1 must be used to determine compliance with existing energy conservation standards and appendix J2 must be used to determine compliance with any future revised energy conservation standards for CCWs.

This final rule also corrects a technical error in the certification and reporting requirements for CCWs at 10 CFR 429.46 by listing the water factor as one of the measures of energy or water consumption for which consumers would favor a lower value.

## III. Discussion

### *A. Early Use of Appendix J2 for Current Energy Conservation Standards*

As discussed above, DOE proposed in the February 2014 NOPR to provide equations for translating MEF and WF values as measured using appendix J2 into their equivalent values as measured using appendix J1. This would enable manufacturers to use appendix J2 to demonstrate compliance with the current energy conservation standards, which are based on appendix J1.

The Association of Home Appliance Manufacturers (AHAM), Whirlpool

[2] Docket number EERE–2012–BT–STD–0020. For more information, see DOE's CCW rulemaking Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/46.*

Corporation (Whirlpool), and Alliance Laundry Systems (ALS) strongly oppose DOE's proposal to permit early compliance with Appendix J2, through the use of the proposed translation equations, three years before it becomes mandatory for CCWs. (AHAM, No. 2 at pp. 2–3; Whirlpool, No. 3 at p. 1; ALS, No. 4 at p. 1)[3][4][5] AHAM stated that although it had sought early compliance with regard to residential refrigerator/freezers and residential clothes washers, it did so with the limited purpose of easing the burden associated with manufacturers transitioning their full product lines to comply with amended standards on one date. Accordingly, AHAM stated that it strongly supported, and continues to support, DOE's guidance permitting early compliance with new or amended test procedures for satisfying applicable new or amended standards.[6] (AHAM, No. 2 at p. 2)

AHAM added that it believes that permitting manufacturers to demonstrate early compliance with an applicable standard using two different test procedures is contrary to the intent of the EPCA, as amended. AHAM stated that the major value of test procedures, labeling, and the restrictions on energy-related representations inconsistent with the required test procedure is to provide consumers with accurate, credible, and comparative energy information. AHAM believes that value would be undermined if manufacturers are authorized to provide energy information under more than one test procedure, particularly if the energy descriptor stays the same. (AHAM, No. 2 at p. 2)

AHAM stated that its concerns are most acute when the amended test procedure impacts measured energy, in which case, a manufacturer could choose the test procedure that will permit CCWs to meet the standard and make more advantageous energy-related claims. AHAM believes that this concern does not disappear if DOE requires a translation equation or "crosswalk" from one standard to another because such a translation equation, at best, provides an estimate of a CCW's measured energy use, but it cannot accurately represent the measured energy of every CCW. AHAM noted that the translation equations represent an average approximation, but that approximation is only based on the test results from a subset of models on the market. According to AHAM, EPCA does not contemplate the use of approximate values to make energy-related representations. (AHAM, No. 2 at p. 2)

Finally, AHAM stated it believes that DOE's permitted use of different test procedures to demonstrate compliance with standards presents challenges for verification. Because third parties could also test with either test procedure, and a translation equation only provides an approximation, third parties may get different results than the manufacturers if the third parties use a different procedure. AHAM stated that should DOE proceed, over AHAM's strong objection, to permit early compliance with appendix J2 through the use of translation equations, AHAM requests that DOE specify that third party testing and verification testing must be done using the same test procedure that was used for certification purposes. (AHAM, No. 2 at p. 3)

ALS also strongly objected to allowing the early use of appendix J2 before it will become mandatory in 2018. (ALS, No. 4 at p. 1) ALS also stated that it strongly objects to the use of translation equations developed by DOE, which are based on testing of limited numbers of existing models, but may not have included all existing compliant models. ALS believes that EPCA does not allow using translation equations, which may not guarantee that all existing certified models, which were certified based on tests to appendix J1, would remain in compliance to the minimum standard when judged by testing to appendix J2 and employing the translation equations. (ALS, No. 4 at p. 1)

DOE did not receive any comments objecting to the translation equations as proposed, aside from the issue of whether to permit the use of appendix J2 in conjunction with the translation equations to determine compliance with the current standards, as described in the previous section.

In consideration of the comments received, DOE has determined it will not adopt the translation equations. Today's final rule requires that manufacturers of CCWs use appendix J1 to demonstrate compliance with the current standards established by the January 2010 final rule. The use of appendix J2 will be required to demonstrate compliance with any amended energy conservation standards to be published in a final rule by January 1, 2015.

Today's final rule also amends 10 CFR 431.152 to provide clarifying definitions for the energy and water descriptors for CCWs to better differentiate between the two test procedures. Consistent with the current CCW standards, the amendments define MEF and WF as the modified energy factor and water factor values, respectively, calculated using appendix J1. To accommodate any future amended standards for CCWs, the amendments define $MEF_{J2}$ and IWF as the modified energy factor and integrated water factor values, respectively, calculated using appendix J2.[7] Since the calculated value of modified energy factor in appendix J2 is not equivalent to the calculated value of modified energy factor in appendix J1, adding the "J2" subscript to the appendix J2 MEF descriptor will avoid any potential ambiguity that would result from using the same energy descriptor for both test procedures.

*B. Drying Energy Calculation*

Section 4.3 of appendix J2 provides the calculation of per-cycle energy consumption for removal of moisture from the test load (*i.e.*, the drying energy), which is one of the energy components used to calculate MEF. The drying energy is calculated as the product of: (1) The weighted average load size; (2) the remaining moisture content minus 4%; (3) the dryer usage factor of 0.91; and (4) the nominal energy required for a clothes dryer to remove moisture from clothing, defined as 0.5 kWh/lb.

In the February 2014 NOPR, DOE responded to comments received from interested parties as part of the concurrent energy conservation standards rulemaking for CCWs. 79 FR 8112, 8116–18. Southern Company had requested that DOE incorporate a variable DEF, and the National Resources Defense Council (NRDC) and the Appliance Standards Awareness Project (ASAP) suggested that DOE

[3] A notation in this form provides a reference for information that is in the docket for DOE's test procedure rulemaking for CCWs (Docket No. EERE–2013–BT–TP–0002), which is maintained at *www.regulations.gov*. This notation indicates that AHAM's statement preceding the reference can be found in document number 4 in the docket, and appears at page 1 of that document.

[4] Whirlpool Corporation submitted a written comment stating that it worked closely with AHAM in the development of AHAM's submitted comments, and that Whirlpool strongly supports the positions taken by AHAM. Throughout this final rule, reference to AHAM's written comments should be considered reflective of Whirlpool's position as well.

[5] ALS submitted a written comment stating that it supports AHAM's public comments for this NOPR. Throughout this final rule, reference to AHAM's comments should be considered reflective of ALS' position as well.

[6] DOE guidance, "When may an amended test procedure be used to test, rate and certify products prior to the compliance date for new standards?" available at: *http://www1.eere.energy.gov/guidance/detail_search.aspx?IDQuestion=658&pid=2&spid=1*.

[7] In the March 2014 standards NOPR, DOE proposed amended standards for CCWs based on the MEF and IWF metrics as measured using appendix J2.

should account for the percentage of market features such as dryer moisture sensors or timer-activated termination controls in commercial clothes dryers. 79 FR 8112, 8117. In response, DOE explained in the February 2014 NOPR that the calculation of drying energy in the clothes washer test procedure is only intended to provide a nominal estimate of associated drying energy that can be used to distinguish among clothes washer models that provide varying degrees of remaining moisture in the clothing load, which provides a consistent basis of comparison across all types of clothes washers. *Id.* In addition, DOE stated that it did not have consumer usage data that would indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers. *Id.* DOE also did not have data indicating the prevalence of features in commercial clothes dryers, such as moisture sensors, that would affect the drying times. *Id.* Such data would be required to support any changes in the test procedure calculations. Therefore, DOE did not propose any changes to the drying energy calculation.

In its comments submitted in response to the February 2014 NOPR, AHAM agrees that the calculation of drying energy in the clothes washer test procedure is intended to provide a nominal estimate of associated drying energy that can be used to distinguish clothes washer models by degree of remaining moisture in the clothing load, which provides a consistent basis on which to compare clothes washers. AHAM also confirms that consumer usage data is not available to indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers, or the prevalence of features in commercial clothes dryers, such as moisture sensors, that would affect the drying times. AHAM agrees that such data would be required in order for DOE to amend the test procedure and therefore supports DOE's decision not to amend the test procedure in the absence of such data. (AHAM, No. 2 at p. 3)

ALS supports DOE's response that the drying energy calculation is intended to be a nominal estimate of drying energy. ALS also supports DOE's response that data does not exist on the prevalence of moisture sensors or other features on commercial clothes dryers, which would be needed to support the test procedure change. (ALS, No. 4 at pp. 1–2)

DOE received no additional comments in support of amending the dryer energy calculation for CCWs. Today's final rule does not include any changes to the drying energy calculation for CCWs.

*C. Water Heating Calculation*

Section 4.1.3 of appendix J2 provides the calculation of total weighted per-cycle hot water energy consumption (*i.e.*, the water heating energy), which is one of the energy components used to calculate MEF. The water heating energy calculations assume a 100% efficient electric water heater that provides a water heating value of 0.00240 kWh/gal/°F. Section 4.1.4 of the test procedure also provides a conversion for gas water heating, assuming a gas water heater efficiency of 75%. However, the gas water heating calculation is not used in any calculations within the DOE test procedure; rather, it is only used with the Federal Trade Commission's EnergyGuide label for calculating the estimated yearly cost of a clothes washer when used with a natural gas water heater. (16 CFR 305, Appendix L).

As part of the concurrent energy conservation standards rulemaking for CCWs, Southern Company had suggested that the assumed water heater efficiencies should be updated as the weighted efficiency of installed water heaters changes over time, as electric heat pump water heaters and gas condensing water heaters gain market share. DOE responded in the February 2014 NOPR that, much like the drying energy calculation described in the previous section of this notice, the calculation of water heating energy in the clothes washer test procedure is only intended to provide a nominal estimate of water heating energy that can be used to distinguish among clothes washer models that use different amounts of hot water, which provides a consistent basis of comparison across all types of clothes washers. Therefore, DOE did not propose any changes to the water heating calculation for CCWs in the February 2014 NOPR. 79 FR 8112, 8117–8118.

ALS supports DOE's response that the calculation for water heating is intended to provide a nominal estimate of water heating energy. ALS noted that the existing test procedure uses electric water heating for the water heating calculation, even though other types of water heating (including gas, solar, and steam water heating) are in use throughout the United States. (ALS, No. 4 at p. 2) AHAM agrees with DOE's decision not to amend the water heating calculation and its reasoning for making that determination. (AHAM, No. 2 at p. 3)

DOE received no comments in support of amending the water heating calculation for CCWs. Today's final rule does not include any changes to the water heating calculation for CCWs.

*D. Temperature Use Factors*

Table 4.1.1 of appendix J2 provides the Temperature Use Factors (TUFs), which represent the percentage of wash cycles performed by end-users at each available wash/rinse temperature. For a clothes washer with cold, warm, and hot wash cycles (all with cold rinse), which DOE testing indicates is the most common combination found on CCWs, the TUFs are assigned as follows: Cold wash 37%; warm wash 49%; and hot wash 14%.

As part of the concurrent energy conservation standards rulemaking for CCWs, NRDC and ASAP had suggested that the cold temperature usage factor of 37% should be corroborated for the commercial environment. DOE responded that it did not have consumer usage data indicating the prevalence of cold wash cycles performed on CCWs. Such data would be required to consider any changes in the test procedure calculations. Therefore, DOE did not propose any changes to the TUFs. 79 FR 8112, 8118.

ALS supports DOE's response that DOE does not have usage data indicating the prevalence of cold wash cycles being used on CCWs. (ALS, No. 4 at p. 2) AHAM supports DOE's decision not to amend the TUFs in the absence of such necessary data. (AHAM No. 2 at p. 4)

DOE received no comments in support of amending the TUFs for CCWs. Today's final rule does not include any changes to the TUFs for CCWs.

*E. Technical Correction to 10 CFR 429.46*

Currently, 10 CFR 429.46(a)(2)(ii) includes "water factor" in the list of measures of energy or water consumption for which consumers would favor a higher value. However, a higher water factor value indicates higher (*i.e.*, less favorable) water consumption. Therefore, water factor should be listed in 10 CFR 429.46(a)(2)(i) as one of the measures of energy or water consumption for which consumers would favor a lower value. Today's final rule corrects this technical error.

## IV. Procedural Issues and Regulatory Review

*A. Review Under Executive Order 12866*

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute

"significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

*B. Review Under the Regulatory Flexibility Act*

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

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the 2007 North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333312—which applies to commercial laundry, dry cleaning, and pressing machine manufacturers—is 500 employees. Searches of the SBA Web site [8] to identify CCW manufacturers within this NAICS classification number did not identify any small businesses that manufacture CCWs. Additionally, DOE checked its own publicly available Compliance Certification Database [9] to identify manufacturers of CCWs and also did not identify any manufacturers of CCWs that employ less than 500 people. In addition, today's final rule does not implement any physical changes to the test methods; it merely clarifies compliance dates and corrects a reporting requirement.

For these reasons, DOE concludes and certifies that today's final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

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

Manufacturers of CCWs must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for CCWs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CCWs. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

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

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

*E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for

[8] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[9] DOE's Compliance Certification Database is available online at: *http://www.regulations.doe.gov/certification-data.*

affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

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

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

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

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

*I. Review Under Executive Order 12630*

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

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

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

*K. Review Under Executive Order 13211*

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

Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. DOE is not requiring the use of any commercial standards in this rulemaking, so these requirements do not apply.

*M. Congressional Notification*

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

## V. Approval of the Office of the Secretary

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

## List of Subjects

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports,

Reporting and recordkeeping requirements.

*10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances.

Issued in Washington, DC, on November 24, 2014.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

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

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

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Section 429.46 is amended by revising paragraphs (a)(2)(i) introductory text, (a)(2)(ii) introductory text, and (b)(2) to read as follows:

### § 429.46 Commercial clothes washers.

(a) * * *

(2) * * *

(i) Any represented value of the water factor or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

(ii) Any represented value of the modified energy factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be greater than or equal to the higher of:

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) If testing was conducted using Appendix J1 to subpart B of part 430 of this chapter: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle); and the water factor (WF) in gallons per cubic feet per cycle (gal/cu ft/cycle);

(ii) If testing was conducted using Appendix J2 to subpart B of part 430 of this chapter: The modified energy factor ($MEF_{J2}$) in cu ft/kWh/cycle and the integrated water factor (IWF) in gal/cu ft/cycle.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6311–6317

■ 4. Section 431.152 is amended by adding in alphabetical order the definitions for IWF, MEF, $MEF_{J2}$, and WF to read as follows:

### § 431.152 Definitions concerning commercial clothes washers.

* * * * *

*IWF* means integrated water factor, in gallons per cubic feet per cycle (gal/cu ft/cycle), as determined in section 4.2.13 of Appendix J2 to subpart B of 10 CFR part 430.

*MEF* means modified energy factor, in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle), as determined in section 4.4 of Appendix J1 to subpart B of part 430.

*$MEF_{J2}$* means modified energy factor, in cu ft/kWh/cycle, as determined in section 4.5 of Appendix J2 to subpart B of part 430.

*WF* means water factor, in gal/cu ft/cycle, as determined in section 4.2.3 of Appendix J1 to subpart B of part 430.

■ 5. Section 431.154 is revised to read as follows:

### § 431.154 Test procedures.

The test procedures for clothes washers in Appendix J1 to subpart B of part 430 of this chapter must be used to test commercial clothes washers to determine compliance with the energy conservation standards at § 431.156(b). The test procedures for clothes washers in Appendix J2 to subpart B of part 430 of this title must be used to determine compliance with any amended standards based on Appendix J2 efficiency metrics published after December 3, 2014.

[FR Doc. 2014–28446 Filed 12–2–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 46

[Docket ID OCC–2014–0015]

RIN 1557–AD85

## Annual Stress Test—Schedule Shift and Adjustments to Regulatory Capital Projections

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** On July 1, 2014, the Office of the Comptroller of the Currency (OCC) proposed to adjust the timing of the annual stress testing cycle and to clarify the method used to calculate regulatory capital in the stress tests (proposed rule). The OCC is now adopting the proposed rule as final (final rule). The final rule shifts the dates of the annual stress testing cycle by approximately three months. The final rule also provides that covered institutions will not have to calculate their risk-weighted assets using the internal ratings-based and advanced measurement approaches until the stress testing cycle beginning on January 1, 2016.

**DATES:** The rule is effective January 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Robert Scavotto, Deputy Director, International Analysis and Banking Condition, (202) 649–5477; William Russell, National Bank Examiner, Large Bank Supervision, (202) 649–7157; Kari Falkenborg, National Bank Examiner, Midsize and Community Bank Supervision, (202) 649–6831; Ron Shimabukuro, Senior Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction and Background

Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requires the federal banking agencies to issue regulations requiring financial companies with more than $10 billion in assets to conduct annual stress tests ("company-run stress tests"). In October 2012, the OCC, the Board of Governors of the Federal Reserve System ("Board"), and the Federal Deposit Insurance Corporation issued rules implementing the company-run stress tests required by the Dodd-Frank Act. Under these rules, the OCC distributes

stress scenarios by November 15 [1] to covered institutions. Covered institutions use their financial position as of September 30 ("as of date") and must make projections that estimate their financial position under the different stress scenarios. Covered institutions with $50 billion or more in assets must submit the results of their stress tests by January 5. Covered institutions with $50 billion or more are required to publish a summary of their stress test results between March 15 and March 31. Covered institutions with between $10 and $50 billion in assets are required to submit their stress test results to the OCC by March 31 and publish a summary of their results between June 15 and June 30.

## II. Description of the Final Rule

### *A. Shift in Stress Testing Cycle*

The proposed rule would have shifted the dates of the stress testing cycle by approximately three months.[2] The proposed rule would have relieved covered institutions with $50 billion or more in assets of the obligation to complete their stress testing submissions by January 5, a time of year when these institutions have other year-end obligations.

Under the proposed rule, covered institutions with $50 billion or more in assets would have been required to submit the results of their company-run stress tests to the OCC by April 7 [3] and would have been required to disclose stress test results between June 15 and July 15. However, within this disclosure period a covered institution that is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board pursuant to 12 CFR part 252 could not disclose its results until the Board has published the supervisory stress test results of the covered institution's parent holding company. In addition, if the Board publishes the supervisory stress test results of the covered institution's parent holding company prior to June 15, then such covered institution could satisfy its publication requirement either through actual publication by the covered institution or through publication by the parent holding company pursuant to 12 CFR 46.8(b). Under the proposed rule, covered institutions with between $10 and $50 billion in assets would have been required to submit the results of their company-run stress tests to the OCC by July 31 and publish those results between October 15 and October 31.

The OCC received four comments on the proposed rule from banking organizations and trade associations. The commenters supported the proposed schedule shift and recommended that the OCC adopt the schedule shift earlier than proposed (adopting the schedule shift for the stress test cycle beginning October 1, 2014 instead of 2015, as proposed). Commenters argued that the current January 5 submission deadline has been challenging because of other year-end financial reporting obligations. The OCC recognizes these concerns and believes that covered institutions should conduct these tests at a time when they are better able to manage their resources. However, adopting the schedule shift one year earlier than proposed would disrupt planning for the stress testing schedule beginning October 1, 2014. Accordingly, under the final rule the schedule shift will take effect in the subsequent stress testing cycle, which will begin January 1, 2016.

The following table summarizes the changes made by the final rule.

TABLE 1—REVISED ANNUAL STRESS TEST TIMELINE FOR COVERED INSTITUTIONS WITH $50 BILLION OR MORE IN ASSETS

| Action required | Current rule | Final rule |
|---|---|---|
| "As of" Date for Financial Data Used by Stress Test | September 30 | December 31. |
| Distribution of Stress Scenarios in OCC | By November 15 | By February 15. |
| Submission of Stress Test Results | By January 5 | By April 5. |
| Disclosure of Results Summary | Between March 15 and March 31 | Between June 15 and July 15 *except* no earlier than Board publication of the supervisory stress test results of the bank holding company. |

TABLE 2—REVISED ANNUAL STRESS TEST TIMELINE FOR COVERED INSTITUTIONS WITH BETWEEN $10 AND $50 BILLION IN ASSETS

| Action required | Current rule | Proposed rule |
|---|---|---|
| "As of" Date for Financial Data Used in Stress Test | September 30 | December 31. |
| Distribution of Stress Scenarios by OCC | By November 15 | By February 15. |
| Submission of Stress Test Results | By March 31 | By July 31. |
| Disclosure of Results Summary | Between June 15 and June 30 | Between October 15 and October 31. |

All covered institutions with between $10 and $50 billion in assets will be required to submit the results of their company-run stress tests to the OCC by July 31 and publish those results between October 15 and October 31. Covered institutions with $50 billion or more will be required to submit the results of their company-run stress tests to the OCC by April 5 and publish those results between June 15 and July 15. The April 5 reporting deadline for covered institutions with $50 billion or more in assets is a minor change from the April 7 deadline proposed in the proposed rule. The final rule also adopts the provisions in the proposed rule that prohibit a covered institution that is a consolidated subsidiary of a bank holding company or savings and loan holding company supervised by the

[1] These scenarios provided by the OCC reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios.

[2] 79 FR 37231 (July 1, 2014).

[3] Under the final rule the reporting deadline has been changed to April 5.

Board from disclosing its results until the Board has published the supervisory stress test results of the covered institution's parent holding company.

With respect to covered institutions with assets between $10 and $50 billion, pursuant to 12 CFR 46.3(e) a covered institution may elect to conduct its stress test under the stress test requirements applicable to a covered institution with assets of $50 billion or more. In that case we note that the covered institution also would be subject to the disclosure requirements applicable to covered institutions with $50 billion or more in assets.

One commenter requested that the OCC release the stress test scenarios earlier than February 15 to give covered institutions more time to prepare their stress test submissions. Under the final rule, the OCC will provide the scenarios "no later than" February 15. The OCC recognizes the need for covered institutions to have adequate time to complete their submissions and will attempt to distribute the scenarios as early as possible.

Two commenters requested that the OCC reduce the stress test planning horizon from nine quarters to eight quarters. Under the current stress testing rule covered institutions are required to make stress test projections over a planning horizon lasting nine quarters. The OCC believes that the nine-quarter planning horizon results in an actual planning horizon of eight quarters, as the first quarter of the horizon is contemporaneous with the quarter in which the covered institution submits its stress test results. As such, in order to maintain a two-year stress test planning horizon, the final rule maintains the nine-quarter requirement. The OCC will consider the appropriate length of the planning horizon in light of future experience with stress testing.

The proposed rule would also have amended the applicability provisions in § 46.3 of the Annual Stress Test rule to reflect the changed timeline. Currently, a national bank or Federal savings association that becomes a covered institution must conduct its first annual stress test beginning in the next calendar year after the date the national bank or Federal savings association becomes a covered institution. Under the new stress testing timeline, if this applicability provision were left unchanged and a national bank or Federal savings association became a covered institution as of September 30 of a given year, the institution would be required to conduct its first stress test in the stress testing cycle beginning the following January 1, three months after becoming a covered institution. The current Annual Stress Test rule provides a minimum of nine months between the date on which a national bank or Federal savings association becomes a covered institution and the start date of the stress testing cycle in which the covered institution must conduct it first stress test. To preserve the nine-month minimum the proposed rule would have established a March 31 cutoff date. A national bank or Federal savings association that becomes a covered institution on or before March 31 of a given year would be required to conduct its first stress test in the next calendar year. For example, a national bank or Federal savings association that becomes a covered institution on March 31, 2015 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2016. A national bank or Federal savings association that becomes a covered institution after March 31 of a given year would be required to conduct its first stress test in the second calendar year after the date the national bank or Federal savings association becomes a covered institution. For example, a national bank or Federal savings association that becomes a covered institution on June 30, 2015 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2017. The OCC received no comments on this aspect of the proposed rule and is adopting the proposed changes as final.

*B. Clarification on the Use of Basel III Advanced Approaches*

On October 11, 2013, the OCC published revised risk-based and leverage capital rules that implement the Basel III framework.[4] In light of the issuance of the revised capital rules, the proposed rule would have clarified when covered institutions would be required to estimate their minimum regulatory capital ratios over the stress-test planning horizon using the Basel III advanced approaches methodology. The current OCC stress testing rule requires covered institutions to estimate the impact of stress scenarios on the covered institution's regulatory capital levels and ratios applicable to the covered institution under 12 CFR part 3 (for national banks) or part 167 (for Federal savings associations), as applicable, and any other capital ratios specified by the OCC.[5] A national bank or Federal savings association that is an advanced approaches banking organization is required to use the advanced approaches to calculate its minimum regulatory capital ratios if it has conducted a satisfactory parallel run.[6] The proposed rule would have provided that covered institutions are not required to calculate their risk-weighted assets using the advanced approaches in their stress testing projections until the stress testing cycle beginning on January 1, 2016—even if an organization has previously exited parallel run.

On February 14, 2014, the OCC announced that certain national banks had completed a successful parallel run. Given the operational complexity associated with incorporating the advanced approaches into the stress testing process, the proposed rule would have clarified that incorporating the advanced approaches into stress testing would be deferred for one stress testing cycle. The transition period will provide the OCC with sufficient time to integrate the advanced approaches into its stress testing examination processes and to provide guidance to advanced approaches banking organizations regarding supervisory expectations on the use of the advanced approaches in stress testing projections. The OCC received no comments on this aspect of the proposed rule and is adopting it as final.

## III. Regulatory Analysis

*Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The final rule amends 12 CFR part 46, which has an approved information collection under the PRA (OMB Control No. 1557–0311). The amendments do not introduce any new collections of information, nor do they amend 12 CFR part 46 in a way that modifies the collection of information that OMB has approved. Therefore, this final rule does not require a PRA submission to OMB.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires generally that, in connection with a final rule, an agency prepare a regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include

[4] 78 FR 62018.

[5] 12 CFR 46.6(a)(2).

[6] A satisfactory parallel run is defined as a period of no less than four consecutive calendar quarters during which a banking organization complies with certain qualification requirements. 12 CFR 3.21(c).

banking entities with total assets of $550 million or less). However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As discussed in the **SUPPLEMENTARY INFORMATION** above, the modified dates of the annual stress test cycle will only affect institutions with more than $10 billion in total assets. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities because no small national banks or Federal savings associations will be affected by the final rule. Accordingly, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act*

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act (2 U.S.C. 1532).

*Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the final rule in a simple and straightforward manner. The OCC did not receive any comment on its use of plain language.

**List of Subjects in 12 CFR Part 46**

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Risk, Savings associations, Stress test.

**Authority and Issuance**

For the reasons set forth in the preamble, the OCC amends 12 CFR part 46 as follows:

## PART 46—ANNUAL STRESS TEST

■ 1. The authority citation for part 46 is revised to read as follows:

**Authority:** 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

■ 2. Section 46.3 is amended by revising paragraph (c) to read as follows:

**§ 46.3 Applicability.**

* * * * *

(c) *Covered institutions that become subject to stress testing requirements under revised Annual Stress Test schedule.* A national bank or Federal savings association that becomes a covered institution, as defined in § 46.2, after March 31, 2014 and on or before March 31, 2015 shall conduct it first annual stress test in the stress test beginning January 1, 2016. A national bank or Federal savings association that becomes a covered institution on or before March 31 of a given year (after 2014) shall conduct its first annual stress test under this part in the next calendar year after the date the national bank or Federal savings association becomes a covered institution. A national bank or Federal savings association that becomes a covered institution after March 31 of a given year (after 2014) shall conduct its first annual stress test under this part in the second calendar year after the date the national bank or Federal savings association becomes a covered institution.

* * * * *

■ 3. Section 46.5 is amended by revising paragraphs (a) through (c) to read as follows:

**§ 46.5 Annual stress test.**

* * * * *

(a) *Financial data.* A covered institution must use financial data as of September 30 (for the stress test beginning October 1, 2014) or December 31 (for the stress test beginning January 1, 2016, and all stress tests thereafter) of that calendar year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than November 15 (for the stress test beginning October 1, 2014) or February 15 (for the stress test beginning January 1, 2016, and all stress tests thereafter) of that calendar year.

(c) *Significant trading activities.* The OCC may require a covered institution with significant trading activities, as determined by the OCC, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 and December 1 (for the stress test beginning October 1, 2014) or between January 1 and March 1 (for the stress test beginning January 1, 2016, and all stress tests thereafter) of that calendar year that will be selected by the OCC and communicated to the covered institution no later than December 1 (for the stress test beginning October 1, 2014) or March 1 (for the stress test beginning January 1, 2016, and all stress tests thereafter) of the calendar year.

* * * * *

■ 4. Section 46.6 is amended by revising paragraph (a)(2) to read as follows:

**§ 46.6 Stress test methodologies and practices.**

(a) * * *

(2) The potential impact on the covered institution's regulatory capital levels and ratios applicable to the covered institution under 12 CFR part 3 or part 167, as applicable, and any other capital ratios specified by the OCC, incorporating the effects of any capital actions over the planning horizon and maintenance by the covered institution of an allowance for loan losses appropriate for credit exposures throughout the planning horizon. Until December 31, 2015, or such other date specified by the OCC, a covered institution is not required to calculate its risk-based capital requirements using the internal ratings-based and advanced measurement approaches as set forth in 12 CFR part 3, subpart E.

* * * * *

■ 5. Section 46.7 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.**

(a) *$10 to $50 billion covered institution.* A $10 to $50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before March 31 (for the stress test beginning October 1, 2014) and on or before July 31 (for the stress test beginning January 1, 2016, and all stress tests thereafter), the results of the stress test in the manner and form specified by the OCC.

(b) *Over $50 billion covered institution.* An over $50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before January 5 (for the stress test beginning October 1,

2014) and on or before April 5 (for the stress test beginning January 1, 2016, and all stress tests thereafter), the results of the stress test in the manner and form specified by the OCC.

* * * * *

■ 6. Section 46.8 is amended by revising paragraphs (a)(1) and (2) to read as follows:

**§ 46.8 Publication of disclosures.**

(a) *Publication date*—(1) *Over $50 billion covered institution.* (i) Prior to January 1, 2016, an over $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting March 15 and ending March 31 (for the stress test cycle beginning October 1, 2014).

(ii) Effective January 1, 2016, an over $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending July 15 (for the stress test cycle beginning January 1, 2016, and for all stress tests thereafter) provided:

(A) Unless the OCC determines otherwise, if the over $50 billion covered institution is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System pursuant to 12 CFR part 252, then within the June 15 to July 15 period such covered institution may not publish the required summary of its annual stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(B) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered institution's parent holding company prior to June 15, then such covered institution may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered institution or through publication by the parent holding company pursuant to paragraph (b) of this section.

(2) *$10 to $50 billion covered institution.* (i) Prior to January 1, 2016, a $10 to $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending June 30 (for the stress test cycle beginning October 1, 2014).

(ii) Effective January 1, 2016, a $10 to $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31 (for the stress test cycle beginning January 1, 2016, and for all stress tests thereafter).

* * * * *

Dated: November 19, 2014.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2014–28420 Filed 12–2–14; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 61 and 141

**[Docket No.: FAA–2014–0987; Amdt. Nos. 61–133, 141–18]; RIN 2120–AK62**

## Aviation Training Device Credit for Pilot Certification

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

**ACTION:** Direct final rule.

**SUMMARY:** This rulemaking relieves burdens on pilots seeking to obtain aeronautical experience, training, and certification by increasing the allowed use of aviation training devices. These training devices have proven to be an effective, safe, and affordable means of obtaining pilot experience. These actions are necessary to bring the regulations in line with current needs and activities of the general aviation training community and pilots.

**DATES:** Effective January 20, 2015.

Send comments on or before January 2, 2015. If the FAA receives an adverse comment or notice of intent to file an adverse comment, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of the final rule, which may withdraw this direct final rule in whole or in part.

**ADDRESSES:** Send comments identified by docket number FAA–2014–0987 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Marcel Bernard, Airmen Certification and Training Branch, Flight Standards Service, AFS–810, Federal Aviation Administration, 55 M Street SE., 8th floor, Washington, DC 20003–3522; telephone (202) 385–9616; email *marcel.bernard@faa.gov.*

For legal questions concerning this action, contact Anne Moore, International Law, Legislation, and Regulations Division, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8018; email *anne.moore@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security; and 49 U.S.C. 44703(a), which requires the Administrator to prescribe regulations for the issuance of airman certificates when the Administrator

finds, after investigation, that an individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate.

**The Direct Final Rule Procedure**

The FAA is adopting this direct final rule without prior notice and prior public comment as a direct final rule because, due to the relieving nature of the provisions, we do not anticipate any adverse comments. This direct final rule concerns the allowances for using aviation training devices (ATD) toward the aeronautical experience requirements for an instrument rating. In 2009, the FAA issued a final rule that placed limits on the use of ATDs for instrument training. These regulatory limits were, in fact, more restrictive than what the FAA historically had permitted through letter of authorization (LOA). Due to public reliance on previous letters of authorization and the long history of allowing higher levels of ATD usage, the FAA believes it is unlikely to receive any adverse comments.

The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

A direct final rule will take effect on a specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, the FAA does not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. The FAA considers the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

If the FAA receives an adverse comment or notice of intent to file an adverse comment, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of the final rule. This document may withdraw the direct final rule in whole or in part. If the FAA withdraws a direct final rule because of an adverse comment, the FAA may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

If the FAA does not receive an adverse comment or notice of intent to file an adverse comment, the FAA will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

See the "Additional Information" section for information on how to comment on this direct final rule and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

**I. Discussion of the Direct Final Rule**

Since the 1970s, the FAA has gradually expanded the use of flight simulation for training—first permitting simulation to be used in air carrier training programs and eventually permitting pilots to credit time in devices toward the aeronautical experience requirements for airman certification and recency. Currently, Title 14 of the Code of Federal Regulations (14 CFR) part 60 governs the qualification of flight simulation training devices (FSTD), which include full flight simulators (FFSs) and flight training devices (FTDs) levels 4 through 7. The FAA has, however, approved other devices including ATDs for use in pilot certification training, under the authority provided in 14 CFR 61.4(c).[1]

For over 30 years, the FAA has issued letters of authorization (LOAs) to manufacturers of ground trainers, personal computer-based aviation training devices (PCATD), FTDs (levels 1 through 3), basic aviation training devices (BATD), and advanced aviation training devices (AATD). These LOAs were based on guidance provided in advisory circulars that set forth the qualifications and capabilities for the devices. Prior to 2008, most LOAs were issued under the guidance provided in advisory circular AC 61–126, Qualification and Approval of Personal Computer-Based Aviation Training Devices, and AC 120–45, Airplane Flight Training Device Qualification. Since July 2008, the FAA has approved devices in accordance with Advisory Circular 61–136, FAA Approval of Basic Aviation Training Devices (BATD) and Advanced Aviation Training Devices (AATD).

In 2009, the FAA issued a final rule that for the first time introduced the term "aviation training device" into the regulations and placed express limits on the amount of instrument time in an ATD that could be credited toward the aeronautical experience requirements for an instrument rating.[2]

Since the 2009 final rule, § 61.65(i) has provided that no more than 10 hours of instrument time received in an ATD may be credited toward the instrument time requirements of that section. In addition, appendix C to part 141 permits an ATD to be used for no more than 10% of the total flight training hour requirements of an approved course for an instrument rating.

Despite the limitations on the use of ATDs that were set forth in the 2009 final rule, the FAA had issued hundreds of LOAs to manufacturers of devices that permitted ATDs (as well as ground trainers, PCATDs, and FTDs (levels 1 through 3)) to be used to a greater extent than was ultimately set forth in the regulations. Even after publication of the 2009 final rule, the FAA continued to issue LOAs in excess of the express limitations in the regulations. On January 2, 2014, the FAA published a notice of policy to reissue LOAs to reflect current regulatory requirements. 79 FR 20. The FAA concluded that it could not use LOAs to exceed express limitations that had been placed in the regulations through notice and comment rulemaking.

As discussed further in the following two sections, the FAA is amending the regulations governing the use of ATDs to increase the use of these devices for instrument training requirements above

[1] Section 61.4(c) states that the "Administrator may approve a device other than a flight simulator or flight training device for specific purposes."

[2] In a 2007 NPRM, the FAA proposed to limit the time in a personal computer-based aviation training device that could be credited toward the instrument rating. *Pilot, Flight Instructor, and Pilot School Certification* NPRM, 72 FR 5806 (February 7, 2007). Three commenters recommended that the FAA use the terms "basic aviation training device" (BATD) and "advanced aviation training device" (AATD). *Pilot, Flight Instructor, and Pilot School Certification* Final Rule, 74 FR 42500 (August 21, 2009) ("2009 Final Rule"). In response to the commenters, the FAA changed the regulatory text in the final rule to "aviation training device," noting BATDs and AATDs "as being aviation training devices (ATD) are defined" in an advisory circular.

the levels established in the 2009 final rule. In developing this direct final rule, the FAA notes that ATD development has advanced to an impressive level of capability. Many ATDs can simulate weather conditions with variable winds, variable ceilings and visibility, icing, turbulence, high definition (HD) visuals, hundreds of different equipment failure scenarios, navigation specific to current charts and topography, specific navigation and communication equipment use, variable "aircraft specific" performance, and more. The visual and motion component of some of these devices permit maneuvers that require outside visual references in an aircraft to be successfully taught in an AATD. Many of these simulation capabilities were not possible in PCATDs and BATDs that the FAA approved for 10 hours of instrument time.

The FAA believes that permitting pilots to log increased time in ATDs will encourage pilots to practice maneuvers until they are performed to an acceptable level of proficiency. In an ATD, a pilot can replay the training scenario, identify any improper action, and determine corrective actions without undue hazard or risk to persons or property. In this fashion, a pilot can continue to practice tasks and maneuvers in a safe, effective, and cost efficient means of maintaining proficiency.

*A. Credit for Instrument Time for an Instrument Rating*

Because of the proven capability of some ATDs, the FAA is increasing the maximum time that may be credited in an ATD toward the instrument time requirements for an instrument rating under § 61.65(i). Upon the effective date of this direct final rule, a person will be permitted to credit a maximum of 20 hours of instrument time in an approved ATD toward the requirements for an instrument rating.[3] Devices that qualify as AATDs will be authorized for up to 20 hours of instrument time. Devices that qualify as BATDs will be authorized for a maximum of 10 hours of instrument time. In light of this difference, pilots must—as required by current regulations—include in their logbooks the type and identification of any ATD that is used to accomplish aeronautical experience requirements for a certificate, rating, or recent flight experience. 14 CFR 61.51(b)(1)(iv). The FAA is retaining the existing limit of 20 hours of combined time in FFS, FTD, and ATDs that may be credited towards the aeronautical experience requirements for an instrument rating.

*B. Approved Instrument Rating Courses*

The FAA is also amending appendix C to part 141 to increase the limit on the amount of training hours that may be accomplished in an ATD in an approved course for an instrument rating. With this direct final rule, an ATD may be used for no more than 40 percent of the total flight training hour requirements for an instrument rating. The FAA notes that this direct final rule does not change the current provision in appendix C, which provides that credit for training in FFS, FTDs, and ATDs, if used in combination, cannot exceed 50 percent of the total flight training hour requirements of an instrument rating course.

In addition, the FAA is amending § 141.41 to clarify the existing qualification and approval requirement for FSTDs and to add the qualification and approval of ATDs by the FAA, which is currently conducted pursuant to § 61.4(c).

*C. View-Limiting Device*

Under § 61.51(g), a person may log instrument time only for that flight time when the person operates an aircraft solely by reference to the instruments under actual or simulated conditions. When instrument time is accomplished in an aircraft, a pilot wears a view-limiting device to simulate instrument conditions and ensure that he or she is flying without utilizing outside visual references.

Currently, § 61.65(i) requires a pilot who is accomplishing instrument time in an ATD to wear a view-limiting device. This requirement is not necessary because ATDs do not afford outside references, other than the simulated visual component that can be configured to limit the visibility level as desired. The purpose of a view-limiting device is to prevent a pilot (while training in an aircraft during flight) from having outside visual references. These references are not available in a training device (which is located in a dedicated room or indoor location). In fact, the majority of these devices have a simulated visual display that can be configured to be unavailable or represent "limited visibility" conditions that preclude any need for a view-limiting device to be worn by the student.

In an ATD (or FSTD), a pilot has no opportunity to look outside for any useful visual references pertaining to the simulation. This lack of visual references requires the pilot to give his or her full attention to the flight instruments which is the goal of any instrument training or experience. The FAA believes that using a training device can be useful because it trains the pilot to focus on, appropriately scan and interpret the flight instruments. All training devices that incorporate a visual system can be configured to the desired visibility level required for that particular lesson. Because of this same capability, use of a view-limiting device is not required.

When the FAA introduced § 61.65(i)(4) requiring view-limiting devices in the 2009 final rule, the preamble was silent as to why a view-limiting device was necessary. 74 FR 42500, 42523. Based on comments from industry, the FAA has determined that due to the sophistication of the flight visual representation for ATDs and the capability of presenting various weather conditions appropriate to the training scenario, a view-limiting device is unnecessary. It is unnecessary to limit the view when the training device is designed to simulate instrument conditions.

The FAA is revising § 61.65(i)(4) to eliminate the requirement that pilots, accomplishing instrument time in an ATD wear a view-limiting device. The FAA emphasizes, however, that a pilot—whether in an aircraft, FFS, FTD, or ATD—may log instrument time only when the pilot is operating solely by reference to the instruments under actual or simulated conditions. If a pilot is using an ATD and the device is providing visual references upon which the pilot is relying, this would not constitute instrument time under § 61.51(g).

## III. Effective Date for Rule Provisions

The FAA is making the provisions of this direct final rule effective 45 days after the date of publication in the **Federal Register**. The FAA reiterates that a direct final rule takes effect on a specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period.

## IV. Advisory Circulars and Other Guidance Materials

To further implement this direct final rule, the FAA is revising the following Advisory Circulars and FAA Orders.

AC 61–136, FAA Approval of Basic Aviation Training Devices (BATD) and Advanced Aviation Training Devices (AATD), has been revised to accommodate all the new ATD provisions.

[3] As required under § 61.51(g)(4), to log instrument time in an ATD for the purpose of a certificate or rating, an authorized instructor must be present.

FAA Order 8900.1, Flight Standards Information Management System, Vol. 11, Chapter 10, Basic and Advanced Aviation Training Device, Sec. 1, Approval and Authorized Use under 14 CFR parts 61 and 141 guidance concerning ATD's is also being revised.

## V. Regulatory Notices and Analyses

### *A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

In conducting these analyses, FAA has determined that this direct final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Department of Transportation DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this direct final rule. The reasoning for this determination follows:

The provisions included in this rule are either relieving or voluntary. The elimination of the requirement to use a view-limiting device is a relieving provision. The other two provisions are voluntary—additional ATD credit for instrument time for an instrument rating and additional ATD credit for approved instrument courses.

Persons who use the new provisions will do so only if the benefit they will accrue from their use exceeds the costs they might incur to comply. There is no cost incurred if people do not choose to comply with these provisions. Benefits will exceed the costs of a voluntary rule if just one person voluntarily complies.

Since this direct final rule will impose no new costs, provides regulatory relief for the use of view-limiting devices, and allows greater voluntary use of aviation training devices, the expected outcome will be a minimal impact with positive net benefits.

### *B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Most of the parties affected by this rule would be small businesses such as flight instructors, aviation schools, and fixed base operators. The general lack of publicly available financial information from these small businesses precludes a financial analysis of these small businesses. While there is likely a substantial number of small entities affected, the provisions of this direct final rule are either relieving (directly provides cost relief) or voluntary (provides benefits or costs only if a person voluntarily chooses to use the rule provision).

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this direct final rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects

of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million.

This direct final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

*E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this direct final rule.

*F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

*G. Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

*H. Administrative Procedure Act*

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. This rule relieves regulatory restrictions by permitting persons to credit a maximum of 20 hours of instrument time in an approved ATD toward the requirements for an instrument rating under § 61.65(i). This rule also permits an ATD to be used for no more than 40 percent of the total flight training hour requirements for an instrument rating under 14 CFR part 141. Finally, this rule eliminates the requirement that pilots, accomplishing instrument time in an ATD, wear a view-limiting device.

Therefore, the FAA finds good cause to publish this action as a direct final rule. Please see the "Direct Final Rule Procedure" section for more information.

## VII. Executive Order Determinations

*A. Executive Order 13132, Federalism*

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

*B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

*C. Executive Order 13609, Promoting International Regulatory Cooperation*

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

## VIII. Additional Information

*A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this document. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rule, the FAA will consider all comments it receives on or before the closing date for comments. The agency may change this rule in light of the comments it receives.

*Proprietary or Confidential Business Information:* Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

*B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
- Accessing the Government Printing Office's Web page at *http://www.fdsys.gov*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or

by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

*C. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

**List of Subjects**

*14 CFR Part 61*

Aircraft, Airmen, Aviation safety, Teachers.

*14 CFR Part 141*

Airmen, Educational facilities, reporting and recordkeeping requirements, Schools.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

## PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.65 by revising paragraph (i) and adding paragraph (j) to read as follows:

**§ 61.65 Instrument rating requirements.**

* * * * *

(i) *Use of an aviation training device.* A maximum of 20 hours of instrument time received in an aviation training device may be credited for the instrument time requirements of this section if—

(1) The device is approved and authorized by the FAA;

(2) An authorized instructor provides the instrument time in the device; and

(3) The FAA approved the instrument training and instrument tasks performed in the device.

(j) A person may not credit more than 20 total hours of instrument time in a flight simulator, flight training device, aviation training device, or combination toward the instrument time requirements of this section.

## PART 141—PILOT SCHOOLS

■ 3. The authority citation for part 141 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 4. Revise § 141.41 to read as follows:

**§ 141.41 Flight simulators, flight training devices, aviation training devices, and training aids.**

An applicant for a pilot school certificate or a provisional pilot school certificate must show that its flight simulators, flight training devices, aviation training devices, training aids, and equipment meet the following requirements:

(a) *Flight simulators and flight training devices.* Each flight simulator and flight training device used to obtain flight training credit in an approved pilot training course curriculum must be:

(1) Qualified under part 60 of the chapter; and

(2) Approved by the Administrator for the tasks and maneuvers.

(b) *Aviation training devices.* Each aviation training device used to obtain flight training credit in an approved pilot training course curriculum must be evaluated, qualified, and approved by the Administrator.

(c) *Training aids and equipment.* Each training aid, including any audiovisual aid, projector, tape recorder, mockup, chart, or aircraft component listed in the approved training course outline, must be accurate and appropriate to the course for which it is used.

■ 5. Amend Appendix C to part 141 by revising paragraph (b) in section 4 to read as follows:

**Appendix C to Part 141—Instrument Rating Course**

* * * * *

4. *Flight training.* * * *

(b) For the use of flight simulators, flight training devices, or aviation training devices—

(1) The course may include training in a flight simulator, flight training device, or aviation training device provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an authorized instructor.

(2) Credit for training in a flight simulator that meets the requirements of § 141.41(a) cannot exceed 50 percent of the total flight training hour requirements of the course or of this section, whichever is less.

(3) Credit for training in a flight training device that meets the requirements of § 141.41(a), an aviation training device that meets the requirements of § 141.41(b), or a combination of these devices cannot exceed 40 percent of the total flight training hour requirements of the course or of this section, whichever is less.

(4) Credit for training in flight simulators, flight training devices, and aviation training devices if used in combination, cannot exceed 50 percent of the total flight training hour requirements of the course or of this section, whichever is less. However, credit for training in a flight training device or aviation training device cannot exceed the limitation provided for in paragraph (b)(3) of this section.

* * * * *

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 44701(a)(5), and 44703(a), on November 28, 2014.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2014–28485 Filed 12–2–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30986 Amdt. No. 3615]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 3, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2014.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule " under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 24, 2014.

**John Duncan,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 11 DECEMBER 2014*

Louisville, KY, Louisville Intl-Standiford Field, RNAV (GPS) Y RWY 35R, Amdt 1B

Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 35R, Orig-B

Starkville, MS, Oktibbeha, RNAV (GPS)–A, Orig

Starkville, MS, Oktibbeha, VOR OR GPS–B, Amdt 6A, CANCELED

Le Roy, NY, Le Roy, RNAV (GPS) RWY 28, Orig-A

*Effective 8 JANUARY 2015*

Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7L, ILS RWY 7L (SA CAT I), ILS RWY 7L (SA CAT II), Amdt 4
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7R, ILS RWY 7R (SA CAT I), ILS RWY 7R (CAT II), ILS RWY 7R (CAT III), Amdt 4
Hartselle, AL, Hartselle-Morgan County Regional, RNAV (GPS) RWY 18, Amdt 1
Hartselle, AL, Hartselle-Morgan County Regional, RNAV (GPS) RWY 36, Amdt 1
Rialto, CA, Rialto Muni/Miro Fld/, NDB OR GPS–A, Amdt 4, CANCELED
Rialto, CA, Rialto Muni/Miro Fld/, Takeoff Minimums and Obstacle DP, Amdt 3, CANCELED
Truckee, CA, Truckee-Tahoe, GPS RWY 19, Orig, CANCELED
Truckee, CA, Truckee-Tahoe, RNAV (GPS) RWY 11, Orig
Truckee, CA, Truckee-Tahoe, RNAV (GPS) Y RWY 20, Orig
Truckee, CA, Truckee-Tahoe, RNAV (GPS) Z RWY 20, Orig
Truckee, CA, Truckee-Tahoe, Takeoff Minimums and Obstacle DP, Amdt 5
Truckee, CA, Truckee-Tahoe, TRUCK FOUR, Graphic DP
Truckee, CA, Truckee-Tahoe, VOR/DME RNAV OR GPS–A, Amdt 5A, CANCELED
Bonifay, FL, Tri-County, NDB–A, Amdt 2, CANCELED
New Smyrna Beach, FL, New Smyrna Beach Muni, NDB RWY 29, Amdt 2A, CANCELED
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR/DME–B, Orig-A, CANCELED
Cornelia, GA, Habersham County, NDB RWY 6, Amdt 2, CANCELED
Creston, IA, Creston Muni, NDB RWY 34, Amdt 2A, CANCELED
Le Mars, IA, Le Mars Muni, VOR/DME RWY 36, Amdt 4A, CANCELED
Olathe, KS, Johnson County Executive, NDB–B, Amdt 3A, CANCELED
Lafayette, LA, Lafayette Rgnl, RNAV (GPS) RWY 29, Orig-B
New Roads, LA, False River Rgnl, LOC RWY 36, Amdt 1A
New Roads, LA, False River Rgnl, NDB RWY 36, Amdt 2A
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 18, Orig-A
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 36, Orig-A
New Roads, LA, False River Rgnl, VOR/DME–A, Amdt 4A
Opelousas, LA, St Landry Parish-Ahart Field, NDB RWY 18, Amdt 3A, CANCELED
Oakland, MD, Garrett County, RNAV (GPS) RWY 9, Amdt 2
Oakland, MD, Garrett County, RNAV (GPS) RWY 27, Amdt 2
Oakland, MD, Garrett County, VOR/DME RWY 9, Orig
Oakland, MD, Garrett County, VOR RWY 27, Amdt 5, CANCELED
Big Rapids, MI, Roben-Hood, GPS RWY 27, Orig-B, CANCELED
Big Rapids, MI, Roben-Hood, RNAV (GPS) RWY 27, Orig
Big Rapids, MI, Roben-Hood, Takeoff Minimums and Obstacle DP, Amdt 6
Big Rapids, MI, Roben-Hood, VOR/DME–A, Amdt 8
Detroit, MI, Willow Run, RNAV (GPS) RWY 5L, Amdt 1
Detroit, MI, Willow Run, RNAV (GPS) RWY 9, Amdt 2
Ray, MI, Ray Community, RNAV (GPS)-A, Orig
Ray, MI, Ray Community, Takeoff Minimums and Obstacle DP, Orig
Great Falls, MT, Great Falls Intl, RNAV (GPS) Y RWY 21, Orig-B
Great Falls, MT, Great Falls Intl, RNAV (RNP) Z RWY 21, Orig-B
Great Falls, MT, Great Falls Intl, VOR RWY 21, Amdt 9C
Mount Olive, NC, Mount Olive Muni, RNAV (GPS) RWY 23, ORIG–A
Omaha, NE, Millard, NDB RWY 12, Amdt 10D, CANCELED
Sandusky, OH, Griffing-Sandusky, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELED
Sandusky, OH, Griffing-Sandusky, VOR RWY 27, Amdt 7B, CANCELED
Sandusky, OH, Griffing-Sandusky, VOR/DME OR GPS RWY 27, Amdt 2B, CANCELED
Port Lavaca, TX, Calhoun County, RNAV (GPS) RWY 14, Amdt 2
Port Lavaca, TX, Calhoun County, RNAV (GPS) RWY 32, Orig
Richmond, VA, Richmond Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Bremerton, WA, Bremerton National, RNAV (GPS) RWY 20, Amdt 1A
Crandon, WI, Crandon/Steve Conway Muni, RNAV (GPS) RWY 12, Orig
Crandon, WI, Crandon/Steve Conway Muni, RNAV (GPS) RWY 30, Orig
Crandon, WI, Crandon/Steve Conway Muni, Takeoff Minimums and Obstacle DP, Orig
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 18, Amdt 2C

[FR Doc. 2014–28243 Filed 12–2–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30987; Amdt. No. 3616]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 3, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2014.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA

Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on October 24, 2014.

**John Duncan,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 13–Nov–14 | AL | Bessemer | Bessemer | 4/8101 | 09/29/14 | This NOTAM, published in TL 14–24, is hereby rescinded in its entirety. |
| 13–Nov–14 | AL | Bessemer | Bessemer | 4/8102 | 09/29/14 | This NOTAM, published in TL 14–24, is hereby rescinded in its entirety. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0657 | 10/15/14 | RNAV (RNP) Z RWY 7, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0658 | 10/15/14 | ILS OR LOC RWY 16R, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0659 | 10/15/14 | RNAV (RNP) Z RWY 35R, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0660 | 10/15/14 | RNAV (RNP) Z RWY 17L, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0661 | 10/15/14 | ILS OR LOC RWY 17R, Amdt 3. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0663 | 10/15/14 | RNAV (GPS) Y RWY 7, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0665 | 10/15/14 | RNAV (RNP) Z RWY 34R, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0666 | 10/15/14 | ILS OR LOC RWY 17L, Amdt 4. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0668 | 10/15/14 | RNAV (RNP) Z RWY 26, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0669 | 10/15/14 | ILS OR LOC RWY 26, Amdt 3. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0670 | 10/15/14 | RNAV (GPS) Y RWY 26, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0672 | 10/15/14 | RNAV (GPS) Y RWY 17L, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0674 | 10/15/14 | RNAV (RNP) Z RWY 8, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0675 | 10/15/14 | RNAV (RNP) Z RWY 16R, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0676 | 10/15/14 | RNAV (RNP) Z RWY 25, Orig.-A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0677 | 10/15/14 | RNAV (GPS) Y RWY 16R, Amdt 1.A. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0681 | 10/15/14 | ILS OR LOC RWY 25, Amdt 3. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0689 | 10/15/14 | ILS OR LOC RWY 7, Amdt 3. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0692 | 10/15/14 | RNAV (RNP) Z RWY 16L, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0693 | 10/15/14 | RNAV (GPS) Y RWY 34R, Amdt 2. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0700 | 10/15/14 | RNAV (GPS) Y RWY 16L, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0701 | 10/15/14 | RNAV (RNP) Z RWY 17R, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0706 | 10/15/14 | RNAV (RNP) Z RWY 35L, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0708 | 10/15/14 | RNAV (RNP) Z RWY 34L, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0709 | 10/15/14 | RNAV (GPS) Y RWY 25, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0710 | 10/15/14 | RNAV (GPS) Y RWY 8, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0711 | 10/15/14 | RNAV (GPS) Y RWY 17R, Amdt 1. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0712 | 10/15/14 | RNAV (GPS) Y RWY 34L, Amdt 2A. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0717 | 10/15/14 | ILS OR LOC RWY 8, Amdt 5. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0720 | 10/15/14 | RNAV (GPS) Y RWY 35L, Amdt 2. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/0726 | 10/15/14 | RNAV (GPS) Y RWY 35R, Amdt 2. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/1303 | 10/15/14 | ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II & III), Amdt 3. |
| 11–Dec–14 | NY | Newburgh | Stewart Intl | 4/1478 | 10/14/14 | ILS OR LOC RWY 9, ILS RWY 9 (SA CAT I), ILS RWY 9 (CAT II & III), Amdt 1.3A. |
| 11–Dec–14 | ME | Portland | Portland Intl Jetport | 4/1613 | 10/20/14 | RNAV (GPS) RWY 11, Amdt 3. |
| 11–Dec–14 | TX | Houston | David Wayne Hooks Memorial | 4/1616 | 10/14/14 | RNAV (GPS) RWY 35L, Amdt 1.A |
| 11–Dec–14 | TX | Houston | David Wayne Hooks Memorial | 4/1625 | 10/14/14 | RNAV (GPS) RWY 17R, Amdt 1.B. |
| 11–Dec–14 | TX | Houston | David Wayne Hooks Memorial | 4/1630 | 10/14/14 | LOC RWY 17R, Amdt 3. |
| 11–Dec–14 | ME | Oxford | Oxford County Rgnl | 4/1641 | 10/20/14 | RNAV (GPS) RWY 15, Orig. |
| 11–Dec–14 | ME | Oxford | Oxford County Rgnl | 4/1642 | 10/20/14 | RNAV (GPS) RWY 33, Orig. |
| 11–Dec–14 | MN | Duluth | Duluth Intl | 4/1926 | 10/09/14 | RNAV (GPS) RWY 27, Orig.-A. |
| 11–Dec–14 | MN | Duluth | Duluth Intl | 4/1928 | 10/09/14 | RNAV (GPS) RWY 9, Amdt 1.A. |
| 11–Dec–14 | MN | Duluth | Duluth Intl | 4/1931 | 10/09/14 | RNAV (GPS) RWY 3, Orig. |
| 11–Dec–14 | MN | Duluth | Duluth Intl | 4/1932 | 10/09/14 | RNAV (GPS) RWY 21, Orig. |
| 11–Dec–14 | TX | Waco | TSTC Waco | 4/2208 | 10/09/14 | NDB RWY 35R, Amdt 1.1A. |
| 11–Dec–14 | MI | Grayling | Grayling AAF | 4/2434 | 10/09/14 | RNAV (GPS) RWY 14, Orig.-A. |
| 11–Dec–14 | MI | Grayling | Grayling AAF | 4/2435 | 10/09/14 | VOR RWY 14, Amdt 2A. |
| 11–Dec–14 | MI | Grayling | Grayling AAF | 4/2436 | 10/09/14 | NDB RWY 14, Amdt 8A. |
| 11–Dec–14 | OR | Portland | Portland Intl | 4/2567 | 10/09/14 | RNAV (GPS) Y RWY 10L, Amdt 2A. |
| 11–Dec–14 | TX | Arlington | Arlington Muni | 4/3497 | 10/09/14 | ILS OR LOC/DME RWY 34, Amdt 2A. |
| 11–Dec–14 | TX | Arlington | Arlington Muni | 4/3498 | 10/09/14 | RNAV (GPS) RWY 34, Amdt 3A. |
| 11–Dec–14 | AR | Manila | Manila Muni | 4/3588 | 10/15/14 | RNAV (GPS) RWY 36, Orig. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/3669 | 10/15/14 | ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II & III), Amdt 5. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/3671 | 10/15/14 | ILS OR LOC RWY 34R, ILS RWY 34R (SA CAT I), ILS RWY 34R (CAT II & III), Amdt 3. |
| 11–Dec–14 | CO | Denver | Denver Intl | 4/3673 | 10/15/14 | ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (CAT II & CAT III), Amdt 2A. |
| 11–Dec–14 | IA | Algona | Algona Muni | 4/4078 | 10/14/14 | RNAV (GPS) RWY 12, Orig.-A. |
| 11–Dec–14 | IA | Algona | Algona Muni | 4/4080 | 10/14/14 | NDB RWY 12, Amdt 6A. |
| 11–Dec–14 | IA | Clinton | Clinton Muni | 4/4081 | 10/14/14 | RNAV (GPS) RWY 21, Amdt 1. |
| 11–Dec–14 | IA | Clinton | Clinton Muni | 4/4082 | 10/14/14 | RNAV (GPS) RWY 14, Amdt 1. |
| 11–Dec–14 | IA | Maquoketa | Maquoketa Muni | 4/4083 | 10/14/14 | RNAV (GPS) RWY 15, Amdt 1. |
| 12/11/2014 | IA | Cherokee | Cherokee County Rgnl | 4/4232 | 10/15/14 | RNAV (GPS) Z RWY 36, Orig.-A. |
| 12/11/2014 | IA | Cherokee | Cherokee County Rgnl | 4/4234 | 10/15/14 | RNAV (GPS) Y RWY 36, Orig. |
| 11–Dec–14 | IL | Chicago/Aurora | Aurora Muni | 4/4485 | 10/20/14 | RNAV (GPS) RWY 27, Amdt 1. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | AZ | Glendale | Glendale Muni | 4/4548 | 10/14/14 | RNAV (GPS) RWY 1, Orig.-B. |
| 11–Dec–14 | IL | Chicago/Rockford. | Chicago/Rockford Intl | 4/5088 | 10/20/14 | RNAV (GPS) RWY 25, Amdt 1. |
| 11–Dec–14 | IN | Indianapolis | Hendricks County-Gordon Graham Fld. | 4/5097 | 10/20/14 | RNAV (GPS) RWY 18, Amdt 1. |
| 11–Dec–14 | IN | Jeffersonville | Clark Rgnl | 4/5277 | 10/20/14 | RNAV (GPS) RWY 18, Orig. |
| 11–Dec–14 | IL | Canton | Ingersoll | 4/5299 | 10/20/14 | RNAV (GPS) RWY 36, Amdt 1. |
| 11–Dec–14 | IL | Dixon | Dixon Muni-Charles R. Walgreen Field. | 4/5367 | 10/20/14 | RNAV (GPS) RWY 8, Amdt 1. |
| 11–Dec–14 | IL | Carmi | Carmi Muni | 4/5368 | 10/20/14 | RNAV (GPS) RWY 36, Orig.-A. |
| 11–Dec–14 | IL | Centralia | Centralia Muni | 4/5385 | 10/20/14 | RNAV (GPS) RWY 18, Amdt 1. |
| 11–Dec–14 | MN | Grand Marais | Grand Marais/Cook County | 4/5459 | 10/20/14 | RNAV (GPS) RWY 9, Orig. |
| 11–Dec–14 | MN | Bigfork | Bigfork Muni | 4/5461 | 10/20/14 | RNAV (GPS) RWY 15, Orig.-A. |
| 11–Dec–14 | MN | Bigfork | Bigfork Muni | 4/5462 | 10/20/14 | NDB RWY 15, Orig.-A. |
| 11–Dec–14 | MN | Glenwood | Glenwood Muni | 4/5463 | 10/20/14 | RNAV (GPS) RWY 15, Orig. |
| 11–Dec–14 | MN | Hutchinson | Hutchinson Muni-Butler Field | 4/5489 | 10/20/14 | RNAV (GPS) RWY 33, Orig. |
| 11–Dec–14 | MN | Hutchinson | Hutchinson Muni-Butler Field | 4/5490 | 10/20/14 | VOR/DME RWY 33, Amdt 3. |
| 11–Dec–14 | MN | Little Falls | Little Falls/Morrison County-Lindbergh Fld. | 4/5492 | 10/20/14 | RNAV (GPS) RWY 31, Orig. |
| 11–Dec–14 | MN | Little Falls | Little Falls/Morrison County-Lindbergh Fld. | 4/5493 | 10/20/14 | NDB RWY 31, Amdt 6B. |
| 11–Dec–14 | MN | Dodge Center | Dodge Center | 4/5494 | 10/20/14 | RNAV (GPS) RWY 34, Amdt 1. |
| 11–Dec–14 | MN | Dodge Center | Dodge Center | 4/5495 | 10/20/14 | RNAV (GPS) RWY 16, Amdt 1. |
| 11–Dec–14 | MO | Cape Girardeau | Cape Girardeau Rgnl | 4/5496 | 10/20/14 | LOC/DME BC RWY 28, Amdt 8. |
| 11–Dec–14 | MO | Cape Girardeau | Cape Girardeau Rgnl | 4/5497 | 10/20/14 | RNAV (GPS) RWY 28, Amdt 1. |
| 11–Dec–14 | MO | Cape Girardeau | Cape Girardeau Rgnl | 4/5498 | 10/20/14 | RNAV (GPS) RWY 2, Orig. |
| 11–Dec–14 | MO | Houston | Houston Memorial | 4/5499 | 10/20/14 | RNAV (GPS) RWY 16, Orig. |
| 11–Dec–14 | ND | Fargo | Hector Intl | 4/5549 | 10/16/14 | ILS OR LOC RWY 36, Amdt 1. |
| 11–Dec–14 | ND | Fargo | Hector Intl | 4/5550 | 10/16/14 | RNAV (GPS) RWY 36, Orig. |
| 11–Dec–14 | ND | Fargo | Hector Intl | 4/5551 | 10/16/14 | VOR OR TACAN RWY 36, Orig.-A. |
| 11–Dec–14 | NE | Gordon | Gordon Muni | 4/5552 | 10/16/14 | NDB RWY 22, Amdt 4. |
| 11–Dec–14 | NE | Kimball | Kimball Muni/Robert E Arraj Field. | 4/5553 | 10/16/14 | RNAV (GPS) RWY 10, Amdt 1. |
| 11–Dec–14 | OH | Barnesville | Barnesville-Bradfield | 4/5574 | 10/16/14 | RNAV (GPS) RWY 27, Orig. |
| 11–Dec–14 | SD | Hot Springs | Hot Springs Muni | 4/5618 | 10/16/14 | RNAV (GPS) RWY 1, Orig. |
| 11–Dec–14 | TX | College Station | Easterwood Field | 4/5626 | 10/16/14 | VOR OR TACAN RWY 10, Amdt 1.9B. |
| 11–Dec–14 | TX | College Station | Easterwood Field | 4/5627 | 10/16/14 | RNAV (GPS) RWY 10, Amdt 1.A. |
| 11–Dec–14 | TX | Cleveland | Cleveland Muni | 4/5639 | 10/16/14 | RNAV (GPS) RWY 16, Orig. |
| 11–Dec–14 | TX | Winters | Winters Muni | 4/5647 | 10/16/14 | RNAV (GPS) RWY 35, Orig. |
| 11–Dec–14 | TX | Childress | Childress Muni | 4/5653 | 10/16/14 | RNAV (GPS) RWY 36, Amdt 1. |
| 11–Dec–14 | FL | West Palm Beach. | Palm Beach Intl | 4/5656 | 10/20/14 | RNAV (RNP) Z RWY 32, Orig.-B. |
| 11–Dec–14 | NY | Le Roy | Le Roy | 4/5658 | 10/20/14 | VOR A, Amdt 1. |
| 11–Dec–14 | NY | Le Roy | Le Roy | 4/5659 | 10/20/14 | RNAV (GPS) RWY 10, Orig. |
| 11–Dec–14 | TX | Cleburne | Cleburne Rgnl | 4/5681 | 10/16/14 | LOC/DME RWY 15, Orig.-D. |
| 11–Dec–14 | TX | Cleburne | Cleburne Rgnl | 4/5682 | 10/16/14 | RNAV (GPS) RWY 15, Amdt 1. |
| 11–Dec–14 | TX | Crockett | Houston County | 4/5684 | 10/16/14 | RNAV (GPS) RWY 20, Orig.-A. |
| 11–Dec–14 | TX | Eastland | Eastland Muni | 4/5686 | 10/16/14 | RNAV (GPS) RWY 17, Orig.-A. |
| 11–Dec–14 | TX | Wink | Winkler County | 4/5689 | 10/16/14 | RNAV (GPS) RWY 13, Amdt 1. |
| 12/11/2014 | TX | Hearne | Hearne Muni | 4/5691 | 10/15/14 | RNAV (GPS) RWY 18, Orig. |
| 11–Dec–14 | TX | Snyder | Winston Field | 4/5693 | 10/15/14 | RNAV (GPS) RWY 35, Amdt 1. |
| 11–Dec–14 | TX | Sweetwater | Avenger Field | 4/5694 | 10/15/14 | RNAV (GPS) RWY 35, Orig. |
| 11–Dec–14 | TX | Sweetwater | Avenger Field | 4/5695 | 10/15/14 | RNAV (GPS) RWY 4, Orig. |
| 11–Dec–14 | WI | East Troy | East Troy Muni | 4/5702 | 10/15/14 | RNAV (GPS) RWY 26, Orig. |
| 11–Dec–14 | PA | Carlisle | Carlisle | 4/5710 | 10/20/14 | RNAV (GPS)–C, Orig. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6266 | 10/20/14 | RNAV (GPS) RWY 1L, Amdt 1.B. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6268 | 10/20/14 | ILS OR LOC RWY 19R, Amdt 1.2. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6269 | 10/20/14 | RNAV (GPS) RWY 19R, Amdt 2. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6270 | 10/20/14 | ILS OR LOC RWY 7R, Amdt 1.6. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6271 | 10/20/14 | RNAV (RNP) Y RWY 7R, Orig. |
| 11–Dec–14 | WI | Milwaukee | General Mitchell Intl | 4/6277 | 10/20/14 | RNAV (GPS) Z RWY 7R, Amdt 1.B. |
| 11–Dec–14 | CA | Lompoc | Lompoc | 4/6673 | 10/20/14 | RNAV (GPS) RWY 25, Amdt 1. |
| 11–Dec–14 | CO | Monte Vista | Monte Vista Muni | 4/6674 | 10/20/14 | GPS RWY 20, Orig. |
| 11–Dec–14 | ID | Gooding | Gooding Muni | 4/6675 | 10/20/14 | NDB RWY 25, Amdt 1. |
| 11–Dec–14 | ID | Gooding | Gooding Muni | 4/6677 | 10/20/14 | RNAV (GPS) RWY 25, Orig. |
| 11–Dec–14 | MO | Cape Girardeau | Cape Girardeau Rgnl | 4/6744 | 10/20/14 | VOR RWY 2, Amdt 1.1. |
| 11–Dec–14 | KS | Eureka | Lt. William M. Milliken | 4/7273 | 10/14/14 | VOR/DME RWY 18, Amdt 2A. |
| 11–Dec–14 | FL | Fort Lauderdale | Fort Lauderdale Executive | 4/7983 | 10/09/14 | RNAV (GPS) RWY 26, Amdt 2. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | AK | Point Hope | Point Hope | 4/8003 | 10/14/14 | RNAV (GPS) RWY 1, Amdt 1. |
| 11–Dec–14 | AK | Point Hope | Point Hope | 4/8004 | 10/14/14 | RNAV (GPS) RWY 19, Amdt 1. |
| 11–Dec–14 | NY | Akron | Akron | 4/8126 | 10/14/14 | RNAV (GPS) RWY 7, Amdt 2A. |
| 11–Dec–14 | NY | Akron | Akron | 4/8132 | 10/14/14 | RNAV (GPS) RWY 25, Amdt 2A. |
| 12/11/2014 | MT | Circle | Circle Town County | 4/8430 | 10/15/14 | RNAV (GPS) RWY 12, Orig. |
| 12/11/2014 | MT | Circle | Circle Town County | 4/8432 | 10/15/14 | RNAV (GPS) RWY 30, Orig. |
| 11–Dec–14 | CA | Hayward | Hayward Executive | 4/8580 | 10/14/14 | LOC/DME RWY 28L, Amdt 3. |
| 11–Dec–14 | CA | Hayward | Hayward Executive | 4/8581 | 10/14/14 | RNAV (GPS) RWY 28L, Amdt 1. |
| 11–Dec–14 | CA | Bakersfield | Bakersfield Muni | 4/8652 | 10/09/14 | RNAV (GPS) RWY 34, Orig. |
| 11–Dec–14 | CA | Bakersfield | Bakersfield Muni | 4/8656 | 10/09/14 | VOR/DME RWY 34, Amdt 1. |
| 11–Dec–14 | CA | Long Beach | Long Beach/Daugherty Field/ | 4/8673 | 10/15/14 | RNAV (RNP) RWY 12, Amdt 1. |
| 11–Dec–14 | CA | Long Beach | Long Beach/Daugherty Field/ | 4/8674 | 10/15/14 | RNAV (RNP) Y RWY 30, Amdt 1. |
| 11–Dec–14 | CA | Long Beach | Long Beach/Daugherty Field/ | 4/8676 | 10/15/14 | RNAV (GPS) Z RWY 30, Amdt 2. |
| 11–Dec–14 | CO | Grand Junction | Grand Junction Regional | 4/8681 | 10/09/14 | RNAV (RNP) Z RWY 11, Orig.-A. |
| 11–Dec–14 | CA | San Diego/El Cajon. | Gillespie Field | 4/8682 | 10/09/14 | RNAV (GPS) RWY 17, Amdt 2A. |
| 11–Dec–14 | AZ | Willcox | Cochise County | 4/8684 | 10/09/14 | RNAV (GPS) RWY 21, Amdt 1. |
| 11–Dec–14 | AZ | Willcox | Cochise County | 4/8685 | 10/09/14 | RNAV (GPS) RWY 3, Amdt 1.A. |
| 11–Dec–14 | TX | Presidio | Presidio Lely Intl | 4/8691 | 10/09/14 | RNAV (GPS) A, Orig. |
| 11–Dec–14 | MO | St Joseph | Rosecrans Memorial | 4/8700 | 10/14/14 | RNAV (GPS) RWY 31, Orig. |
| 11–Dec–14 | CO | Durango | Durango-La Plata County | 4/8707 | 10/14/14 | VOR/DME RWY 3, Amdt 5. |
| 11–Dec–14 | MT | Malta | Malta | 4/8719 | 10/09/14 | RNAV (GPS) RWY 8, Amdt 1. |
| 11–Dec–14 | MT | Malta | Malta | 4/8720 | 10/09/14 | RNAV (GPS) RWY 26, Amdt 1. |
| 11–Dec–14 | MT | Glasgow | Wokal Field/Glasgow Intl | 4/8727 | 10/09/14 | VOR RWY 30, Amdt 4. |
| 11–Dec–14 | MT | Glasgow | Wokal Field/Glasgow Intl | 4/8728 | 10/09/14 | RNAV (GPS) RWY 12, Orig. |
| 11–Dec–14 | MT | Glasgow | Wokal Field/Glasgow Intl | 4/8729 | 10/09/14 | NDB RWY 30, Amdt 2. |
| 11–Dec–14 | MT | Glasgow | Wokal Field/Glasgow Intl | 4/8730 | 10/09/14 | RNAV (GPS) RWY 30, Orig. |
| 11–Dec–14 | MT | Glasgow | Wokal Field/Glasgow Intl | 4/8731 | 10/09/14 | VOR RWY 12, Amdt 3. |
| 11–Dec–14 | ID | Grangeville | Idaho County | 4/8879 | 10/09/14 | RNAV (GPS) RWY 7, Amdt 1. |
| 11–Dec–14 | ID | Grangeville | Idaho County | 4/8880 | 10/09/14 | RNAV (GPS) RWY 25, Amdt 1. |
| 11–Dec–14 | MT | Wolf Point | L M Clayton | 4/8881 | 10/09/14 | RNAV (GPS) RWY 11, Amdt 1. |
| 11–Dec–14 | MT | Wolf Point | L M Clayton | 4/8882 | 10/09/14 | NDB RWY 29, Amdt 4. |
| 11–Dec–14 | MT | Wolf Point | L M Clayton | 4/8883 | 10/09/14 | RNAV (GPS) RWY 29, Amdt 1. |
| 11–Dec–14 | MT | Helena | Helena Rgnl | 4/8886 | 10/09/14 | ILS OR LOC Z RWY 27, Amdt 1.A. |
| 11–Dec–14 | MT | Helena | Helena Rgnl | 4/8887 | 10/09/14 | RNAV (RNP) Y RWY 27, Orig.-C. |
| 11–Dec–14 | MT | Helena | Helena Rgnl | 4/8888 | 10/09/14 | ILS OR LOC Y RWY 27, Amdt 3A. |
| 11–Dec–14 | ID | Coeur D'Alene | Coeur D'Alene—Pappy Boyington Field. | 4/9214 | 10/14/14 | VOR/DME RWY 2, Amdt 2A. |
| 11–Dec–14 | ID | Coeur D'Alene | Coeur D'Alene—Pappy Boyington Field. | 4/9215 | 10/14/14 | RNAV (GPS) RWY 6, Orig.-B. |
| 11–Dec–14 | MT | Glendive | Dawson Community | 4/9442 | 10/09/14 | NDB RWY 12, Amdt 4B. |
| 11–Dec–14 | MT | Glendive | Dawson Community | 4/9443 | 10/09/14 | RNAV (GPS) RWY 30, Orig. |
| 11–Dec–14 | MT | Glendive | Dawson Community | 4/9444 | 10/09/14 | RNAV (GPS) RWY 12, Orig. |
| 11–Dec–14 | UT | Nephi | Nephi Muni | 4/9595 | 10/09/14 | RNAV (GPS) RWY 17, Orig. |
| 11–Dec–14 | UT | Nephi | Nephi Muni | 4/9596 | 10/09/14 | RNAV (GPS) RWY 35, Orig. |
| 11–Dec–14 | NV | Carson City | Carson | 4/9598 | 10/09/14 | RNAV (GPS) RWY 27, Orig. |
| 11–Dec–14 | UT | Delta | Delta Muni | 4/9599 | 10/09/14 | RNAV (GPS) RWY 35, Amdt 1.A. |
| 11–Dec–14 | UT | Delta | Delta Muni | 4/9600 | 10/09/14 | RNAV (GPS) RWY 17, Amdt 1.A. |
| 11–Dec–14 | OR | Astoria | Astoria Rgnl | 4/9638 | 10/09/14 | RNAV (GPS) RWY 8, Orig. |
| 11–Dec–14 | OR | Baker City | Baker City Muni | 4/9676 | 10/09/14 | RNAV (GPS) RWY 13, Amdt 1.B. |
| 11–Dec–14 | UT | Brigham City | Brigham City | 4/9715 | 10/09/14 | RNAV (GPS) RWY 35, Amdt 2A. |
| 11–Dec–14 | WA | Arlington | Arlington Muni | 4/9881 | 10/14/14 | RNAV (GPS) RWY 34, Orig. |
| 11–Dec–14 | WA | Arlington | Arlington Muni | 4/9882 | 10/14/14 | LOC RWY 34, Amdt 5. |
| 11–Dec–14 | WA | Arlington | Arlington Muni | 4/9883 | 10/14/14 | NDB RWY 34, Amdt 4. |
| 11–Dec–14 | WY | Cheyenne | Cheyenne Rgnl/Jerry Olson Field | 4/9896 | 10/09/14 | NDB RWY 27, Amdt 1.5. |
| 11–Dec–14 | WA | Renton | Renton Muni | 4/9898 | 10/14/14 | RNAV (GPS) Y RWY 16, Amdt 4. |
| 11–Dec–14 | WA | Renton | Renton Muni | 4/9899 | 10/14/14 | RNAV (GPS) Z RWY 16, Amdt 2. |
| 11–Dec–14 | WY | Powell | Powell Muni | 4/9943 | 10/14/14 | RNAV (GPS) RWY 13, Orig. |
| 11–Dec–14 | WY | Powell | Powell Muni | 4/9950 | 10/14/14 | NDB RWY 31, Amdt 2. |
| 11–Dec–14 | WY | Powell | Powell Muni | 4/9951 | 10/14/14 | RNAV (GPS) RWY 31, Orig. |
| 11–Dec–14 | WY | Worland | Worland Muni | 4/9952 | 10/14/14 | RNAV (GPS) RWY 34, Orig.-A. |
| 11–Dec–14 | WY | Worland | Worland Muni | 4/9953 | 10/14/14 | RNAV (GPS) RWY 16, Orig.-A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9954 | 10/14/14 | RNAV (RNP) Z RWY 27, Orig.-A. |
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9958 | 10/14/14 | COPTER NDB RWY 27, Amdt 2. |
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9959 | 10/14/14 | RNAV (RNP) RWY 9, Orig.-A. |
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9961 | 10/14/14 | RNAV (GPS) W RWY 27, Amdt 1. |
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9964 | 10/14/14 | RNAV (GPS) X RWY 27, Amdt 1.A. |
| 11–Dec–14 | WA | Yakima | Yakima Air Terminal/McAllister Field. | 4/9966 | 10/14/14 | RNAV (RNP) Y RWY 27, Orig.-A. |
| 11–Dec–14 | UT | Provo | Provo Muni | 4/9969 | 10/14/14 | ILS OR LOC/DME RWY 13, Amdt 2. |
| 11–Dec–14 | UT | Provo | Provo Muni | 4/9971 | 10/14/14 | RNAV (GPS) RWY 13, Amdt 2. |
| 11–Dec–14 | WY | Worland | Worland Muni | 4/9993 | 10/14/14 | VOR RWY 16, Amdt 6A. |

[FR Doc. 2014–28234 Filed 12–2–14; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 30989; Amdt. No. 3618]

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 3, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2014.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of

immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on November 7, 2014.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | AK | Point Hope | Point Hope | 4/8003 | 10/14/14 | This NOTAM, published in TL 14–25, is hereby rescinded in its entirety. |
| 11–Dec–14 | AK | Point Hope | Point Hope | 4/8004 | 10/14/14 | This NOTAM, published in TL 14–25, is hereby rescinded in its entirety. |
| 11–Dec–14 | MA | Hyannis | Barnstable Muni-Boardman/ Polando Field. | 4/0009 | 10/22/14 | RNAV (GPS) RWY 33, Orig. |
| 11–Dec–14 | KY | Hopkinsville | Hopkinsville-Christian County | 4/0014 | 10/22/14 | RNAV (GPS) RWY 26, Amdt 1. |
| 11–Dec–14 | NY | East Hampton | East Hampton | 4/0027 | 10/22/14 | RNAV (GPS) X RWY 10, Orig. |
| 11–Dec–14 | AL | Bessemer | Bessemer | 4/0029 | 10/23/14 | RNAV (GPS) RWY 5, Amdt 1. |
| 11–Dec–14 | AL | Bessemer | Bessemer | 4/0030 | 10/23/14 | ILS OR LOC RWY 5, Amdt 2. |
| 11–Dec–14 | VT | Highgate | Franklin County State | 4/0040 | 10/22/14 | VOR/DME RWY 19, Amdt 5. |
| 11–Dec–14 | VT | Highgate | Franklin County State | 4/0041 | 10/22/14 | RNAV (GPS) RWY 1, Amdt 3. |
| 11–Dec–14 | VT | Highgate | Franklin County State | 4/0044 | 10/22/14 | RNAV (GPS) RWY 19, Amdt 1. |
| 11–Dec–14 | NC | Shelby | Shelby-Cleveland County Rgnl | 4/0188 | 10/22/14 | RNAV (GPS) RWY 5, Amdt 2. |
| 11–Dec–14 | NC | Shelby | Shelby-Cleveland County Rgnl | 4/0190 | 10/22/14 | RNAV (GPS) RWY 23, Orig. |
| 11–Dec–14 | NC | Monroe | Charlotte-Monroe Executive | 4/0192 | 10/21/14 | RNAV (GPS) RWY 23, Orig-A. |
| 11–Dec–14 | VT | Newport | Newport State | 4/0193 | 10/22/14 | RNAV (GPS) RWY 36, Orig. |
| 11–Dec–14 | NC | Edenton | Northeastern Rgnl | 4/0198 | 10/22/14 | ILS OR LOC RWY 19, Orig-A. |
| 11–Dec–14 | FL | Panama City | Northwest Florida Beaches Intl | 4/0200 | 10/22/14 | RNAV (GPS) RWY 34, Amdt 2A. |
| 11–Dec–14 | MD | Easton | Easton/Newnam Field | 4/0201 | 10/21/14 | RNAV (GPS) RWY 22, Amdt 1A. |
| 11–Dec–14 | NC | Lexington | Davidson County | 4/0226 | 10/21/14 | ILS OR LOC/DME RWY 6, Amdt 1A. |
| 11–Dec–14 | NC | Lexington | Davidson County | 4/0228 | 10/21/14 | RNAV (GPS) RWY 6, Orig. |
| 11–Dec–14 | NC | Lexington | Davidson County | 4/0230 | 10/21/14 | RNAV (GPS) RWY 24, Orig. |
| 11–Dec–14 | AL | Eufaula | Weedon Field | 4/0239 | 10/21/14 | RNAV (GPS) RWY 18, Amdt 1. |
| 11–Dec–14 | AL | Eufaula | Weedon Field | 4/0240 | 10/21/14 | RNAV (GPS) RWY 36, Amdt 1. |
| 11–Dec–14 | AZ | Phoenix | Phoenix-Mesa Gateway | 4/0294 | 10/24/14 | ILS OR LOC RWY 30C, Amdt 3A. |
| 11–Dec–14 | AZ | Phoenix | Phoenix-Mesa Gateway | 4/0295 | 10/24/14 | RNAV (GPS) RWY 12R, Amdt 1A. |
| 11–Dec–14 | AZ | Phoenix | Phoenix-Mesa Gateway | 4/0296 | 10/24/14 | RNAV (GPS) RWY 30L, Amdt 1A. |
| 11–Dec–14 | AZ | Phoenix | Phoenix-Mesa Gateway | 4/0297 | 10/24/14 | RNAV (GPS) Y RWY 30C, Amdt 1A. |
| 11–Dec–14 | AZ | Phoenix | Phoenix-Mesa Gateway | 4/0298 | 10/24/14 | VOR OR TACAN RWY 30C, Amdt 2A. |
| 11–Dec–14 | FL | Orlando | Kissimmee Gateway | 4/0462 | 10/22/14 | RNAV (GPS) RWY 33, Amdt 2. |
| 11–Dec–14 | FL | Orlando | Kissimmee Gateway | 4/0466 | 10/22/14 | RNAV (GPS) RWY 6, Orig. |
| 11–Dec–14 | GA | Douglas | Douglas Muni | 4/0542 | 10/22/14 | ILS OR LOC/NDB RWY 4, Amdt 2. |
| 11–Dec–14 | GA | Douglas | Douglas Muni | 4/0543 | 10/22/14 | RNAV (GPS) RWY 4, Amdt 1. |
| 11–Dec–14 | GA | Douglas | Douglas Muni | 4/0544 | 10/22/14 | RNAV (GPS) RWY 22, Amdt 1. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | PA | Doylestown | Doylestown | 4/0545 | 10/22/14 | VOR/DME RWY 23, Amdt 8. |
| 11–Dec–14 | GA | Elberton | Elbert County-Patz Field | 4/0548 | 10/21/14 | RNAV (GPS) RWY 11, Amdt 1. |
| 11–Dec–14 | GA | Elberton | Elbert County-Patz Field | 4/0550 | 10/21/14 | VOR/DME RWY 11, Amdt 4. |
| 11–Dec–14 | GA | Elberton | Elbert County-Patz Field | 4/0551 | 10/21/14 | RNAV (GPS) RWY 29, Amdt 1. |
| 11–Dec–14 | NC | Kenansville | Duplin Co | 4/0552 | 10/21/14 | RNAV (GPS) RWY 23, Orig. |
| 11–Dec–14 | NC | Kenansville | Duplin Co | 4/0553 | 10/21/14 | RNAV (GPS) RWY 5, Orig. |
| 11–Dec–14 | NC | Kenansville | Duplin Co | 4/0554 | 10/21/14 | LOC/NDB RWY 23, Amdt 1. |
| 11–Dec–14 | MA | Boston | General Edward Lawrence Logan Intl. | 4/0653 | 10/30/14 | RNAV (GPS) RWY 32, Orig-D. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0654 | 10/24/14 | VOR RWY 9R, Amdt 21. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0655 | 10/24/14 | ILS OR LOC RWY 9R, Amdt 12. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0656 | 10/24/14 | RNAV (GPS) RWY 9R, Amdt 1. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0662 | 10/24/14 | LOC BC RWY 27L, Amdt 10. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0664 | 10/24/14 | RNAV (GPS) RWY 27L, Amdt 1. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0678 | 10/24/14 | RNAV (GPS) RWY 27R, Amdt 1. |
| 11–Dec–14 | FL | Melbourne | Melbourne Intl | 4/0690 | 10/24/14 | RNAV (GPS) RWY 9L, Amdt 1. |
| 11–Dec–14 | FL | St Petersburg | Albert Whitted | 4/0722 | 10/24/14 | RNAV (GPS) RWY 7, Amdt 3. |
| 11–Dec–14 | WV | Huntington | Tri-State/Milton J. Ferguson Field. | 4/0983 | 10/27/14 | RNAV (GPS) RWY 30, Amdt 1. |
| 11–Dec–14 | WV | Huntington | Tri-State/Milton J. Ferguson Field. | 4/0984 | 10/27/14 | RNAV (GPS) RWY 12, Amdt 3. |
| 11–Dec–14 | WV | Huntington | Tri-State/Milton J. Ferguson Field. | 4/0986 | 10/27/14 | ILS OR LOC RWY 30, Amdt 7. |
| 11–Dec–14 | WV | Huntington | Tri-State/Milton J. Ferguson Field. | 4/0987 | 10/27/14 | ILS OR LOC RWY 12, Amdt 14. |
| 11–Dec–14 | DE | Georgetown | Sussex County | 4/1003 | 10/30/14 | RNAV (GPS) RWY 22, Amdt 2. |
| 11–Dec–14 | CT | Meriden | Meriden Markham Muni | 4/1091 | 10/24/14 | RNAV (GPS) RWY 36, Orig-B. |
| 11–Dec–14 | VA | Fredericksburg | Shannon | 4/1108 | 10/21/14 | NDB RWY 24, Amdt 3. |
| 11–Dec–14 | VA | Fredericksburg | Shannon | 4/1110 | 10/21/14 | RNAV (GPS) RWY 24, Orig. |
| 11–Dec–14 | MS | Marks | Selfs | 4/1125 | 10/24/14 | RNAV (GPS) RWY 2, Amdt 1. |
| 11–Dec–14 | MS | Marks | Selfs | 4/1126 | 10/24/14 | RNAV (GPS) RWY 20, Amdt 1. |
| 11–Dec–14 | NJ | Morristown | Morristown Muni | 4/1128 | 10/30/14 | ILS OR LOC RWY 23, Amdt 10. |
| 11–Dec–14 | NJ | Morristown | Morristown Muni | 4/1129 | 10/30/14 | RNAV (GPS) Z RWY 23, Orig-A. |
| 11–Dec–14 | NJ | Morristown | Morristown Muni | 4/1130 | 10/30/14 | RNAV (GPS) RWY 5, Amdt 3A. |
| 11–Dec–14 | NJ | Morristown | Morristown Muni | 4/1132 | 10/30/14 | RNAV (RNP) Y RWY 23, Orig. |
| 11–Dec–14 | ME | Millinocket | Millinocket Muni | 4/1136 | 10/24/14 | RNAV (GPS) RWY 11, Orig. |
| 11–Dec–14 | TN | Huntingdon | Carroll County | 4/1191 | 10/23/14 | RNAV (GPS) RWY 19, Amdt 1. |
| 11–Dec–14 | TN | Huntingdon | Carroll County | 4/1192 | 10/23/14 | RNAV (GPS) RWY 1, Amdt 1. |
| 11–Dec–14 | ME | Houlton | Houlton Intl | 4/1193 | 10/29/14 | RNAV (GPS) RWY 5, Orig. |
| 11–Dec–14 | ME | Houlton | Houlton Intl | 4/1194 | 10/29/14 | VOR/DME RWY 5, Amdt 11. |
| 11–Dec–14 | ME | Millinocket | Millinocket Muni | 4/1352 | 10/24/14 | RNAV (GPS) RWY 29, Amdt 1. |
| 11–Dec–14 | SC | Conway | Conway-Horry County | 4/1375 | 10/28/14 | NDB RWY 22, Amdt 1. |
| 11–Dec–14 | SC | Conway | Conway-Horry County | 4/1378 | 10/28/14 | RNAV (GPS) RWY 22, Amdt 1. |
| 11–Dec–14 | SC | Conway | Conway-Horry County | 4/1380 | 10/28/14 | NDB RWY 4, Orig-B. |
| 11–Dec–14 | SC | Conway | Conway-Horry County | 4/1387 | 10/28/14 | RNAV (GPS) RWY 4, Amdt 1. |
| 11–Dec–14 | TN | Madisonville | Monroe County | 4/1400 | 10/24/14 | RNAV (GPS) RWY 23, Amdt 2. |
| 11–Dec–14 | TN | Madisonville | Monroe County | 4/1401 | 10/24/14 | RNAV (GPS) RWY 5, Amdt 2A. |
| 11–Dec–14 | TN | Morristown | Moore-Murrell | 4/1429 | 10/24/14 | RNAV (GPS) RWY 23, Orig-A. |
| 11–Dec–14 | TN | Morristown | Moore-Murrell | 4/1430 | 10/24/14 | SDF RWY 5, Amdt 5A. |
| 11–Dec–14 | TN | Morristown | Moore-Murrell | 4/1432 | 10/24/14 | RNAV (GPS) RWY 5, Orig-A. |
| 11–Dec–14 | TN | Morristown | Moore-Murrell | 4/1433 | 10/24/14 | NDB RWY 5, Amdt 5A. |
| 11–Dec–14 | PA | Mount Pocono | Pocono Mountains Muni | 4/1531 | 10/27/14 | VOR/DME RWY 13, Amdt 8. |
| 11–Dec–14 | PA | Mount Pocono | Pocono Mountains Muni | 4/1532 | 10/27/14 | RNAV (GPS) RWY 31, Amdt 2A. |
| 11–Dec–14 | PA | Mount Pocono | Pocono Mountains Muni | 4/1533 | 10/27/14 | RNAV (GPS) RWY 13, Amdt 3A. |
| 11–Dec–14 | NC | Manteo | Dare County Rgnl | 4/1569 | 10/27/14 | RNAV (GPS) RWY 5, Orig-A. |
| 11–Dec–14 | NC | Manteo | Dare County Rgnl | 4/1570 | 10/27/14 | RNAV (GPS) RWY 23, Orig. |
| 11–Dec–14 | NC | Manteo | Dare County Rgnl | 4/1571 | 10/27/14 | VOR RWY 17, Amdt 4. |
| 11–Dec–14 | NC | Manteo | Dare County Rgnl | 4/1572 | 10/27/14 | RNAV (GPS) RWY 17, Orig. |
| 11–Dec–14 | NC | Manteo | Dare County Rgnl | 4/1573 | 10/27/14 | NDB RWY 17, Amdt 6. |
| 11–Dec–14 | MS | Jackson | Hawkins Field | 4/1601 | 10/27/14 | ILS OR LOC RWY 16, Amdt 6. |
| 11–Dec–14 | MS | Jackson | Hawkins Field | 4/1609 | 10/27/14 | RNAV (GPS) RWY 16, Amdt 2. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/1723 | 10/27/14 | RNAV (GPS) RWY 15R, Orig-A. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/1724 | 10/27/14 | ILS OR LOC RWY 24, Amdt 4B. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/1725 | 10/27/14 | RNAV (GPS) RWY 24, Amdt 1B. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/1726 | 10/27/14 | RNAV (GPS) RWY 33L, Orig-A. |
| 11–Dec–14 | NC | Roanoke Rapids | Halifax-Northampton Rgnl | 4/1727 | 10/27/14 | RNAV (GPS) RWY 2, Amdt 1. |
| 11–Dec–14 | NC | Roanoke Rapids | Halifax-Northampton Rgnl | 4/1728 | 10/27/14 | RNAV (GPS) RWY 20, Amdt 1. |
| 11–Dec–14 | FL | Jacksonville | Jacksonville Intl | 4/1730 | 10/29/14 | ILS OR LOC RWY 26, Amdt 2. |
| 11–Dec–14 | AL | Gulf Shores | Jack Edwards | 4/1731 | 10/27/14 | RNAV (GPS) RWY 9, Amdt 3. |
| 11–Dec–14 | FL | Jacksonville | Jacksonville Intl | 4/1733 | 10/29/14 | RNAV (RNP) Y RWY 26, Amdt 1. |
| 11–Dec–14 | FL | Jacksonville | Jacksonville Intl | 4/1734 | 10/29/14 | RNAV (GPS) Z RWY 26, Amdt 2. |
| 11–Dec–14 | NY | Piseco | Piseco | 4/1746 | 10/27/14 | RNAV (GPS) RWY 4, Orig. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
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| 11–Dec–14 | KY | Falmouth | Gene Snyder | 4/1747 | 10/27/14 | RNAV (GPS) RWY 21, Orig. |
| 11–Dec–14 | KY | Lewisport | Hancock Co-Ron Lewis Field | 4/1748 | 10/27/14 | RNAV (GPS) RWY 23, Amdt 1. |
| 11–Dec–14 | KY | Lewisport | Hancock Co-Ron Lewis Field | 4/1749 | 10/27/14 | RNAV (GPS) RWY 5, Amdt 1. |
| 11–Dec–14 | FL | Lakeland | Lakeland Linder Rgnl | 4/1750 | 10/30/14 | RNAV (GPS) RWY 5, Orig-B. |
| 11–Dec–14 | FL | Miami | Miami Intl | 4/1881 | 10/27/14 | ILS OR LOC RWY 8R, Amdt 30C. |
| 11–Dec–14 | FL | Miami | Miami Intl | 4/1885 | 10/27/14 | ILS OR LOC RWY 9, Amdt 9C. |
| 11–Dec–14 | FL | Miami | Miami Intl | 4/1886 | 10/27/14 | RNAV (GPS) RWY 9, Amdt 1. |
| 11–Dec–14 | FL | Miami | Miami Intl | 4/1887 | 10/27/14 | RNAV (GPS) RWY 26R, Amdt 2. |
| 11–Dec–14 | FL | Miami | Miami Intl | 4/1888 | 10/27/14 | ILS OR LOC RWY 27, Amdt 25A. |
| 11–Dec–14 | PA | Johnstown | John Murtha Johnstown-Cambria Co. | 4/1983 | 10/28/14 | ILS OR LOC/DME RWY 33, Amdt 7. |
| 11–Dec–14 | PA | Johnstown | John Murtha Johnstown-Cambria Co. | 4/1984 | 10/28/14 | VOR/DME OR TACAN RWY 15, Amdt 6. |
| 11–Dec–14 | PA | Johnstown | John Murtha Johnstown-Cambria Co. | 4/1985 | 10/28/14 | VOR/DME OR TACAN RWY 23, Amdt 3. |
| 11–Dec–14 | PA | Johnstown | John Murtha Johnstown-Cambria Co. | 4/1988 | 10/28/14 | RNAV (GPS) RWY 23, Amdt 2. |
| 11–Dec–14 | PA | Johnstown | John Murtha Johnstown-Cambria Co. | 4/1989 | 10/28/14 | RNAV (GPS) RWY 5, Amdt 2. |
| 11–Dec–14 | MS | Raymond | John Bell Williams | 4/2014 | 10/28/14 | ILS OR LOC RWY 12, Amdt 1. |
| 11–Dec–14 | MS | Raymond | John Bell Williams | 4/2015 | 10/28/14 | RNAV (GPS) RWY 12, Amdt 3. |
| 11–Dec–14 | MS | Raymond | John Bell Williams | 4/2018 | 10/28/14 | NDB RWY 12, Amdt 3. |
| 11–Dec–14 | AL | Gulf Shores | Jack Edwards | 4/2023 | 10/27/14 | ILS OR LOC RWY 27, Amdt 1. |
| 11–Dec–14 | AL | Gulf Shores | Jack Edwards | 4/2024 | 10/27/14 | RNAV (GPS) RWY 27, Amdt 2. |
| 11–Dec–14 | MD | Baltimore | Martin State | 4/2026 | 10/27/14 | RNAV (GPS) RWY 15, Amdt 1. |
| 11–Dec–14 | MD | Baltimore | Martin State | 4/2027 | 10/27/14 | LOC RWY 15, Amdt 3. |
| 11–Dec–14 | VA | Leesburg | Leesburg Executive | 4/2029 | 10/27/14 | RNAV (GPS) RWY 17, Amdt 3. |
| 11–Dec–14 | VA | Leesburg | Leesburg Executive | 4/2030 | 10/27/14 | ILS OR LOC RWY 17, Amdt 1. |
| 11–Dec–14 | NC | Lumberton | Lumberton Rgnl | 4/2042 | 10/28/14 | RNAV (GPS) RWY 23, Orig-A. |
| 11–Dec–14 | NC | Lumberton | Lumberton Rgnl | 4/2043 | 10/28/14 | RNAV (GPS) RWY 13, Orig-A. |
| 11–Dec–14 | NC | Lumberton | Lumberton Rgnl | 4/2044 | 10/28/14 | RNAV (GPS) RWY 5, Orig-A. |
| 11–Dec–14 | NC | Lumberton | Lumberton Rgnl | 4/2045 | 10/28/14 | ILS OR LOC RWY 5, Amdt 1A. |
| 11–Dec–14 | FL | Lake City | Lake City Gateway | 4/2046 | 10/28/14 | RNAV (GPS) RWY 10, Orig-D. |
| 11–Dec–14 | NJ | Millville | Millville Muni | 4/2053 | 10/28/14 | RNAV (GPS) RWY 14, Orig-C. |
| 11–Dec–14 | MS | Prentiss | Prentiss-Jefferson Davis County | 4/2092 | 10/27/14 | RNAV (GPS) RWY 12, Amdt 1. |
| 11–Dec–14 | MS | Prentiss | Prentiss-Jefferson Davis County | 4/2093 | 10/27/14 | RNAV (GPS) RWY 30, Amdt 2. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/2094 | 10/27/14 | ILS OR LOC RWY 6, Amdt 24. |
| 11–Dec–14 | NY | New York | Long Island Mac Arthur | 4/2095 | 10/27/14 | RNAV (GPS) RWY 6, Amdt 1A. |
| 11–Dec–14 | NY | Malone | Malone-Dufort | 4/2185 | 10/28/14 | RNAV (GPS) RWY 5, Orig. |
| 11–Dec–14 | NY | Malone | Malone-Dufort | 4/2186 | 10/28/14 | RNAV (GPS) RWY 23, Orig. |
| 11–Dec–14 | PA | Monongahela | Rostraver | 4/2187 | 10/27/14 | RNAV (GPS) RWY 26, Orig-A. |
| 11–Dec–14 | MA | Falmouth | Cape Cod Coast Guard Air Station. | 4/2189 | 10/30/14 | TACAN RWY 14, Amdt 2. |
| 11–Dec–14 | MA | Falmouth | Cape Cod Coast Guard Air Station. | 4/2190 | 10/30/14 | ILS OR LOC RWY 23, Amdt 1A. |
| 11–Dec–14 | GA | Macon | Macon Downtown | 4/2249 | 10/28/14 | RNAV (GPS) RWY 28, Amdt 1. |
| 11–Dec–14 | GA | Macon | Macon Downtown | 4/2250 | 10/28/14 | RNAV (GPS) RWY 10, Amdt 1. |
| 11–Dec–14 | GA | Macon | Macon Downtown | 4/2252 | 10/28/14 | LOC RWY 10, Amdt 7. |
| 11–Dec–14 | AL | Fayette | Richard Arthur Field | 4/2263 | 10/28/14 | RNAV (GPS) RWY 36, Amdt 1A. |
| 11–Dec–14 | NY | Montauk | Montauk | 4/2341 | 10/27/14 | RNAV (GPS) RWY 24, Amdt 1. |
| 11–Dec–14 | SC | Myrtle Beach | Myrtle Beach Intl | 4/2364 | 10/27/14 | RNAV (GPS) RWY 18, Amdt 3. |
| 11–Dec–14 | SC | Myrtle Beach | Myrtle Beach Intl | 4/2365 | 10/27/14 | ILS OR LOC RWY 18, Amdt 3. |
| 11–Dec–14 | SC | Myrtle Beach | Myrtle Beach Intl | 4/2366 | 10/27/14 | RNAV (GPS) RWY 36, Amdt 3. |
| 11–Dec–14 | SC | Myrtle Beach | Myrtle Beach Intl | 4/2367 | 10/27/14 | ILS OR LOC RWY 36, Amdt 3. |
| 11–Dec–14 | NJ | Lumberton | Flying W | 4/2469 | 10/30/14 | RNAV (GPS) RWY 19, Amdt 1. |
| 11–Dec–14 | NJ | Lumberton | Flying W | 4/2470 | 10/30/14 | RNAV (GPS) RWY 1, Amdt 1. |
| 11–Dec–14 | AR | Fayetteville | Drake Field | 4/2510 | 10/28/14 | LDA/DME RWY 34, Amdt 4. |
| 11–Dec–14 | AR | Fayetteville | Drake Field | 4/2512 | 10/28/14 | RNAV (GPS) RWY 34, Amdt 1. |
| 11–Dec–14 | NJ | Pittstown | Sky Manor | 4/2549 | 10/27/14 | RNAV (GPS) RWY 7, Orig. |
| 11–Dec–14 | NJ | Pittstown | Sky Manor | 4/2555 | 10/27/14 | RNAV (GPS) RWY 25, Orig. |
| 11–Dec–14 | TN | Murfreesboro | Murfreesboro Muni | 4/2558 | 10/29/14 | NDB RWY 18, Amdt 1A. |
| 11–Dec–14 | MS | Mc Comb | Mc Comb/Pike County/John E Lewis Field. | 4/2585 | 10/29/14 | RNAV (GPS) RWY 15, Amdt 1. |
| 11–Dec–14 | AL | Courtland | Courtland | 4/2639 | 10/23/14 | RNAV (GPS) RWY 13, Amdt 2. |
| 11–Dec–14 | AL | Courtland | Courtland | 4/2640 | 10/23/14 | RNAV (GPS) RWY 31, Amdt 2. |
| 11–Dec–14 | AL | Courtland | Courtland | 4/2641 | 10/23/14 | VOR RWY 13, Amdt 1A. |
| 11–Dec–14 | PA | Shamokin | Northumberland County | 4/2707 | 10/28/14 | VOR RWY 8, Amdt 3C. |
| 11–Dec–14 | PA | Shamokin | Northumberland County | 4/2708 | 10/28/14 | RNAV (GPS) RWY 26, Orig-A. |
| 11–Dec–14 | PA | Shamokin | Northumberland County | 4/2709 | 10/28/14 | RNAV (GPS) RWY 8, Orig-B. |
| 11–Dec–14 | NC | Hickory | Hickory Rgnl | 4/2890 | 10/30/14 | VOR/DME RWY 24, Orig-C. |
| 11–Dec–14 | NC | Hickory | Hickory Rgnl | 4/2891 | 10/30/14 | ILS OR LOC RWY 24, Amdt 8. |
| 11–Dec–14 | NC | Hickory | Hickory Rgnl | 4/2892 | 10/30/14 | RNAV (GPS) RWY 24, Amdt 1. |

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| 11–Dec–14 | MS | Meridian | Key Field | 4/2908 | 10/30/14 | RNAV (GPS) RWY 22, Amdt 1. |
| 11–Dec–14 | AR | Camden | Harrell Field | 4/2916 | 10/28/14 | VOR/DME RWY 1, Amdt 10. |
| 11–Dec–14 | GA | Macon | Middle Georgia Rgnl | 4/2978 | 10/29/14 | RNAV (GPS) RWY 31, Amdt 1. |
| 11–Dec–14 | GA | Macon | Middle Georgia Rgnl | 4/2979 | 10/29/14 | ILS OR LOC/DME RWY 5, Amdt 1. |
| 11–Dec–14 | GA | Macon | Middle Georgia Rgnl | 4/2981 | 10/29/14 | RNAV (GPS) RWY 5, Amdt 1. |
| 11–Dec–14 | VA | Marion/ Wytheville. | Mountain Empire | 4/2985 | 10/28/14 | LOC RWY 26, Amdt 2. |
| 11–Dec–14 | GA | Moultrie | Moultrie Muni | 4/3106 | 10/28/14 | RNAV (GPS) RWY 4, Amdt 1. |
| 11–Dec–14 | GA | Moultrie | Moultrie Muni | 4/3108 | 10/28/14 | RNAV (GPS) RWY 22, Amdt 1. |
| 11–Dec–14 | NC | Maxton | Laurinburg-Maxton | 4/3109 | 10/29/14 | RNAV (GPS) RWY 23, Amdt 1. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3137 | 10/30/14 | ILS OR LOC RWY 10, Amdt 23G. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3138 | 10/30/14 | RNAV (GPS) RWY 10, Amdt 1A. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3139 | 10/30/14 | RNAV (GPS) RWY 28, Amdt 1A. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3140 | 10/30/14 | ILS Z RWY 28, Orig. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3141 | 10/30/14 | RNAV (GPS) RWY 3, Amdt 2. |
| 11–Dec–14 | AL | Montgomery | Montgomery Rgnl (Dannely Field). | 4/3142 | 10/30/14 | ILS Y OR LOC RWY 28, Amdt 11. |
| 11–Dec–14 | WI | Racine | John H Batten | 4/3239 | 10/30/14 | ILS OR LOC RWY 4, Amdt 4D. |
| 11–Dec–14 | WI | Racine | John H Batten | 4/3240 | 10/30/14 | VOR RWY 4, Amdt 1A. |
| 11–Dec–14 | FL | Crystal River | Crystal River-Captain Tom Davis Fld. | 4/3410 | 10/31/14 | RNAV (GPS) RWY 9, Amdt 1A. |
| 11–Dec–14 | FL | Crystal River | Crystal River-Captain Tom Davis Fld. | 4/3413 | 10/31/14 | Takeoff Minimums and (Obstacle) DP, Orig. |
| 11–Dec–14 | FL | Crystal River | Crystal River-Captain Tom Davis Fld. | 4/3414 | 10/31/14 | RNAV (GPS) RWY 27, Amdt 1A. |
| 11–Dec–14 | AL | Haleyville | Posey Field | 4/3419 | 10/29/14 | RNAV (GPS) RWY 18, Orig-A. |
| 11–Dec–14 | AL | Haleyville | Posey Field | 4/3420 | 10/29/14 | VOR/DME RWY 18, Amdt 5A. |
| 11–Dec–14 | KY | Springfield | Lebanon-Springfield | 4/3434 | 10/29/14 | RNAV (GPS) RWY 29, Orig-A. |
| 11–Dec–14 | MS | Raymond | John Bell Williams | 4/3435 | 10/29/14 | RNAV (GPS) RWY 30, Amdt 3A. |
| 11–Dec–14 | OR | Newport | Newport Muni | 4/3538 | 10/30/14 | RNAV (GPS) RWY 16, Orig. |
| 11–Dec–14 | OR | Newport | Newport Muni | 4/3539 | 10/30/14 | ILS OR LOC RWY 16, Amdt 1B. |
| 11–Dec–14 | OR | Newport | Newport Muni | 4/3540 | 10/30/14 | VOR/DME RWY 34, Amdt 1A. |
| 11–Dec–14 | OR | Newport | Newport Muni | 4/3541 | 10/30/14 | RNAV (GPS) RWY 34, Orig-A. |
| 11–Dec–14 | OR | Newport | Newport Muni | 4/3542 | 10/30/14 | VOR/DME RWY 16, Amdt 8A. |
| 11–Dec–14 | IL | Chicago | Chicago O'Hare Intl | 4/3688 | 10/30/14 | RNAV (RNP) Y RWY 27L, Orig. |
| 11–Dec–14 | MI | Detroit | Detroit Metropolitan Wayne County. | 4/3721 | 10/28/14 | RNAV (GPS) RWY 21L, Amdt 2A. |
| 11–Dec–14 | MI | Detroit | Detroit Metropolitan Wayne County. | 4/3725 | 10/28/14 | ILS Y RWY 22R, Orig-B. |
| 11–Dec–14 | MI | Detroit | Detroit Metropolitan Wayne County. | 4/3726 | 10/28/14 | ILS PRM Y RWY 22R (SIMULTANEOUS CLOSE PARALLEL), Orig-D. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/3825 | 10/30/14 | RNAV (RNP) Z RWY 33, Orig-A. |
| 11–Dec–14 | WI | Sturgeon Bay | Door County Cherryland | 4/3829 | 10/28/14 | RNAV (GPS) RWY 2, Amdt 1. |
| 11–Dec–14 | WI | Sturgeon Bay | Door County Cherryland | 4/3830 | 10/28/14 | SDF RWY 2, Amdt 8. |
| 11–Dec–14 | NC | Lincolnton | Lincolnton-Lincoln County Rgnl | 4/3977 | 10/30/14 | ILS Y OR LOC Y RWY 23, Orig. |
| 11–Dec–14 | NC | Lincolnton | Lincolnton-Lincoln County Rgnl | 4/3980 | 10/30/14 | ILS Z OR LOC Z RWY 23, Orig. |
| 11–Dec–14 | NC | Lincolnton | Lincolnton-Lincoln County Rgnl | 4/3983 | 10/30/14 | RNAV (GPS) RWY 5, Amdt 1. |
| 11–Dec–14 | NC | Lincolnton | Lincolnton-Lincoln County Rgnl | 4/3984 | 10/30/14 | NDB RWY 23, Amdt 3. |
| 11–Dec–14 | AL | Dothan | Dothan Rgnl | 4/4094 | 10/30/14 | RNAV (GPS) RWY 32, Amdt 1. |
| 11–Dec–14 | AL | Dothan | Dothan Rgnl | 4/4095 | 10/30/14 | COPTER VOR RWY 36, Amdt 1. |
| 11–Dec–14 | AL | Dothan | Dothan Rgnl | 4/4096 | 10/30/14 | RNAV (GPS) RWY 36, Amdt 1. |
| 11–Dec–14 | AL | Dothan | Dothan Rgnl | 4/4097 | 10/30/14 | RNAV (GPS) RWY 14, Amdt 2. |
| 11–Dec–14 | AL | Dothan | Dothan Rgnl | 4/4098 | 10/30/14 | ILS OR LOC RWY 14, Amdt 1. |
| 11–Dec–14 | MA | Worcester | Worcester Rgnl | 4/4236 | 10/21/14 | ILS OR LOC RWY 11, Amdt 23B. |
| 11–Dec–14 | FL | Hollywood | North Perry | 4/4238 | 10/30/14 | RNAV (GPS) RWY 28R, Orig. |
| 11–Dec–14 | FL | Hollywood | North Perry | 4/4239 | 10/30/14 | RNAV (GPS) RWY 10R, Orig. |
| 11–Dec–14 | FL | Fernandina Beach. | Fernandina Beach Muni | 4/4533 | 10/30/14 | RNAV (GPS) RWY 13, Amdt 2. |
| 11–Dec–14 | FL | Fernandina Beach. | Fernandina Beach Muni | 4/4534 | 10/30/14 | RNAV (GPS) RWY 22, Amdt 1A. |
| 11–Dec–14 | MI | Detroit | Detroit Metropolitan Wayne County. | 4/5083 | 10/28/14 | RNAV (GPS) RWY 27R, Amdt 2A. |
| 11–Dec–14 | MI | Detroit | Detroit Metropolitan Wayne County. | 4/5084 | 10/28/14 | ILS OR LOC RWY 27R, Amdt 12A. |
| 11–Dec–14 | KS | Anthony | Anthony Muni | 4/5423 | 10/22/14 | RNAV (GPS) RWY 18, Amdt 1. |

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| 11–Dec–14 | KS | El Dorado | El Dorado/Captain Jack Thomas Memorial. | 4/5425 | 10/22/14 | RNAV (GPS) RWY 4, Amdt 1. |
| 11–Dec–14 | LA | Natchitoches | Natchitoches Rgnl | 4/5435 | 10/22/14 | NDB RWY 35, Amdt 6. |
| 11–Dec–14 | LA | Natchitoches | Natchitoches Rgnl | 4/5439 | 10/22/14 | LOC RWY 35, Amdt 4. |
| 11–Dec–14 | LA | Natchitoches | Natchitoches Rgnl | 4/5440 | 10/22/14 | RNAV (GPS) RWY 35, Amdt 1. |
| 11–Dec–14 | MN | Brainerd | Brainerd Lakes Rgnl | 4/5441 | 10/22/14 | ILS OR LOC/DME RWY 34, Amdt 1. |
| 11–Dec–14 | MO | Osage Beach | Grand Glaize-Osage Beach | 4/5500 | 10/22/14 | RNAV (GPS) RWY 14, Amdt 1. |
| 11–Dec–14 | MO | Gideon | Gideon Memorial | 4/5501 | 10/22/14 | RNAV (GPS) RWY 33, Orig. |
| 11–Dec–14 | ND | Devils Lake | Devils Lake Rgnl | 4/5502 | 10/22/14 | RNAV (GPS) RWY 3, Amdt 2A. |
| 11–Dec–14 | ND | Devils Lake | Devils Lake Rgnl | 4/5503 | 10/22/14 | VOR RWY 3, Orig-A. |
| 11–Dec–14 | MO | Mountain View | Mountain View | 4/5505 | 10/22/14 | RNAV (GPS) RWY 10, Orig-A. |
| 11–Dec–14 | ND | Hillsboro | Hillsboro Muni | 4/5506 | 10/22/14 | RNAV (GPS) RWY 16, Amdt 1. |
| 11–Dec–14 | ND | Hillsboro | Hillsboro Muni | 4/5507 | 10/22/14 | RNAV (GPS) RWY 34, Amdt 1. |
| 11–Dec–14 | OH | Batavia | Clermont County | 4/5576 | 10/22/14 | RNAV (GPS) RWY 4, Amdt 1A. |
| 11–Dec–14 | VA | Franklin | Franklin Muni-John Beverly Rose | 4/5593 | 10/30/14 | RNAV (GPS) RWY 27, Amdt 1. |
| 11–Dec–14 | VA | Franklin | Franklin Muni-John Beverly Rose | 4/5598 | 10/30/14 | RNAV (GPS) RWY 9, Amdt 1. |
| 11–Dec–14 | OH | New Philadelphia. | Harry Clever Field | 4/5611 | 10/22/14 | RNAV (GPS) RWY 14, Orig-A. |
| 11–Dec–14 | OH | Wauseon | Fulton County | 4/5612 | 10/22/14 | RNAV (GPS) RWY 9, Orig. |
| 11–Dec–14 | OK | Ardmore | Ardmore Muni | 4/5614 | 10/22/14 | RNAV (GPS) RWY 13, Orig. |
| 11–Dec–14 | SD | Sioux Falls | Joe Foss Field | 4/5616 | 10/22/14 | RNAV (GPS) RWY 21, Amdt 1A. |
| 11–Dec–14 | SD | Sioux Falls | Joe Foss Field | 4/5617 | 10/22/14 | ILS OR LOC RWY 21, Amdt 10A. |
| 11–Dec–14 | MD | Westminster | Carroll County Rgnl/Jack B Poage Field. | 4/5655 | 10/30/14 | RNAV (GPS) RWY 16, Amdt 2. |
| 11–Dec–14 | FL | West Palm Beach. | North Palm Beach County General Aviation. | 4/5793 | 10/21/14 | ILS OR LOC RWY 8R, Amdt 1. |
| 11–Dec–14 | FL | West Palm Beach. | North Palm Beach County General Aviation. | 4/5794 | 10/21/14 | RNAV (GPS) RWY 8R, Orig. |
| 11–Dec–14 | TN | Murfreesboro | Murfreesboro Muni | 4/5888 | 10/30/14 | RNAV (GPS) RWY 36, Amdt 2. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/5893 | 10/30/14 | ILS OR LOC RWY 15, ILS RWY 15 (SA CAT I), ILS RWY 15 (CAT II), Amdt 24. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/5899 | 10/30/14 | ILS OR LOC/DME RWY 2R, ILS RWY 2R (SA CAT I), ILS RWY 2R (CAT II & III), Amdt 8. |
| 11–Dec–14 | GA | Atlanta | Hartsfield—Jackson Atlanta Intl | 4/6564 | 10/30/14 | ILS OR LOC RWY 8L, Amdt 5. |
| 11–Dec–14 | AZ | Mesa | Falcon Fld | 4/6934 | 10/21/14 | RNAV (GPS) RWY 4R, Amdt 1C. |
| 11–Dec–14 | NC | Fayetteville | Fayetteville Rgnl/Grannis Field | 4/7062 | 10/21/14 | LOC BC RWY 22, Amdt 8. |
| 11–Dec–14 | NC | Fayetteville | Fayetteville Rgnl/Grannis Field | 4/7063 | 10/21/14 | RNAV (GPS) RWY 4, Amdt 3. |
| 11–Dec–14 | NC | Fayetteville | Fayetteville Rgnl/Grannis Field | 4/7064 | 10/21/14 | RNAV (GPS) RWY 22, Amdt 5. |
| 11–Dec–14 | MA | New Bedford | New Bedford Rgnl | 4/7164 | 10/23/14 | RNAV (GPS) RWY 32, Orig. |
| 11–Dec–14 | MA | New Bedford | New Bedford Rgnl | 4/7165 | 10/23/14 | RNAV (GPS) RWY 14, Orig. |
| 11–Dec–14 | FL | Fort Myers | Page Field | 4/7498 | 10/24/14 | RNAV (GPS) RWY 31, Orig-A. |
| 11–Dec–14 | VA | Richmond | Richmond Executive-Chesterfield County. | 4/7736 | 10/23/14 | ILS OR LOC RWY 33, Amdt 2B. |
| 11–Dec–14 | VA | Richmond | Richmond Executive-Chesterfield County. | 4/7738 | 10/23/14 | RNAV (GPS) RWY 15, Amdt 1A. |
| 11–Dec–14 | VA | Richmond | Richmond Executive-Chesterfield County. | 4/7739 | 10/23/14 | RNAV (GPS) RWY 33, Orig-B. |
| 11–Dec–14 | PA | Clearfield | Clearfield-Lawrence | 4/7785 | 10/23/14 | RNAV (GPS) RWY 12, Orig. |
| 11–Dec–14 | PA | Clearfield | Clearfield-Lawrence | 4/7788 | 10/23/14 | RNAV (GPS) RWY 30, Amdt 1. |
| 11–Dec–14 | NY | Westhampton Beach. | Francis S Gabreski | 4/7797 | 10/23/14 | TACAN RWY 24, Orig. |
| 11–Dec–14 | NY | Westhampton Beach. | Francis S Gabreski | 4/7798 | 10/23/14 | ILS OR LOC RWY 24, Amdt 10. |
| 11–Dec–14 | NY | Westhampton Beach. | Francis S Gabreski | 4/7799 | 10/23/14 | RNAV (GPS) RWY 24, Amdt 2. |
| 11–Dec–14 | NY | Westhampton Beach. | Francis S Gabreski | 4/7800 | 10/23/14 | TACAN RWY 6, Orig. |
| 11–Dec–14 | NY | Westhampton Beach. | Francis S Gabreski | 4/7802 | 10/23/14 | RNAV (GPS) RWY 6, Amdt 2. |
| 11–Dec–14 | GA | Cairo | Cairo-Grady County | 4/8390 | 10/23/14 | NDB RWY 13, Amdt 5. |
| 11–Dec–14 | GA | Cairo | Cairo-Grady County | 4/8391 | 10/23/14 | RNAV (GPS) RWY 13, Amdt 1. |
| 11–Dec–14 | GA | Cairo | Cairo-Grady County | 4/8392 | 10/23/14 | RNAV (GPS) RWY 31, Amdt 1. |
| 11–Dec–14 | NJ | Newark | Newark Liberty Intl | 4/8441 | 10/21/14 | RNAV (RNP) Y RWY 22L, Orig-G. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8594 | 10/22/14 | RNAV (GPS) Y RWY 21, Amdt 2A. |
| 11–Dec–14 | FL | Deland | Deland Muni-Sidney H Taylor Field. | 4/8596 | 10/22/14 | VOR/DME RWY 23, Orig. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8597 | 10/22/14 | RNAV (RNP) Z RWY 21, Orig-A. |
| 11–Dec–14 | TN | Knoxville | Knoxville Downtown Island | 4/8608 | 10/22/14 | RNAV (GPS) RWY 26, Orig-A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8609 | 10/22/14 | RNAV (GPS) Y RWY 3, Amdt 2A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8614 | 10/22/14 | RNAV (RNP) Z RWY 3, Orig-A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8637 | 10/22/14 | RNAV (GPS) Y RWY 33, Amdt 3A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8643 | 10/22/14 | RNAV (GPS) Y RWY 15, Amdt 3A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8648 | 10/22/14 | RNAV (RNP) Z RWY 15, Orig-A. |
| 11–Dec–14 | SC | Charleston | Charleston AFB/Intl | 4/8651 | 10/22/14 | ILS OR LOC/DME RWY 33, Amdt 8A. |
| 11–Dec–14 | FL | Destin | Destin-Fort Walton Beach | 4/8942 | 10/21/14 | RNAV (GPS) RWY 32, Amdt 1. |
| 11–Dec–14 | FL | Destin | Destin-Fort Walton Beach | 4/8943 | 10/21/14 | RNAV (GPS) RWY 14, Amdt 2. |
| 11–Dec–14 | PA | Pittsburgh | Allegheny County | 4/9273 | 10/22/14 | ILS OR LOC RWY 10, Amdt 6. |
| 11–Dec–14 | PA | Pittsburgh | Allegheny County | 4/9274 | 10/30/14 | RNAV (GPS) RWY 10, Amdt 4. |
| 11–Dec–14 | PA | Pittsburgh | Allegheny County | 4/9276 | 10/22/14 | ILS OR LOC RWY 28, Amdt 29. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9446 | 10/24/14 | RNAV (GPS) Y RWY 2C, Amdt 1B. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9449 | 10/24/14 | ILS OR LOC/DME RWY 20L, Amdt 6. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9451 | 10/24/14 | ILS OR LOC RWY 20R, Amdt 10B. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9453 | 10/24/14 | ILS OR LOC RWY 2C, Amdt 1B. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9456 | 10/24/14 | RNAV (GPS) Y RWY 20L, Amdt 2. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9460 | 10/24/14 | RNAV (GPS) Y RWY 2L, Amdt 2. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9461 | 10/24/14 | RNAV (GPS) Y RWY 2R, Amdt 2. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9462 | 10/24/14 | RNAV (GPS) Y RWY 20R, Amdt 2B. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9469 | 10/24/14 | RNAV (RNP) Z RWY 20L, Amdt 2. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9470 | 10/24/14 | RNAV (RNP) Z RWY 20R, Amdt 2. |
| 11–Dec–14 | AR | Camden | Harrell Field | 4/9682 | 10/28/14 | RNAV (GPS) RWY 1, Amdt 1. |
| 11–Dec–14 | SC | Aiken | Aiken Muni | 4/9754 | 10/24/14 | ILS OR LOC/DME RWY 7, Orig-B. |
| 11–Dec–14 | SC | Aiken | Aiken Muni | 4/9755 | 10/24/14 | RNAV (GPS) RWY 25, Amdt 1A. |
| 11–Dec–14 | SC | Aiken | Aiken Muni | 4/9756 | 10/24/14 | RNAV (GPS) RWY 7, Amdt 1A. |
| 11–Dec–14 | SC | Aiken | Aiken Muni | 4/9758 | 10/24/14 | NDB RWY 25, Amdt 10A. |
| 11–Dec–14 | TN | Nashville | Nashville Intl | 4/9766 | 10/24/14 | ILS OR LOC RWY 2L, ILS RWY 2L (SA CAT I), ILS RWY 2L (CAT II–III), Amdt 10. |
| 11–Dec–14 | OK | Pryor | Mid-America Industrial | 4/9913 | 10/28/14 | VOR/DME OR GPS A, Orig. |
| 11–Dec–14 | GA | Cochran | Cochran | 4/9948 | 10/22/14 | RNAV (GPS) RWY 11, Amdt 1. |
| 11–Dec–14 | GA | Thomson | Thomson-McDuffie County | 4/9973 | 10/22/14 | ILS OR LOC/NDB RWY 10, Amdt 1. |

[FR Doc. 2014–28237 Filed 12–2–14; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30988 Amdt. No. 3617]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 3, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2014.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on November 7, 2014.

**John Duncan,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 11 DECEMBER 2014**

Blytheville, AR, Arkansas Intl, ILS OR LOC/DME RWY 18, Amdt 2

Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 18, Amdt 3

Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 36, Amdt 3

Blytheville, AR, Arkansas Intl, Takeoff Minimums and Obstacle DP, Amdt 1

Blytheville, AR, Arkansas Intl, VOR RWY 18, Amdt 1, CANCELED

Blytheville, AR, Arkansas Intl, VOR RWY 36, Amdt 1, CANCELED

New Bedford, MA, New Bedford Rgnl, ILS OR LOC RWY 5, Amdt 26

New Bedford, MA, New Bedford Rgnl, LOC BC RWY 23, Amdt 13

New Bedford, MA, New Bedford Rgnl, NDB RWY 5, Amdt 12, CANCELED

New Bedford, MA, New Bedford Rgnl, RNAV (GPS) RWY 5, Amdt 1

New Bedford, MA, New Bedford Rgnl, RNAV (GPS) RWY 23, Amdt 1

Pittsfield, MA, Pittsfield Muni, LOC/DME RWY 26, Amdt 9

Pittsfield, MA, Pittsfield Muni, RNAV (GPS) RWY 8, Amdt 1

Pittsfield, MA, Pittsfield Muni, RNAV (GPS) RWY 26, Amdt 1

Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (GPS) Y RWY 33L, Amdt 4

Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 33L, Amdt 3

South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 5, Amdt 1B

South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 23, Amdt 1B
Falls City, NE, Brenner Field, NDB–A, Amdt 3C
Falls City, NE, Brenner Field, RNAV (GPS) RWY 15, Amdt 1
Falls City, NE, Brenner Field, RNAV (GPS) RWY 33, Amdt 2
Falls City, NE, Brenner Field, Takeoff Minimums and Obstacle DP, Amdt 4
Sussex, NJ, Sussex, RNAV (GPS) RWY 3, Orig-A
Pottstown, PA, Heritage Field, RNAV (GPS) RWY 28, Orig-A
Canadian, TX, Hemphill County, RNAV (GPS) RWY 22, Amdt 2
Gordonsville, VA, Gordonsville Muni, RNAV (GPS) RWY 5, Orig, CANCELED
Gordonsville, VA, Gordonsville Muni, RNAV (GPS) RWY 23, Orig, CANCELED
Gordonsville, VA, Gordonsville Muni, RNAV (GPS)-A, Orig
Gordonsville, VA, Gordonsville Muni, RNAV (GPS)-B, Orig

**Effective 8 JANUARY 2015**

Fairbanks, AK, Fairbanks Intl, ILS OR LOC RWY 2L, ILS RWY 2L (SA CAT I), ILS RWY 2L (CAT II), ILS RWY 2L (CAT III), Amdt 10
Fairbanks, AK, Fairbanks Intl, ILS OR LOC RWY 20R, ILS RWY 20R (SA CAT I), ILS RWY 20R (SA CAT II), Amdt 25
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) RWY 2R, Amdt 1
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) RWY 20L, Amdt 1
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 2L, Amdt 1
Fairbanks, AK, Fairbanks Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Fairbanks, AK, Fairbanks Intl, VOR/DME OR TACAN RWY 20R, Amdt 1
Murrieta/Temecula, CA, French Valley, RNAV (GPS) RWY 18, Amdt 2
Mount Carmel, IL, Mount Carmel Muni, VOR/DME RWY 22, Amdt 10A
Liberal, KS, Liberal Mid-America Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Gonzales, LA, Louisiana Rgnl, RNAV (GPS) RWY 17, Amdt 1B
Gonzales, LA, Louisiana Rgnl, VOR/DME–A, Amdt 2A
Cut Bank, MT, Cut Bank Intl, RNAV (GPS) RWY 14, Orig
Cut Bank, MT, Cut Bank Intl, RNAV (GPS) RWY 32, Orig
Sylva, NC, Jackson County, RNAV (GPS) RWY 33, Orig
Sylva, NC, Jackson County, Takeoff Minimums and Obstacle DP, Orig
Omaha, NE, Eppley Airfield, ILS OR LOC/DME RWY 14R, ILS RWY 14R (SA CAT I), ILS RWY 14R (CAT II), ILS RWY 14R (CAT III), Amdt 5A
Omaha, NE, Eppley Airfield, ILS OR LOC/DME RWY 18, Amdt 9A
Omaha, NE, Eppley Airfield, RNAV (GPS) Y RWY 14R, Amdt 2
Omaha, NE, Eppley Airfield, RNAV (GPS) Y RWY 18, Amdt 3
Omaha, NE, Eppley Airfield, VOR/DME RWY 32L, Amdt 12
Farmingdale, NY, Republic, Takeoff Minimums and Obstacle DP, Amdt 7
Altus, OK, Altus/Quartz Mountain Rgnl, RNAV (GPS) RWY 17, Amdt 1
Altus, OK, Altus/Quartz Mountain Rgnl, RNAV (GPS) RWY 35, Amdt 1
Altus, OK, Altus/Quartz Mountain Rgnl, VOR–A, Orig
Altus, OK, Altus/Quartz Mountain Rgnl, VOR–A, Amdt 4D, CANCELED
Altus, OK, Altus/Quartz Mountain Rgnl, VOR–B, Amdt 1, CANCELED
Oklahoma City, OK, Wiley Post, RNAV (GPS) RWY 17L, Amdt 2
Portland, OR, Portland-Troutdale, NDB OR GPS–A, Amdt 8B, CANCELED
Portland, OR, Portland-Troutdale, RNAV (GPS)-A, Orig
Rapid City, SD, Rapid City Rgnl, ILS OR LOC RWY 32, Amdt 20

RESCINDED: On October 24, 2014 (79 FR 63530), the FAA published an Amendment in Docket No. 30979, Amdt No. 3609, to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries for South Haven, MI, effective November 13, 2014 are hereby rescinded in their entirety:

South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 5, Amdt 1B
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 23, Amdt 1B

[FR Doc. 2014–28245 Filed 12–2–14; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

**[Docket No. USCG–2013–0841]**

**RIN 1625–AA01**

## Anchorage Regulations: Anchorage Grounds, Los Angeles and Long Beach Harbors, California

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is disestablishing Commercial Anchorage "A" and is revising the permission and notification requirements in the regulations for the anchorage grounds of Los Angeles and Long Beach Harbors, California. Commercial Anchorage "A" has become the location of a Submerged Material Storage Site and is no longer usable. Revised permission and notification requirements affect the six commercial anchorages within the breakwater of the Ports of Los Angeles and Long Beach that can accommodate vessels with lengths exceeding 800 feet overall and drafts greater than 40 feet. This revision requires vessels using these deep draft anchorages for more than 48 hours to obtain extended anchorage permission from the Captain of the Port (COTP) Los Angeles-Long Beach. This action will assist the COTP and the Pilots for the Ports of Los Angeles and Long Beach to reduce congestion in the deep draft anchorage grounds within the harbor breakwater.

**DATES:** This rule is effective January 2, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0841. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on the Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room w12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Zachary Bonheim, Waterways Management Division, U.S. Coast Guard District 11, telephone (510) 437–3801, email *zachary.w.bonheim@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

On February 25, 2014, we published a Notice of Proposed Rulemaking (NPRM) entitled, "Anchorage Regulations: Anchorage Grounds, Los Angeles and Long Beach Harbors, California," in the **Federal Register** (79 FR 10438). We received one comment on the NRPM. There was no request for a public meeting. A public meeting was not held.

### B. Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

Section 110.214(b)(1) of 33 CFR establishes Commercial Anchorage "A" within Los Angeles Harbor. Commercial Anchorage "A" is a circular area with a radius of 400 yards, centered in position

33°43′19.2″ N, 118°14′18.5″ W. Since its establishment, Commercial Anchorage "A" has become a Submerged Material Storage Site. It is now encircled by a submerged dike and is no longer usable.

Section 110.214(a)(2) allows vessels to remain anchored for up to 10 consecutive days inside of the Los Angeles and Long Beach harbors before obtaining extended anchorage permission from the COTP. It does not offer any special consideration for the six sub-anchorages that can accommodate vessels with lengths exceeding 800 feet overall and drafts greater than 40 feet.

For the purpose of this rule, designated geographic areas within a commercial anchorage will be known as sub-anchorages. The U.S. Coast Guard is authorized to determine anchorage grounds, and this rule aims to regulate specific vessels that may use areas within these grounds. Sub-anchorages are geographic areas established by the U.S. Coast Guard and displayed on NOAA oceanographic charts, labeled first with the letter of the commercial anchorage, followed by a number. For example; A–1, B–2, etc.

Due to the increasing size of commercial vessels and the growth in shipping traffic, the anchorage grounds inside the breakwater of the Los Angeles and Long Beach harbors are becoming increasingly crowded. Vessels with lengths exceeding 800 feet overall and drafts greater than 40 feet are often compelled to wait outside of the breakwater while other vessels are moved out of deep draft anchorages to accommodate them.

Pilots for the Ports of Los Angeles and Long Beach have recommended that the Coast Guard consider reducing the number of days a vessel may remain anchored in the six deep draft anchorages of Los Angeles and Long Beach harbors, without approval of the COTP. This will aid them in reducing congestion in the deep draft anchorages more effectively.

This rule was recommended by Pilots for the Ports of Los Angeles and Long Beach and has three purposes. The first purpose is to disestablish Commercial Anchorage "A", as it is no longer usable. The second purpose is to identify commercial sub-anchorages B–7, B–9, B–11, D–5, D–6 and D–7 as anchorages that can accommodate vessels with lengths exceeding 800 feet overall and drafts greater than 40 feet within the Ports of Los Angeles and Long Beach. These anchorages are defined by the U.S. Coast Guard, and their coordinates and dimensions are defined below:

| Anchorage | Latitude | Longitude | Radius (yards) |
|---|---|---|---|
| B–7 | 33–43′ 52.0″ N | 118–12′ 47.9″ W | 450 |
| B–9 | 33–43′ 28.5″ N | 118–13′ 10.5″ W | 500 |
| B–11 | 33–43′ 44.5″ N | 118–12′ 17″ W | 450 |
| D–5 | 33–43′ 40.5′ N | 118–10′ 30″ W | 450 |
| D–6 | 33–43′ 40.5′ N | 118–9′ 57.5″ W | 450 |
| D–7 | 33–43′ 40.5′ N | 118–9′ 25″ W | 450 |

The final purpose of this rule is to revise the permission and notification requirements for the six sub-anchorages above by requiring vessels in these anchorages for more than 48 consecutive hours to obtain permission to remain from the COTP. This will reduce congestion in the deep draft anchorages within the breakwater of both ports, and reduce the need for deep draft vessels to wait outside the breakwater as other vessels are moved to accommodate them.

### C. Discussion of Comments, Changes, and the Final Rule

We received one comment on this rule. A request was made to extend the time limit for vessels anchoring within the commercial sub-anchorages B–7, B–9, B–11, D–5, D–6, and D–7, from 48 to 72 hours. After further consideration, we have decided to finalize this proposal without the changes suggested. The process for obtaining COTP permission for a longer anchoring period is not difficult, and the 48 hour window for anchoring will reduce congestion and allow for better management of the deep draft anchorages within the area. When faced with congestion of the port, Los Angeles and Long Beach Harbor pilots are forced to coordinate the movement of multiple deep draft vessels that can only safely navigate and anchor in specific sub-anchorages, as noted above. With the 48 hour restriction in place, vessel traffic and congestion within the small navigable area of the breakwater will be dispersed, ensuring the continuation of commerce and decrease the risk of navigation incidents within this highly trafficked port.

Based on data from the pilots association, the majority of vessels calling upon the Port of Los Angeles/Long Beach do not require more than 48 hours to complete operations. Bunkering vessels are routinely and consistently available between 6 and 24 hours after arrival. The request for a stay of 72 hours is in excess of the average time needed by vessels, and will decrease the efficiency of the pilots, port operations, and limit the number of vessels able to use the specific deep draft anchorages. This extended stay will increase the numbers of vessels waiting in queue of the deep draft anchorages, leading to higher risk of collision, potential damage to property, and additional incidents outside the breakwater. If repairs or additional bunkering time is needed, permission can be granted for vessels to remain past the 48 hour limit on a case by case basis.

The Coast Guard will disestablish Commercial Anchorage "A" in the regulations for the anchorage grounds of Los Angeles and Long Beach Harbors, California in 33 CFR 110.214(b)(1). Commercial Anchorage "A" is a circular area with a radius of 400 yards, centered in position 33°43′19.2″ N, 118°14′18.5″ W, approximately 600 yards to the east of Pier 400. Since its establishment, Commercial Anchorage "A" has become a Submerged Material Storage Site. It is now encircled by a submerged dike and can no longer be used as an anchorage.

The Coast Guard is revising the permission and notification requirements in the regulations for the anchorage grounds of Los Angeles and Long Beach Harbors, California in 33 CFR 110.214(a)(2). Under this rule, no vessel may anchor in deep draft anchorages B–7, B–9, B–11, D–5, D–6 or D–7 within Los Angeles or Long Beach harbors for more than 48 consecutive hours unless extended anchorage permission is obtained from the COTP. These sub-anchorages are the only locations within the breakwater of Los Angeles and Long Beach harbors where vessels with lengths exceeding 800 feet overall and drafts greater than 40 feet can anchor.

The purpose of the 48 hour time requirement is to reduce vessel

congestion in deep draft anchorages B–7, B–9, B–11, D–5, D–6 and D–7. Vessels within these sub-anchorages are required to justify remaining there beyond 48 hours to the COTP, or be prepared to move based on the needs of other vessels and the judgment of the Pilots for the Ports of Los Angeles and Long Beach. Limiting congestion in these anchorages will reduce the need for deep draft vessels to wait outside of the breakwater while other vessels are moved from the inside deep draft anchorages. As shipping volume and the size of vessels making calls to the Ports of Los Angeles and Long Beach continue to grow, maintaining anchorage space for deep draft vessels within the shelter of the breakwater is becoming increasingly important.

This rule maintains the requirement for all vessels that anchor anywhere else within Los Angeles or Long Beach harbors to obtain extended anchorage permission from the COTP if they wish to remain anchored for more than 10 consecutive days. In determining whether extended anchorage permission will be granted (for vessels in any anchorage), consideration will be given, but not necessarily limited to: The current and anticipated demands for anchorage space within the harbor, the requested duration, the condition of the vessel, and the reason for the request.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect minimal additional cost impacts to the maritime industry, because this rule does not impose fees or more specialized requirements to utilize these anchorage grounds. The effect of this rule is not significant, as it removes an obsolete anchorage ground that is no longer used and revises the permission and notification requirements for six of the deep draft anchorage grounds in Los Angeles and Long Beach Harbors, California. The revised permission and notification requirements do not restrict vessels from utilizing these deep draft anchorages. They simply require vessels in these anchorages to obtain permission from the COTP to remain longer than 48 hours. While we recognize that this rule shortens the amount of time that a vessel may remain in the deep draft anchorages B–7, B–9, B–11, D–5, D–6 and D–7 from 10 days to 48 hours before being required to obtain extended anchorage permission from the COTP and may also increase the number of times that a vessel operator may be required to obtain extended anchorage permission, we anticipate this 48-hour notice requirement will not have a significant impact on vessel owners or operators. We further anticipate the 48 hour requirement will provide the pilots and COTP with more accurate and more up-to-date information on vessel movements and will help reduce the need to move vessels out of deep draft anchorages on short notice. This will also assist in minimizing the number of deep draft vessels waiting outside of the breakwater while other vessels are moved from these anchorages to accommodate them. The COTP and pilots for Los Angeles and Long Beach retain their authority to move any vessel inside the breakwater when necessary.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to anchor in the affected areas.

The impact to these entities is not expected to be significant because the only anticipated impact on vessel owners or operators will be the requirement to obtain extended anchorage permission from the COTP if they wish to remain in the deep draft anchorages for more than 48 hours. We expect this 48 hour notice requirement will help toward reducing the need to move vessels out of these deep draft anchorages by providing better awareness of vessel schedules and movements to pilots and the COTP. This rule will reduce congestion, enhance the effectiveness of anchorage management, and increase the availability of deep draft anchorages. It does not hamper the ability of commercial vessels to anchor inside of the Los Angeles and Long Beach harbor breakwater. Disestablishing Commercial Anchorage "A" has no affect on these entities because the anchorage area is no longer usable and has not been for some time.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves disestablishing one unusable anchorage ground and revising the permission and notification requirements for six deep draft anchorage grounds at Los Angeles and Long Beach Harbors, California. The revised requirements will assist the COTP and the pilot stations for the Ports of Los Angeles and Long Beach in managing anchorages inside the harbor breakwater. This rule is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.214, revise paragraph (a)(2)(i) and remove and reserve paragraph (b)(1) to read as follows:

**§ 110.214 Los Angeles and Long Beach Harbors, California.**

(a) * * *

(2) * * *

(i)(A) No vessel may anchor in deep draft sub-anchorages B–7, B–9, B–11, D–5, D–6 or D–7 within Los Angeles or Long Beach harbors for more than 48 consecutive hours unless extended anchorage permission is obtained from the Captain of the Port. These sub-anchorages are defined by the following coordinates and dimensions:

| Anchorage | Latitude | Longitude | Radius (yards) |
|---|---|---|---|
| B–7 | 33–43′ 52.0″ N | 118–12′ 47.9″ W | 450 |
| B–9 | 33–43′ 28.5″ N | 118–13′ 10.5″ W | 500 |
| B–11 | 33–43′ 44.5″ N | 118–12′ 17″ W | 450 |
| D–5 | 33–43′ 40.5′ N | 118–10′ 30″ W | 450 |
| D–6 | 33–43′ 40.5′ N | 118–9′ 57.5″ W | 450 |
| D–7 | 33–43′ 40.5′ N | 118–9′ 25″ W | 450 |

(B) No vessel may anchor anywhere else within Los Angeles or Long Beach harbors for more than 10 consecutive days unless extended anchorage permission is obtained from the Captain of the Port. In determining whether extended anchorage permission will be granted, consideration will be given, but not necessarily limited to: The current and anticipated demands for anchorage space within the harbor, the requested duration, the condition of the vessel, and the reason for the request.

* * * * *

Dated: November 14, 2014.

**J.A. Servidio,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 2014–28449 Filed 12–2–14; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900–AO17**

## Home Improvements and Structural Alterations (HISA) Benefits Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking adopts as final, without change, a proposed rule creating regulations for the Home Improvements and Structural Alterations (HISA) benefits program. Through the HISA benefits program, VA provides monetary benefits to disabled veterans for necessary home improvements and alterations. An increase in the HISA benefits limit was authorized by the Caregivers and Veterans Omnibus Health Services Act of 2010. This rulemaking codifies regulations governing the HISA benefits program and incorporates the increase in HISA benefits authorized by the 2010 Act.

**DATES:** *Effective Date:* This rule is effective January 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Shayla Mitchell, Program Analyst, Rehabilitation and Prosthetic Services (10P4R), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–0366 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On November 20, 2013, VA published a proposed rule in the **Federal Register** (78 FR 69614) that would create regulations governing the HISA benefits program. VA invited the public to submit comments on the proposed rulemaking on or before January 21, 2014. VA received comments from four members of the public. Based on the rationale in the proposed rule and in this document, VA is adopting the proposed rule, with no changes.

Section 1717(a)(1) of title 38, United States Code, authorizes the Secretary of Veterans Affairs (Secretary) to furnish home health services as part of medical services provided to veterans. As a part of home health services, 38 U.S.C. 1717(a)(2) authorizes VA to furnish improvements and structural alterations to the homes of disabled veterans "only as necessary to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities." Section 1717(d) extends these same benefits to certain servicemembers.

VA proposed to establish regulations to govern the HISA benefits program and to codify an increase in HISA benefit limits enacted in the 2010 Act, Public Law 111–163. Additionally, VA proposed to streamline the application process; simplify, reduce, or eliminate administrative burdens on both VA and HISA beneficiaries; and generally improve the administration of the program.

During the comment period, VA received four public comments. A consideration of these comments follows.

One commenter recommended "more restrictions on contractors and vendors with more bids coming from the community." VA believes the process we proposed is consistent with this recommendation because veterans will have complete control over the choice of contractors who complete the improvements or structural alterations to their homes. VA will no longer require bids from multiple contractors, nor will VA be involved in reviewing these bids as part of the application, under the new HISA application and approval procedures in §§ 17.3120 and 17.3125. The commenter may have been making reference to geographic restrictions on contractors by recommending more bids from the community. This regulation puts no geographic restrictions on the contractors that a veteran can choose for a HISA project. The same commenter recommended that contractors provide "more line items with actual costs listed." VA will require an itemized estimate of costs for the improvement or structural alteration under § 17.3120(a)(4). Because veterans have full control over the selection of their contractors, they may request additional details about the costs of a project as they wish. VA makes no changes to the regulation based on this comment.

Another commenter recommended that HISA applications be evaluated by occupational therapists to determine whether lower-cost options to accommodate veterans' needs have been evaluated, and to determine exactly what modifications are required to meet veterans' needs. The commenter notes that occupational therapists are trained to determine whether certain structural adaptations are appropriate for a specific space and to assess adaptive equipment, home safety, and environmental modifications. VA believes that these regulations and HISA program policies are consistent with this recommendation. VA medical facilities employ occupational therapists, physical therapists, and kiniseiotherapists, as well as blind rehabilitation specialists, who evaluate veterans applying for HISA benefits. This evaluation typically occurs when a physician documents within the veteran's prescription that there is a clinical need for that type of an evaluation. These evaluations are usually performed at the local VA medical facility, though some are performed in veterans' homes, depending on individual veterans' needs and the availability of certain therapeutic evaluation facilities at VA medical facilities. The same commenter expressed some concern over prosthetics program representatives inspecting HISA applicants' homes, as in §§ 17.3120(b) and 17.3130(c)(1), because they do not have the same training and expertise as occupational therapists. This comment does not reflect VA's procedures. Prosthetics representatives will only inspect veterans' homes to ensure that the improvements or structural alterations proposed in a beneficiary's application are feasible, or that they have been completed as described in the application so VA can approve the final grant payment. These inspections relate to administration of the grant and protecting grant funds. Prosthetics representatives will not be inspecting homes to make decisions about whether the improvements or structural adaptations will provide medical benefits to the veteran, because those determinations are made by VA's clinical staff, such as physicians, kinesiotherapists, and occupational and physical therapists. VA makes no changes based on this comment.

Two commenters disagreed with VA's statement in the proposed rule that the HISA benefit is not a construction benefit and that VA does not have any responsibility for ensuring the structural integrity or code compliance of alterations. VA stated in the proposed rule that our inspections of HISA grant sites or construction under §§ 17.3120(b) and 17.3130(c)(1) should not be confused with, or interpreted as, code enforcement or structural integrity inspections. The commenters recommended that VA inform HISA beneficiaries about existing construction standards so beneficiaries can provide them to their contractors. Specifically, the commenters recommend referring beneficiaries to the accessibility guidelines in the Americans with Disabilities Act, to section 504 of the Rehabilitation Act, or recommends that VA give beneficiaries the Specially Adapted Housing grant construction manual. The Specially Adapted Housing (SAH) program is administered by the

Veterans Benefits Administration under 38 U.S.C. 2101 through 2107 and is distinct from the HISA program. This recommendation reflects VA's regulations and HISA policy, in part. VA prescribes the specific structural adaptations or improvements that veterans need before veterans apply for a HISA grant. That process ensures that the HISA grant provides veterans with resources that are suited to their abilities. When appropriate, prosthetics representatives may refer HISA beneficiaries and contractors to the SAH program minimum property requirements for construction projects, if the type of improvement or structural alteration being done with HISA grant funds calls for such guidance. Issues of code compliance and the structural soundness of construction, however, are different. VA does not have expertise in the building codes of each jurisdiction in which HISA benefits are used. Contractors performing the work on HISA grants must take responsibility for the structural soundness of the construction work they perform and for complying with their local building codes, and HISA grant funds may be used to ensure that structural alterations or improvements are sound and comply with building codes. We stress that VA's inspections are for the administrative purposes of ensuring that an improvement or structural alteration detailed in an application may be completed at the property, or that a project has been completed and therefore VA should make a final payment. VA makes no changes to the regulation based on these comments.

One commenter objected to the proposed payment process, stating that it would add more steps to the application process and increase the risk of fraud. The commenter stated that veterans would need to submit additional forms for advance payments, then submit additional forms for final payment, instead of VA paying a sum directly to the vendor. VA disagrees with the commenter's characterization of the proposed rule. Requests for advance payments of HISA grant funds will be included in the same application that all veterans must submit to apply for a HISA grant under proposed § 17.3120(a)(2), so there would be no additional paperwork required to request advance payments. Veterans are currently required to submit documentation to receive final payments, and will continue to be required to do so under § 17.3130(b); there is, therefore, no additional paperwork associated with that requirement. VA believes that the process we have proposed for veterans to request advance payments of HISA grant funds creates minimal additional burden for veterans, and that the benefits of making these funds available earlier in the process will outweigh any burden. The same commenter stated that the proposed rule is unclear on whether prepayments would be made to the veteran or the contractor. The commenter said that these prepayments would increase the risk of funds being lost or abused, apparently if the veteran receives the advanced funds, or would increase the risk of jeopardizing grant funds if a contractor is unreliable, apparently if the advance funds are paid directly to the contractor. The commenter believes these risks could lead to increased legal fees for VA if funds are abused, apparently to recover grant funds from veterans or contractors who have misused prepayments. VA disagrees that the process we have proposed for making prepayments creates significant increased risks of fraud or abuse. We do not agree that veterans cannot be trusted to receive funds directly as the HISA grant beneficiaries, nor do we believe that directly paying veterans creates any greater (or less) likelihood of misuse than directly paying the contractor or vendor who performs the work. VA acknowledged in the proposed rule that making advance payments could lead to abuse. The application form, VA Form 10–0103, will require beneficiaries who request advance payments to commit to using advance funds specifically for the HISA project, and to submit a request for final payment upon completion the project. VA would have legal authority to take action against veterans in such cases. If a veteran who receives an advance payment of HISA funds pays a contractor to perform work, but the contractor fails to do so, VA will not take action against the veteran. With these safeguards, we think there is minimal risk of fraud, abuse, or increased fees related to legal actions over advance payments. The commenter recommended, apparently as an alternative to the advance payment process, that VA dedicate a prosthetics representative to each HISA grant to help veterans complete the application process instead. VA prosthetics representatives do review each HISA application and provide assistance to veterans as needed to complete the application process. VA makes no changes based on this comment.

VA received several comments recommending that we increase the deadline for submitting a final payment request under § 17.3130(b) from 60 days to at least 90 days, with one commenter recommending 120 days. Based on our administration of the program, we believe that 60 days is sufficient time to complete a HISA grant project. By the time VA approves the HISA grant application or issues an advance payment, most of the project plan is already in place: the needed improvement or structural alteration must be prescribed and the contractor must be identified so the veteran could submit an itemized estimate of costs with their complete application under § 17.3120. Most projects that use HISA grants should be able to be completed within 60 days of securing the information in the HISA grant application. There is no penalty if the project extends beyond 60 days, either; the regulation at § 17.3130(d) describes the process by which VA will remind veterans to submit a final payment request or request more time to complete the application. In this manner, VA has given veterans flexibility to complete a HISA project, while also providing a reasonable deadline for ensuring that the HISA program can be administered efficiently and that government funds distributed as advance payments are being used properly. VA makes no changes based on these comments, but makes on technical correction. The undesignated center heading and §§ 17.3100 through 17.3130 are added following § 17.2000, and not following § 17.1008 as written in the proposed rule.

**Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following amended information collection requirements. HISA beneficiaries will be required to submit VA Form 10–0103 (which OMB previously approved and assigned OMB control number 2900–0188), a medical prescription, a statement from the homeowner (notarized, if the homeowner is not the beneficiary), an estimate of the costs for the improvement or structural alteration, and a color photograph of the unimproved site. As required by the Paperwork Reduction Act of 1995, VA has submitted these information collections to OMB for its review. OMB approved the amended information collection requirements associated with the final rule under existing OMB control number 2900–0188.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause a significant economic impact on construction companies and their suppliers since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. sections 603 and 604.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/*, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 24, 2014, for publication.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: November 26, 2014.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.*

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

■ 2. Add an undesignated center heading and §§ 17.3100 through 17.3130 to read as follows:

### Home Improvements and Structural Alterations (HISA) Program

Sec.



### Home Improvements and Structural Alterations (HISA) Program

**§ 17.3100 Purpose and scope.**

(a) *Purpose.* The purpose of §§ 17.3100 through 17.3130 is to implement the Home Improvements and Structural Alterations (HISA) program. The purpose of the HISA benefits

program is to provide eligible beneficiaries monetary benefits for improvements and structural alterations to their homes when such improvements and structural alterations:

(1) Are necessary for the continuation of the provision of home health treatment of the beneficiary's disability; or

(2) Provide the beneficiary with access to the home or to essential lavatory and sanitary facilities.

(b) *Scope.* 38 CFR 17.3100 through 17.3130 apply only to the administration of the HISA benefits program, unless specifically provided otherwise.

(Authority: 38 U.S.C. 501, 1717(a)(2))

**§ 17.3101 Definitions.**

For the purposes of the HISA benefits program (§§ 17.3100 through 17.3130):

*Access to essential lavatory and sanitary facilities* means having normal use of the standard structural components of those facilities.

*Access to the home* means the ability of the beneficiary to enter and exit the home and to maneuver within the home to at least one bedroom and essential lavatory and sanitary facilities.

*Beneficiary* means a veteran or servicemember who is awarded or who is eligible to receive HISA benefits.

*Essential lavatory and sanitary facilities* means one bathroom equipped with a toilet and a shower or bath, one kitchen, and one laundry facility.

*HISA benefits* means a monetary payment by VA to be used for improvements and structural alterations to the home of a beneficiary in accordance with §§ 17.3100 through 17.3130.

*Home* means the primary place where the beneficiary resides or, in the case of a servicemember, where the beneficiary intends to reside after discharge from service.

*Improvement or structural alteration* means a modification to a home or to an existing feature or fixture of a home, including repairs to or replacement of previously improved or altered features or fixtures.

*Undergoing medical discharge* means that a servicemember has been found unfit for duty due to a medical condition by their Service's Physical Evaluation Board, and a date of medical discharge has been issued.

(Authority: 38 U.S.C. 501, 1717)

**§ 17.3102 Eligibility.**

The following individuals are eligible for HISA benefits:

(a) A veteran who is eligible for medical services under 38 U.S.C. 1710(a).

(b) A servicemember who is undergoing medical discharge from the Armed Forces for a permanent disability that was incurred or aggravated in the line of duty in the active military, naval, or air service. A servicemember would be eligible for HISA benefits while hospitalized or receiving outpatient medical care, services, or treatment for such permanent disability.

(Authority: 38 U.S.C. 501, 1717)

**§§ 17.3103–17.3104 [Reserved]**

**§ 17.3105 HISA benefit lifetime limits.**

(a) *General.* Except as provided in paragraph (e) of this section, a beneficiary's HISA benefit is limited to the lifetime amount established in paragraph (b), (c), or (d) of this section, as applicable. A beneficiary may use HISA benefits to pay for more than one home alteration, until the beneficiary exhausts his or her lifetime benefit. HISA benefits approved by VA for use in a particular home alteration but unused by the beneficiary will remain available for future use.

(b) *HISA benefits for a service-connected disability, a disability treated "as if" it were service connected, or for veterans with a service-connected disability rated 50 percent or more.* (1) If a veteran:

(i) Applies for HISA benefits to address a service-connected disability;

(ii) Applies for HISA benefits to address a compensable disability treated "as if" it is a service-connected disability and for which the veteran is entitled to medical services under 38 U.S.C. 1710(a)(2)(C) (*e.g.*, a disability acquired through treatment or vocational rehabilitation provided by VA); or

(iii) Applies for HISA benefits to address a nonservice-connected disability, if the beneficiary has a service-connected disability rated at least 50 percent disabling; and

(2) The veteran first applies for HISA benefits:

(i) Before May 5, 2010, then the veteran's lifetime HISA benefit limit is $4,100.

(ii) On or after May 5, 2010, then the veteran's lifetime HISA benefit limit is $6,800.

(c) *HISA benefits for any other disabilities.* If a veteran who is eligible for medical services under 38 U.S.C. 1710(a) applies for HISA benefits to address a disability that is not covered under paragraph (b) of this section, and the veteran first applies for HISA benefits:

(1) Before May 5, 2010, then the veteran's lifetime HISA benefit limit is $1,200; or

(2) On or after May 5, 2010, then the veteran's lifetime HISA benefit limit is $2,000.

(d) *Servicemembers.* If a servicemember is eligible for HISA benefits under § 17.3102(b), and the servicemember first applies:

(1) Before May 5, 2010, then the servicemember's HISA benefit lifetime limit is $4,100; or

(2) On or after May 5, 2010, then the servicemember's HISA benefit lifetime limit is $6,800.

(e) *Increases to HISA benefit lifetime limit.* (1) A veteran who received HISA benefits under paragraph (c) of this section, and who subsequently qualifies for HISA benefits under paragraph (b)(1) of this section on or after May 5, 2010, due to a new award of disability compensation based on service connection or an increased disability rating, may apply for the increased lifetime benefit amount under paragraph (b)(2)(ii) of this section. The increased amount that will be available is $6,800 minus the amount of HISA benefits previously used by the beneficiary.

(2) A veteran who previously received HISA benefits as a servicemember is not eligible for a new lifetime HISA benefit amount based on his or her attaining veteran status, but the veteran may file a HISA claim for any HISA benefit amounts not used prior to discharge. The veteran's subsequent HISA award cannot exceed the applicable award amount under paragraphs (b), (c), or (e)(1) of this section, as applicable, minus the amount of HISA benefits awarded to the veteran while the veteran was a servicemember.

(Authority: 38 U.S.C. 501, 1717)

**§§ 17.3106–17.3119 [Reserved]**

**§ 17.3120 Application for HISA benefits.**

(a) *Application package.* To apply for HISA benefits, the beneficiary must submit to VA a complete HISA benefits application package. A complete HISA benefits application package includes all of the following:

(1) A prescription, which VA may obtain on the beneficiary's behalf, written or approved by a VA physician that includes all of the following:

(i) The beneficiary's name, address, and telephone number.

(ii) Identification of the prescribed improvement or structural alteration.

(iii) The diagnosis and medical justification for the prescribed improvement or structural alteration.

(2) A completed and signed VA Form 10–0103, Veterans Application for

Assistance in Acquiring Home Improvement and Structural Alterations, including, if desired, a request for advance payment of HISA benefits.

(3) A signed statement from the owner of the property authorizing the improvement or structural alteration to the property. The statement must be notarized if the beneficiary submitting the HISA benefits application is not the owner of the property.

(4) A written itemized estimate of costs for labor, materials, permits, and inspections for the home improvement or structural alteration.

(5) A color photograph of the unimproved area.

(b) *Pre-award inspection of site.* The beneficiary must allow VA to inspect the site of the proposed improvement or structural alteration. VA will not approve a HISA application unless VA has either conducted a pre-award inspection or has determined that no such inspection is needed. No later than 30 days after receiving a complete HISA benefits application, VA will conduct the inspection or determine that no inspection is required.

(c) *Incomplete applications.* If VA receives an incomplete HISA benefits application, VA will notify the applicant of the missing documentation. If the missing documentation is not received by VA within 30 days after such notification, VA will close the application and notify the applicant that the application has been closed. The closure notice will indicate that the application may be re-opened by submitting the requested documentation and updating any outdated information from the original application.

(Authority: 38 U.S.C. 501, 1717)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0188.)

**§§ 17.3121–17.3124 [Reserved]**

**§ 17.3125 Approving HISA benefits applications.**

(a) *Approval of application.* VA will approve the HISA benefits application if:

(1) The application is consistent with §§ 17.3100 through 17.3130, and

(2) VA determines that the proposed improvement or structural alteration is reasonably designed to address the needs of the beneficiary and is appropriate for the beneficiary's home, based on documentation provided and/or through a pre-award inspection of the home.

(b) *Notification of approval.* No later than 30 days after a beneficiary submits a complete application, VA will notify the beneficiary whether an application is approved. The notification will:

(1) State the total benefit amount authorized for the improvement or structural alteration.

(2) State the amount of any advance payment, if requested by the beneficiary, and state that the advance payment must be used for the improvements or structural alterations detailed in the application. The notification will also remind beneficiaries receiving advance payment of the obligation to submit the request for final payment upon completion of the construction.

(3) Provide the beneficiary with the notice of the right to appeal if they do not agree with VA's decision regarding the award.

(Authority: 38 U.S.C. 501, 1717, 7104)

**§ 17.3126 Disapproving HISA benefits applications.**

VA will disapprove a HISA benefits application if the complete HISA benefits application does not meet all of the criteria outlined in § 17.3125(a). Notification of the decision provided to the beneficiary will include the basis for the disapproval and notice to the beneficiary of his or her right to appeal.

(Authority: 38 U.S.C. 501, 7104)

**§§ 17.3127–17.3129 [Reserved]**

**§ 17.3130 HISA benefits payment procedures.**

(a) *Advance payment.* If the beneficiary has requested advance payment of HISA benefits in VA Form 10–0103, as provided in § 17.3120(a)(2), VA will make an advance payment to the beneficiary equal to 50 percent of the total benefit authorized for the improvement or structural alteration. VA will make the advance payment no later than 30 days after the HISA benefits application is approved. The beneficiary may receive only one advance payment for each approved HISA benefits application. A beneficiary must use the advance payment only for the improvement or structural alteration described in the application and must submit a final payment request, as defined in paragraph (b) of this section, to document such use after the construction is finished.

(b) *Final payment request.* No later than 60 days after the application is approved or, if VA approved an advance payment, no later than 60 days after the advance payment was made, the beneficiary must submit a complete final payment request to VA for payment. The complete final payment request must include:

(1) A statement by the beneficiary that the improvement or structural alteration, as indicated in the application, was completed;

(2) A color photograph of the completed work; and

(3) Documentation of the itemized actual costs for material, labor, permits, and inspections.

(c) *VA action on final payment request.* (1) Prior to approving and remitting the final payment, VA may inspect (within 30 days after receiving the final payment request) the beneficiary's home to determine that the improvement or structural alteration was completed as indicated in the application. No payment will be made if the improvement or structural alteration has not been completed.

(2) No later than 30 days after receipt of a complete final payment request, or, if VA conducts an inspection of the home under paragraph (c)(1) of this section, no later than 30 days after the inspection, VA will make a determination on the final payment request. If approved, VA will remit a final payment to the beneficiary equal to the lesser of:

(i) The approved HISA benefit amount, less the amount of any advance payment, or

(ii) The total actual cost of the improvement or structural alteration, less the amount of any advance payment.

(3) If the total actual cost of the improvement or structural alteration is less than the amount paid to the beneficiary as an advance payment, the beneficiary will reimburse VA for the difference between the advance payment and the total actual costs.

(4) After final payment is made on a HISA benefits application, the application file will be closed and no future HISA benefits will be furnished to the beneficiary for that application. If the total actual cost of the improvement or structural alteration is less than the approved HISA benefit, the balance of the approved amount will be credited to the beneficiary's remaining HISA benefits lifetime balance.

(d) *Failure to submit a final payment request.* (1) If an advance payment was made to the beneficiary, but the beneficiary fails to submit a final payment request in accordance with paragraph (b) of this section within 60 days of the date of the advance payment, VA will send a notice to remind the beneficiary of the obligation to submit the final payment request. If the beneficiary fails to submit the final payment request or to provide a suitable update and explanation of delay within 30 days of this notice, VA may take

appropriate action to collect the amount of the advance payment from the beneficiary.

(2) If an advance payment was not made to the beneficiary and the beneficiary does not submit a final payment request in accordance with paragraph (b) of this section within 60 days of the date the application was approved, the application will be closed and no future HISA benefits will be furnished to the beneficiary for that application. Before closing the application, VA will send a notice to the beneficiary of the intent to close the file. If the beneficiary does not respond with a suitable update and explanation for the delay within 30 days, VA will close the file and provide a final notice of closure. The notice will include information about the right to appeal the decision.

(e) *Failure to make approved improvements or structural alterations.* If an inspection conducted pursuant to paragraph (c)(1) of this section reveals that the improvement or structural alteration has not been completed as indicated in the final payment request, VA may take appropriate action to collect the amount of the advance payment from the beneficiary. VA will not seek to collect the amount of the advance payment from the beneficiary if the beneficiary provides documentation indicating that the project was not completed due to the fault of the contractor, including bankruptcy or misconduct of the contractor.

(Authority: 38 U.S.C. 501, 1717)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0188.)

[FR Doc. 2014–28373 Filed 12–2–14; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 52, and 97

[EPA–HQ–OAR–2009–0491; FRL–9919–71–OAR]

RIN 2060–AS40

### Rulemaking To Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter

**AGENCY:** Environmental Protection Agency.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the *Code of Federal Regulations* (CFR) to correctly reflect the compliance deadlines for the Cross-State Air Pollution Rule (CSAPR) as revised by the effect of the action of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) granting the EPA's motion to lift the previous stay of CSAPR and delay (toll) its deadlines by three years. With these ministerial amendments, the CFR text will correctly indicate that CSAPR's Phase 1 emissions budgets apply in 2015 and 2016 and that CSAPR's Phase 2 emissions budgets and assurance provisions apply in 2017 and beyond. The ministerial amendments similarly correct dates in the CFR text related to specific activities required or permitted under CSAPR by regulated sources, the EPA, and states, as well as dates related to the sunsetting of the Clean Air Interstate Rule (CAIR) upon its replacement by CSAPR. The amendments are necessary to clarify the timing of requirements and elections under CSAPR as shown in the CFR text so that compliance can begin in an orderly manner on January 1, 2015, consistent with the Court's order. The EPA is also taking comment on the amendments being made in this interim final rule and will consider whether to retain these revisions as promulgated or whether further revisions are necessary to make the CSAPR compliance deadlines consistent with the Court's order.

**DATES:** This final rule is effective on December 3, 2014. The EPA will consider comments on this interim final rule received on or before February 2, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0491, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- Email: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–9744.
- Mail: EPA Docket Center, Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attn: Docket ID No. EPA–HQ–OAR–2009–0491.
- Hand delivery: EPA Docket Center, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attn: Docket ID No. EPA–HQ–OAR–2009–0491. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0491. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The EPA is including this action in Docket ID No. EPA–HQ–OAR–2009–0491, which is also the docket for the original CSAPR rulemaking and other related rulemakings. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for

the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Beth A. Murray, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9115; email address: *murray.beth@epa.gov*. Electronic copies of this document can be accessed through the EPA Web site at: *http://www.epa.gov/airmarkets*.

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Entities regulated by CSAPR are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

| Category | NAICS * code | Examples of potentially regulated industries |
|---|---|---|
| Industry | 221112 | Fossil fuel electric power generation. |

* North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. This table lists the types of entities of which the EPA is now aware that could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by CSAPR, you should carefully examine the applicability provisions in 40 CFR 97.404, 97.504, 97.604, and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Judicial review of this rule is available only by filing a petition for review in the D.C. Circuit on or before February 2, 2015. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of EPA final action under the CAA that is "nationally applicable" or that the Administrator determines is of "nationwide scope or effect" is available only in the D.C. Circuit. Because this rule amends regulations that apply to sources in 28 states, it is "nationally applicable" within the meaning of section 307(b)(1). For the same reason, the Administrator determines that this rule is of "nationwide scope or effect" for purposes of section 307(b)(1). CAA section 307(b)(1) also provides that filing a petition for reconsideration by the Administrator of this rule does not affect the finality of the rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The following outline is provided to aid in locating information in this preamble.



## I. Overview

The EPA issued the Cross-State Air Pollution Rule (CSAPR) [1] in July 2011 to address CAA requirements concerning interstate transport of air pollution and to replace the previous Clean Air Interstate Rule (CAIR) which the D.C. Circuit remanded to the EPA for replacement.[2] Following the original rulemaking, CSAPR was amended by three further rules known as the Supplemental Rule,[3] the First Revisions Rule,[4] and the Second Revisions Rule.[5] As amended, CSAPR requires 28 states to limit their state-wide emissions of sulfur dioxide ($SO_2$) and/or nitrogen oxides ($NO_X$) in order to reduce or eliminate the states' unlawful contributions to fine particulate matter and/or ground-level ozone pollution in other states. The emissions limitations are defined in terms of maximum state-wide "budgets" for emissions of annual $SO_2$, annual $NO_X$, and/or ozone-season $NO_X$ by each state's large electricity generating units (EGUs). The emissions budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets originally scheduled to apply to emissions in 2012 and 2013 and the Phase 2 budgets originally scheduled to apply to emissions in 2014 and later years.

As the mechanism for achieving compliance with the emissions limitations, CSAPR establishes federal implementation plans (FIPs) that require large EGUs in each affected state to participate in one or more new emissions trading programs that supersede the existing CAIR emissions trading programs. Interstate trading of CSAPR's emission allowances is permitted, but the rule includes "assurance provisions" designed to ensure that individual states' emissions in each Phase 2 compliance period do not exceed the states' respective emissions budgets for that period by more than specified "variability limits."

CSAPR allows states to elect to revise their state implementation plans (SIPs) to modify or replace the FIPs while continuing to rely on the rule's trading programs for compliance with the emissions limitations, and establishes certain requirements and deadlines

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[2] *See North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir.), *modified*, 550 F.3d 1176 (D.C. Cir. 2008).

[3] Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone, 76 FR 80760 (December 27, 2011).

[4] Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 77 FR 10324 (February 21, 2012).

[5] Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 77 FR 34830 (June 12, 2012).

related to those optional SIP revisions.[6] The rule also contains provisions that sunset CAIR compliance requirements on a schedule coordinated with the implementation of CSAPR compliance requirements.

Certain industry and state and local government petitioners challenged CSAPR in the D.C. Circuit and filed motions seeking a stay of the rule pending judicial review.[7] On December 30, 2011, the Court granted a stay of the rule, ordering the EPA to continue administering CAIR on an interim basis.[8] In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims, but on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.[9] Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay remained in place and the EPA has continued to implement CAIR. Following the Supreme Court decision, in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings are held to resolve petitioners' remaining claims, the EPA filed a motion asking the D.C. Circuit to lift the stay and to toll by three years all CSAPR compliance deadlines that had not passed as of the date of the stay order.[10] On October 23, 2014, the Court granted the EPA's motion.[11]

This action makes ministerial amendments to the dates in the CSAPR regulatory text in 40 CFR parts 51, 52, and 97 to clarify how the EPA will implement the rule consistent with the D.C. Circuit's order lifting the stay and tolling the rule's deadlines. Generally, this action tolls by three calendar years dates and years in the regulatory text as previously amended that had not passed as of December 30, 2011, the date of the stay order.[12] The ministerial amendments restore parties and the rule to the status that would have existed but for the stay albeit three years later, preserve the rule's internal consistency, render moot questions as to whether the Court's order might not have tolled some of the individual dates being amended, and provide clarity to stakeholders and the public, thereby permitting orderly implementation of the rule.

The most fundamental amendments make clear that, consistent with the Court's order, compliance with CSAPR's Phase 1 emissions budgets is now required in 2015 and 2016 (instead of 2012 and 2013) and compliance with the rule's Phase 2 emissions budgets and assurance provisions is now required in 2017 and beyond (instead of 2014 and beyond).[13] Other amendments toll specific deadlines for sources to certify monitoring systems and to start reporting emissions, for the EPA to allocate and record emission allowances, and for states to take optional steps to modify or replace their CSAPR FIPs through SIP revisions. Dates are also tolled in the regulatory provisions that sunset CAIR upon its replacement by CSAPR, and a new deadline is set for removal of CAIR $NO_X$ allowances from allowance tracking system accounts.[14] The EPA's authority to issue these ministerial amendments is not affected by the continuation of proceedings at the D.C. Circuit to resolve petitioners' remaining claims regarding CSAPR. No regulatory text is amended other than dates and no substantive changes to CSAPR are being made. Section II of this notice provides additional information about the specific amendments.

As permitted under section 307(d)(1) of the CAA where good cause exists, these amendments to CSAPR's dates are being promulgated as a final rule without prior notice or opportunity for public comment, and the amendments are effective immediately upon publication of this notice in the **Federal Register**. At the same time, the EPA is also seeking comment on the content of the amendments and the consistency of the revisions with the Court's order granting the EPA's motion to lift the stay and toll CSAPR compliance deadlines by three years. The EPA is not reopening for comment any provisions of CSAPR other than the dates and years amended in this interim final rule. The EPA will consider any comments received and issue a final rule that either confirms these revisions or makes any further revisions that may be needed for implementation on the revised compliance schedule. Section III of this notice provides additional information on this rulemaking procedure and on the EPA's findings of good cause to issue an immediately effective final rule without prior notice or opportunity for public comment.

## II. Specific Amendments to CSAPR Dates

This action amends dates appearing in regulatory text in 40 CFR parts 51, 52, and 97. Most of the amendments, addressing virtually all aspects of implementation of the CSAPR FIPs and trading programs, toll dates in the CSAPR trading program provisions in subparts AAAAA, BBBBB, CCCCC, and DDDDD of part 97 and in the additional CSAPR FIP provisions in §§ 52.38 and 52.39. The other amendments,

[6] CSAPR does not restrict states' ability to adopt SIP revisions to meet their emissions limitations through mechanisms other than the rule's trading programs.

[7] Separate challenges seeking judicial review of the Supplemental Rule, the First Revisions Rule, and the Second Revisions Rule are currently being held in abeyance at the D.C. Circuit.

[8] Order, Document #1350421, *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. issued Dec. 30, 2011). Although the Court did not explicitly address the stay order's effect on requirements established by the Supplemental Rule, the EPA issued a notice indicating that, because of the close relationship between CSAPR as originally promulgated and the Supplemental Rule, the Agency would treat both rules in the same manner and would not expect covered sources in the states addressed by the Supplemental Rule to comply with the Supplemental Rule's requirements for the duration of the stay. 77 FR 5710 (February 6, 2012). As discussed below, now that the Court has lifted the stay, the EPA expects covered sources in states addressed by the Supplemental Rule to comply with the Supplemental Rule's requirements consistent with the new compliance schedule established by the Court's order and this interim final rule.

[9] *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014), *reversing* 696 F.3d 7 (D.C. Cir. 2012).

[10] Respondents' Motion to Lift the Stay Entered on December 30, 2011, Document #1499505, *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. filed June 26, 2014) [EPA Motion]; *see also* Reply in Further Support of Motion to Lift Stay, Document #1508914, *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. filed August 22, 2014) [EPA Reply]. Both documents are available in the docket.

[11] Order, Document #1518738, *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. issued Oct. 23, 2014).

[12] As discussed in section II of this preamble, the amendments also toll certain dates in the regulatory text before December 30, 2011, that are used to establish deadlines occurring after December 30, 2011.

[13] The EPA is also administratively converting the 2012-vintage and 2013-vintage CSAPR emission allowances previously recorded in tracking system accounts into 2015-vintage and 2016-vintage allowances, respectively. In light of the Court's order tolling compliance deadlines and the applicable Phase 1 and Phase 2 emissions budget periods, and given the need for the vintages of the rule's emission allowances to correctly reflect the revised emissions budget periods, the EPA considers this one-time conversion to be a reasonable exercise of the Agency's plenary authority under 40 CFR 97.427, 97.527, 97.627, and 97.727 to correct errors in CSAPR tracking system accounts.

[14] The EPA removed CAIR annual $NO_X$ and ozone-season $NO_X$ allowances from tracking system accounts before the stay, as required under the rule, but then restored the allowances to the accounts following the Court's order to continue implementing CAIR during the stay. CSAPR does not call for removal of CAIR $SO_2$ allowances, which are the same $SO_2$ allowances used in the Title IV Acid Rain Program.

addressing the sunsetting of CAIR obligations and the CAIR trading programs, toll or otherwise reset dates in scattered sections of parts 51 and 52. No regulatory text other than dates is amended and no substantive changes to CSAPR are being made. The remainder of this section discusses the functions of the various dates being changed and identifies the specific CFRs being amended.

The EPA interprets the Court's order lifting the stay as already tolling CSAPR deadlines that had not passed as of the date of the Court's previous stay order, with the consequence that the corresponding regulatory text amendments in this action do not alter legal requirements or options but merely amend regulatory text to accurately reflect the timing of legal requirements and options as revised by the Court. With respect to the possibility that some of the dates amended in this action might not have been tolled by the Court's order, all of the date changes are required to serve the purpose of the rule—to address states' interstate transport obligations in an efficient and equitable manner—and the purpose of the Court's order—to allow the rule to be implemented in accordance with the EPA's motion. The rule's various dates are elements of a carefully integrated design, and uncoordinated changes could disrupt that design and lead to inefficient and inequitable results. Therefore, to the extent that any of the date changes in this action may be outside the scope of the tolling already ordered by the Court, those changes are nevertheless necessary to provide for efficient, equitable, and orderly implementation of the rule consistent with the Court's order. The necessity of specific date changes is further discussed below.

*A. Emissions Limitations and Assurance Provisions*

The most fundamental amendments in this action toll the years in which compliance with CSAPR's emissions limitations and assurance provisions is required, as well as the years in which the rule's Phase 1 and Phase 2 emissions budgets, Phase 1 and Phase 2 "set-asides," [15] and Phase 2 variability limits apply. The compliance period definitions drive many of the rule's specific requirements, and the budget applicability dates are key specifications affecting the rule's stringency. These date changes were explicitly requested and discussed in the EPA's motion to lift the stay and toll compliance deadlines by three years.[16] As explained in the motion, tolling these deadlines by three years returns the rule and parties to the status quo that would have existed but for the stay, provides parties with sufficient time to prepare for implementation, and avoids unnecessary regulatory burden by retaining a calendar-year schedule for the rule's annual trading programs. This rule makes no substantive changes to the emissions limitations or assurance provisions other than the revision of the deadlines.

The EPA also explained in the motion that CSAPR would be implemented as previously amended by the Supplemental Rule, the First Revisions Rule, and the Second Revisions Rule, and that dates first established or amended in those later rulemakings would also be tolled.[17] Tolling of these dates is necessary to preserve CSAPR's internal consistency and to provide for efficient and equitable implementation. For example, the Supplemental Rule established dates specifying the applicable compliance periods for the Phase 1 and Phase 2 ozone-season emissions budgets, set-asides, and variability limits that the Supplemental Rule established for five states.[18] If dates first established by the Supplemental Rule were not tolled, in 2015 and 2016 these five states would be subject to Phase 2 emissions budgets while all other states would be subject to Phase 1 emissions budgets, an inequitable outcome. In another example, the First Revisions Rule deferred applicability of CSAPR's assurance provisions from Phase 1 to Phase 2 in order to encourage greater trading activity during Phase 1 and thereby ensure a smooth transition from CAIR.[19] If dates amended by the First Revisions Rule were not tolled from their previously amended starting points, the assurance provisions would apply in 2015, contrary to the rationale supporting their prior deferral until Phase 2.

The date changes relating to the compliance deadlines and applicable periods for the rule's emissions limitations and assurance provisions are reflected in amendments to the following sections of 40 CFR:

- Sections 97.406(c)(3)(i), 97.506(c)(3)(i), 97.606(c)(3)(i), and 97.706(c)(3)(i) (applicable periods for emissions limitations);
- Sections 97.406(c)(3)(ii), 97.506(c)(3)(ii), 97.606(c)(3)(ii), and 97.706(c)(3)(ii) (applicable periods for assurance provisions);
- Sections 97.410(a), 97.510(a), 97.610(a), and 97.710(a) (applicable periods for Phase 1 and Phase 2 emissions budgets and set-asides);
- Sections 97.410(b), 97.510(b), 97.610(b), and 97.710(b) (applicable periods for Phase 2 variability limits); and
- Sections 97.425(b)(1), 97.525(b)(1), 97.625(b)(1), and 97.725(b)(1) (assurance provision administration deadlines).

*B. Monitoring System Certification and Emissions Reporting*

Several amendments in this action toll CSAPR dates that define deadlines by which owners and operators of affected units must meet monitoring system certification requirements and begin submitting quarterly emissions reports. These date changes are necessary to coordinate the timing of these specific requirements with the revised timing of the rule's emissions limitations and to avoid requiring sources to engage in certification and emissions reporting activities before those activities serve a useful purpose. The EPA's motion indicated that the deadlines for CSAPR's monitoring and reporting obligations would be tolled if the Court granted the motion.[20] This rule makes no substantive changes to the monitoring and reporting requirements other than the revision of the deadlines.

The amendments to the certification and reporting deadlines toll several dates in the regulatory text earlier than December 30, 2011. The reason for tolling these dates is that their function in the rule is to define deadlines originally scheduled to occur after December 30, 2011. Specifically, the original regulatory text provides that units in operation for at least six months before implementation of the rule's first emissions limitations—defined in the existing regulatory text as "unit[s] that commence[] commercial operation before July 1, 2011"—become subject to reporting obligations for annual emissions occurring as of January 1, 2012, and are required to complete monitoring system certification by that same date.[21] In contrast, units in

[15] CSAPR sets aside portions of each state's emissions budgets for potential allocation to new units in the state. For states with areas of Indian country within their borders, the rule establishes additional set-asides for new units in those areas.

[16] *See, e.g.*, EPA Motion at 1, 14–16, 18.

[17] *See, e.g.*, EPA Motion at 14, 16–17.

[18] The five states with emissions limitations established in the Supplemental Rule are Iowa, Michigan, Missouri, Oklahoma, and Wisconsin.

[19] *See* 77 FR 10324, 10330–32 (February 21, 2012).

[20] *See* EPA Motion at 14 and note 5.

[21] *See, e.g.*, 40 CFR 97.430(b)(1) and 97.434(d)(1)(i). The analogous compliance deadline in the original regulatory text for requirements related to ozone-season $NO_X$ emissions is May 1, 2012. *See* 40 CFR 97.530(b)(1) and 97.534(d)(1)(i) and (2)(ii)(A).

operation for less than six months before implementation of the rule's first emission limitations—defined in the existing regulatory text as "unit[s] that commence[] commercial operation on or after July 1, 2011"—are given potentially later deadlines.[22] Similarly, because the reporting deadlines for the newer units are defined in part by reference to events that could have occurred before implementation of the rule's first emissions limitations, in order to avoid creation of reporting deadlines before January 1, 2012, the existing regulatory text contains language providing that reporting obligations do not apply with respect to "the third or fourth quarter of 2011."[23] This action amends these 2011 dates, changing them to 2014 dates consistent with the change in initial implementation of the rule's emissions limitations from 2012 to 2015 as ordered by the Court. If these amendments were not made, the regulatory text could require some sources commencing commercial operation on or after July 1, 2011, and before January 1, 2015, to begin reporting under CSAPR prior to 2015, a result that would be unnecessary, inefficient, inequitable, and inconsistent with the Court's order.

The date changes related to CSAPR's compliance deadlines for monitoring system certification and the applicable periods for emissions reporting are reflected in amendments to the following sections of 40 CFR:

- Sections 97.430(b)(1), 97.530(b)(1), 97.630(b)(1), and 97.730(b)(1) (certification deadlines for units that commence commercial operation at least six months before the first compliance period);
- Sections 97.430(b)(2), 97.530(b)(2)–(3), 97.630(b)(2), and 97.730(b)(2) (certification deadlines for newer units);
- Sections 97.434(d)(1)(i), 97.534(d)(1)(i) and (2)(ii)(A), 97.634(d)(1)(i), and 97.734(d)(1)(i) (applicable periods for emissions reporting by units that commence commercial operation at least six months before the first compliance period); and
- Sections 97.434(d)(1)(ii), 97.534(d)(1)(ii) and (2)(ii)(B), 97.634(d)(1)(ii), and 97.734(d)(1)(ii) (applicable periods for emissions reporting by newer units).

### *C. Allocation and Recordation of Emission Allowances*

Some of the amendments in this action toll dates defining CSAPR deadlines by which the EPA must allocate and record emission allowances. The date changes are necessary to coordinate these deadlines with the rule's compliance deadlines as revised by the Court's order and to preserve states' opportunities under the rule to substitute their own preferred allowance allocations for the EPA's default allocations. More specifically, to facilitate allowance trading and compliance planning activities, the rule's recordation deadlines require recordation of most CSAPR allowances up to four years in advance of the respective compliance periods. The rule also establishes default procedures by which the EPA allocates allowance quantities equal to each state's emissions budgets among the EGUs in the state, but after the first compliance year the rule permits states to replace the EPA's default allocations for most units through SIP revisions, as discussed below.[24] States' opportunities to replace the default allocations extend only to allowances that have not yet been recorded. If the dates in the regulatory text defining the recordation deadlines were not tolled consistent with the revised compliance deadlines established by the Court's order, the unrevised recording deadlines could unnecessarily prevent states from controlling the allocations of allowances for certain compliance periods because the allowances would already have been recorded. This rule makes no substantive changes to the allowance allocation and recordation provisions other than the revision of the deadlines.

The EPA notes that the allocation date amendments include tolling a particular phrase from "after 2011" to "after 2014".[25] The phrase concerns allowance allocations to units that cease operations, and the effect of the change is that by default (*i.e.*, unless the state revises the allocations) a retiring unit will continue to receive allocations of allowances for five compliance periods after the unit's last year of operation, which in the case of a unit retiring between 2010 and 2014 would be the rule's first five compliance periods from 2015 through 2019. The phrase "after 2011" indicates a date after December 30, 2011, making this a deadline that had not passed as of the date of the stay, and the EPA's reply regarding the motion to lift the stay explicitly confirmed the intention to toll these specific dates.[26]

The EPA also notes that some of the recordation deadlines being amended were initially established in the Supplemental Rule. These deadlines apply to the recordation of allowances for CSAPR's first two compliance periods and affect only the ozone-season allowances for the five states covered by the Supplemental Rule.[27] If the recordation deadlines established in the Supplemental Rule were not tolled—specifically, the March 26, 2012, recordation deadline for allowances for the rule's second compliance year—while the analogous deadlines established for other states in the original CSAPR rulemaking were tolled, these five states alone would lack the opportunity to revise allowance allocations for the rule's second compliance period, an inappropriate, unnecessary, and inequitable result.

The date changes related to administrative deadlines and applicable periods for allocation and recordation of allowances are reflected in amendments to the following sections of 40 CFR:

- Sections 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1) (applicable periods for default allowance allocations to existing units);
- Sections 97.411(a)(2), 97.511(a)(2), 97.611(a)(2), and 97.711(a)(2) (applicable periods for default allowance allocations to retired units);
- Sections 97.411(b)(1), 97.511(b)(1), 97.611(b)(1), and 97.711(b)(1) (administrative deadlines for default allowance allocations from new unit set-asides);
- Sections 97.411(b)(2), 97.511(b)(2), 97.611(b)(2), and 97.711(b)(2) (administrative deadlines for allowance allocations from Indian country new unit set-asides);
- Sections 97.411(c)(1), 97.511(c)(1), 97.611(c)(1), and 97.711(c)(1) (applicable periods for correction of incorrect allowance allocations);
- Sections 97.412(a), 97.512(a), 97.612(a), and 97.712(a) (applicable periods for default allowance allocations from new unit set-asides);
- Sections 97.412(b), 97.512(b), 97.612(b), and 97.712(b) (applicable periods for allocations from Indian country new unit set-asides);
- Sections 97.421(a)–(f), 97.521(a)–(f), 97.621(a)–(f), and 97.721(a)–(f) (administrative deadlines and applicable periods for allowance recordation for existing units); and
- Sections 97.421(g)–(i), 97.521(g)–(i), 97.621(g)–(i), and 97.721(g)–(i)

[22] *See, e.g.*, 40 CFR 97.430(b)(2) and 97.434(d)(1)(ii).

[23] *See, e.g.*, 40 CFR 97.434(d)(1)(ii).

[24] States are not permitted to revise the recordation provisions or the provisions governing allocation of allowances from the Indian country new unit set-asides.

[25] *See, e.g.*, 40 CFR 97.411(a)(2).

[26] *See* EPA Reply, attached Supplemental Declaration of Reid Harvey, ¶7.

[27] *See* 40 CFR 97.521(a)–(b).

(administrative deadlines and applicable periods for allowance recordation from new unit set-asides and Indian country new-unit set-asides).

*D. Optional SIP Revisions*

Some of the amendments in this action toll deadlines for filings by states that elect to submit SIP revisions to modify or replace the CSAPR FIPs in order to replace the default allowance allocations. The rule sets deadlines for submission of these SIP revisions (and for associated notifications) that are coordinated with the rule's deadlines for allowance recordation. Tolling of these dates is necessary to preserve this coordination and to restore to states the same SIP revision opportunities that would have existed if the rule had not been stayed. The EPA's reply regarding the motion to lift the stay explained in detail the intention for these deadlines to be tolled if the Court granted the motion.[28] This rule makes no substantive changes to the provisions providing optional SIP revisions other than the revision of the deadlines.

As indicated in the EPA's reply, only the SIP revision and notification deadlines that had not passed as of the date of the stay would be tolled. This restriction applies to a CSAPR deadline of October 17, 2011—which is not being tolled—for states to notify the EPA of their intent to submit SIP revisions modifying allowance allocations for the rule's second compliance period (except with respect to obligations established in the Supplemental Rule). For the twelve states that notified the EPA by that deadline of their intent to submit SIP revisions modifying allowance allocations for the second compliance year, the deadline for submission of those SIP revisions is being tolled from April 1, 2012, to April 1, 2015.[29] The states that did not provide notification prior to the October 17, 2011, deadline will not have an opportunity to modify allowance allocations for that compliance year. Pursuant to a November 7, 2011, deadline in the rule—which is also not being tolled—the EPA duly recorded allowances for those states using the EPA's default allocations, and removal of those allowances from tracking system accounts to provide states with a new reallocation opportunity would be inequitable because allowance trades affecting these allowances have already taken place. Separate deadlines applicable to all states relating to optional SIP revisions to revise allowance allocations for later compliance periods are being tolled.[30]

The EPA notes that some of the SIP revision-related deadlines being amended were initially established in the Supplemental Rule. These deadlines apply to SIP revisions replacing default allowance allocations for CSAPR's second compliance period but affect only the ozone-season allowances for the five states covered by the Supplemental Rule.[31] Specifically, the regulatory text as currently amended provides that these states must notify the EPA by March 6, 2012, of their intent to modify allowance allocations for the rule's second compliance year and must submit the corresponding SIP revisions by October 1, 2012. If these deadlines established in the Supplemental Rule were not tolled, while the April 1, 2012, deadline described above for other states was tolled, these five states alone would lack the opportunity to revise allowance allocations for the rule's second compliance period, an inappropriate, unnecessary, and inequitable result.

The date changes related to notification and SIP revision filing deadlines for states' that elect to modify or replace the FIPs are reflected in amendments to the following sections of 40 CFR:

- Sections 52.38(a)(3) and (b)(3), and 52.39(d) and (g) (SIP revisions to modify the FIP default allowance allocations for the second compliance year);
- Sections 52.38(a)(4) and (b)(4), and 52.39(e) and (h) (SIP revisions to modify the FIP default allowance allocations for the third compliance year and beyond);
- Sections 52.38(a)(5) and (b)(5), and 52.39(f) and (i) (SIP revisions to replace the FIPs for the third compliance year and beyond); and
- Sections 97.421(b), 97.521(b), 97.621(b), and 97.721(b) (interaction of SIP revision-related filing deadlines and allowance recordation deadlines for the second compliance year).

*E. Sunsetting of CAIR*

The remaining amendments in this action toll or reset deadlines associated with the sunsetting of CAIR. In 2008, the DC Circuit remanded CAIR to the EPA for replacement.[32] Since that remand, the EPA has continued to implement CAIR in accordance with that and subsequent Court orders, first while CSAPR was developed and in the period leading up to its planned 2012 implementation, and then while CSAPR was stayed. When CSAPR is implemented in 2015, CAIR will sunset in compliance with the terms of the 2008 remand. The amendments in this action toll the dates in the existing regulatory text reflecting the originally planned 2012 sunset, replacing them with dates reflecting the 2015 sunset consistent with the Court's order lifting the stay of CSAPR.

Several additional CAIR-related amendments reset deadlines for removal of CAIR $NO_X$ allowances from tracking system accounts. To prevent possible confusion over how many allowances are available for CSAPR compliance after CSAPR supersedes CAIR, CSAPR as originally issued provided for post-2011-vintage CAIR $NO_X$ allowances to be removed from tracking system accounts on November 7, 2011 (before the stay). The EPA removed the allowances by that deadline but then restored the allowances to the accounts in order to allow CAIR to continue to be implemented consistent with the Court's stay order. This action sets a new deadline of March 3, 2015 for removal of post-2014-vintage CAIR $NO_X$ allowances, serving the original purpose of avoiding confusion over the number of allowances available for CSAPR compliance. The date changes related to the sunsetting of CAIR and removal of CAIR $NO_X$ allowances from tracking system accounts are reflected in amendments to the following sections of 40 CFR:

- Section 51.121(r)(2) ($NO_X$ SIP Call obligations);
- Sections 51.123(ff) and 51.124(s) (CAIR obligations);
- Sections 52.35(f) and 52.36(e) (CAIR FIPs);
- Sections 52.440(c) and 52.441(b) (Delaware);
- Sections 52.484(c) and 52.485(b) (District of Columbia);
- Section 52.984(c) (Louisiana);
- Sections 52.1186(c) and 52.1187(b) (Michigan);
- Sections 52.1584(c) and 52.1585(b) (New Jersey);
- Sections 52.2240(c) and 52.2241(b) (Tennessee);
- Sections 52.2283(b) and 52.2284(b) (Texas); and
- Sections 52.2587(c) and 52.2588(b) (Wisconsin).

[28] *See* EPA Reply, attached Supplemental Declaration of Reid Harvey, ¶¶8–11.

[29] The twelve states are Alabama, Florida, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New York, Ohio, Pennsylvania, and South Carolina.

[30] For example, the deadline to submit SIP revisions addressing allowance allocations for CSAPR's third and fourth compliance periods as revised by the Court's order (*i.e.*, 2017 and 2018) is being tolled from December 1, 2012, to December 1, 2015.

[31] *See* 40 CFR 52.38(b)(3)(v).

[32] *North Carolina* v. *EPA*, 550 F.3d 1176, 1178 (DC Cir. 2008).

## III. Legal Authority, Administrative Procedures, and Findings of Good Cause

The EPA's authority to issue the amendments in this action is provided by CAA sections 110 and 301 (42 U.S.C. 7410 and 7601).

The EPA is taking this action as a final rule without prior notice or opportunity for public comment because the EPA finds that the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) good cause exemption applies here. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(B).

While CAA section 307(d)(1)(B) also provides that, in general, actions to revise FIPs under CAA section 110(c) are subject to the procedural requirements set forth in section 307(d), including publication of a notice of proposed rulemaking in the **Federal Register** and provision of an opportunity for public comment, section 307(d)(1) also provides that section 307(d) does not apply in the case of any rule or circumstance referred to in APA section 553(b)(B). The EPA finds for good cause under APA section 553(b)(B) that provision of such notice and opportunity for comment in this case is impracticable or unnecessary.

The EPA finds that providing notice and an opportunity for comment before promulgation of the amendments in this final action is impracticable or unnecessary for the following reasons.[33] First, to the extent that this action amends dates in the regulatory text that have already been tolled by the Court's order, providing notice and an opportunity for comment is unnecessary because the revisions are merely a ministerial act intended to implement the Court's order and it would generally serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue, particularly in the very short timeframe in which the EPA is required to begin implementing CSAPR consistent with the Court's order. The EPA interprets the DC Circuit's order as having already reset all legal deadlines under CSAPR, as amended, that had not passed as of December 30, 2011, the date of the stay.[34] The EPA's action to amend the regulatory text consistent with the effect of the Court's order merely makes the regulatory text consistent with the actual legal requirements as revised by the Court. Such consistency promotes regulatory clarity prior to the revised compliance dates, including the January 1, 2015, start date for compliance with the rule's emissions limitations. Delaying clarification of the regulatory text in order to allow time to conduct notice-and-comment procedures would result in regulatory text that does not accurately reflect the legally effective compliance dates until a rulemaking could be completed. Because completion of a rulemaking with notice-and-comment procedures would not occur until after the start of the first compliance period, the delay in clarification of the regulatory text would create confusion that could disrupt orderly implementation of the rule, contrary to the purpose of the Court's order and the public interest.

Second, to the extent that this action may amend any CSAPR dates that have not already been tolled by the Court's order, providing notice and an opportunity for public comment is impracticable because the ten-week interval between the Court's order and the January 1, 2015, start of compliance is insufficient time for completion of notice-and-comment rulemaking. As discussed in section II of this preamble, several of this action's amendments change dates that were initially established or amended in the Supplemental Rule or the First Revisions Rule, and these dates must be tolled in the current action for consistency with other tolled dates in order to allow equitable and orderly implementation of CSAPR as already amended by these other rules.

Some petitioners responding to the EPA's motion suggested that the Court may lack the power to toll dates in CSAPR's current regulatory text that were not established in the original CSAPR rulemaking under review by the Court (*e.g.*, dates finalized in the Supplemental and Revisions Rules). If correct, this position would mean that, in this action, with respect to these particular dates, the EPA not only would be altering the appearance of the dates in the regulatory text but also would be amending the effective legal dates themselves. The EPA disagrees with petitioners' narrow view of the Court's equitable powers, but finds that, if this action is indeed amending the effective legal dates, good cause exists to make the amendments without prior notice or opportunity for comment because the changes are necessary for orderly implementation of the rule consistent with the Court's order, and it is impracticable to provide notice and an opportunity for comment prior to the start of implementation. In a similar vein, as also discussed in section II above, the EPA notes that several of this action's amendments toll dates in the regulatory text before December 30, 2011. The EPA interprets the Court's order as tolling these dates because, as explained in section II, their function in the rule is to establish deadlines after December 30, 2011. However, in these instances as well, if this action is indeed amending the effective legal dates, the EPA finds that good cause exists to make the amendments without prior notice or opportunity for comment for the same reasons just stated.

As permitted by APA section 553(d) upon a finding of good cause, the EPA is also making this action tolling the dates in the CSAPR regulatory text effective immediately upon publication in the **Federal Register**. The EPA finds good cause to make this action immediately effective for the following reasons. The Court's order lifting the stay of CSAPR and tolling the rule's deadlines allows implementation of the rule's emission limitations to begin on January 1, 2015. Promptly commencing implementation on January 1, 2015, is in the public interest because the rule will help states meet their interstate transport obligations under the CAA and protect air quality for millions of Americans. Finally, immediately amending the dates in the CSAPR regulatory text—*i.e.*, before the January 1, 2015, start of implementation—in order to clarify and make internally consistent the timing of the rule's requirements and elections will promote orderly implementation consistent with the Court's order.

As just described, the EPA finds good cause to take this final action without prior notice or opportunity for public comment and to make this action

[33] The EPA's finding that providing notice and an opportunity for comment before promulgation of the regulatory text amendments in this final action is impracticable, unnecessary, or contrary to the public interest also applies for purposes of section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), as referenced in section IV.K of this preamble.

[34] The EPA's motion was clear that the requested relief encompassed tolling of not only the "key compliance deadlines" concerning applicability of CSAPR's emissions budgets and assurance provisions but also the "additional deadlines applicable to the EPA, the states, and utilities for reporting and other generally ministerial actions." *See* EPA Motion at 14 and note 5.

effective immediately upon publication in the **Federal Register**. However, the EPA is also implementing this action on an interim basis only and is providing notice and an opportunity for comment on the content of the amendments. In particular, the EPA requests comment on whether, in order to be consistent with the Court's order tolling CSAPR deadlines by three years, the provisions of this interim rule should become permanent or, alternatively, whether any date or year in the regulatory text amended by the interim final rule should either be restored to the date or year as it appeared in the regulatory text prior to promulgation of the interim final rule or should be changed to a date or year different from the date or year set in the interim final rule. The EPA is not reopening for comment any provisions of CSAPR other than the dates and years amended in the interim final rule for consistency with the Court's order tolling CSAPR deadlines by three years. Issuance of this interim final rule, while also requesting comment, enables CSAPR to be implemented in an orderly manner beginning January 1, 2015, consistent with the Court's order and also provides public notice and an opportunity for comment as to whether these revisions should be made permanent or whether further amendments to the regulatory text may be necessary to comply with the Court's order. The EPA anticipates issuing a final rule confirming these revisions or making any further amendments to the CSAPR regulatory text that may be necessary following consideration of any comments received.

## IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. This action simply tolls the deadlines of CSAPR by three years, including the deadlines for the rule's information collection requirements, consistent with the order of the DC Circuit lifting the previous stay of the rule.

### *C. Regulatory Flexibility Act*

This action is not subject to the Regulatory Flexibility Act (RFA). The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b), as discussed in section III of this preamble.

### *D. Unfunded Mandates Reform Act*

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply tolls the deadlines of CSAPR by three years consistent with the order of the DC Circuit lifting the previous stay of the rule.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply tolls the deadlines of CSAPR by three years consistent with the order of the DC Circuit lifting the previous stay of the rule.

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

This action does not have tribal implications as specified in Executive Order 13175. This action simply tolls the deadlines of CSAPR by three years, consistent with the order of the DC Circuit lifting the previous stay of the rule. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply tolls the deadlines of the CSAPR FIPs implementing previously promulgated health or safety-based federal standards, consistent with the order of the DC Circuit lifting the previous stay of the rule.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This action simply tolls the deadlines of CSAPR by three years, consistent with the order of the DC Circuit lifting the previous stay of the rule. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income, minority, and indigenous populations while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

### *K. Congressional Review Act*

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking

procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section III of this preamble, including the basis for that finding.

**List of Subjects**

*40 CFR Part 51*

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

*40 CFR Part 52*

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

*40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 21, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, parts 51, 52, and 97 of chapter I of title 40 of the *Code of Federal Regulations* are amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

**§§ 51.121, 51.123, and 51.124 [Amended]**

■ 2. Part 51 is amended by removing "2012" and adding in its place "2015" in the following places:
■ a. Section 51.121(r)(2);
■ b. Section 51.123(ff)(2) through (4); and
■ c. Section 51.124(s)(2).

**§§ 51.123 and 51.124 [Amended]**

■ 3. Part 51 is further amended by removing "December 31, 2011" and adding in its place "December 31, 2014" in the following places:
■ a. Section 51.123(ff)(1) introductory text; and
■ b. Section 51.124(s)(1) introductory text;

**§ 51.123 [Amended]**

■ 4. Section 51.123 is amended in paragraphs (ff)(3) and (4) by removing "November 7, 2011" and adding in its place March 3, 2015".

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

**§§ 52.35, 52.36, 52.440, 52.441, 52.484, 52.485, 52.984, 52.1186, 52.1187, 52.1584, 52.1585, 52.2240, 52.2241, 52.2283, 52.2284, 52.2587, and 52.2588 [Amended]**

■ 6. Part 52 is amended by removing "2012" and adding in its place "2015" in the following places:
■ a. Section 52.35(f)(2) through (4);
■ b. Section 52.36(e)(2);
■ c. Section 52.440(c)(2) through (4);
■ d. Section 52.441(b)(2);
■ e. Section 52.484(c)(2) through (4);
■ f. Section 52.485(b)(2);
■ g. Section 52.984(c)(2) through (4);
■ h. Section 52.1186(c)(2) through (4);
■ i. Section 52.1187(b)(2);
■ j. Section 52.1584(c)(2) through (4);
■ k. Section 52.1585(b)(2);
■ l. Section 52.2240(c)(2) through (4);
■ m. Section 52.2241(b)(2);
■ n. Section 52.2283(b)(2) and (3);
■ o. Section 52.2284(b)(2);
■ p. Section 52.2587(c)(2) through (4); and
■ q. Section 52.2588(b)(2).

**§§ 52.35, 52.36, 52.440, 52.441, 52.484, 52.485, 52.984, 52.1186, 52.1187, 52.1584, 52.1585, 52.2240, 52.2241, 52.2283, 52.2284, 52.2587, and 52.2588 [Amended]**

■ 7. Part 52 is further amended by removing "December 31, 2011" and adding in its place "December 31, 2014" in the following places:
■ a. Section 52.35(f)(1) introductory text;
■ b. Section 52.36(e)(1) introductory text;
■ c. Section 52.440(c)(1) introductory text;
■ d. Section 52.441(b)(1) introductory text;
■ e. Section 52.484(c)(1) introductory text;
■ f. Section 52.485(b)(1) introductory text;
■ g. Section 52.984(c)(1) introductory text;
■ h. Section 52.1186(c)(1) introductory text;
■ i. Section 52.1187(b)(1) introductory text;
■ j. Section 52.1584(c)(1) introductory text;
■ k. Section 52.1585(b)(1) introductory text;
■ l. Section 52.2240(c)(1) introductory text;
■ m. Section 52.2241(b)(1) introductory text;
■ n. Section 52.2283(b)(1) introductory text;
■ o. Section 52.2284(b)(1) introductory text;
■ p. Section 52.2587(c)(1) introductory text; and
■ q. Section 52.2588(b)(1) introductory text.

**§§ 52.35, 52.440, 52.484, 52.984, 52.1186, 52.1584, 52.2240, 52.2283, and 52.2587 [Amended]**

■ 8. Part 52 is further amended by removing "November 7, 2011" and adding in its place March 3, 2015" in the following places:
■ a. Section 52.35(f)(3) and (4);
■ b. Section 52.440(c)(3) and (4);
■ c. Section 52.484(c)(3) and (4);
■ d. Section 52.984(c)(3) and (4);
■ e. Section 52.1186(c)(3) and (4);
■ f. Section 52.1584(c)(3) and (4);
■ g. Section 52.2240(c)(3) and (4);
■ h. Section 52.2283(b)(3); and
■ i. Section 52.2587(c)(3) and (4).

**§§ 52.38 and 52.39 [Amended]**

■ 9. Sections 52.38 and 52.39 are amended as follows:
■ a. By removing "2020" wherever it appears and adding in its place "2023";
■ b. By removing "2019" wherever it appears and adding in its place "2022";
■ c. By removing "2018" wherever it appears and adding in its place "2021";
■ d. By removing "2017" wherever it appears and adding in its place "2020";
■ e. By removing "2016" wherever it appears and adding in its place "2019";
■ f. By removing "2015" wherever it appears and adding in its place "2018";
■ g. By removing "2014" wherever it appears and adding in its place "2017";
■ h. By removing "2013" wherever it appears and adding in its place "2016"; and
■ i. By removing "2012" wherever it appears and adding in its place "2015".

## PART 97—FEDERAL $NO_X$ BUDGET TRADING PROGRAM AND CAIR $NO_X$ AND $SO_2$ TRADING PROGRAMS

■ 10. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

**§§ 97.406, 97.506, 97.606, and 97.706 [Amended]**

■ 11. Sections 97.406, 97.506, 97.606, and 97.706 are amended as follows:
■ a. By removing "2014" wherever it appears and adding in its place "2017"; and
■ b. By removing "2012" wherever it appears and adding in its place "2015".

**§§ 97.410, 97.510, 97.610, and 97.710 [Amended]**

■ 12. Sections 97.410, 97.510, 97.610, and 97.710 are amended as follows:
■ a. By removing "2014" wherever it appears and adding in its place "2017";
■ b. By removing "2013" wherever it appears and adding in its place "2016"; and
■ c. By removing "2012" wherever it appears and adding in its place "2015".

**§§ 97.411, 97.511, 97.611, and 97.711 [Amended]**

■ 13. Sections 97.411, 97.511, 97.611, and 97.711 are amended as follows:
■ a. By removing "2012" wherever it appears and adding in its place "2015"; and
■ b. By removing "after 2011" wherever it appears and adding in its place "after 2014".

**§§ 97.412, 97.512, 97.612, and 97.712 [Amended]**

■ 14. Sections 97.412, 97.512, 97.612, and 97.712 are amended by removing "2012" wherever it appears and adding in its place "2015".

**§§ 97.421, 97.521, 97.621, and 97.721 [Amended]**

■ 15. Sections 97.421, 97.521, 97.621, and 97.721 are amended as follows:
■ a. By removing "2019" wherever it appears and adding in its place "2022";
■ b. By removing "2018" wherever it appears and adding in its place "2021";
■ c. By removing "2017" wherever it appears and adding in its place "2020";
■ d. By removing "2016" wherever it appears and adding in its place "2019";
■ e. By removing "2015" wherever it appears and adding in its place "2018";
■ f. By removing "2014" wherever it appears and adding in its place "2017";
■ g. By removing "2013" wherever it appears and adding in its place "2016"; and
■ h. By removing "2012" wherever it appears and adding in its place "2015".

**§§ 97.425, 97.525, 97.625, and 97.725 [Amended]**

■ 16. Sections 97.425, 97.525, 97.625, and 97.725 are amended by removing "2015" wherever it appears and adding in its place "2018".

**§§ 97.430, 97.530, 97.630, and 97.730 [Amended]**

■ 17. Sections 97.430, 97.530, 97.630, and 97.730 are amended as follows:
■ a. By removing "2012" wherever it appears and adding in its place "2015"; and
■ b. By removing "July 1, 2011" wherever it appears and adding in its place "July 1, 2014".

**§§ 97.434, 97.534, 97.634, and 97.734 [Amended]**

■ 18. Sections 97.434, 97.534, 97.634, and 97.734 are amended as follows:
■ a. By removing "2012" wherever it appears and adding in its place "2015";
■ b. By removing "the third or fourth quarter of 2011" wherever it appears and adding in its place "the third or fourth quarter of 2014"; and
■ c. By removing "July 1, 2011" wherever it appears and adding in its place "July 1, 2014".

[FR Doc. 2014–28286 Filed 12–2–14; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2014–0747; FRL–9919–83–Region 5]**

### Approval and Promulgation of Air Quality Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on September 17, 2014, to revise the Indiana state implementation plan (SIP). The submission revises the Indiana Administrative Code (IAC) definition of "References to the Code of Federal Regulations," from the 2011 edition to the 2013 edition. There is also a revised definition of "Board."

**DATES:** This rule is effective on February 2, 2015, unless EPA receives adverse comments by January 2, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0747 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2014–0747. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:



## I. What is the background for this action?

On September 17, 2014, IDEM submitted a request to revise the definitions of "References to the Code of Federal Regulations," and "Board."

On March 19, 2014, IDEM published a "Notice of Public Information" in several newspapers, and on their Web site at *http://www.in.gov/idem/6777.htm*, providing a 30-day public comment period on the proposed revision to its SIP concerning updates to definitions of "References to the Code of Federal Regulations," and "Board." The notice also informed the public that a hearing was scheduled for April 9, 2014. A public hearing was held on April 9, 2014. IDEM did not receive any comments.

## II. What revision did the State request be incorporated into the SIP?

IDEM has requested that revisions to Indiana's SIP include:

*Rule 326 IAC 1–1–3, Definition of "References to Code of Federal Regulations"*

IDEM updated the reference to the Code of Federal Regulations (CFR) in 326 IAC 1–1–3 from the 2011 edition to the 2013 edition. This is solely an administrative change that allows Indiana to reference a more current version of the CFR. By amending 326 IAC 1–1–3 to reference the most current version of the CFR, the provision in Title 326 of the IAC will be consistent and current with Federal regulations.

*Rule 326 IAC 1–2–6.5, Definition of "Board"*

IDEM made a minor revision to its definition of "Board." Currently, SIP rule 326 IAC 1–2–6.5 defines "Board" as the "air pollution control board," *i.e.*, the Indiana Air Pollution Control Board. In 2013, the Air Pollution Control Board, Water Pollution Control Board, and the Solid Waste Management Board were consolidated into the new Environmental Rules Board. The rule has been revised to reflect this consolidation of boards in the state rules.

## III. What action is EPA taking?

EPA is approving revisions to the Indiana SIP to update 326 IAC 1–1–3, "References to the Code of Federal Register", and the definition of "Board," at 326 IAC 1–2–6.5.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 2, 2015 without further notice unless we receive relevant adverse written comments by January 2, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 2, 2015.

## IV. Statutory and Executive Order Reviews

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

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175, nor will it impose substantial direct costs on Tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 17, 2014.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (c) is amended by:

■ a. Revising the entry in Article 1, General Provisions for Rule 1, "Provisions Applicable Throughout Title 326" in 1–1–3 "References to the Code of Federal Regulations"; and

■ b. Adding a new entry in numerical order in Article 1, General Provisions for Rule 2, "Definitions", "1–2–6.5" "Board". The revised and added text reads as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

| Indiana citation | Subject | Indiana effective date | EPA approval date | Notes |
|---|---|---|---|---|
| * | * | * | * | * |
| **Article 1. General Provisions** | | | | |
| **Rule 1. Provisions Applicable Throughout Title 326** | | | | |
| * | * | * | * | * |
| 1–1–3 | References to the Code of Federal Regulations | 8/31/2014 | 12/03/2014, [insert **Federal Register** citation]. | |
| * | * | * | * | * |
| **Rule 2. Definitions** | | | | |
| * | * | * | * | * |
| 1–2–6.5 | Board | 8/31/2014 | 12/03/2014, [insert **Federal Register** citation]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2014–28291 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

[EPA–HQ–OAR–2009–0491; FRL–9919–91–OAR]

### Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; notice of data availability (NODA).

**SUMMARY:** Through this notice of data availability (NODA), the EPA is providing notice of allocations of emission allowances to certain units for compliance with the Cross-State Air Pollution Rule (CSAPR). Since its original promulgation, CSAPR has been amended in several subsequent rulemakings and its compliance deadlines have been tolled by three years pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court). These allowance allocations, which supersede the allocations announced in a 2011 NODA, reflect the

changes to CSAPR made in those subsequent rulemakings as well as "re-vintaging" of previously recorded allowances so as to account for the impact of tolling of the rule's deadlines. The allocations apply only to units that commenced commercial operation before 2010 and only to the extent that states do not provide alternative allowance allocations following procedures set out in the rule. A spreadsheet containing both the allowance allocations and the data upon which the allocations are based has been posted on the EPA's Web site.

**DATES:** December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be addressed to Michael Cohen, at (202) 343–9497 or *cohen.michael@epa.gov;* or Robert Miller, at (202) 343–9077 or *miller.robertl@epa.gov.* The mailing address for each of these individuals is U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

## I. Data for Which Notice Is Being Provided

Through this NODA, the EPA is providing notice of the availability of unit-specific default allocations of CSAPR allowances for electricity generating units (EGUs) that commenced commercial operation before 2010. The data are contained in an Excel spreadsheet titled "Unit Level Allocations Under the CSAPR FIPs After Tolling" that has been posted on the EPA's Web site at *http://www.epa.gov/crossstaterule/actions.html.* The spreadsheet contains default allocations of allowances under each of the four CSAPR trading programs for individual EGUs for each compliance year from 2015 through 2020. The spreadsheet also contains the data used to compute the allocations and describes how the computations are performed. The EPA is not requesting comment on the allocations, underlying data, or computation methodology.

The EPA notes that an allocation or lack of allocation of emission allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU.[1] The EPA also notes that allocations are subject to potential correction under the rule.[2]

## II. Description of the Allocations

CSAPR includes several emissions trading programs that require affected EGUs to hold emission allowances sufficient to cover their emissions of nitrogen oxides ($NO_X$) and/or sulfur dioxide ($SO_2$) in each compliance period. For each trading program and compliance period, the rule establishes overall state "budgets" representing the maximum number of emission allowances that may be allocated to the group of affected EGUs in each covered state. Beginning with CSAPR's second compliance year, each covered state generally has the option to determine how the allowances in its state budget for each program should be allocated among the state's EGUs.[3] However, for CSAPR's first compliance year, and by default for subsequent compliance years in situations where a state has not provided the EPA with the state's own allocations pursuant to an approved SIP revision, the allocations are made by the EPA.

In the case of units commencing commercial operation on or after January 1, 2010, termed "new" units, the EPA's default allocations for each compliance year are annually determined during the compliance year based on current and prior year emission data, using a methodology set out in the regulatory text.[4] In the case of units that commenced commercial operations before January 1, 2010, termed "existing" units, the EPA determined default allocations for all compliance years during the initial rulemaking based on 2006–2010 heat input data and 2003–2010 emissions data, according to a methodology finalized in the rulemaking but not included in the regulatory text.[5] The regulatory text calls for default allocations to the existing units to be provided in a NODA.[6] In July 2011, the EPA issued a NODA reflecting the default allocations for existing units as determined in the original CSAPR rulemaking.[7]

In three rulemakings finalized after the original CSAPR rulemaking, the EPA created budgets for several states added to the rule's ozone-season $NO_X$ trading program, increased some previously established state budgets, and changed the shares of some state budgets set aside for new units.[8] In one of those rulemakings, the EPA also revised unit-specific allowance allocations in some states in order to account for emissions tonnage limitations established under certain consent decrees.[9]

As originally promulgated, compliance with CSAPR's trading programs was scheduled to begin on January 1, 2012. However, on December 30, 2011, the D.C. Circuit stayed the rule. On October 23, 2014, the Court granted the EPA's motion to lift the stay and toll the rule's compliance deadlines by three years, allowing the first compliance period to begin on January 1, 2015.[10]

The allowance allocations described in this NODA reflect all the budget, set-aside, and unit-specific allocation changes finalized in the rulemakings conducted after the original CSAPR rulemaking. The allocations also account for the impact of the tolling of the rule's compliance deadlines by re-vintaging previously recorded 2012 and 2013 allowances as 2015 and 2016 allowances, respectively.

## III. Recordation of the Allocations

CSAPR specifies deadlines for the EPA to record allowance allocations for each compliance year.[11] In cases where those deadlines, as tolled by the Court's order, have not yet passed, and where states have not submitted alternative allowance allocations pursuant to approved SIP revisions, the EPA will record the allocations described in this NODA by the applicable recordation deadlines.

To meet recordation deadlines that occurred before CSAPR was stayed, the EPA has already recorded most allowances allocated for CSAPR's first compliance year (originally 2012 and now 2015), and some allowances allocated for CSAPR's second

[1] *See* 40 CFR 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1).

[2] *See* 40 CFR 97.411(c), 97.511(c), 97.611(c), and 97.711(c).

[3] *See* 40 CFR 52.38 and 52.39.

[4] *See* 40 CFR 97.412, 97.512, 97.612, and 97.712.

[5] *See* 76 FR 48208, 48288–90 (August 8, 2011).

[6] *See* 40 CFR 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1).

[7] 76 FR 42055 (July 18, 2011).

[8] *See* 76 FR 48208 (August 8, 2011) (the original CSAPR final rule); 76 FR 80760 (December 27, 2011) (the "Supplemental Rule"); 77 FR 10324 (February 21, 2012) (the "First Revisions Rule"); 77 FR 34830 (June 12, 2012) (the "Second Revisions Rule").

[9] The consent decree tonnage limitations had already been considered for purposes of setting the CSAPR state budgets but had not previously been accounted for in setting unit-specific allowance allocations in states with EGUs affected by those limitations. *See* 77 FR at 10329–30.

[10] Order, Document #1518738, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. issued Oct. 23, 2014).

[11] *See* 40 CFR 97.421, 97.521, 97.621, and 97.721. With respect to recordation of allowance allocations for the additional state budgets established in the Supplemental Rule, CSAPR as amended includes separate, specific recordation deadlines. *See* 76 FR 80760 (December 27, 2011); 40 CFR 97.521(a) and (b). However, with respect to recordation of allocation changes resulting from the two Revisions Rules, *see* 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012), or re-vintaging of previously recorded allowances to account for tolling of the rule's compliance deadlines, CSAPR as amended does not include specific recordation deadlines.

compliance year (originally 2013 and now 2016). In these cases, the EPA will re-vintage the previously recorded 2012 and 2013 allowances into 2015 and 2016 allowances, respectively, consistent with the Court's order tolling CSAPR's compliance deadlines. The EPA will then record adjustments as needed to bring the re-vintaged, previously recorded allocations up to the 2015 and 2016 allocations described in this NODA. Allowance tracking system accounts will be briefly frozen while the re-vintaging and adjustments are carried out.

**List of Subjects**

*40 CFR Part 97*

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 21, 2014.

**Reid P. Harvey,**

*Director, Clean Air Markets Division.*

[FR Doc. 2014–28281 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2014–0682; FRL–9918–41]

## Oxirane, Phenyl, Polymer With Oxirane, Monooctyl Ether; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, phenyl, polymer with oxirane, monooctyl ether; when used as an inert ingredient in a pesticide chemical formulation. Envonik Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, phenyl, polymer with oxirane, monooctyl ether on food or feed commodities.

**DATES:** This regulation is effective December 3, 2014. Objections and requests for hearings must be received on or before February 2, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0682, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

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

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

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0682 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 2, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0682, by one of the following methods.

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

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

### II. Background and Statutory Findings

In the **Federal Register** of October 15, 2014 (79 FR 61844) (FRL–9917–24), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10751) filed by Envonik Corporation, P.O. Box 1299, Hopewell, VA 23860. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, phenyl, polymer with oxirane, monooctyl ether; 83653–00–3. That document included a summary of the petition prepared by the petitioner and solicited comments on the

petitioner's request. One comment was received for a notice of filing from a private citizen.

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

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, phenyl, polymer with oxirane, monooctyl ether; 83653–00–3 conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

8. The polymer's number average MW of 1,200 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, oxirane, phenyl, polymer with oxirane, monooctyl ether meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, phenyl, polymer with oxirane, monooctyl ether.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, phenyl, polymer with oxirane, monooctyl ether could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of oxirane, phenyl, polymer with oxirane, monooctyl ether is 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, phenyl, polymer with oxirane, monooctyl ether conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and

children. Due to the expected low toxicity of oxirane, phenyl, polymer with oxirane, monooctyl ether, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

### VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, phenyl, polymer with oxirane, monooctyl ether.

### VIII. Other Considerations

*A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

*B. International Residue Limits*

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

The Codex has not established a MRL for oxirane, phenyl, polymer with oxirane, monooctyl ether.

*C. Comments*

One comment was received for a notice of filing from a private citizen who opposed any pesticide product that leaves a residue above 0.00. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

### IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, phenyl, polymer with oxirane, monooctyl ether from the requirement of a tolerance will be safe.

### X. Statutory and Executive Order Reviews

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

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

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

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

### XI. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: November 24, 2014.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.960, alphabetically add the following polymer to the table to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * * | |
| Oxirane, phenyl, polymer with oxirane, monooctyl ether, minimum average molecular weight (in amu) 1,200 ..... | 83653–00–3 |
| * * * * * | |

[FR Doc. 2014–28384 Filed 12–2–14; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–2001–0002; FRL–9920–08–Region–2]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Consolidated Iron and Metal Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, announces the deletion of the Consolidated Iron and Metal Superfund Site (Site) located in the City of Newburgh, Orange County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This action is effective on December 3, 2014.

**ADDRESSES:** *Docket:* EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–2001–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Site information repositories. Locations, contacts, phone numbers and viewing hours are: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* 212–637–4308, *Hours:* Monday to Friday from 9:00 a.m. to 5:00 p.m. and Newburgh Free Library, Consolidated Iron and Metal Site Repository File, 124 Grand Street, Newburgh, NY 12550, *Phone:* 845–563–3600, *Hours:* Monday & Thursday from 9:00 a.m. to 9:00 p.m., Tuesday, Wednesday, & Friday from 9:00 a.m. to 5:00 p.m., Saturday from 10:00 a.m. to 3:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Michael Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, Emergency and Remedial Response Division, 290 Broadway, 20th Floor, New York, NY 10007–1866; (212) 637–4248; *negrelli.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Consolidated Iron and Metal Superfund Site, City of Newburgh, Orange County, New York. A Notice of Intent to Delete for this Site was published in the **Federal Register** FRL–9917–27–Region–2 on October 1, 2014, (79 FR 59182).

The closing date for comments on the Notice of Intent to Delete was October 30, 2014. No adverse public comments were received and therefore no response to comments was required. The deletion action is appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 18, 2014.

**Judith A. Enck,**

*Regional Administrator, EPA, Region 2.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

### PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing "NY", "Consolidated Iron and Metal", "Newburgh".

[FR Doc. 2014–28445 Filed 12–2–14; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Part 447

**CMS–2315–F]**

**RIN 0938–AQ37**

### Medicaid Program; Disproportionate Share Hospital Payments—Uninsured Definition

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

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses the hospital-specific limitation on Medicaid disproportionate share hospital (DSH) payments under the Social Security Act (the Act). Under this limitation, DSH payments to a hospital cannot exceed the uncompensated costs of furnishing hospital services by the hospital to individuals who are Medicaid-eligible or "have no health insurance (or other source of third party coverage) for the services furnished during the year." This rule provides that, in auditing DSH payments, the quoted test will be applied on a service-specific basis; so that the calculation of uncompensated care for purposes of the hospital-specific DSH limit will include the cost of each service furnished to an individual by that hospital for which the individual had no health insurance or other source of third party coverage.

**DATES:** Effective December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert Weaver, 410–786–5914; or Rory Howe, (410) 786–4878.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. Introduction

On December 19, 2008, we published a final rule in the **Federal Register** (73 FR 77904) entitled "Medicaid Disproportionate Share Hospital Payments" (hereinafter referred to as the 2008 DSH final rule) that implemented section 1001 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requiring State reports and audits to ensure the appropriate use of Medicaid Disproportionate Share Hospital (DSH) payments and compliance with the DSH limit imposed at section 1923(g) of the Social Security Act (the Act). The limit at section 1923(g) of the Act is commonly referred to as the hospital-specific DSH limit and specifies that only the uncompensated costs of providing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and uninsured individuals as described in section 1923(g)(1)(A) of the Act are included in the calculation of the hospital-specific DSH limit. The statute describes uninsured individuals as those "who have no health insurance (or other source of third party coverage) for the services furnished during the year."

Citing an effort to adhere to an accurate representation of the broad statutory references to insurance or other coverage and to delineate more definitively the meaning of the term uninsured, we defined the phrase "who have health insurance (or other third party coverage)" to refer broadly to individuals who have creditable coverage consistent with the definitions under 45 CFR parts 144 and 146, as well as individuals who have coverage based upon a legally liable third party payer. This regulatory definition was not the same as the preliminary guidance previously issued to states and providers in 1994.

In an August 17, 1994 letter to State Medicaid Directors (SMD), CMS included a summary of the DSH provisions in the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66), as a preliminary interpretation. In that letter, we endorsed a service-specific approach in which individuals were considered "uninsured" for purposes of DSH to the extent that they did not have third party coverage for the specific hospital service that they received. A January 10, 1995 letter to the Chair of the State Medicaid Director's Association affirmed the service-specific interpretation of the definition of uninsured by clarifying that: "it would be permissible for States to include in their determination of uninsured patients those individuals who do not possess health insurance, which would apply to the service which the individual sought".

The regulatory definition published in the 2008 DSH final rule was more restrictive than the service-specific definition and is applied on an individual-specific basis rather than a service-specific basis. This interpretation of the definition of "uninsured" superseded all prior interpretive issuances.

After publication of the 2008 DSH final rule, numerous states, members of the Congress, and related stakeholders expressed their concern that the 2008 DSH final rule definition of the uninsured deviated from prior guidance and would have a significant financial impact on states and hospitals. This final rule is designed to mitigate some of the unintended consequences of the uninsured definition put forth in the 2008 DSH final rule and to provide additional clarity on which costs can be considered uninsured costs for purposes of determining the hospital-specific limit. Specifically, this final rule's interpretation and definition of "uninsured" affords states and hospitals maximum flexibility permitted by statute in calculating the hospital-specific DSH limit. Although this rule's definition of uninsured may affect the calculation of the hospital-specific DSH limit, the final rule does not modify the DSH allotment amounts and will have no effect on a state's ability to claim FFP for DSH payments made up to the published DSH allotment amounts.

### B. Legislative History

Title XIX of the Act authorizes federal grants to states for Medicaid programs that provide Medical assistance to low-income families, the elderly, and persons with disabilities. Section 1902(a)(13)(A)(iv) of the Act requires that states make Medicaid payment adjustments for hospitals that serve a disproportionate share of low-income patients with special needs. Section 1923 of the Act contains more specific requirements related to the DSH payments.

The OBRA 93 was signed into law on August 10, 1993. Section 13621 of OBRA 93 added section 1923(g) of the Act, limiting Medicaid DSH payments to a qualifying hospital to the amount of eligible uncompensated costs incurred. This hospital-specific limit requires that Medicaid DSH payments to a qualifying hospital not exceed the costs incurred by that hospital for providing inpatient and outpatient hospital services furnished during the year to Medicaid patients and individuals who have no health insurance or other source of third party coverage for the services provided during the year, less applicable revenues for those services.

### C. Hospital-Specific DSH Limit

Section 1923(g)(1) of the Act defines a hospital-specific limit on Federal financial participation (FFP) for DSH payments. Each state must develop a methodology to compute this hospital-specific limit for each DSH hospital in the state. As defined in section 1923(g)(1) of the Act, the state's methodology must calculate for each hospital, for each fiscal year, the costs incurred by that hospital for furnishing inpatient hospital and outpatient hospital services during the applicable state fiscal year to Medicaid individuals and individuals who have no health insurance or other source of third party coverage for the inpatient hospital and outpatient hospital services they receive, less all applicable revenues for these hospital services. This difference, if any, between incurred inpatient hospital and outpatient hospital costs and associated revenues is considered a hospital's uncompensated care cost (UCC) limit, or hospital-specific DSH limit. FFP is not available for DSH payments that exceed a hospital's UCC for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and individuals who have no health insurance or other source of third party coverage for the services they receive in any given state plan rate year.

To be considered as an inpatient or outpatient hospital service for purposes of Medicaid DSH, a service must meet the federal and state definitions of an inpatient hospital service or outpatient hospital service and must be included in the state's definition of an inpatient hospital service or outpatient hospital service under the approved state plan. While states may have some flexibility to define the scope of inpatient or outpatient hospital services, states must use consistent definitions. Hospitals may engage in any number of activities, or may furnish practitioner, nursing facility, or other services to patients that are not within the scope of inpatient hospital services or outpatient hospital services. These services are not considered inpatient or outpatient hospital services for purposes of the Medicaid DSH calculations.

Sections 1923(a) and 1923(c) of the Act provide states some latitude in determining the level of DSH payment under the Medicaid State plan. Section 1923(g) of the Act, however, provides for hospital-specific limitations on FFP for DSH payments to individual

hospitals. These limits provide that FFP is not available in payments that exceed the level of costs that are considered uncompensated care costs (UCCs) that are specifically defined as certain net costs. The first component of the net costs is described in statute as attributable to hospital costs incurred by individuals eligible for medical assistance under the state plan and net of payments made under title XIX of the Act. We currently implement this provision by allowing all medically necessary inpatient and outpatient costs associated with Medicaid eligible individuals authorized under section 1905 of the Act and covered under the approved Medicaid State plan regardless of whether those beneficiaries or hospitals were entitled to payment as part of the Medicaid benefit package under the state plan. To arrive at uncompensated Medicaid costs, all Medicaid payments received from the state for Medicaid hospital services, including supplemental payments, must be netted against those costs.

The second type of costs allowable as part of the Medicaid DSH limit are described in statute as attributable to hospital costs incurred by individuals who have no health insurance or other source of third party coverage for services furnished during the year. To arrive at uncompensated costs for these services, all payments received for that care must be netted against those costs (without regard to whether the hospital received payments for services provided to indigent patients by a state or local governmental unit).

*D. CMS Guidance Regarding the Definition of Uninsured*

Following the passage of the OBRA 93, we did not issue a rule implementing section 1923(g) of the Act. However, we did receive questions concerning the implementation of section 1923(g) of the Act from states, including many regarding the criteria used to determine which of a hospital's patients "have no health insurance or other source of third party coverage for the services provided." In response to these questions, we issued a letter on August 17, 1994 to all SMD's delineating the Agency's interpretation of statutory provisions of section 13621 of OBRA 93.

The SMD letter specifically established our interpretation of the term "uninsured" patients for purposes of the calculating OBRA 93 DSH limits. We developed a definition of "individuals who have no health insurance or other source of third party coverage for the services provided" based on the statutory language linking coverage and the provision of services throughout the year in which the service was provided. The August 17, 1994 SMD letter articulated this policy interpretation by stating that individuals who have no health insurance (or other source of third party coverage) for the services provided during the year include those "who do not possess health insurance, which would apply to the service the individual sought treatment." We affirmed this guidance in a January 10, 1995 letter to the Chair of the SMD's Association. This interpretation remained in effect until the January 19, 2009 effective date of the 2008 DSH final rule implementing the DSH auditing and reporting requirements.

*E. MMA and the 2008 DSH Final Rule*

Several United States Department of Health & Human Services Office of Inspector General (OIG) audits and United States Government Accountability Office (GAO) reports detailing improper DSH expenditures in some states, raised concern that we did not have sufficient authority to appropriately monitor state compliance with section 1923 of the Act. In particular, concerns were expressed that states were not enforcing the OBRA 93 limits on DSH expenditures. Subsequently, Congress include in the MMA section 1001(d), which added new audit and reporting requirements to the Act. Specifically, it added section 1923(j)(1) of the Act, which requires states to submit an annual report and audit to ensure the appropriate compliance with DSH limits imposed at section 1923(g) of the Act.

In promulgating the 2008 DSH final rule, we defined the phrase "who have health insurance (or other third party coverage)" by referencing individuals who have a legally liable third party payer for the services provided by a hospital and by referencing regulations that define creditable coverage under 45 CFR parts 144 and 146. The regulatory definition of creditable coverage in Parts 144 and 146 was developed to implement, in part, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Pub. L. 104–191) and was designed to offer protection to the broadest number of individuals. This definition of creditable coverage, which did not exist in 1994 when we issued initial guidance on the Medicaid DSH definition of uninsured, is applied on an individual-specific basis (that is, does an individual have coverage) rather than on the existing service-specific interpretation (that is, does an individual have coverage for a service). Creditable coverage includes coverage of an individual under a group health plan, Medicare, Medicaid, a medical care program of the Indian Health Service (IHS) or tribal organization, and other examples as outlined in the rules relating to creditable coverage at § 146.113.

The new interpretation of the definition of "individuals who have no health insurance or other source of third party coverage for the services provided" articulated in the 2008 DSH final rule, which relied on the existing regulatory definition of creditable coverage, superseded all prior interpretive issuances.

*F. Concerns Raised*

Numerous states, members of the Congress, hospitals and related stakeholders expressed concerns following the publication of the 2008 DSH final rule that the rule's definition of uninsured individuals would have a significant negative financial impact on states and hospitals. As states and hospitals began to complete the initial audits as defined in the final rule, they identified specific issues relating to the regulatory definition of uninsured adopted under the rule. Specific consequences regarding the practical application of the creditable coverage definition were identified and some stakeholders questioned the impact of the new definition of uninsured as it relates to individuals who had IHS and tribal health coverage for services and individuals who had exhausted their insurance benefits or who had reached their lifetime insurance limits. Uncompensated costs to hospitals for these services were no longer eligible DSH costs under the creditable coverage definition applied in the 2008 DSH final rule.

The issue involving IHS and tribal programs arises because IHS coverage is within the scope of "creditable coverage" under the regulations in Parts 144 and 146, and thus individuals with this coverage could not be considered "uninsured" even if the IHS or tribal health program did not provide the service or authorize coverage through the contract health service program (through a purchase order or equivalent document). In that circumstance, the hospital would not be able to count, as costs eligible for Medicaid DSH payments, costs of uncompensated care associated with the provision of inpatient or outpatient hospital services to American Indians/Alaska Natives with access to IHS and tribal coverage (but no other source of third party payment).

The IHS and Tribal health programs provide two primary types of services: Direct health care services and contract health services. Direct health care services are oftentimes limited to primary care services and are limited to eligible beneficiaries identified at 42 CFR § 136.12. Many of the beneficiaries that receive direct care services have no other source of third party coverage. Contract health services (CHS) are services provided outside of an IHS or Tribal facility to an eligible beneficiary (§ 136.23). CHS appropriations are discretionary; therefore, coverage is determined based on a priority system. Coverage for CHS services is specifically authorized on a case-by-case basis through a CHS purchase order or equivalent document. IHS and tribal health programs can also issue referrals that do not authorize CHS coverage of a service.

For Medicaid DSH purposes, we believe that American Indians/Alaska Natives are considered to have third party coverage for inpatient and outpatient hospital services received directly from IHS or tribal health programs (direct health care services) and for services specifically authorized under CHS. The service-specific determination of third party coverage status of American Indian/Alaska Natives for services not authorized to be within the scope of coverage by CHS should be made consistently with determinations made for non-IHS patients. This is the same treatment that, as we describe below, we will give to these services that are outside the scope of coverage from any other insurer or third party payer.

The second issue concerns the interaction between the creditable coverage definition in the 2008 DSH final rule and hospital services provided to individuals with creditable coverage but without coverage for specific hospital services received. By using the current regulatory creditable coverage definition, an individual is considered either to have coverage, as broadly described in regulations, or not to have coverage during the period a hospital service was provided. Under the 2008 DSH final rule, if an individual had creditable coverage at the time of the service, that individual was not considered uninsured and the service costs would be excluded from the hospital-specific DSH limit calculation. In practical application, this definition appeared to exclude from uncompensated care for DSH purposes the costs of many services that were provided to individuals with creditable coverage but were outside the scope of coverage. Costs affected include those associated with individuals who have exhausted their insurance benefits or who have reached lifetime insurance limits for certain services, as well as services not included in a benefit package as covered, but those identified in section 1905 of the Act and covered under the approved Medicaid State plan.

For purposes of defining uncompensated care costs for the Medicaid hospital-specific DSH limit, we believe that uncompensated costs of providing inpatient and outpatient hospital services to individuals who do not have coverage for those specific services should be considered costs for which there is no liable third party payer and thus eligible costs for Medicaid DSH payments. An example of a situation involves an individual with basic hospitalization coverage that has an exclusion for transplant services. Should the individual need the excluded service, the cost of that service could be included in the Medicaid hospital-specific DSH limit. Another example involves an individual with excluded benefits or services, or exhaustion of coverage or benefits for a limited covered service, due to a pre-existing condition (for example, cancer or diabetes). Although both examples involve medically necessary services for which an individual is uninsured, associated costs would have been prohibited from inclusion in calculating the hospital-specific DSH limit based on the 2008 DSH final rule and related guidance.

If an individual is Medicaid eligible, all costs incurred in providing inpatient and outpatient hospital services identified in section 1905 of the Act and covered under the approved Medicaid state plan should be included in calculating Medicaid hospital costs, not uninsured hospital costs, for purposes of calculating the hospital-specific DSH limit, regardless of whether the individual's benefits have been exhausted or whether coverage limits have been reached.

## II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

On January 18, 2012, we published a proposed rule entitled, Disproportionate Share Hospital Payments-Uninsured Definition (hereinafter referred to as the 2012 DSH proposed rule). In that rule, we proposed to add a new 42 CFR 447.298—Hospital-Specific Disproportionate Share Hospital Payment Limit-Definition of Individuals Who have no health Insurance (or Other Source of Third Party Coverage). Specifically, we proposed to describe the scope of the new regulation section and define the following terms:

- Individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year.
- Health insurance coverage limit.
- No source of third party coverage for a specific inpatient hospital or outpatient service.
- Determination of an Individual's Third Party Coverage Status.
- Service-Specific Coverage Determination.

In response to the 2012 DSH proposed rule, we received 71 public comments from State Medicaid agencies, provider associations, providers, and other interested parties. The following is a brief summary of each proposed provision, a summary of the public comments that we received related to that proposal, and our responses to the comments.

### *A. Effective Date*

We proposed this final rule effective for DSH audits and reports submitted for state plan rate year 2011 and after, which are due to CMS on December 31, 2014. In this final rule, we are making the effective date December 31, 2014. Medicaid DSH audits and reports required by section 1923(j) of the Social Security Act due to CMS on or after this date should rely on the provision of this final rule. We will continue to provide technical assistance and guidance to states to assure compliance with section 1923(j) of the Act. Comments and our response to comments on the effective date are as follows:

*Comment:* Many commenters requested clarification on the effective date of the rule. Specifically, the commenters wanted to know which DSH audit year the modified definition of uninsured would apply to and made various suggestions regarding the effective date and the application of the modified definition. Some commenters suggested that CMS make this final rule effective retroactive to the effective date of the 2008 DSH final rule and requested that CMS rescind the discussion of creditable coverage in that rule (that is, the 2008 DSH final rule). Other commenters suggested CMS clarify if states could use either definition for periods prior to the effective date of this rule. Some commenters requested that CMS specify whether the new definition of uninsured would be applicable to pending DSH audits and reports and requested that CMS extend the deadline for states to submit pending DSH audits and reports so that accurate data on

costs and payments allowable under the definition will be captured.

*Response:* This final rule has an effective date of December 31, 2014. We did not see a clear basis consistent with the requirements of the Administrative Procedure Act to make this rule retroactive. The provisions of this final rule will thus apply to audits due on or after that date. The first Medicaid State Plan Rate Year (SPRY) for which audits are due after that date, to which the modified definition of uninsured is applicable, is SPRY 2011. We believe that this effective date will provide states and hospitals with adequate time to implement any necessary changes to their administrative process. Therefore, we are not extending the submission deadline for any DSH audits and reports.

*B. Medicaid Eligible Individuals*

DSH payments are limited to the hospital-specific limit defined in section 1923(g)(1) of the Act. For each fiscal year, the state must calculate this limit for each hospital. We proposed that the limit is the costs incurred by that hospital for furnishing inpatient hospital and outpatient hospital services during the applicable state fiscal year to Medicaid individuals and individuals who have no health insurance or other source of third party coverage for the inpatient hospital and outpatient hospital services they receive, less all applicable revenues for these hospital services.

If an individual is Medicaid eligible, all costs incurred in providing inpatient and outpatient hospital services identified in section 1905 of the Act and covered under the approved Medicaid state plan should be included in calculating Medicaid hospital costs, not uninsured hospital costs, for purposes of calculating the hospital-specific DSH limit, regardless of whether the individual's benefits have been exhausted or whether coverage limits have been reached. Comments and our response to comments on Medicaid eligible individuals are as follows:

*Comment:* Several commenters requested clarification on the inclusion of hospital costs relating to services furnished to Medicaid eligible individuals for purposes of calculating the hospital-specific DSH limit. A few commenters wanted clarification that costs of services furnished to Medicaid eligible individuals who have exhausted hospital benefits available under a state's Medicaid program will be included in the hospital-specific DSH limit calculation. Another commenter stated that the cost of hospital services furnished to Medicaid eligible individuals that are beyond state plan service limits would be allowable as uninsured costs when calculating the hospital-specific DSH limit.

*Response:* We clarify that the cost of inpatient hospital and outpatient hospital services furnished to a Medicaid eligible individual who has exhausted applicable state coverage limits, and has no other source of third party coverage for the specific service, can be included as Medicaid shortfall in the hospital-specific DSH calculation.

*Comment:* A few commenters requested clarification regarding the inclusion of inpatient hospital service costs and revenues in the hospital-specific DSH limit when an individual's Medicaid eligibility status ends prior to the completion of their inpatient stay. Commenters noted that under some Medicaid programs, hospitals are reimbursed by Medicaid on a per diem basis and may only bill for the days when patients are Medicaid eligible. For the days of care furnished when patients are not Medicaid eligible, the commenter requested clarification if the days of care would be considered uninsured for DSH purposes.

*Response:* The hospital-specific limit is calculated by determining the uncompensated costs incurred in furnishing inpatient and outpatient hospital services to Medicaid eligible individuals and uninsured individuals. This final rule establishes a single determination of whether costs and revenues associated with a particular service are included in the hospital-specific DSH limit calculation. If an individual is Medicaid eligible for any day during a single inpatient stay for a particular service, states must classify the individual as Medicaid eligible for all costs and revenues associated with that particular service, including, but not limited to, revenues from all third party payors. If the individual is not Medicaid eligible and has a source of third party coverage for all or a portion of the single inpatient stay for a particular service, states cannot include any costs and revenues associated with that particular service when calculating the hospital-specific DSH limit. If the individual has no source of third party coverage for the specific inpatient hospital or outpatient hospital service furnished by the hospital, states should classify the individual as uninsured for the particular service and include the costs and revenues associated with that particular service when calculating the hospital-specific DSH limit.

*Comment:* A few commenters requested clarification with respect to Medicaid spend-down. States impose monthly or other periodic "spend-down" requirements on individuals that must be met for their incomes to qualify under Medicaid income eligibility criteria. Until an individual has satisfied his or her spend-down requirements, medical assistance is unavailable for services provided and these individuals must incur medical costs out-of-pocket. Commenters expressed that it is appropriate to treat these individuals as uninsured patients for services furnished to them prior to meeting Medicaid spend-down requirements.

*Response:* To the extent that Medicaid does make any payment for a specific inpatient or outpatient hospital service furnished by the hospital to an individual who has not met spend-down obligations, and the individual has no source of third party coverage for the specific service, states must classify the individuals as uninsured for purposes of the hospital-specific DSH limit. After the individuals have been determined Medicaid eligible after meeting Medicaid spend-down requirements, states must classify them as Medicaid eligible for purposes of the hospital-specific DSH limit.

Uninsured and Underinsured Individuals

*Comment:* A few commenters expressed concern about patients who are severely underinsured. One commenter provided a situation where the cost to provide care for a 7-day inpatient stay was approximately $7,000, but the patient's hospital insurance only paid the hospital approximately $2,250. The commenter asked CMS to define an exception that would allow these patients to be considered uninsured for purposes of the hospital-specific DSH limit.

*Response:* To the extent that the hospital received payment for the service consisting of a 7-day hospital stay, the individual was "insured" for that specific service. Only the uncompensated costs of providing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and uninsured individuals as described in section 1923(g)(1)(A) of the Act are included in the calculation of the hospital-specific DSH limit. The statute describes uninsured individuals as those "who have no health insurance (or other source of third party coverage) for the services furnished during the year." We do not have the authority to craft an exception to include insured individuals whose insurance does not pay the full cost of covered services.

*Comment:* A few commenters suggested that CMS should modify the definition of "no source of third party coverage" for a specific inpatient or

outpatient hospital service under § 447.295(b) because it mentions only annual or lifetime limits. Commenters also suggested that CMS should revise the regulatory language to explicitly capture cost for individuals who "have exhausted covered benefits."

*Response:* We have revised the regulations text to clarify that individuals who have exhausted benefits before obtaining services will be considered uninsured. In contrast, individuals who exhaust covered benefits during the course of a service will not be considered uninsured for that particular service. We will work with states and stakeholders to ensure that all stakeholders receive clear federal and state guidance regarding service-specific coverage determinations.

*Comment:* A few commenters stated that the final rule should define whether an individual is uninsured on a service-specific basis.

*Response:* This final rule implements a service-specific approach to define individuals who have no health insurance (or source of third party coverage) for purposes of calculating the hospital-specific DSH limit.

*Comment:* Several commenters requested that Medicaid eligible individuals who have private insurance should be excluded from the hospital-specific DSH limit calculation. In determining uncompensated care, CMS requires hospitals to take into account all revenues and costs associated with the care and treatment of Medicaid patients. When Medicaid patients also have insurance, the commenters suggest factoring payments from commercial insurance may artificially lower a hospital's DSH limit, especially if the hospital serves a high percentage of Medicaid patients who have dual coverage.

*Response:* To ensure payment accuracy and program integrity, the 2008 DSH final rule and associated guidance clarified that all costs and revenues associated with Medicaid eligibles that have a source of private insurance coverage, including all third party payer revenues received by the hospital on behalf of the patient, must be included in the calculation of the hospital-specific DSH limit. Before this policy clarification, some states and hospitals were excluding costs and revenues, or simply revenues, associated with Medicaid eligible individuals with an additional source of coverage, such as Medicare or private insurance, when calculating hospital-specific DSH limits. This practice led to the artificial inflation of hospital-specific DSH limits and permitted some hospitals to be paid twice based on the same costs. The clarifying policy included in the 2008 DSH final rule and associated guidance promotes fiscal integrity by preventing duplicate payment to DSH hospitals. It also promotes program integrity by ensuring that hospitals receive Medicaid DSH payments only up to the uncompensated costs incurred in providing inpatient and outpatient hospital services to Medicaid individuals or individuals with no health insurance or other source of third party coverage.

Scope of Inpatient and Outpatient Hospital Services

To be considered as an inpatient or outpatient hospital service for purposes of Medicaid DSH, a service must meet the federal and state definitions of an inpatient hospital service or outpatient hospital service and must be included in the state's definition of an inpatient hospital or outpatient hospital service under the approved state plan. Comments and our response to comments on the scope of inpatient and outpatient hospital services are as follows:

*Comment:* Several commenters requested clarification on the scope of Medicaid inpatient and outpatient hospital services. Specifically, they requested CMS to confirm that it did not intend to narrow the scope of these services for DSH purposes from what is considered allowable under the Medicaid program section 1905(a) of the Act.

*Response:* Within broad federal parameters, each state is responsible under §§ 440.10 and 440.20 for defining the amount, duration, and scope of inpatient or outpatient hospital services. This final rule does not affect the ability for states to define the scope of inpatient or outpatient hospital services. For Medicaid eligible or uninsured individuals, all costs incurred in providing inpatient hospital and outpatient hospital services identified in section 1905 of the Act and covered under the approved Medicaid state plan should be included when calculating the hospital-specific DSH limit.

*Comment:* A few commenters requested that CMS confirm that uninsured costs of hospital-based outpatient departments and clinics are to be included in the calculation of uncompensated care costs, irrespective of whether the hospital department or clinic is a federal qualified health care (FQHC) for Medicaid payment purposes.

*Response:* Services that could be included in more than one benefit category must be treated consistently for payment purposes, since the payment methodologies are different for each benefit category. In particular, if a hospital elects to have a department meet the conditions to participate in Medicaid as a provider of FQHC services, and claims payment for its services as an FQHC, the services of that department are not considered outpatient hospital services. Although the FQHC may be provider based, its services are not recognized or paid as outpatient hospital services, but instead are covered and paid for as an FQHC service under section 1905(a)(2)(C) of the Act. Section 1923(g) of the Act only permits costs and revenues associated with services furnished as inpatient hospital and outpatient hospital services to be included when calculating the hospital-specific DSH limit. Congress provided for a different, cost-based, payment methodology for FQHCs, under sections 1902(a)(15) and 1902(bb) of the Act and did not provide for DSH payments as part of that methodology. In sum, states cannot include costs and revenues associated with FQHC services because payment for the services is authorized under a statutory benefit separate and distinct from outpatient hospital services that entitles the provider to a cost-based payment rate.

*Comment:* A few commenters noted the preamble in the proposed rule provided examples of hospital services that would have been prohibited from the hospital-specific DSH limit calculation based on the individual-specific approach set forth in the 2008 DSH final rule, but would be permissible under the service-specific approach in the 2012 DSH proposed rule. The examples make reference to medically necessary hospital services furnished to individuals who did not have coverage for those specific services. Commenters requested CMS to clarify if hospitals had to verify with Medicaid that services to uninsured individuals meet Medicaid protocols, such as prior authorization, and medical necessity reviews.

*Response:* Hospitals do not need to verify with Medicaid that services to uninsured individuals meet Medicaid protocols, such as prior authorization and medical necessity reviews. To the extent that there is a non-Medicaid third party payer that covers the service for the individual subject to reasonable conditions, we expect the hospital to take appropriate steps to ensure that the individual can take advantage of that coverage. Thus, we do not expect that hospitals will claim as uncompensated care services for which an insurer would have paid if the hospital had followed appropriate protocols. To the

extent that a hospital systematically fails to follow those protocols, there could be an issue for state regulatory authorities.

*Comment:* Several commenters requested CMS to clarify statements in the preamble of the 2012 DSH proposed rule regarding the requirement that the definition of inpatient and outpatient hospital services for DSH purposes must be consistent with federal and state regulations and be included in a Medicaid state plan. With respect to being included in the state plan, several commenters noted possible scenarios where care and services may be available in an inpatient or outpatient basis, but the state plan might not cover the treatment at all, or might exclude it because the Medicaid individual had exceeded limits on amount or duration. Commenters cited transplants as a service that might not be available under a particular state's Medicaid program, but fits within the federal definition of a Medicaid inpatient hospital service.

*Response:* For Medicaid eligible or uninsured individuals, only costs incurred in providing inpatient hospital and outpatient hospital services identified in section 1905 of the Act and that would meet the definition under the approved Medicaid state plan as inpatient hospital or outpatient hospital services should be included when calculating the hospital-specific DSH limit. Any services that fall outside of either definition are not eligible for inclusion in the calculation of the hospital-specific limit. For example, if transplant services are not covered under the approved state plan in a particular state, costs associated with those services cannot be included in calculating the hospital-specific DSH limit. In another example, a hospital might own and operate a nursing facility or a home health agency, employ physicians or other licensed practitioners, and bill for their professional services. While a hospital may have a connection to these services, they are not recognized as inpatient or outpatient hospital services and are not covered under the inpatient hospital or outpatient hospital Medicaid benefit service categories. Accordingly, the associated costs and revenues cannot be included in calculating the hospital-specific DSH limit.

Services may be included in the DSH calculation if they are within the scope of the definition of inpatient or outpatient hospital services even if they are not covered under Medicaid because of amount or durational limits. States may establish reasonable limits on inpatient and outpatient services to ensure medical necessity or control utilization of services. Inpatient or outpatient hospital services furnished beyond state established limits on amount and duration may be included in the hospital-specific limit calculation to the extent that the services being sought are hospital services that the state Medicaid program would otherwise pay for if not for the limits being exceeded.

*Comment:* Several commenters requested clarification of swing bed services and stated that because these services are categorically inpatient in nature they should be included in a the calculation of the hospital-specific DSH limit.

*Response:* The commenters are referring to hospitals that have agreements to swing their acute hospital beds to long term care services in accordance with section 1913 of the Act. It is unclear if the commenters are referring to inpatient hospital care services or less acute nursing facility care services. The inpatient hospital care services must be included when calculating the hospital-specific DSH limit. The long term care services; however, are not inpatient hospital or outpatient hospital services and are covered under the nursing facility services benefit for Medicaid or skilled nursing facilities (SNF) benefit for Medicare. Therefore, these levels of services cannot be included in the calculation of the hospital-specific DSH limit.

*Comment:* A commenter requested clarification of whether days of care provided while patients are waiting to be discharged due to lack of appropriate setting can be included in the calculation of the hospital-specific DSH limit.

*Response:* Under Medicaid, these inpatient days are commonly referred to as inappropriate level of care days or administratively necessary care days. These days of care are recognized as inpatient hospital services under section 1905(a) of the Act and are explicitly acknowledged in section 1923(b) of the Act that requires these days to be included in the DSH eligibility formula.

### *C. Timing of Service Specific Determination*

We specified in the proposed rule the determination of an individual's status as having a source of third party coverage can occur only once per individual per service provided and applies to the entire service, including all elements as that service, or similar services, would be defined in Medicaid. Comments and our response to comments on the timing of service specific determination are as follows:

*Comment:* Many commenters suggested that it would be appropriate to allow for redeterminations during a stay when coverage benefits are exhausted during a hospital stay. Commenters suggested various scenarios. For example, a patient with private insurance coverage is admitted to a hospital for treatment and 10 days following admission they reach their lifetime maximum coverage limit, but remain in the hospital for a total of 20 days. The commenters stated that a single determination would produce inequitable results. The commenters recommended that the patient should be considered uninsured for the remaining portion of their treatment after coverage limits are reached or exhausted during a hospital stay.

*Response:* We are finalizing the provision of the proposed rule that the determination of an individual's status as having a source of third party coverage can occur only once per individual per service provided and applies to the entire service, including all elements as that service, or similar services, would be defined in Medicaid. When benefits have been exhausted for individuals with a source a third party coverage, only costs associated with separate services provided after the exhaustion of covered benefits are permitted for inclusion in the calculation of the hospital-specific DSH limit. Section 1923(g) of the Act specifies that only certain costs associated with "individuals who are eligible for medical assistance under the state plan or who have no health insurance (or other source of third party coverage) for the services furnished during the year" are included when calculating the hospital-specific DSH limit. Even if the third party coverage is exhausted or otherwise limited for a particular service, the individual still has a source of third party coverage for that particular service. Therefore, we are finalizing the single service determination as proposed.

*Comment:* Many commenters suggested allowing revisions to an individual's insurance status during an inpatient hospital stay as necessary based on additional information received regarding the individual's coverage. The commenters noted that the coverage determination usually occurs at intake, then new information may be obtained that warrants a change from the initial determination, (for example, a patient is retroactively determined eligible for Medicaid, or the patient's third party insurance coverage has expired or has been exhausted).

*Response:* We do not think the single coverage determination precludes corrections to the initial determination. When a hospital classifies an individual as uninsured at intake, then later determines that the individual had Medicaid or third party coverage for that particular service, we would expect the hospital to re-classify the individual for purposes of calculating the hospital-specific DSH limit. Any individuals that have a source of third party coverage for a particular service, even if that coverage is limited, are considered for Medicaid DSH purposes to have a source of third party coverage even if their initial determination at intake is uninsured.

*Comment:* Several commenters expressed concern that a service-specific coverage determination for each service rendered to each individual with third party liability could be unduly burdensome to hospitals, contracted DSH auditors and states. Commenters stated that CMS should issue clear instructions regarding acceptable implementation of this requirement, the level of detail of claims, and patient data needed.

*Response:* We will work with states to ensure that all stakeholders receive clear federal and state guidance regarding service-specific coverage determinations. In general, it would be to the advantage of hospitals to engage in service-specific coverage determinations because it would result in more documented uncompensated care costs.

*Comment:* One commenter recommended that CMS increase accountability and improve patient access to financial assistance by directing funding to states that condition hospital payments on provision of financial assistance to needy patients.

*Response:* The comments are outside the scope of the proposed and final rule. Section 1923(c) of the Act provides states with considerable flexibility in establishing DSH payment methodologies as long as the DSH payments under the methodology do not exceed the state's federal DSH allotment and the hospital-specific DSH limit.

Co-Insurance, Co-Pays, and Deductibles

Section 1923(g) of the Act excludes costs associated with individuals with a source of third party coverage for a service from the calculation of the hospital-specific DSH limit. In the 2012 DSH proposed rule, we stated that costs associated with unpaid coinsurance, deductibles, bad debts, and payer discounts for individuals with a source of third party coverage are excluded when calculating the hospital-specific DSH limit. In the proposed rule, we reiterated this statement and are finalizing those provisions as proposed without change. Comments and our response to comments regarding co-insurance, co-pays, and deductibles are as follows:

*Comment:* A commenter requested clarification regarding how Medicaid programs should treat out-of-pocket costs relating to an inpatient stay. The commenter provided an example where a patient is admitted for an inpatient stay and his or her insurance does not provide any payment for the first 5 days of the stay. The insurance plan requires that the patient pay out-of-pocket until day six. The commenter requested clarification regarding the treatment of the first 5 days for purposes of calculating the hospital-specific DSH limit, including cases where the payment exclusion is due to an individual's pre-existing condition.

*Response:* When an individual has a source of third party coverage for an inpatient or outpatient hospital service, the costs and revenues cannot be included in the calculation of the hospital-specific limit unless the individual is also Medicaid eligible. In the commenter's example, to the extent that the individual has a source of coverage for the specific inpatient hospital service, it could not be included in the calculation of the hospital-specific limit. Any uncompensated costs that hospitals incur for unpaid co-pays, co-insurance, or deductibles associated with a non-Medicaid eligible individual who has insurance cannot be included in the calculation of the hospital-specific limit. Exclusions relating to pre-existing conditions would depend on the terms and nature of the exclusion. If the exclusion bars coverage for particular services, the person would be considered uninsured. When the exclusion results in a higher deductible or cost sharing for services related to the preexisting condition, the person would be considered insured.

*Comment:* Many commenters stated that patients with a high-deductible plan/catastrophic plan should be consider uninsured for services until they meet their deductible or spending thresholds. The commenters stated that hospitals are bearing the burden of unreimbursed costs associated with high deductible amounts or catastrophic health plans where the individual has no means of paying the deductible amounts. Additionally, commenters noted that the unpaid deductible and copayments are the fastest growing part of uncompensated care costs and requested CMS to expand the definition of uninsured to include the underinsured costs associated with unpaid copayments and deductible in the hospital DSH limits.

*Response:* We acknowledge concerns regarding the financial challenges that hospitals may encounter in providing services to individuals with high deductible or catastrophic coverage health plans. Section 1923(g) of the Act restricts the calculation of DSH-eligible uncompensated costs to those incurred in providing inpatient and outpatient hospital services to Medicaid-eligible individuals and those individuals with no source of third party coverage for the services they receive. When an individual's policy includes in its benefit package inpatient or outpatient hospital services obtained by the individual, we consider this person to have a source of third party coverage for services included in the benefit package unless the individual has exhausted insurance coverage prior to the service at issue. When benefits have been exhausted for individuals with a source a third party coverage, only costs associated with separate services provided after the exhaustion of covered benefits are permitted for inclusion in the calculation of the hospital-specific DSH limit. The individual is considered insured for the service even in instances when the policy requires the individual to satisfy a deductible and/or share in the overall cost of the hospital service.

*Comment:* Several commenters stated that individuals whose only source of coverage is a limited benefit plan should be treated as uninsured for purposes of the DSH limit calculation. For example, if a patient has an extended stay in a hospital trauma center after a car accident, and the patients only coverage is through limited medical care payment under an auto insurance plan (a per accident amount), the hospital should be able to include as uncompensated cost the significant services provided once the per accident limitation are exceeded. The commenter asserts that these plans that are not health plans or health insurers, and the medical benefits they afford are incidental to the principle insurance benefits. These type of policies are defined as "excepted benefits" under the Health Insurance Portability and Accountability Act regulations at § 148.220. In some cases, the legal liable third party may not be determined until years after the services were provided because the liability of these third parties are not established for specific services. A hospital's entitlement may not be certain until after legal proceedings or negotiations. Individuals, in these situations should

be treated as uninsured for the costs of services provided offset by the amount of any payment actually received by the hospital from a legally liable third party.

*Response:* We have previously considered limited benefit plans and issued our position in the 2008 DSH final rule. In that final rule, we provided that these plans, such as auto insurance, would not be considered insurance except when they are legally liable to pay for hospital care. The change to a service-specific approach does not affect our previous guidance.

The 2008 final DSH rule and related CMS guidance addressed the treatment of revenue offsets that must be applied against the cost of providing services to individuals with no source of third party coverage. The guidance addressed future revenue streams including, but not limited to, legal decisions, payment plans, and recoveries. The General DSH Audit and Reporting Protocol specified that that states, hospitals, and auditors, for purposes of individuals with no source of third party coverage, should not attempt to allocate payments received during the State plan rate year to services provided in prior periods. It, instead, required that all payments received in the year will be counted as revenue to the hospital in that same year. It was understood that some costs incurred during the state plan rate year under audit may be associated with future revenue streams (legal decisions, payment plans, and recoveries), but that the payments must not counted as revenue until actually received.

When a hospital classifies an individual as uninsured at intake, then later determines that the individual had Medicaid or third party coverage for that particular service, we expect the hospital to re-classify the individual for purposes of calculating the hospital-specific DSH limit. Any individuals that have a source of third party coverage for a particular service, including limited coverage, are considered for Medicaid DSH purposes to have a source of third party coverage even if their initial determination at intake is uninsured. We recognize that corrections to the initial determination may be warranted based on information available only after the completion of the DSH audit and reports for a particular state plan rate year. In these instances, states are not required to correct the audit for the closed period to reclassify the individual. However, for individuals, states must still offset all associated revenues received by the third party payer against costs incurred for the uninsured in the year in which the revenue is received. If cumulative correcting adjustments would be significant on a state-wide basis due to a series of warranted corrections that arise post-audit (for example, widespread errors in individual coverage determinations), states should correct the audit and report by indicating post-audit adjustments and must reopen the audit to make a correction.

*Comment:* A commenter recommended that costs associated with unpaid co-insurance, deductibles, and payer discounts that qualify as charity care be permitted in the calculation of the hospital-specific limit. The instructions for Form CMS 2552–10, Worksheet S–10 Hospital Uncompensated and Indigent Care Data specifically states that deductible and coinsurance payments for patients who are covered by public or private insurers, which the provider has a contractual relationship and are approved for charity care be included on line 20, column 2. The commenter believes that these instructions should be consistent for both the hospital-specific DSH limit calculation and the Medicare Form 2552–10, Worksheet S–10.

*Response:* Medicare and Medicaid are separate programs and the statutory framework for each program is different. Costs that may be relevant for Medicare purposes, such as bad debt or charity care, are not relevant to Medicaid DSH. These costs are relevant to Medicare payment mechanisms that ensure that the Medicare program does not shift costs onto other payers, which do not apply in the Medicaid program. Section 112(b) of the Balance Budget Refinement Act (BBRA) requires that Medicare-participating hospitals submit in their Medicare cost reports data on costs incurred by a hospital for providing inpatient and outpatient hospital services for which no compensation is received. This provision specifically requires hospitals to include data on non-Medicare bad debt, charity care, and charges for Medicaid and indigent care. While there may be overlaps between these costs as reported in Medicare cost reports and the costs considered under the Medicaid hospital-specific DSH limit at section 1923(g) of the Act, the Medicare reporting requirement is different and broader than the Medicaid hospital-specific DSH limit at section 1923(g) of the Act. Thus, the same data cannot be used for both purposes.

*Comment:* A number of commenters stated bad debt and payer discounts should be included in the Hospital DSH limit.

*Response:* As defined in the DSH audit reporting requirement in regulations at § 447.299(c)(15), uncompensated care costs for inpatient and outpatient hospital services does not include bad debt or payer discounts related to services furnished to individuals who have health insurance or another third party payer.

*D. Physician Services*

The hospital-specific DSH limit established in section 1923(g) of the Act permits the inclusion of inpatient and outpatient hospitals service costs only. Services that are not inpatient or outpatient hospital services, including physician services, must be excluded when calculating the hospital-specific DSH limit. Comments and our response to comments regarding physician services are as follows:

*Comment:* Many commenters requested that unreimbursed physician costs associated with hospital services should be included in the hospital DSH limit calculation. Two common requests were that states be permitted to define their inpatient and outpatient hospital benefits services of physicians employed by the hospital. The commenters stated that since the costs of physicians furnishing services to the hospital are already allowable, they interpret this to refer to direct patient care furnished by physicians. Additionally, commenters stated that CMS could allow a hospital to include the cost of its salaried physicians in its DSH costs as long as those salaries were not greater than what is allowed under the Medicare program. Commenters believe if the hospitals do not separately bill for physician services then the costs hospitals incur to secure physician services to serve a hospital's Medicaid population are legitimate costs.

*Response:* Section 1905(a) of the Act identifies categories of medical items and services eligible for federal matching payment under the Medicaid program. Inpatient hospital services, outpatient hospital services, and physician services are listed as separate and distinct categories of Medical assistance. Inpatient hospital services are defined in section 1905(a)(1) of the Act and implementing regulations at § 440.10, outpatient hospital services are defined at section 1905(a)(2)(A) of the Act and implementing regulations at § 440.20(a), and physician services are defined at section 1905(a)(5)(A) of the Act and implementing regulations at § 440.50(a).

The DSH limit provided in section 1923(g) of the Act, refers only to hospital services and does not include physician services or any other Medicaid services listed in section 1905(a) of the Act. Furthermore, state

DSH payments are made pursuant to section 1902(a)(13)(A)(iv) of the Act as part of state payment rates set for inpatient hospital services to take into account the situation of hospitals that serve a disproportionate share of low-income patients with special health needs. Section 1923(a)(1)(B) of the Act requires states in paying for inpatient hospital services, to increase payments to the hospitals consistent with the minimum DSH payment requirements set forth in section 1923(c) of the Act. While the term "hospital services" does expand DSH beyond just inpatient hospital services, this expansion is not unlimited, and the legislative history shows that the term is limited to include only outpatient hospital services.

The distinction between physician services, inpatient and outpatient services is a long standing position and recognized throughout the Medicaid program as well as other insurance programs and hospital accounting practices. The Medicaid program has special requirements that are unique to each service type. Hospital services are subject to public process requirement in section 1902(a)(13)(A) of the Act and as previously mentioned, rates set under that process must include payment adjustment for DSH providers that comply with the requirement in section 1923 of the Act. Medicaid inpatient and outpatient hospital services are also subject to additional payment requirements known as Medicaid upper limits (UPLs) in regulations at § 447.272 and § 447.321, with inpatient hospital service also being limited to customary charges pursuant to section 1903(i)(3) of the Act and regulations at § 447.271. Unlike hospital services, Medicaid physician services are subject to the general public notice requirements at § 447.205, Medicaid economy, efficiency, and quality of care requirements, but not subject to any specific regulatory UPL requirements. With respect to primary care physician services are eligible for higher federal matching rate.

As we explained in the preamble of the 2008 DSH final rule, physician professional services are generally not recognized or considered hospital service costs reporting process under either Medicaid or Medicare. Physician services cost identified as professional services are removed from the inpatient and outpatient hospital costs as part of the hospital cost step down process. The Medicare 2552 cost report does not include direct physician patient care services. These costs are identified, segregated, and are paid not as a hospital services but separately as professional services in accordance with a fee schedule established for physician services. Therefore, any physician costs attributable to professional services that are reimbursed as physician services under a state's Medicaid program, are not allowable in the DSH limit calculation, since by statute, the DSH limit can include only inpatient and outpatient hospital services.

The general rule is that physician services that are covered and reimbursed as such under a state's Medicaid program are excluded from the DSH limit calculation. We realize in some instances, some states may set a single rate for an inpatient or outpatient hospital service and included in the rate is the costs of physician services. A hypothetical example might be a single per diem rate for a day of inpatient care, with no separate payment for physician services to a hospital or physician. In that instance, the physician cannot bill the patient or the Medicaid program for their professional services since it is already included in the per diem rate paid to the hospital. We do not feel this is the customary practice, but where this practice is used, the entire bundle of services included in the per diem hospital payment rate, including any physician and practitioner services, would be considered part of the inpatient or outpatient hospital services.

*Comment:* A commenter noted that exclusion of physician uncompensated care costs in the DSH limit calculation has had a detrimental financial impact on children's hospitals and fails to recognize the increasing important role of hospital based physicians in guaranteeing Medicaid and low-income children access to primary and specialty care. Commenters stated data indicates that hospitals now employ approximately 25 percent of all active physicians, and these employment relationships are expected to increase as more integrated care models enter the market place. Therefore, they believe it is critical for CMS to recognize the safety net role of children hospital and the financial losses that hospitals absorb should be eligible for inclusion in the hospital-specific DSH limit under section 1923(g) definition because they represent losses incurred by a DSH eligible hospital for services to Medicaid beneficiaries.

*Response:* We appreciate and value the contribution children's hospitals, the physicians they employ to assure Medicaid, and other low income children have access to needed care and services. While the Medicaid statute does not contemplate DSH payments beyond inpatient hospital services that exceed the uncompensated care cost incurred for inpatient and outpatient hospital services furnished to Medicaid and uninsured individuals, states have the option to increase Medicaid payments rate for physician services for services furnished in children's hospital settings. Physician payment rates are not subject to the same limitations as payments to hospital services.

*Comment:* A few commenters stated many safety net hospitals, particularly those located in inner-cities and rural areas, employ physicians in order to provide access to critical hospital inpatient and outpatient services for their communities. The commenters stated that the costs associated with employing physicians are legitimate hospital costs and should be included in the calculations of the hospital-specific DSH limitations. These commenters stated that excluding these costs from this calculation only further threatens the tenuous financial status of safety net hospitals and their ability to maintain services for underserved populations.

*Response:* We value and appreciate all health care providers that participate in the Medicaid program to make health care available in the communities they serve. Hospital services and physician services are separate and distinct services. The DSH limit in section 1923(g) of the Act is specific to only hospital services. Physician professional services recognized, billed, or paid as such under a state's Medicaid program are not allowable costs for purposes of Medicaid DSH. To the extent that states wish to provide incentives for physicians to work in underserved areas, states have the option to target adjustments to physician payment rates.

*Comment:* A commenter stated that it appears CMS has approved waivers in two states that allow state Medicaid programs to reimburse hospitals for hospital-based physician costs. These costs associated with securing physician services to serve a hospital's Medicaid population are legitimate unreimbursed costs if the hospital does not separately bill for the services. The waivers seem to instruct that both costs and payments be excluded from DSH audits. If this is the case, this option would achieve the same result and could be considered by CMS as an alternative for the DSH limit calculation.

*Response:* We believe the commenter may be referring to Section 1115 waivers. Section 1115 of the Act gives the Secretary of Health and Human Services (the Secretary) authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid and Children's Health Insurance Program (CHIP) programs. The purpose of these demonstrations, give states additional

flexibility to design and improve their programs, to demonstrate and evaluate policy approaches such as:

- Expanding eligibility to individuals who are not otherwise Medicaid or CHIP eligible.
- Providing services not typically covered by Medicaid.
- Using innovative service delivery systems that improve care, increase efficiency, and reduce costs.

In general, the section 1115 demonstrations are approved for a five-year period and can be renewed, typically for an additional 3 years. The demonstrations must be "budget neutral" to the federal government, which means that during the course of the project federal Medicaid expenditures will not be more than federal spending could have been without the use of 1115 waiver authority. Several states have requested and have approved section 1115 demonstration proposals that, in part, allow the state to use savings generated by the overall demonstration project for payments to hospitals for unreimbursed physician costs provided by hospital employees or contractors. For DSH purposes, these are considered to be payment for physician services and; therefore, neither the costs nor payments related to physician services are included in the DSH limit calculation.

*E. Prisoners*

The preamble to the proposed rule clarified that the proposed change in the definition of uninsured would not have any impact on how prisoners are treated in the DSH limit calculation. The DSH limit includes hospital services to individuals who are Medicaid eligible or who have no health insurance. Current DSH inmate guidance issued to states in a letter dated August 8, 2002, addressed only the uninsured possibility, and clarified that prisoners would not qualify for DSH under that authority. That guidance stated that since the federal, state, or local agencies that hold individuals in custody are responsible to cover their basic needs (including medical needs), they are legally liable for medical care and are a source of third party coverage.

The preamble discussion may have created some unnecessary confusion because it did not address Medicaid eligible inmates. We received many comments pointing to prior CMS guidance related to inmate and eligibility Medical Assistance. Medicaid generally does not pay for medical care and services to inmates. This is known as the inmate of a public institution exclusion. This exclusion is not absolute as there is an exception regarding patients in a medical institution. Pursuant to Medicaid policy set forth in a 1997 letter to all state Medicaid Directors, we interpreted this exception to allow Medicaid to pay for inpatient care furnished to inmates that have been determined to be eligible for Medicaid under a state's program. In adopting the service specific definition of uninsured, we did not mean to suggest a change in long standing inmate policy under the regular program. With respect to DSH, in those cases in which a Medicaid eligible individual meets the patient in a medical institution exception—(that is, a Medicaid eligible inmate is transferred to a hospital to be a patient for inpatient services), the state Medicaid agency has determined the individual to be eligible for Medicaid, and makes a regular hospital payment, DSH can be used to make up any shortfall. The costs of the service less non-DSH payments would be factored into the limit calculation. (Services received or costs incurred as a patient in a prison hospital, or in a dedicated prison ward, cannot be included in the calculation of the hospital-specific DSH limit since these entities could not meet the hospital conditions of participation related to patient rights.) The exception to the exclusion is limited to inpatient services, so any outpatient services obtained by an inmate would not be reimbursable under regular Medicaid or could not be included in the calculation of DSH.

*Comment:* Many commenters suggested CMS not to change current non-DSH Medicaid inmate policy. We also received many inquiries related to Medicaid eligibility related to inmates.

*Response:* We agree eligibility for Medicaid and inmates is a separate policy area outside of the DSH program. In this final rule we are not making any changes to current Medicaid non-DSH inmate policy and we are not addressing specific inquiries related to that policy because it is outside the scope of this rule.

*F. Indian Health Services*

In the 2012 DSH proposed rule, we specified that, for Medicaid DSH purposes, American Indians/Alaska Natives are considered to have third party coverage for inpatient and outpatient hospital services received directly from IHS or tribal health programs (direct health care services) and for services specifically authorized under CHS. The service-specific determination of third party coverage status of American Indian/Alaska Natives for services not authorized to be within the scope of coverage by CHS should be made in the same way as all other patients. This is the same treatment that we apply to services that are outside the scope of coverage from any other insurer or third party payer. Comments and our response to comments regarding Indian Health Services are as follows:

*Comment:* Many commenters stated that the regulation should allow hospitals to count unfunded and unreimbursed costs attributed to IHS facilities, tribal program, and contract health services toward the hospital-specific DSH limit. Commenters recommended that any subsequent cash settlement should be treated as a cash collection from the uninsured in the ensuing DSH audit cycle. Another commenter expressed concern that when Indian Health Care Providers render services to IHS-eligible persons the uncompensated costs associated with the service could not be included in calculating the hospital-specific DSH limit.

*Response:* The determining factor in deciding whether an American Indian or Alaska Native has health insurance for an inpatient or outpatient hospital service is if the providing entity is an IHS facility or tribal health program. In the case of contract services, the coverage of the services is specifically authorized via a purchase order or equivalent document because individuals in these circumstances are considered to have a source of third party payment. The cost of services and any revenues received would be excluded from the DSH calculation. Individuals obtaining inpatient or outpatient hospital services from a non-IHS or tribal facility without a purchase order (or other authorization) would be considered uninsured for these services. The costs of these services and revenues received could be included in the DSH limit calculation.

*Comment:* A few commenters stated hospitals participate in the CHS program through a formal arrangement that includes a purchase order or its equivalent. A strict reading of the regulatory language suggest that hospitals' formal arrangements with the CHS program would disqualify those unreimbursed costs as eligible to be counted for purposes of calculating the DSH limit. The commenters requested that CMS clarify that these unfunded services would be eligible for costs.

*Response:* An American Indian or Alaska Native would be considered to have no health insurance when he or she obtains services without a purchase order or equivalent authorization to pay for them. If contract providers have

provided needed services that were not pursuant to a purchase order, the American Indian or Alaska Native would be considered uninsured (absent private coverage) and the costs and any revenues associated with these services could be included in the limit.

*Comment:* A commenter indicated that CMS did not engage in tribal consultation on the 2012 DSH proposed rule as required under section 5006(e) of the American Recovery and Reinvestment Act or Executive Order 13174, "Consultation with Tribal Governments." Therefore, CMS should engage in consultation with the American Indians and Alaska Native tribes before issuing a final rule.

*Response:* We solicited input on the proposed rule from IHS, Tribal, and urban programs on March 16, 2012 during an All Tribes' Call. The purpose of the call was to solicit input regarding how implementation or changes to regulatory provisions would affect American Indians and Alaska Native beneficiaries and the operation of the Indian health program delivery system.

*Comment:* A commenter, recognizing that the statute only addresses "a State or local unit of government within a State," recommends that CMS include a provision in the final regulation that would treat IHS and tribal hospitals similarly to "a State or unit of local government within a State" for purposes of section 1923(g)(1)(A) of the Act.

*Response:* The comments are outside the scope of the proposed and final rule.

*Comment:* A few commenters expressed concern regarding the proposed rule's reliance on the definition of creditable coverage under 45 CFR parts 144 and 146.

*Response:* In this final rule, we are defining "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for purposes of calculating the hospital-specific DSH limit on a service-specific basis rather than on an individual basis, and thus do not make reference to the regulatory definition of creditable coverage. The definition instead requires a determination of whether, for each specific service furnished during the year, the individual has third party coverage.

*G. Affordable Care Act*

In response to the 2012 DSH proposed rule, we received a number of comments requesting clarification regarding how this final rule interacts with the Affordable Care Act. Comments and our response to comments on the Affordable Care Act are as follows:

*Comment:* A commenter stated that CMS should issue guidance on the definition of uninsured addressing issues that may be raised by the changes to the health insurance landscape when the remaining Affordable Care Act reforms take effect in 2014, including implementation of state Health Insurance Exchanges and individual mandates. After the implementation of state-based exchanges in 2014, the definition of uninsured should include people who do not qualify for exchange-based coverage because of immigration status; people who receive an affordability waiver of the individual mandate; patients with coverage that meets the essential health benefits standards or catastrophic plan requirements but does not cover a provided service, and other uninsured consumers.

*Response:* Absent a legislative change to the DSH law, we believe the determination of uninsured status will continue to be a fact-based determination that occurs at the time a patient presents to a hospital. Undoubtedly, some or all of the individuals in the populations the commenters cited would be considered uninsured when presenting to the hospital.

*Comment:* A commenter stated that, with the reduction in DSH dollars in accordance with the Affordable Care Act, it is critical to require that hospitals collect information for each patient to determine their status as uninsured. The commenter stated that these issues should be addressed in the proposed rule implementing provisions of the Affordable Care Act requiring a reduction to DSH allotments. The commenter recommended various reporting activities, to ensure DSH funds are used to pay for the uninsured.

*Response:* The comments are outside the scope of this regulation.

*H. DSH Audit Oversight*

*Comment:* Several commenters provided inquiries related to the DSH Audit and Reports that are required by section 1923(j) of the Act and implemented in regulations Parts 447 and 455. The commenters generally requested greater CMS oversight to the Medicaid DSH audit program, clearer guidance, better communication between state programs, auditors, and hospitals, or highlighted other programmatic concerns related to the audits.

*Response:* While the methods and procedures related to state reports and audits is outside the scope of this regulation, we will continue to provide technical assistance and guidance to states to assure compliance with section 1923(j) of the Act.

*Comment:* Several commenters stated that CMS should conduct ongoing evaluation of how DSH funds are distributed within a state and how funds are used by states and hospitals to adequately address the needs of remaining uninsured patients. Commenters stated that it will be critical to ensure the diminishing uncompensated care funding like DSH, and related policies, is properly targeted and allocated to those providers who continue to serve the uninsured.

*Response:* States are required under section 1923(j) of the Act to report information about their DSH program and have it independently audited. We will continue to review this information.

## III. Provisions of the Final Rule

*A. Definition of Uninsured Under Section 1923(g) of the Act*

We are finalizing with one clarifying change to the provisions in the 2012 DSH proposed rule. Specifically, we have revised the regulations text to clarify the definition of "health care coverage limit" to include other coverage limits than annual and lifetime limits. We are adding a new § 447.295 Hospital-Specific Disproportionate Share Hospital Payment Limit—Definition of Individuals Who Have no Health Insurance (or Other Source of Third Party Coverage) for the Services Furnished During the Year and the Determination of an Individual's Third Party Coverage Status. Specifically, § 447.295(a) describes the scope of the new regulatory section and its focus on defining the term "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year."

Section 447.295(b) defines through regulation "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for purposes of calculating the hospital-specific DSH limit as described in section 1923(g) of the Act effective for 2011. Section 447.295(b) also provides specific definitions for the terms "service-specific coverage determination" and "health insurance coverage limit."

In this final rule, we are defining "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for purposes of calculating the hospital-specific DSH limit on a service-specific basis rather than on an individual basis, and thus do not make reference to the regulatory

definition of creditable coverage. The definition instead requires a determination of whether, for each specific service furnished during the year, the individual has third party coverage.

We are also implementing the definition of "no source of third party coverage for a specific inpatient or outpatient service" to mean that the service is not within a covered benefit package under a group health plan or health insurance coverage (including the Medicare program), and is not covered by another legally liable third party. We are specifying that services beyond health coverage limits on insurance coverage, including annual or lifetime limits, will not be considered to be within a covered benefit package.

Because funding limitations for services furnished through the IHS or tribal health programs are similar in nature to benefit limitations, we consider them as such for this purpose. This final rule considers services furnished to American Indians/Alaska Natives to be covered by IHS or tribal health programs only to the extent that the individuals receive services directly from IHS or tribal health programs (direct health care services) or when IHS or a tribal health program has authorized coverage through the contract health service program (through a purchase order or equivalent document).

We are not including in this final rule a single test for how a "service" is defined for these purposes because of the variance in the types of services that are at issue. However, we are including at § 447.295(c)(1) "Determination of an Individual's Third Party Coverage Status," the principle that a "service" should include the same elements that would be included for the same or similar services under Medicaid generally. The intent is that the hospital will generally determine that an individual is either insured or not insured for a given hospital stay, and will not separate out component parts of the hospital stay based on the level of payment received.

Section 447.295(c) specifies that the determination of an individual's third party coverage status is a service-specific measure for purposes of calculating the hospital-specific DSH limit, based on the coverage and benefit exclusions of health insurers and the availability of coverage for that service from other third party carriers. This final rule establishes that the determination of an individual's status as an "individual who has no health insurance (or other source of third party coverage)" for purposes of calculating the Medicaid hospital-specific DSH limit be based on coverage for the particular inpatient or outpatient hospital service provided to an individual under the terms of an insurance or other coverage plan, or actual coverage for the service through such a plan or another third party. The determination is not based on payment.

*B. Lifetime Limits, Limited Coverage Plans, and Exhausted Benefits*

This final rule clarifies the definition of "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" so that inpatient and outpatient hospital costs associated with individuals who have third party coverage but have reached annual or lifetime insurance limits or have otherwise exhausted covered benefits can be included in calculating the hospital-specific DSH limit. For purposes of the preceding sentence, the only costs that are permitted for inclusion in the calculation of the limit are for separate services provided after the exhaustion of covered benefits. Additionally, inpatient and outpatient hospital costs of services provided to individuals whose coverage specifically excludes the hospital service provided can be included in calculating the hospital-specific DSH limit. This interpretation and definition of "uninsured" affords states and hospitals maximum flexibility permitted by statute in calculating the hospital-specific DSH limit. This clarification is effective for DSH audits and reports submitted following the effective date of the rule, thus avoiding any unintended, and potentially significant, financial impact resulting from the 2008 DSH final rule.

While this final rule provides some relief for certain costs by allowing their inclusion in the calculation of the hospital-specific DSH limit, we believe that it is equally important to address those costs that are currently prohibited from inclusion and for which this rule provides no change in treatment under title XIX of the Act. For the reasons described below, we continue to believe that currently prohibited costs are not appropriate for purposes of Medicaid DSH and are not consistent with statutory language with respect to the hospital-specific DSH limit.

*C. Bad Debt and Unpaid Coinsurance and Deductibles*

This final rule clarifies the definition of "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" such that costs associated with bad debt, including any unpaid coinsurance and deductibles required under third party coverage, and payer discounts under such coverage cannot be included in calculating the hospital-specific DSH limit for individuals with a source of third party coverage. In these instances, the cost of the service in question was provided to an individual with a source of third party coverage for the service, and the amount due represents uncollected revenues not uninsured costs. This clarification ensures that this final rule is consistent with existing DSH statute, regulations, and longstanding CMS policy.

Section 1923(g) of the Act requires that costs associated with individuals with a source of third party coverage be excluded from the calculation of the hospital-specific DSH limit. The current DSH regulations, as modified by the 2008 DSH final rule, also prohibit the inclusion of costs associated with unpaid coinsurance, deductibles, bad debt, and payer discounts for individuals with a source of third party coverage. This final rule makes no change to the allowability of these costs.

*D. Prisoners*

This final rule clarifies that the final definition of "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" maintains the current position that individuals who are inmates in a public institution are considered to have a source of third party coverage as described in guidance issued to states in a letter dated August 8, 2002. The final rule does not make any changes to current Medicaid Non-DSH inmate policy.

*E. Clarification of the Application of the Definition of "Individuals Who Have No Health Insurance (or Other Source of Third Party Coverage) for the Services Furnished During the Year" for Purposes of Calculating Hospital-Specific DSH Limits*

Section 447.295(d) specifies that costs considered for purposes of calculating the hospital-specific limit are limited to net costs incurred for individuals who have no health insurance or source of third party coverage for the services furnished during the year. This section ensures that the regulatory definition of "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" is appropriately applied for purposes of calculating hospital-specific DSH limits.

## IV. Waiver of 60-Day Delay in the Effective Date

We ordinarily provide a 60-day delay in the effective date of the provisions of a major rule, pursuant to 5 U.S.C. 801(a)(3). However, if we find, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the rule issued, the 60-day delay in the effective date can take effect as we determine in 5 U.S.C. 808(2)).

We find good cause to provide a 30-day delayed effective date instead of a 60-day delayed effective date. Many states and hospitals continue to apply the pre-DSH audit transition period definition of "uninsured" articulated in the August 17, 1994 letter to State Medicaid Directors. This rule, effective for the first audits due after the DSH audit transition period, realigns the definition of "uninsured" with the pre-DSH audit transition period definition. We find that a 30-day delay in the effective date would be sufficient to permit implementation of this definition, and that additional time would be unnecessary, because this rule conforms the audit standards to the practice and procedure that many states and hospitals followed through the DSH audit transition period and are following now.

This rule ensures that audit standards for state DSH payments made to hospitals during the DSH audit transition period will not exceed the hospital-specific limit as a result of using the old definition.

## V. Collection of Information Requirements

This rule does not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements. Additionally, it does not impact any auditing or reporting requirements/burden associated with section 1923(j) of the Act or information collections under the CMS–2552 (OMB control number 0938–0050) cost report. Consequently, the rule does not require additional review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## VI. Regulatory Impact Analysis

### *A. Overall Impact*

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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). We do not have definitive national data that isolates the impact of this rule on hospital-specific DSH limits or national DSH payments. Due to the lack of this data we are unable to predict and estimate the impacts of this final rule, including those of individual hospitals or groups of hospitals. However, a rough calculation for one large hospital system indicates that that system alone would experience rule-induced transfer impacts of over $100 million in the next year. As a result, this rule has been designated an "economically significant" rule under section 3(f)(1) of Executive Order 12866, since it may have an economic impact in excess of $100 million. Furthermore, it is a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. This rule affects the calculation of the hospital-specific DSH limit. States may reduce Medicaid DSH payments to certain providers and increase DSH payments to other providers as a result of changes to the hospital-specific DSH limit, so it is possible that this rule could result in a change of more than 3 to 5 percent of total hospital revenue due to the overall size of the Medicaid DSH program. Regardless, states alone are responsible in the management of their DSH allotment, retain the same flexibility to design DSH payment methodologies under the state plan, and are not required to increase or to decrease payments to providers as a result of this rule. Additionally, we do not have national data that isolates the impact of this rule on hospital-specific DSH limits or national DSH payments. Based on the lack of data and the factors described above, we cannot predict an accurate estimate of the impact on individual hospitals. As a result, this final rule may have a significant economic impact on a substantial number of small entities. This analysis, combined with the preamble, constitutes our final analysis for the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. This rule affects the calculation of the hospital-specific DSH limit. States may reduce Medicaid DSH payments to certain providers and increase DSH payments to other providers as a result of changes to the hospital-specific DSH limit, so it is possible that this rule may have a significant impact on small rural hospitals due to the overall size of the Medicaid DSH program. Regardless, states alone are responsible for the management of their DSH allotment, retain the same flexibility to design DSH payment methodologies under the state plan, and are not required to increase or to decrease payments to providers as a result of this rule. Additionally, we do not have national data that isolates the impact of this rule on hospital-specific DSH limits or national DSH payments. Based on the lack of data and the factors described above, we cannot predict an accurate estimate of the impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately

$141 million. This rule has no consequential mandate on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

Pursuant to E.O. 13175 and the CMS Tribal Consultation Policy (November 2011), CMS consulted with Tribal officials prior to the formal promulgation of this regulation.

*B. Anticipated Effects*

1. Effects on State Medicaid Programs

CMS does not anticipate that the final rule will have significant financial effects on State Medicaid Programs. Federal share DSH allotments, which are published by CMS in an annual **Federal Register** notice, limit the amount of Federal financial participation (FFP) that can be paid annually to a state for aggregate DSH payments made to hospitals. This final rule does not modify the DSH allotment amounts and will have no effect on a state's ability to claim FFP for DSH payments made up to the published DSH allotment amounts.

This final rule, however, may affect the calculation of the hospital-specific DSH limit established at section 1923(g) of the Act. This hospital-specific limit requires that Medicaid DSH payments to a qualifying hospital not exceed the costs incurred by that hospital for providing inpatient and outpatient hospital services furnished during the year to Medicaid patients and individuals who have no health insurance or other source of third party coverage for the services provided during the year, less applicable revenues for those services. This final rule defines "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for purposes of calculating the hospital-specific DSH limit effective for 2011. This final rule also provides additional clarification to states and hospitals regarding costs eligible for inclusion in the calculation of the hospital-specific DSH limit. The provisions of this rule may have an effect on the calculation of the hospital's specific DSH limit amount for some hospitals depending upon the method utilized by the hospital or state in calculating the limit prior to the effective date of the final rule.

States retain considerable flexibility in setting DSH State plan payment methodologies to the extent that these methodologies are consistent with section 1923(c) of the Act and all other applicable statute and regulations. Some states may determine that implementing a retrospective DSH payment methodology or a DSH reconciliation in their state plan is a reasonable way to manage its DSH allotment and ensure that payments made in excess of hospital-specific DSH limits are redistributed to hospitals that have not exceeded their limits. Although the state may have to modify definitions provided to hospitals in determining the hospital-specific DSH limit, the potential effect on the calculation of these limits would not result in an increase or decrease in the amount of FFP available to states for aggregate DSH payments made to hospitals.

2. Effects on Providers

This final rule defines "individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for purposes of calculating the hospital-specific DSH limit effective for 2011. This final rule also provides additional clarification to states and hospitals regarding costs eligible for inclusion in the calculation of the hospital-specific DSH limit. This final rule may affect the calculation of the hospital-specific DSH limit established at section 1923(g) of the Act. Hospitals, if directly affected by the final rule, should have higher DSH eligible costs. This increase in eligible costs would result in an increase in the hospital-specific DSH limit of these affected hospitals. In particular, DSH hospitals that provide a high volume of hospital services to American Indians/Alaska Natives where CHS payment is not authorized, individuals with creditable coverage but without coverage for the hospital services received as it relates to DSH costs, or individuals with limited coverage plans, lifetime limits, or exhausted benefits, may recognize an increase in their hospital-specific DSH limit. States are not required to increase DSH payments to affected hospitals based on increases in hospital-specific DSH limits.

The increased DSH limits, however, may mitigate the potential return of DSH payments to hospitals that would have been considered to exceed the hospital-specific DSH limit absent the provisions of this final rule. Additionally, states may reduce Medicaid DSH payments to certain providers and increase DSH payments to other providers as a result of changes to the hospital-specific DSH limit. Regardless, states alone are responsible in the management of their DSH allotment, retain the same flexibility to design DSH payment methodologies under the state plan, and are not required to increase or to decrease payments to providers as a result of this rule. We do not have national data that isolates the impact of this rule on hospital-specific DSH limits or national DSH payments. Based on the lack of data and the factors described above, we cannot predict an accurate estimate of the impact on individual hospitals or groups of hospitals.

*C. Alternatives Considered*

In developing this rule, the following alternatives were considered. We considered not revising the definition of uninsured for purposes of determining the Medicaid DSH hospital-specific limit. However, we believe the individual-specific application of the definition of "uninsured" under the current rule effectively precludes recognition of uncompensated care costs for many services for which an individual is uninsured and has no third party coverage. Costs affected also include those associated with individuals who have reached health coverage limits, including annual or lifetime insurance limits, for certain services; have limited coverage through IHS or tribal health programs; or have inadequate insurance benefit packages.

An alternative approach that we considered when developing this rule was to broaden even further the definition of uninsured to take into account costs associated with bad debt and prisoners. However, we believe that such an approach would not be consistent with the intent of both the hospital-specific limit and with the general exclusion of payment for services furnished to prisoners.

*D. Accounting Statement and Table*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4/*), we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule.

ACCOUNTING TABLE

| Category | Estimate |
|---|---|
| Transfers | Qualitative assessment of impacts as a result of this final rule may result in transfers that exceed $100 million in a given year.<br>To: Hospitals whose DSH limits increase.<br>From: Other disproportionate share hospitals. |

*E. Conclusion*

For the reasons discussed above, this rule has been designated an "economically significant" rule under section 3(f)(1) of Executive Order 12866, since it may have an economic impact in excess of $100 million on a substantial number of small entities or on a substantial number of small rural hospitals. We do not have definitive national data that isolates the impact of this rule on hospital-specific DSH limits or national DSH payments. Due to the lack of this data we are unable to predict and estimate the impacts of this final rule, including those of individual hospitals or groups of hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 447**

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 447 as set forth below:

**Title 42—Public Health**

## PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

### Subpart E—Payment Adjustments for Hospitals That Serve a Disproportionate Number of Low-Income Patients

■ 2. Add § 447.295 to read as follows:

**§ 447.295—Hospital-Specific Disproportionate Share Hospital Payment Limit: Determination of Individuals without Health Insurance or Other Third Party Coverage.**

(a) *Basis and purpose.* This section sets forth the methodology for determining the costs for individuals who have no health insurance or other source of third party coverage for services furnished during the year for purposes of calculating the hospital-specific disproportionate share hospital payment limit under section 1923(g) of the Act.

(b) *Definitions.*

*Individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year* means individuals who have no source of third party coverage for the specific inpatient hospital or outpatient hospital service furnished by the hospital.

*Health insurance coverage limit* means a limit imposed by a third party payer that establishes a maximum dollar value or maximum number of specific services, for benefits received by an individual.

*No source of third party coverage for a specific inpatient hospital or outpatient hospital service* means that the service is not included in an individual's health benefits coverage through a group health plan or health insurer, and for which there is no other legally liable third party. When a health insurance coverage limit is imposed by a third party payer, specific services beyond the limit would not be within the individual's health benefit package from that third party payer. For American Indians/Alaska Natives, IHS and tribal coverage is only considered third party coverage when services are received directly from IHS or tribal health programs (direct health care services) or when IHS or a tribal health program has authorized coverage through the contract health service program (through a purchase order or equivalent document). Administrative denials of payment, or requirements for satisfaction of deductible, copayment or coinsurance liability, do not affect the determination that a specific service is included in the health benefits coverage.

(c) *Determination of an individual's third party coverage status.* Individuals who have no source of third party coverage for a specific inpatient hospital or outpatient hospital service must be considered, for purposes of that service, to be uninsured. This determination is not dependent on the receipt of payment by the hospital from the third party.

(1) The determination of an individual's status as having a source of third party coverage must be a service-specific coverage determination. The service-specific coverage determination can occur only once per individual per service provided and applies to the entire service, including all elements as that service, or similar services, would be defined in Medicaid.

(2) Individuals who are inmates in a public institution or are otherwise involuntarily in secure custody as a result of criminal charges are considered to have a source of third party coverage.

(d) *Hospital-specific DSH limit calculation.* Only costs incurred in providing inpatient hospital and outpatient hospital services to Medicaid individuals, and revenues received with respect to those services, and costs incurred in providing inpatient hospital and outpatient hospital services, and revenues received with respect to those services, for which a determination has been made in accordance with paragraph (c) of this section that the services were furnished to individuals who have no source of third party coverage for the specific inpatient hospital or outpatient hospital service are included when calculating the costs and revenues for Medicaid individuals and individuals who have no health insurance or other source of third party coverage for purposes of section 1923(g)(1) of the Act.

Dated: September 26, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: November 19, 2014.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–28424 Filed 11–28–14; 11:15 am]

BILLING CODE 4120–01–P

# Proposed Rules

Federal Register
Vol. 79, No. 232
Wednesday, December 3, 2014

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 890 and 892

**RIN 3206–AN08**

## Federal Employees Health Benefits Program Self Plus One Enrollment Type

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations to add an additional enrollment type called "self plus one" for premium rating and family member eligibility purposes.

**DATES:** Comments are due on or before February 2, 2015.

**ADDRESSES:** Send written comments to Chelsea Ruediger, Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606–4640 Attn: Chelsea Ruediger. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Ruediger at *Chelsea.Ruediger@opm.gov* or (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** Section 706 of the Bipartisan Budget Act of 2013 adds to chapter 89 of title 5 United States Code a self plus one enrollment type for Federal employees and retirees under the Federal Employees Health Benefits (FEHB) Program. This proposed regulation amends 5 CFR parts 890 and 892 to include a self plus one enrollment type.

The self plus one enrollment type will be available starting in the 2015 Open Season for the 2016 plan year. A self plus one enrollment will cover the enrollee and one eligible family member, designated by the enrollee. The proposed regulation does not alter current FEHB family member eligibility guidelines. Eligible family members under a self plus one enrollment will be a spouse or an eligible child as outlined in § 890.302.

The government contribution calculation, determined by statute in 5 U.S.C. 8906, is based on the lesser of: (1) 72 percent of amounts OPM determines are the program-wide weighted average of premiums in effect each year, for self only, self plus one, and for self and family enrollments, respectively, or (2) capped at 75 percent of the total premium for the particular plan option an enrollee selects. This government contribution calculation will apply to the three tier enrollment structure. Because actual enrollment data for a new three tier structure will not be available in advance, OPM will determine the weighted average [1] for use in calculating the Government contribution and the employee contribution for the first plan year in which the self plus one enrollment type is made available (5 U.S.C. 8906(a)(1)(B)).

The proposed regulation provides definitions for a self only, self plus one, and self and family enrollment as follows:

- Self only enrollment means an enrollment that covers only the enrollee.
- Self plus one enrollment means an enrollment that covers the enrollee and one eligible family member.
- Self and family enrollment means an enrollment that covers the enrollee and all eligible family members.

We also offer definitions for an increase and decrease in enrollment type as follows:

- Decrease enrollment type means a change in enrollment from self and family to self plus one or to self only or a change from self plus one to self only.
- Increase enrollment type means a change in enrollment from self only to self plus one or to self and family or a change from self plus one to self and family.

This proposed regulation allows individuals with a self plus one enrollment to make enrollment changes during Open Season and consistent with the guidelines for current FEHB Qualifying Life Events. The following chart summarizes when enrollment changes will be allowed. Definitions for each of the event codes can be found on the SF2809 at *http://www.opm.gov/forms/pdf_fill/sf2809.pdf.*

| Change | *Permitted* for the following event codes |
|---|---|
| **For Enrollees Participating in Premium Conversion** | |
| Increase enrollment | 1B, 1C, 1E, 1F, 1I, 1J, 1K, 1M, 1N, 1O, 1R. |
| Decrease enrollment | 1B, 1C, 1E, 1F, 1G, 1H, 1J, 1M, 1N, 1O, 1P, 1Q, 1R. |
| **For Annuitants (decreases in enrollment type are allowed at any time)** | |
| Increase enrollment | 2A, 2B, 2F, 2G, 2H, 2I, 2J, 2K. |
| **For Former Spouses Under the Spouse Equity Provision (decreases in enrollment type are allowed at any time)** | |
| Increase enrollment | 3B, 3C, 3F, 3G, 3H, 3I. |

[1] Pub. L 113–67 sec. 706(d) WEIGHTED AVERAGE FOR FIRST YEAR.—For the first contract year for which an employee may enroll for self plus one coverage under chapter 89 of title 5, United States Code, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect for the contract year for enrollments for self plus one under such chapter based on an actuarial analysis.

| Change | *Permitted* for the following event codes |
|---|---|
| **For Temporary Continuation of Coverage (TCC) for Eligible Former Employees, Former Spouses, and Children (decreases in enrollment type are allowed at any time)** | |
| Increase enrollment | 4A (for eligible former employees only), 4B, 4C, 4D, 4F, 4G, 4H. |
| **For Employees Not Participating in Premium Conversion (decreases in enrollment type are allowed at any time)** | |
| Increase enrollment | 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5N. |

In addition, enrollees in self plus one are provided with an opportunity to switch their covered family member during the annual Open Season and outside of Open Season upon experiencing a change in family status, a change in coverage, or a change in eligibility. The following chart summarizes this. Definitions for each of the event codes can be found on the SF2809 at *http://www.opm.gov/forms/pdf_fill/sf2809.pdf.*

| Change | *Permitted* for the following event codes |
|---|---|
| **For Enrollees Participating in Premium Conversion** | |
| Switch covered family member under a self plus one enrollment. | 1B, 1C, 1I, 1J, 1M, 1N, 1O, 1P, 1Q, 1R. |
| **For Annuitants (decreases in enrollment type are allowed at any time)** | |
| Switch covered family member under a self plus one enrollment. | 2A, 2B, 2F, 2G, 2H, 2I, 2J. |
| **For Former Spouses Under the Spouse Equity Provision (decreases in enrollment type are allowed at any time)** | |
| Switch covered family member under a self plus one enrollment. | 3B, 3C, 3F, 3G, 3H, 3I. |
| **For Temporary Continuation of Coverage (TCC) for Eligible Former Employees, Former Spouses, and Children (decreases in enrollment type are allowed at any time)** | |
| Switch covered family member under a self plus one enrollment. | 4B, 4C, 4D, 4F, 4G, 4H. |
| **For Employees Not Participating in Premium Conversion (decreases in enrollment type are allowed at any time)** | |
| Switch covered family member under a self plus one enrollment. | 5B, 5C, 5F, 5G, 5H, 5I, 5J, 5N. |

We are requesting comments on these amendments and on the implementation of the self plus one enrollment type.

**Regulatory Impact Analysis**

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs 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). A regulatory impact analysis must be prepared for major rules that may have economically significant effects (*i.e.,* effects of $100 million or more in at least one year). Given that there are approximately 8.2 million members participating in the FEHB Program and participation involves hundreds of dollars per member per month, we cannot rule out the possibility that this proposed rule's changes to the FEHB Program will have effects that meet the threshold for economic significance. However, we do expect the overall federal budget impact of this proposed rule to be net neutral.

The new enrollment tier will align the FEHB Program with the commercial market and serve to spread costs across different enrollment types; in other words, it will shift costs among program participants. Under OPM's policies, current enrollees with Self and Family coverage who only have one dependent are expected to have lower premiums under the new enrollment tier, while those with more than one dependent are expected to have higher premiums. A large percentage of annuitants who currently have Self and Family coverage would likely benefit from a Self-Plus One premium tier, resulting in mandatory savings to the government because the government share of annuitant premiums will decrease. As enrollees shift from Self and Family enrollments, OPM will closely monitor the effect on premiums for those remaining in that enrollment type. If premiums for active employees with more than one covered family member rise, there will be increasing costs to the government (assuming appropriation of necessary funds).[2]

The impact of this proposed rule hinges upon the relative premiums for self plus one and self and family insurance options. Because the self and family option includes coverage for a larger number of people, a natural assumption would be that premiums (both the portion paid by the

[2] United States Office of Personnel Management, Congressional Budget Justification Performance Budget, Fiscal Year 2014, Submitted April 2013, available at *https://www.opm.gov/about-us/budget-performance/budgets/congressional-budget-justification-fy2014.pdf.* See also Congressional Budget Office, Cost Estimate, Bipartisan Budget Act of 2013, dated December 11, 2013, available at *http://www.cbo.gov/sites/default/files/cbofiles/attachments/Bipartisan%20Budget%20Act%20of%202013.pdf.*

government and the portion paid by the federal employee or annuitant) would be lower with self plus one enrollment than with self and family enrollment. In that case, several rule-induced outcomes are likely:

- Federal employees and annuitants who, in the absence of the rule, would choose self and family enrollment for themselves and either a spouse or a child would switch to self-plus-one enrollment, resulting in lower premium payments for both the employees and annuitants and the federal government.
- Federal employees and annuitants choosing self and family enrollment for themselves and at least two family members would experience an increase in premiums and therefore, in some cases, may choose to switch from FEHB to an alternative health insurance option. If all such families continued with FEHB participation, the government would experience an increase in premium payments that would (in theory) exactly offset the decreases associated with two-person families switching from self and family to self plus one enrollment; however, any switching away from FEHB would mitigate the premium increases experienced by the federal government, instead potentially leading to payment increases by any contributors to the newly-chosen insurance options (an obvious example would be the employer of a federal employee's or annuitant's spouse if that employer sponsors the newly-chosen insurance).
- Federal employees and annuitants who, in the absence of the rule, would choose self only enrollment in spite of having a spouse or child who would be eligible for coverage under self and family enrollment may choose self plus one enrollment. For example, this outcome might occur if a self and family premium is greater than the combined premiums for a federal employee's self only enrollment and a spouse's self only enrollment in health insurance through his or her own employer, but the relevant FEHB self plus one premium is less than the combined premiums.[3] In this type of scenario in which the federal employee's or annuitant's enrollment increases, the federal government would pay more in premiums (relative to a baseline in which this rule is not finalized) but the federal employee's or annuitant's family would pay less. Any contributors to the insurance in which the family member would be enrolled in the absence of the rule—such as the employer of the federal employee's spouse in the preceding example—would also pay less.

The premium payments newly made by the entities listed above are appropriately categorized as costs to society if rule-induced changes in health insurance enrollment would be associated with providing additional or higher-quality medical services to affected individuals. These costs would presumably be associated with health and longevity benefits. Analogously, overall reductions in premium payments are appropriately categorized as cost savings for society if rule-induced changes in health insurance enrollment would be associated with providing lower amounts or quality of medical services. These cost savings would presumably be associated with reductions in health and longevity. To the extent that new patterns of enrollment do not change how society uses its resources, then effects described above would be transfers between members of society, rather than social costs or benefits.

We lack data with which to quantify rule-induced costs, transfers or public health benefits. We therefore request comments on any of this proposed rule's impacts.

### Regulatory Flexibility Act

I propose to certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds a self plus one enrollment tier to the current self only and self and family enrollment tiers under FEHB.

### Executive Orders 13563 and 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

### Federalism

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

### List of Subjects in 5 CFR Part 890 and 892

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Taxes, Wages.

Retirement.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

Accordingly, OPM proposes to amend 5 CFR parts 890 and 892 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Amend § 890.101 by:

■ a. Revising the definitions of "Change the enrollment" and "Covered family member"; and

■ b. Adding the definitions of "Decrease enrollment type," "Increase enrollment type," "Self and family enrollment," "Self only enrollment," and "Self plus one enrollment" in alphabetical order.

The revisions and additions read as follows:

**§ 890.101 Definitions; time computations.**

* * * * *

*Change the enrollment* means to submit to the employing office an appropriate request electing a change of enrollment to a different plan or option, or to a different type of coverage (self only, self plus one, or self and family).

* * * * *

*Covered family member* means a member of the family of an enrollee with a self plus one or self and family enrollment who meets the requirements of § 890.302, § 890.804, or § 890.1106(a), as appropriate to the type of enrollee.

*Decrease enrollment type* means a change in enrollment from self and family to self plus one or to self only or a change from self plus one to self only.

* * * * *

*Increase enrollment type* means a change in enrollment from self only to

[3] Similarly, federal employees and annuitants who, in the absence of the rule, would choose not to participate in the FEHB Program may choose self plus one enrollment. For example, this outcome might occur if a federal employee's spouse has access to health insurance with a family or plus-one premium that is less than the combined premiums for the federal employee's self only enrollment and the spouse's self only enrollment, but the relevant FEHB self plus one premium is even further below the combined premiums than the family or plus-one premium through the spouse's employer.

self plus one or to self and family or a change from self plus one to self and family.

* * * * *

*Self and family enrollment* means an enrollment that covers the enrollee and all eligible family members.

*Self only enrollment* means an enrollment that covers only the enrollee.

*Self plus one enrollment* means an enrollment that covers the enrollee and one eligible family member.

* * * * *

■ 3. Amend § 890.201 by revising (a)(6) to read as follows:

**§ 890.201 Minimum standards for health benefits plans.**

(a) * * *

(6) Provide a standard rate structure that contains, for each option, one standard self only rate, one standard self plus one rate and one standard self and family rate.

* * * * *

■ 4. Amend § 890.301 by revising paragraphs (e), (f)(3), (g)(1) and (3), (h) introductory text, (i) introductory text and (i)(1), and (m) to read as follows:

**§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.**

* * * * *

(e) *Decreasing enrollment type.* (1) Subject to two exceptions, an employee may decrease enrollment type at any time. *Exceptions:*

(i) An employee participating in health insurance premium conversion may decrease enrollment type during an open season or because of and consistent with a qualifying life event as defined in part 892 of this chapter.

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not decrease enrollment type in a way that eliminates coverage of a child identified in the order as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren). The employee may not elect self only as long as he or she has one child identified as covered, but may elect self plus one.

(2) A decrease in enrollment type takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to change the enrollment, except that at the request of the enrollee and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the self plus one or self and family enrollment, or only one family member eligible for coverage under the self and family enrollment, as appropriate, the employing office may make the change effective on the first day of the pay period following the one in which there was, in the case of a self plus one enrollment, no family member or, in the case of a self only enrollment, only one or no family member.

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, may change from one plan or option to another, or may make any combination of these changes. Exception: An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not cancel his or her enrollment, decrease enrollment type, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren). The employee may not elect self only as long as he or she has one child identified as covered, but may elect self plus one.

* * * * *

(g) *Change in family status.* (1) An eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the employee's family status changes, including a change in marital status or any other change in family status. The employee must enroll or change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

* * * * *

(3)(i) If an employing office receives a court or administrative order on or after October 30, 2000, requiring an employee to provide health benefits for his or her child or children, the employing office will determine if the employee has a self plus one or self and family enrollment, as appropriate, in a health benefits plan that provides full benefits in the area where the child or children live. If the employee does not have the required enrollment, the agency must notify him or her that it has received the court or administrative order and give the employee until the end of the following pay period to change his or her enrollment or provide documentation to the employing office that he or she has other coverage for the child or children. If the employee does not comply within these time frames, the employing office must enroll the employee involuntarily as stated in paragraph (g)(3)(ii) of this section.

(ii) If the employee is not enrolled or does not enroll, the agency must enroll him or her for self plus one or self and family coverage, as appropriate, in the option that provides the lower level of coverage in the Service Benefit Plan. If the employee is enrolled but does not increase the enrollment type in a way that is sufficient to cover the child or children, the employing office must change the enrollment to self plus one or self and family, as appropriate, in the same option and plan, as long as the plan provides full benefits in the area where the child or children live. If the employee is enrolled in a comprehensive medical plan that does not serve the area in which the child or children live, the employing office must change the enrollment to self plus one or self and family, as appropriate, in the option that provides the lower level of coverage in the Service Benefit Plan.

* * * * *

(h) *Change in employment status.* An eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the employee's employment status changes. Except as otherwise provided, an employee must enroll or change the enrollment within 60 days after the change in employment status. Employment status changes include, but are not limited to—

* * * * *

(i) *Loss of coverage under this part or under another group insurance plan.* An eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee loses coverage under this part or another group health benefits plan. Except as otherwise provided, an employee must enroll or change the enrollment within the period beginning 31 days before the date of loss of coverage, and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the

termination, cancellation, or a change to self plus one or to self only, of the covering enrollment.

* * * * *

(m) An employee or eligible family member becomes eligible for premium assistance under Medicaid or a State Children's Health Insurance Program (CHIP). An eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee becomes eligible for premium assistance under a Medicaid plan or CHIP. An employee must enroll or change his or her enrollment within 60 days after the date the employee or family member is determined to be eligible for assistance.

■ 5. Amend § 890.302 by revising paragraphs (a)(1), (a)(2)(ii), and (c) introductory text and adding paragraph (f) to read as follows:

**§ 890.302 Coverage of family members.**

(a)(1) An enrollment for self plus one includes the enrollee and one eligible family member. An enrollment for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is already covered under another person's self plus one or self and family enrollment in the FEHB Program.

(2) * * *

(ii) *Exception.* An individual described in paragraph (a)(2)(i) of this section may enroll if he or she or his or her eligible family members would otherwise not have access to coverage, in which case the individual may enroll in his or her own right for self only, self plus one, or self and family coverage, as appropriate. However, an eligible individual is entitled to receive benefits under only one enrollment regardless of whether he or she qualifies as a family member under a spouse's or parent's enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which person(s) will be covered under his or her enrollment. These individuals are not covered under the other enrollment. Examples include but are not limited to:

(A) To protect the interests of married or legally separated Federal employees, annuitants, and their children, an employee or annuitant may enroll in his or her own right in a self only, self plus one, or self and family enrollment, as appropriate, even though his or her spouse also has a self plus one or self and family enrollment if the employee, annuitant, or his or her children live apart from the spouse and would otherwise not have access to coverage due to a service area restriction and the spouse refuses to change health plans.

(B) When an employee who is under age 26 and covered under a parent's self plus one or self and family enrollment acquires an eligible family member, the employee may elect to enroll for self plus one or self and family coverage.

* * * * *

(c) *Child incapable of self-support.* When an individual's enrollment for self plus one or self and family includes a child who has become 26 years of age and is incapable of self-support, the employing office must require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

* * * * *

(f) *Switching a covered family member.* An enrollee with a self plus one enrollment may switch his or her covered family member during the annual Open Season, upon a change in family status, upon a change in coverage, or upon a change in eligibility, so long as switching a covered family member is consistent with the event that has taken place.

■ 6. Amend § 890.303 by revising paragraphs (c), (d)(2)(ii), and the paragraph heading to (d)(3) to read as follows:

**§ 890.303 Continuation of enrollment.**

* * * * *

(c) *On death.* (1) The enrollment of a deceased employee or annuitant who is enrolled for self plus one or self and family (as opposed to self only) is transferred automatically to his or her eligible survivor annuitant(s) covered by the enrollment, as applicable. For self and family, the enrollment is considered to be that of:

(i) The survivor annuitant from whose annuity all or the greatest portion of the withholding for health benefits is made; or

(ii) The surviving spouse entitled to a basic employee death benefit.

(2) The enrollment covers members of the family of the deceased employee or annuitant. In those instances in which the annuity is split among surviving family members, multiple enrollments are allowed. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 or 8442 of title 5, United States Code, continues after remarriage.

(d) * * *

(2) * * *

(ii) If the surviving spouse of a deceased employee or annuitant is enrolled as an employee with a self plus one or self and family enrollment (or, if both the decedent and the surviving spouse were enrolled in a self only or self plus one enrollment) at the time the surviving spouse becomes a survivor annuitant and the surviving spouse is thereafter separated without entitlement to continued enrollment as a retiree, the surviving spouse is entitled to enroll as a survivor annuitant. The change from coverage as an employee to coverage as a survivor annuitant must be made within 30 days of separation from service.

* * * * *

(3) *Insurable interest survivor annuity.*

* * * * *

■ 7. Amend § 890.306 by revising paragraphs (e), (f)(1)(i), (g)(1), (l) introductory text, (l)(1), (n), and (r) as follows:

**§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?**

* * * * *

(e) *Decreasing enrollment type.* (1) With one exception, an annuitant may decrease enrollment type at any time. Exception: An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not, after retirement, decrease enrollment type in a way that eliminates coverage of a child identified in the order as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children. The annuitant may not elect self only as long as he or she has one child identified as covered, but may elect self plus one.

(2) A decrease in enrollment type takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to change the enrollment, except that at the request of the annuitant and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the self plus one or self and family enrollment, or only one family member eligible for coverage under the self and family enrollment, as appropriate, the employing office may make the change effective on the first day of the pay period following the one

in which there was, in the case of a self plus one enrollment, no family member or, in the case of a self and family enrollment, only one or no family member.

(f) * * *

(1) * * *

(i) With one exception, an enrolled annuitant may decrease or increase enrollment type, may change from one plan or option to another, or may make any combination of these changes. Exception: An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not cancel or suspend his or her enrollment, decrease enrollment type, in a way that eliminates coverage of a child identified in the order or change to a comprehensive medical plan that does not serve the area where his or her child or children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children. The annuitant may not elect self only as long as he or she has one child identified as covered, but may elect self plus one.

* * * * *

(g) *Change in family status.* (1) An enrolled former employee in receipt of an annuity may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the annuitant's family status changes, including a change in marital status or any other change in family status. In the case of an enrolled survivor annuitant, a change in family status based on additional family members occurs only if the additional family members are family members of the deceased employee or annuitant. The annuitant must change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

* * * * *

(l) *Loss of coverage under this part or under another group insurance plan.* An annuitant who meets the requirements of paragraph (a) of this section, and who is not enrolled but is covered by another enrollment under this part may continue coverage by enrolling in his or her own name when the annuitant loses coverage under the other enrollment under this part. An enrolled annuitant may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the annuitant or an eligible family member of the annuitant loses coverage under this part or under another group health benefits plan. Except as otherwise provided, an annuitant must enroll or change the enrollment within the period beginning 31 days before the date of loss of coverage and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or a change to self plus one or self only, of the covering enrollment;

* * * * *

(n) *Overseas post of duty.* An annuitant may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes within 60 days after the retirement or death of the employee on whose service title to annuity is based, if the employee was stationed at a post of duty outside a State of the United States or the District of Columbia at the time of retirement or death.

* * * * *

(r) *Sole survivor.* When an employee or annuitant enrolled for self plus one or self and family dies, leaving a survivor annuitant who is entitled to continue the enrollment, and it is apparent from available records that the survivor annuitant is the sole survivor entitled to continue the enrollment, the office of the retirement system which is acting as employing office must change the enrollment from self plus one or self and family to self only, effective on the commencing date of the survivor annuity. On request of the survivor annuitant made within 31 days after the first installment of annuity is paid, the office of the retirement system which is acting as employing office must rescind the action retroactive to the effective date of the change to self only, with corresponding adjustment in withholdings and contributions.

* * * * *

■ 8. Amend § 890.401 by revising paragraph (a)(1) to read as follows:

**§ 890.401 Temporary extension of coverage and conversion.**

(a) *Thirty-one day extension and conversion.* (1) An enrollee whose enrollment is terminated other than by cancellation of the enrollment or discontinuance of the plan, in whole or part, and a covered family member whose coverage is terminated other than by cancellation of the enrollment or discontinuance of the plan, in whole or in part, is entitled to a 31-day extension of coverage for self only, self plus one, or self and family, as the case may be, without contributions by the enrollee or the Government, during which period he or she is entitled to exercise the right of conversion provided for by this part. The 31-day extension of coverage and the right of conversion for any person ends on the effective date of a new enrollment under this part covering the person.

* * * * *

■ 9. Amend § 890.501 by revising paragraph (b) introductory text, (b)(2)(i), and (b)(3) to read as follows:

**§ 890.501 Government contributions.**

* * * * *

(b) In accordance with the provisions of 5 U.S.C. 8906(a) which take effect with the contract year that begins in January 1999, OPM will determine the amounts representing the weighted average of subscription charges in effect for each contract year, for self only, self plus one, and self and family enrollments, as follows:

* * * * *

(2)* * *

(i) When a subscription charge for an upcoming contract year applies to a plan that is the result of a merger of two or more plans which contract separately with OPM during the determination year, or applies to a plan which will cease to offer two benefits options, OPM will combine the self only enrollments, the self plus one enrollments, and the self and family enrollments from the merging plans, or from a plan's benefits options, for purposes of weighting subscription charges in effect for the successor plan for the upcoming contract year.

* * * * *

(3) After OPM weights each subscription charge as provided in paragraph (b)(2) of this section, OPM will compute the total of subscription charges associated with self only enrollments, self plus one enrollments, and self and family enrollments, respectively. OPM will divide each subscription charge total by the total number of enrollments such amount represents to obtain the program-wide weighted average subscription charges for self only and for self plus one and self and family enrollments, respectively.

* * * * *

■ 10. Amend § 890.804 by revising paragraph (a) to read as follows:

**§ 890.804 Coverage.**

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self only, self plus one, or self and family. A self and family enrollment covers only the former spouse and all eligible children of both the former spouse and the employee, former employee, or employee annuitant, provided such children are not otherwise covered by a health plan under this part. A self plus one enrollment covers only the former spouse and one eligible child of both the former spouse and the employee, former employee, or employee annuitant, provided the child is not otherwise covered by a health plan under this part. A child must be under age 26 or incapable of self-support because of a mental or physical disability existing before age 26. No person may be covered by two enrollments.

* * * * *

■ 11. Amend § 890.806 by revising paragraphs (e), (f)(1)(i), (g)(1), (j) introductory text, and (j)(1) to read as follows:

**§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?**

* * * * *

(e) *Decreasing enrollment type.* (1) A former spouse may decrease enrollment type at any time.

(2) A decrease in enrollment type takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to change the enrollment, except that at the request of the former spouse and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the self plus one or self and family enrollment, or only one family member eligible for coverage under the self and family enrollment, as appropriate, the employing office may make the change effective on the first day of the pay period following the one in which there was, in the case of a self plus one enrollment, no family member or, in the case of a self and family enrollment, only one or no family member.

(f) * * *

(i) An enrolled former spouse may decrease enrollment type, increase enrollment type provided the family member(s) to be covered under the enrollment is eligible for coverage under § 890.804, change from one plan or option to another, or make any combination of these changes.

* * * * *

(g) *Change in family status.* (1) An enrolled former spouse may increase enrollment type, change from one plan or option to another, or make any combination of these changes within the period beginning 31 days before and ending 60 days after the birth or acquisition of a child who meets the eligibility requirements of § 890.804.

* * * * *

(j) *Loss of coverage under this part or under another group insurance plan.* An enrolled former spouse may decrease or increase enrollment type, change from one plan or option to another or make any combination of these changes when the former spouse or a child who meets the eligibility requirements under § 890.804 loses coverage under another enrollment under this part or under another group health benefits plan. Except as otherwise provided, the former spouse must change the enrollment within the period beginning 31 days before the date of loss of coverage and ending 60 days after the date of loss of coverage, provided he or she continues to meet the eligibility requirements under § 890.803. Losses of coverage include but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or a change to self plus one or self only, of the covering enrollment;

* * * * *

■ 12. Amend § 890.1103 by revising paragraphs (a)(2) and (3) to read as follows:

**§ 890.1103 Eligibility.**

(a) * * *

(2) Individuals whose coverage as children under the self plus one or self and family enrollment of an employee, former employee, or annuitant ends because they cease meeting the requirements for being considered covered family members. For the purpose of this section, children who are enrolled under this part as survivors of deceased employees or annuitants are considered to be children under a self plus one or self and family enrollment of an employee or annuitant at the time of the qualifying event.

(3) Former spouses of employees, of former employees having continued self plus one or self and family coverage under this subpart, or of annuitants, if the former spouse would be eligible for continued coverage under subpart H of this part except for failure to meet the requirement of § 890.803(a)(1) or § 890.803(a)(3) of this part or the documentation requirements of § 890.806(a) of this part, including former spouses who lose eligibility under subpart H within 36 months after termination of the marriage because they ceased meeting the requirement of § 890.803(a)(1) or § 890.803(a)(3) of this part.

* * * * *

■ 13. Amend § 890.1106 by revising paragraph (a) introductory text to read as follows:

**§ 890.1106 Coverage.**

(a) *Type of enrollment.* An individual who enrolls under this subpart may elect coverage for self only, self plus one, or self and family.

* * * * *

■ 14. Amend § 890.1108 by revising paragraphs (d), (e)(1), (f)(1) and (2), (h) introductory text, and (h)(1) to read as follows:

**§ 890.1108 Opportunities to change enrollment; effective dates.**

* * * * *

(d) *Decreasing enrollment type.* (1) An enrollee may decrease enrollment type at any time.

(2) A decrease in enrollment type takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to change the enrollment, except that at the request of the enrollee and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the self plus one or self and family enrollment, or only one family member eligible for coverage under the self and family enrollment, as appropriate, the employing office may make the change effective on the first day of the pay period following the one in which there was, in the case of a self plus one enrollment, no family member or, in the case of a self and family enrollment, only one or no family member.

(e) *Open season.* (1) During an open season as provided by § 890.301(f), an enrollee (except for a former spouse who is eligible for continued coverage under § 890.1103(a)(3)) may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes. A former spouse who is eligible for continued coverage under § 890.1103(a)(3) may change from one plan or option to another, but may not change from self only to self plus one or self and family unless the individual to be covered under the self plus one or self and family enrollment qualifies as a family member under § 890.1106(a)(2).

* * * * *

(f) *Change in family status.* (1) Except for a former spouse, an enrollee may decrease or increase enrollment type, change from one plan or option to

another, or make any combination of these changes when the enrollee's family status changes, including a change in marital status or any other change in family status. The enrollee must change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

(2) A former spouse who is covered under this section may increase enrollment type, change from one plan or option to another, or make any combination of these changes within the period beginning 31 days before and ending 60 days after the birth or acquisition of a child who qualifies as a covered family member under § 890.1106(a)(2).

* * * * *

(h) *Loss of coverage under this part or under another group insurance plan.* An enrollee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the enrollee loses coverage under this part or a qualified family member of the enrollee loses coverage under this part or under another group health benefits plan. Except as otherwise provided, an enrollee must change the enrollment within the period beginning 31 days before the date of loss of coverage and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or change to self plus one or to self only, of the covering enrollment.

* * * * *

■ 15. Amend § 890.1202 by revising the definition of "Covered family members" to read as follows:

**§ 890.1202 Definitions.**

* * * * *

*Covered family members* as it applies to individuals covered under this subpart has the same meaning as set forth in § 890.101(a). For eligible survivors of individuals enrolled under this subpart, a self plus one enrollment covers only the survivor or former spouse and one eligible child of both the survivor or former spouse and hostage. A self and family enrollment covers only the survivor or former spouse and any eligible children of both the survivor or former spouse and hostage.

* * * * *

■ 16. Amend § 890.1203 by revising paragraph (b) to read as follows:

**§ 890.1203 Coverage.**

* * * * *

(b) An individual who is covered under this subpart is covered under the Standard Option of the Service Benefit Plan. The individual has a self and family enrollment unless the U.S. Department of State determines that the individual is married and has no eligible children, or is unmarried and has one eligible child, in which case the individual is covered under a self plus one enrollment, or unless the U.S. Department of State determines that the individual is unmarried and has no eligible children, in which case the individual has a self only enrollment.

* * * * *

■ 17. Amend § 890.1205 by revising paragraphs (a) and (b) to read as follows:

**§ 890.1205 Change in type of enrollment.**

(a) Individuals covered under this subpart or eligible survivors enrolled under this subpart may increase enrollment type if they acquire an eligible family member. The change may be made at the written request of the enrollee at any time after the family member is acquired. An increase in enrollment type under this paragraph becomes effective on the 1st day of the pay period after the pay period during which the request is received by the U.S. Department of State, except that a change based on the birth or addition of a child as a new family member is effective on the 1st day of the pay period during which the child is born or otherwise becomes a new family member.

(b) Individuals covered under this subpart or eligible survivors enrolled under this subpart may decrease enrollment type from a self and family enrollment when the last eligible family member (other than the enrollee) ceases to be a family member or only one family member remains; and may decrease enrollment type from a self plus one enrollment when no family member remains. The change may be made at the written request of the enrollee at any time after the last family member is lost and it becomes effective on the 1st day of the pay period after the pay period during which the request is received by the U.S. Department of State.

* * * * *

■ 18. Amend § 890.1209 by revising paragraph (c) to read as follows:

**§ 890.1209 Responsibilities of the U.S. Department of State.**

* * * * *

(c) The U.S. Department of State must determine the number of eligible family members, if any, for the purpose of coverage under a self only, self plus one, or self and family enrollment as set forth in § 890.1203(b). If the number of eligible family members of the individual cannot be determined, the U.S. Department of State must enroll the individual for self and family coverage.

## PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 19. The authority citation for part 892 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

■ 20. Amend § 892.101 by revising paragraphs (9) and (13) in the definition of "Qualifying life event" to read as follows:

**§ 892.101 Definitions.**

* * * * *

*Qualifying life event.* * *

(9) An employee becomes entitled to Medicare. (For change to self only, self plus one, cancellation, or change in premium conversion status see § 892.101 (11)).

* * * * *

(13) An employee or eligible family member becomes eligible for premium assistance under Medicaid or a State Children's Health Insurance Program (CHIP). An eligible employee may enroll and an enrolled employee may decrease or increase enrollment type, change from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee becomes eligible for premium assistance under a Medicaid plan or a State Children's Health Insurance Program. An employee must enroll or change his or her enrollment within 60 days after the date the employee or family member is determined to be eligible for assistance.

■ 21. Amend § 892.207 by revising paragraph (b) to read as follows:

**§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?**

* * * * *

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to decrease enrollment type or to cancel FEHB coverage entirely. (See §§ 892.209 and 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

* * * * *

■ 22. Revise § 892.208 to read as follows:

**§ 892.208 Can I change my enrollment from self and family to self plus one or self only at any time?**

(a) If you are participating in premium conversion you may decrease your FEHB enrollment type under either of the following circumstances:

(1) *During the annual open season.* A decrease in enrollment type made during the annual open season takes effect on the 1st day of the first pay period that begins in the next year.

(2) *Within 60 days after you have a qualifying life event.* A decrease in enrollment type made because of a qualifying life event takes effect on the first day of the first pay period that begins after the date your employing office receives your appropriate request. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced and have no dependent children, changing to self only would be consistent with that qualifying life event. As another example, if both you and your spouse are Federal employees, and your youngest dependent turns age 26, changing from a self and family to a self plus one or two self only enrollments would be consistent and appropriate for that event.

(b) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not decrease enrollment type in a way that eliminates coverage of a child identified in the order as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also §§ 892.207 and 892.209. If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not change your enrollment to self plus one as long as the court or administrative order is still in effect and you have more than one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your children. See also §§ 892.207 and 892.209.

[FR Doc. 2014–28429 Filed 12–2–14; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. APHIS–2014–0041]**

**RIN 0579–AE01**

## Importation of Orchids in Growing Media From Taiwan

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation of plants and plant products to add orchid plants of the genus *Oncidium* from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request from the Taiwanese Government and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

**DATES:** We will consider all comments that we receive on or before February 2, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0041.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0041, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0041* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2076.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in "Subpart—Plants for Planting," §§ 319.37 through 319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37–8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported § 319.37–8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of the country where the plants are grown and between the foreign NPPO and the grower;
- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and

• Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the NPPO of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

Currently, orchid plants of genus *Oncidium* spp. may only be imported into the United States as bare root plants, in accordance with § 319.37–2. The Government of Taiwan has requested that importation into the United States of those plants be allowed under the provisions of § 319.37–8.

The regulations in § 319.37–8(g) provide that requests such as the one made by the Government of Taiwan be evaluated by APHIS using specific pest risk evaluation standards that are based on pest risk analysis (PRA) guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization. Such analyses are conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS should propose to allow the requested plant article established in growing media to be imported into the United States. In accordance with § 319.37–8(g), APHIS has conducted the required PRA, which can be viewed on the Internet on the Regulations.gov Web site or in our reading room.[1]

In the PRA, titled "Importation of *Oncidium* spp. in growing media from Taiwan into the United States," APHIS determined that 14 quarantine pests present in Taiwan could potentially follow the import pathway:

• *Tetranychus kanzawai* Kishida, a spider mite.

• *Amsacta lactinea* Cramer, a tiger moth.

• *Spodoptera litura* (Fabricius), the Oriental leafworm moth.

• *Scirtothrips dorsalis* Hood, the chili thrips.

• *Thrips palmi* Karny, the melon thrips.

• *Lissachatina fulica* (Bowdich), a snail.

• *Deroceras laeve* (Muller), the marsh slug.

• *Parmarion martensi* Simroth, a semislug.

• *Petalochlamys vesta* (Pfeiffer), a snail.

• *Meghimatium bilineatus* (Benson), a slug.

• *Meghimatium pictum* Stoliczka, a slug.

• *Laevicaulis alte* (Férussac), the tropical leatherleaf.

• *Pectobacterium cypripedii* (Hori) Brenner et al., a bacterial leaf-disease of orchids.

• *Bipolaris zizaniae* (Y. Nisik.) Shoemaker, a fungus.

A quarantine pest is defined in § 319.37–1 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of *Oncidium* spp. from Taiwan into the United States were derived by estimating the consequences and likelihood of introduction of each quarantine pest into the United States and ranking the risk potential as high, medium, or low. The PRA determined that 12 of these 14 pests—*T. kanzawai, A. lactinea, S. litura, S. dorsalis, T. palmi, L. fulica, D. laeve, P. martensi, P. vesta, M. bilineatus, M. pictum,* and *L. alte*—pose a high risk of following the pathway. The remaining pests—*P. cypripedii* and *B. zizaniae*—were rated as having a medium risk potential. However, the PRA acknowledged that the risk presented by these plant pests is consistent with any propagative epiphytic orchid materials and pest associations. Further, it is important to note that those plant pest risks were identified in the absence of the mitigative effects of the requirements in § 319.37–8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. Given that, the PRA concluded that the safeguards in § 319.37–8(e) would allow the safe importation of *Oncidium* spp. from Taiwan provided that the plants are established in an approved growing medium and meet all other applicable conditions of § 319.37–8(e). This determination is based on the findings of the PRA and the Secretary's judgment that the application of the measures required under § 319.37–8(e) will prevent the introduction or dissemination of plant pests into the United States.

Accordingly, we are proposing to amend the regulations in § 319.37–8(e) by adding *Oncidium* spp. from Taiwan to the list of plants established in an approved growing medium that may be imported into the United States. The plants would have to be produced, handled, and imported in accordance with the requirements of § 319.37–8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the NPPO of Taiwan that declares that those requirements have been met.

**Miscellaneous**

In "Subpart—Plants for Planting," there is an incorrect reference in footnotes 9 and 10. Currently, both footnotes 9 and 10 refer the reader to footnote 9 when they should refer instead to footnote 8. In a previous action we redesignated some of the footnotes in "Subpart—Plants for Planting" and neglected to update the references to other footnotes. We are therefore proposing to revise footnotes 9 and 10 to refer the reader to footnote 8.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would amend the regulations to include *Oncidium* spp. from Taiwan on the list of plants that may enter the United States established in approved growing media, subject to specified growing, inspection, and certification requirements. Eliminating the requirement that *Oncidium* spp. from Taiwan must be bare-rooted is expected to increase the number and quality of these plants imported by U.S. growers, who then finish the plants for the retail market. It is also expected to reduce the production time for growers. However, gains due to improved product quality and reduced production time are likely to lead to compensating price adjustments, assuming a competitive market.

*Oncidium* spp. represent a relatively small portion of the orchid market and orchid trade, with a market share of

[1] Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk analysis by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

between 15 and 25 percent. While many of the entities that may be affected by the final rule, such as importers of orchids for the potted plant market, are small by Small Business Administration standards, we expect any impact to be minimal, given *Oncidium* spp.'s small share of the U.S. orchid market and their small share of total orchid imports from Taiwan. Allowing importation of *Oncidium* spp. from Taiwan in growing media could also lead to an expanded market for this genus, but any increase is likely to be limited given the flower's unusual appearance.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of *Oncidium* spp. from Taiwan, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37–8 (e) introductory text is amended as follows:

■ a. By adding a new entry in alphabetical order.

■ b. In footnotes 9 and 10, by removing the words "footnote 9" and adding the words "footnote 8" in their place.

The addition reads as follows:

**§ 319.37–8 Growing media.**

* * * * *

(e) * * *

*Oncidium* spp. from Taiwan

* * * * *

Done in Washington, DC, this 1st day of December 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–28487 Filed 12–2–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket No. EERE–2011–BT–STD–0043]**

**RIN 1904–AC51**

## Energy Conservation Standards for Miscellaneous Refrigeration Products: Public Meeting and Availability of the Preliminary Technical Support Document

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

**ACTION:** Notice of public meeting and availability of preliminary technical support document.

**SUMMARY:** The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the preliminary analysis it has conducted for purposes of establishing energy conservation standards for miscellaneous refrigeration products. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate whether to set standards for these products; the results of preliminary analyses performed by DOE for the products; the potential energy conservation standard levels derived from these analyses that DOE could consider for these products; and any other issues relevant to the development of energy conservation standards for miscellaneous refrigeration products. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71.*

**DATES:** DOE will hold a public meeting on Friday January 9, 2015, from 9 a.m. to 4 p.m., in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via Webinar. DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than February 2, 2015. See section IV, "Public Participation," of this notice for details.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Interested persons may submit comments, identified by docket number EERE–2011–BT–STD–0043 and/or Regulation Identification Number (RIN) 1904–AC51, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: WineChillers-2011–STD–0043@ee.doe.gov.* Include the docket number EERE–2011–BT–STD–0043 and/or RIN 1904–AC51 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71*. This Web page contains a link to the docket for this notice on the regulation.gov site. The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

For detailed instructions on attending the meeting and submitting comments, and for additional information on the rulemaking process, see section IV, "Public Participation," of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] As part of these statutory provisions, EPCA permits DOE to establish energy conservation standards for those consumer products that are not already explicitly addressed by EPCA provided they meet certain threshold criteria for coverage and specific additional standards-related criteria. See 42 U.S.C. 6292(b) (laying out predicate requirements prior to treating a product as a newly covered product). See also 42 U.S.C. 6295(l)(1) (detailing the criteria that a newly covered product must meet in order to permit DOE to establish energy conservation standards for that product). This notice addresses a variety of consumer refrigeration products that DOE is evaluating whether to regulate.

The consumer products addressed by this notice are hybrid (or combination) refrigerators, refrigerator-freezers, and freezers (*i.e.*, products that include warm compartments such as wine storage compartments in products that otherwise perform the functions of refrigerators, refrigerator-freezers, or freezers), cooled cabinets (including wine chillers), refrigeration products that do not use vapor-compression refrigeration systems (*i.e.*, products that do not include a compressor and condenser unit as an integral part of the cabinet assembly), and ice makers. Although cooled cabinets (including wine chillers) that use a conventional compressor/condenser system already fall into the covered products category described in 42 U.S.C. 6292(a)(1), they are not covered by energy conservation standards for refrigerators, refrigerator-freezers, and freezers, largely because they are not designed to be capable of achieving compartment temperatures colder than the 39 degrees Fahrenheit (°F) limit specified in DOE's current regulatory definition for "refrigerator." (10 CFR 430.2)

The other remaining products listed in the previous paragraph, however, do not fall into the category described in 42 U.S.C. 6292(a)(1) for coverage of consumer refrigerators, refrigerator-freezers, and freezers. In cases such as these, where a given product is not explicitly covered by EPCA, DOE may classify that product as a covered product if doing so would satisfy the requirements of 42 U.S.C. 6292(b)(1). That provision states that the Secretary of Energy may classify a type of consumer product as a covered product if: (1) Coverage of the product is necessary or appropriate for carrying out the purposes of EPCA and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (kWh) per year. DOE preliminarily determined in an October 31, 2013 notice (hereafter referred to as the October 2013 Coverage Proposal) that, in aggregate, the products listed above satisfy the coverage prerequisites of 42 U.S.C. 6292(b)(1). Consequently, DOE proposed to treat these products as a single new product coverage category under EPCA. 78 FR 65223. Should DOE issue a final determination that such products are covered and meet the EPCA requirements in 42 U.S.C. 6295(l)(A), DOE would have the authority to develop energy conservation standards for these products.

In a NOPR for a parallel rulemaking (hereafter referred to as the Test Procedure NOPR), DOE has proposed new test procedures for all the products in this new coverage category. The Test Procedure NOPR proposes that all the products covered in this rulemaking would be collectively defined as "miscellaneous refrigeration products," which is the term that will be used to refer to these products in this document.

DOE is required to consider standards that: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the

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

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).

benefits of the standard exceed its burdens to the greatest extent practicable, using the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;
3. The total projected amount of energy savings likely to result directly from the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product. This notice announces the availability of the preliminary TSD, which details the preliminary analyses, discusses the comments DOE received from interested parties on the Framework Document, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

## II. History of Energy Conservation Standards Rulemaking for Miscellaneous Refrigeration Products

### A. Background

DOE does not have energy conservation standards for miscellaneous refrigeration products but recognizes the increasing popularity of these particular products. Given the projections of continued sales growth of these products, DOE is examining whether regulating their energy efficiency would satisfy the necessary statutory prerequisities as newly covered products and would help reduce the risk of creating any regulatory gaps that might result in manufacturer or consumer confusion regarding the energy usage of these products.

### B. Current Rulemaking Process

In initiating this rulemaking, DOE prepared a Framework Document, "Energy Conservation Standards Rulemaking Framework Document for Wine Chillers and Miscellaneous Refrigeration Products," which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for miscellaneous refrigeration products. This document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71*.

DOE held a public meeting on February 20, 2012, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

## III. Summary of the Analyses Performed by DOE

For the products covered in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71*.

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses that DOE anticipates will likely be expanded upon for a notice of proposed rulemaking (NOPR) if DOE determines that new energy conservation standards are technologically feasible, economically justified, and would save a significant amount of energy, based on the information presented to or obtained by the Department. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses if it decides to issue a NOPR to propose energy conservation standards for the products at this time.

### A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of the product that DOE is considering regulating by evaluating the impacts flowing from potential energy conservation standards for that product. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. "Baseline products" refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market and, for products already subject to energy conservation standards, a model that just meets the current standard. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. Chapter 5 of the preliminary TSD discusses the engineering analysis.

### B. Markups To Determine Prices

DOE derives customer prices based on manufacturer markups, retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving these markups, DOE determines the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the markups at each step in each distribution channel. Chapter 6 of the preliminary TSD addresses the markups analysis.

*C. Energy Use Analysis*

The energy use analysis provides estimates of the annual energy consumption of miscellaneous refrigeration products. The energy use analysis estimates the range of energy consumption of the products that meet each of the efficiency levels considered in a given rulemaking as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

*D. Life-Cycle Cost and Payback Period Analyses*

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a considered product over the course of its lifetime. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCC of the product likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the product (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency products through savings in the operating cost of the product. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

*E. National Impact Analysis*

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for miscellaneous refrigeration products as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the products shipped from 2021 to 2050. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates. Chapter 10 of the preliminary TSD addresses the NIA.

## IV. Public Participation

DOE invites input from the public on all the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. Any final rule that DOE may issue establishing new energy conservation standards will contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71*. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by February 2, 2015 comments, data, and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for miscellaneous refrigeration products.

The public meeting will be conducted in an informal conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, the Department will publish either a determination that it is declining to set standards for miscellaneous refrigeration products or a NOPR proposing to establish standards for them. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

*A. Attendance at Public Meeting*

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *regina.washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to with laptop computers and other devices, such as tablets, to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S.

Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

You can attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/71*. Participants are responsible for ensuring their computer systems are compatible with the webinar software.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before 5 p.m. on Friday, December 26, 2014. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 5 p.m. on Friday, December 26, 2014.

*B. Procedure for Submitting Requests To Speak*

Any person who has an interest in this notice or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov*.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

*C. Conduct of Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and other information regarding this rulemaking submitted before or after the public meeting, but by no later than the submission date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2011–BT–STD–0043 and/or RIN 1904–AC51 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of public meeting and availability of preliminary technical support document.

Issued in Washington, DC, on November 25, 2014.

**Kathleen B. Hogan,**

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

[FR Doc. 2014–28460 Filed 12–2–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

**[Docket No. EERE–2013–BT–STD–0007]**

**RIN 1904–AC95**

### Energy Efficiency Program for Commercial and Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment

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

**ACTION:** Reopening of public comment period.

**SUMMARY:** On September 30, 2014, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking for small, large, and very large air-cooled commercial package air conditioning and heating equipment in the **Federal Register**. This document announces the reopening of the public comment period for submitting comments and data on the proposed rulemaking, associated technical support document (TSD), or any other aspect of the rulemaking for small, large, and very large air-cooled commercial package air conditioning and heating equipment. The reopened comment period ends December 22, 2014.

**DATES:** The comment period for the proposed rule published on September 30, 2014 (79 FR 58947), is reopened. DOE will accept comments, data, and information regarding this rulemaking received no later than December 22, 2014.

**ADDRESSES:** Interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0007 and/or Regulation Identification Number (RIN) 1904–AC95, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CommPkgACHP2013STD0007@ee.doe.gov.* Include the docket number EERE–2013–BT–STD–0007 and/or RIN 1904–AC95 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=59.* This Web page contains a link to the docket for this notice on the regulation.gov site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *commercial_package_ac_heating_equipment@ee.doe.gov.*

In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On September 30, 2014, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking and the announcement of a public meeting in the **Federal Register** to make available and invite comments on its proposed rulemaking regarding energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment. 79 FR 58947 (Sept. 30, 2014). The notice provided for the written submission of comments by December 1, 2014, and oral comments were also accepted at a public meeting held on November 6, 2014. Various stakeholders have requested an extension of the comment period to consider the proposed standards, the associated technical support document and analytical tools, the public meeting presentation, and to prepare and submit comments and data accordingly.

DOE has determined that reopening of the public comment period is appropriate based on the foregoing reason. DOE will consider any comments received by midnight of December 22, 2014, and deems any comments received by that time to be timely submitted.

Issued in Washington, DC, on November 25, 2014.

**Reuben Sarkar,**

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

[FR Doc. 2014–28451 Filed 12–2–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2014–0879; Airspace Docket No. 14–ASW–7]**

### Proposed Revocation of Class E Airspace; Forrest City, AR

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to remove Class E airspace at Forrest City Municipal Airport, Forrest City, AR, due to the cancellation of instrument flight rules (IFR) operations. The FAA is proposing this action to enhance airspace management within the National Airspace System.

**DATES:** Comments must be received on or before January 20, 2015.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; telephone (202) 366–9826. You must identify the docket number FAA–2014–0879/ Airspace Docket No. 14–ASW–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday

through Friday, except Federal holidays. The Docket Office telephone 1–800–647–5527 is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2014–0879 and Airspace Docket No. 14–ASW–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2014–0879 and Airspace Docket No. 14–ASW–7." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class E airspace extending upward from 700 feet above the surface at Forrest City Municipal Airport, Forrest City, AR. This action is necessary due to the cancellation of standard instrument approach procedures for IFR operations at the airport, therefore controlled airspace is no longer needed.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Forrest City Municipal Airport, AR.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014 is amended as follows:

*Paragraph 6005 Class E Airspace area extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASW AR E5 Forrest City, AR [Removed]**

Issued in Fort Worth, TX, on November 24, 2014.

**Humberto Melendez,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2014–28378 Filed 12–2–14; 8:45 am]

**BILLING CODE 4901–14–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1422

**[CPSC Docket No. CPSC–2009–0087]**

### Recreational Off-Highway Vehicles (ROVs); Notice of Opportunity for Oral Presentation of Comments

**AGENCY:** Consumer Product Safety Commission

**ACTION:** Notice of opportunity for oral presentation of comments.

**SUMMARY:** The Consumer Product Safety Commission (CPSC, Commission) announces that there will be an opportunity for interested persons to present oral comments on the notice of proposed rulemaking (NPR) the Commission issued proposing a standard to reduce the risk of injury associated with recreational off-highway vehicles (ROVs). Any oral comments will be part of the rulemaking record.

**DATES:** The meeting will begin at 10 a.m., January 7, 2015, at the Consumer Product Safety Commission National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (EST) on December 30, 2014.

**ADDRESSES:** The meeting will be held at the Consumer Product Safety Commission National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850. Requests to make oral presentations, and texts of oral presentations, should be captioned: "ROVs NPR; Oral Presentation" and submitted by email to *cpsc-os@cpsc.gov*, or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, not later than 5 p.m. EST on December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** For information about the purpose or subject matter of this meeting, contact Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2225; *cpaul@cpsc.gov*. For information about the procedure to make an oral presentation, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The U.S. Consumer Product Safety Commission has determined preliminarily that there may be an unreasonable risk of injury and death associated with ROVs. On November 19, 2014, the Commission issued an NPR to address the risk of injury posed by ROVs. (79 FR 68964). The NPR proposes a rule that includes:

(1) Lateral stability and vehicle handling requirements that specify a minimum level of rollover resistance for ROVs and require that ROVs exhibit sublimit understeer characteristics;

(2) lateral stability information requirements in the form of a hangtag; and

(3) occupant retention requirements that would limit the maximum speed of an ROV to no more than 15 miles per hour (mph), unless the seat belts of both the driver and front passengers, if any, are fastened, and would require ROVs to have a passive means, such as a barrier or structure, to limit further the ejection of a belted occupant in the event of a rollover.

These requirements would be issued under the Consumer Product Safety Act (CPSA). The NPR and staff's briefing package are available on the Commission's Web site at: *http://www.cpsc.gov/Newsroom/FOIA/Commission-Briefing-Packages/2014/*.

#### B. The Public Meeting

The CPSA requires that the Commission provide an opportunity for the "oral presentation of data, views, or arguments," in addition to written comments, when the Commission develops a consumer product safety standard under section 9 of the CPSA. 15 U.S.C. 2058(d)(2). Thus, the Commission is providing this forum for oral presentations concerning the proposed ROV standard. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice for information on making requests to give oral presentations at the meeting and submission of written text in advance. Those who wish to make oral presentations must comply with the procedures described in this notice.

Participants should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners. To prevent duplicative presentations, groups will be directed to designate a spokesperson. The Commission reserves the right to adjust meeting procedures as may be necessary, including the right to limit the time further for any presentation and impose restrictions to avoid excessive duplication of presentations.

Dated: November 26, 2014.

**Alberta E. Mills,**

*Acting Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2014–28381 Filed 12–2–14; 8:45 am]

**BILLING CODE 6355–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2014–0747; FRL–9919–82–Region 5]**

### Approval and Promulgation of Air Quality Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Indiana Department of Environmental Management on September 17, 2014, to revise the Indiana state implementation plan (SIP). The submission revises the Indiana Administrative Code definition of "References to the Code of Federal Regulations," from the 2011 edition to the 2013 edition. There is also a revised definition of "Board."

**DATES:** Comments must be received on or before January 2, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0747 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the Indiana's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 17, 2014.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2014–28287 Filed 12–2–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2013–0574; FRL–9919–58]**

## Receipt of Pesticide Petition Filed for Residues of Bacillus subtilis Strain IAB/BS03; Reopening of Comment Period

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

**ACTION:** Notice of filing of petition; reopening of comment period.

**SUMMARY:** EPA issued a document in the **Federal Register** of September 12, 2013, announcing the filing of a pesticide tolerance petition for residues of the fungicide, *Bacillus subtilis* strain IAB/BS03. That pesticide petition requested that EPA establish an exemption from the requirement of a tolerance for residues of that fungicide in or on all food commodities. Through an administrative error, the summary of the pesticide petition was not made available in the docket. Now available in the docket, this document reopens the comment period for that pesticide petition for 30 days to allow for public review and comment.

**DATES:** Comments must be received on or before January 2, 2015.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0574 and pesticide petition number (PP 3F8177), by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in **FOR FURTHER INFORMATION CONTACT.**

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

### II. What action is the Agency taking?

This document reopens the public comment period established in the **Federal Register** document of September 12, 2013 (78 FR 56185) (FRL–9399–7) for the pesticide petition (PP 3F8177) filed requesting that the Agency establish an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain IAB/BS03. In that document, the Agency noted that the summary of the pesticide petition

prepared by the petitioner, Investigaciones y Aplicaciones Biotecnologicas S.L., Avda, Paret del Patriarca 11–B, Ap. 30, 46113 Moncada (Valencia) Spain, was available in the docket at *http://www.regulations.gov.* Through an administrative error, the summary of the pesticide petition was not made available in the docket. The Agency has made the summary of the pesticide petition (PP 3F8177) available in the docket under docket ID number EPA–HQ–OPP–2013–0574 at *http://www.regulations.gov* and is reopening the comment period for that pesticide petition (PP 3F8177) for 30 days to allow for public review and comment.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 19, 2014.

**Robert McNally,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2014–28389 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 12–267; DA 14–1697]**

### Comprehensive Review of Licensing and Operating Rules for Satellite Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment and reply comment period.

**SUMMARY:** In this document, the International Bureau granted a request for an extension of time to file comments in response to a Further Notice of Proposed Rulemaking that initiated a comprehensive review of the Commission's rules governing space stations and earth stations. The original deadline for filing comments was December 15, 2014; the original deadline for filing reply comments was January 14, 2015. The International Bureau extended the deadlines for filing both comments and reply comments by 45 days.

**DATES:** Comments must be received on or before January 29, 2015. Reply comments must be received on or before March 2, 2015.

**ADDRESSES:** You may submit comments and reply comments, identified by IB Docket No. 12–267, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Cindy Spiers, Satellite Division, International Bureau, at 202–418–1593 or via email at *Cindy.Spiers@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The original Notice of Proposed Rulemaking was published in the **Federal Register** at 79 FR 65106, October 31, 2014. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email *FCC@BCPIWEB.com.*

Federal Communications Commission.

**Mindel De La Torre,**

*Chief, International Bureau.*

[FR Doc. 2014–28412 Filed 12–2–14; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 226

**[Docket No. 120912447–4278–01]**

**RIN 0648–BC56**

### Endangered and Threatened Species; Designation of Critical Habitat for the Arctic Ringed Seal

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** We, NMFS, propose to designate critical habitat for the Arctic subspecies (*Phoca hispida hispida*) of the ringed seal (*Phoca hispida*) under the Endangered Species Act (ESA). We propose to designate one specific area of marine habitat in the northern Bering, Chukchi, and Beaufort seas. We are soliciting comments from the public on all aspects of the proposal, including our identification and consideration of the economic, national security, and other relevant impacts of the proposed designation.

**DATES:** Comments on this proposed rule must be received by March 3, 2015. Four public hearings on the proposed rule will be held in Alaska (Anchorage, Barrow, Kotzebue, and Nome). The dates and times of these hearings will be provided in a subsequent **Federal Register** notice.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2013–0114, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0114,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the proposed rule, list of references and supporting documents, and the draft economic report (*i.e.*, Regulatory Impact Review (RIR)/4(b)(2) Preparatory Assessment/

Initial Regulatory Flexibility Act (IRFA) report) prepared for this action are available from *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0114* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tamara Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Marta Nammack, NMFS Office of Protected Resources, (301) 427–8469.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 28, 2012, we published a final rule to list the Arctic ringed seal as threatened under the ESA (77 FR 76706). Section 4(b)(6)(C) of the ESA requires the Secretary of Commerce (Secretary) to designate critical habitat concurrently with making a determination to list a species as threatened or endangered unless it is not determinable at that time, in which case the Secretary may extend the deadline for this designation by 1 year. At the time of listing, we announced our intention to designate critical habitat for the Arctic ringed seal in separate rulemaking, as sufficient information was not available to: (1) Identify and describe the physical and biological features essential to the conservation of the Arctic ringed seal; and (2) assess the economic consequences of designating critical habitat for the Arctic ringed seal. At that time, we also solicited comments related to identification of critical habitat during a 60-day comment period. We received nine comment submissions in response to this solicitation. Subsequently we researched, reviewed, and compiled the best available scientific and commercial data available, including the public comments received to date, to develop a critical habitat proposal for the Arctic ringed seal. We used these data to identify the physical and biological features essential to the conservation of the Arctic ringed seal, specific areas that we are proposing as critical habitat for the Arctic ringed seal, and the impacts associated with the proposed designation.

This proposed rule would designate critical habitat for the Arctic ringed seal pursuant to section 4(b)(2) of the ESA. Critical habitat is defined by section 3 of the ESA as: "(i) The specific areas within the geographical area occupied by the species, at the time it is listed . . ., on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species." Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms "conserve," "conserving," and "conservation" to mean: "to use, and the use of, all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." Critical habitat cannot be designated in areas outside U.S. jurisdiction (50 CFR 424.12(h)).

Section 4(b)(2) of the ESA and our implementing regulations require that, before designating critical habitat, we consider the economic, national security, and other relevant impacts of the designation. The Secretary has discretion to exclude any particular area from the critical habitat if she determines that the benefits of exclusion outweigh the benefits of designation. The Secretary, however, may not exclude a particular area if the failure to designate that area as critical habitat would result in the extinction of the species.

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is additional to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

This proposed rule describes information on Arctic ringed seal biology, distribution, and habitat use, the methods used to develop the proposed designation, and our proposal to designate critical habitat for the Arctic ringed seal.

## Arctic Ringed Seal Biology and Habitat Use

The following discussion of the natural history and ecology of Arctic ringed seals as it relates to habitat use is based on the best scientific and commercial data available, including information in the status review report for the ringed seal (Kelly *et al.,* 2010a). In this proposed rule, we focus on those aspects directly relevant to the designation of critical habitat for the Arctic ringed seal. For more detailed information on the biology and habitat use of ringed seals, refer to the status review report and the proposed and final listing rules (75 FR 77476, December 10, 2010; 77 FR 76706, December 28, 2012).

The Arctic ringed seal is the smallest of the northern seals, with typical adult body size of 1.5 m in length and 70 kg in weight. Arctic ringed seal females generally reach sexual maturity at 3 to 6 years of age, and males at 5 to 7 years of age, but with geographic and temporal variability depending on animal condition and population structure. The average life span of Arctic ringed seals is about 15 to 28 years.

### *Seasonal Distribution and Habitat Use*

Arctic ringed seals are circumpolar and are found throughout ice-covered waters of the Arctic Basin and southward into adjacent seas, including the Bering and Labrador seas. In the United States, ringed seals occur in the Beaufort, Chukchi, and Bering seas off Alaska's coast, as far south as Bristol Bay in years of extensive ice coverage (King, 1964; Frost and Lowry, 1981; Frost, 1985; Kelly, 1988; Rice, 1998).

Ringed seals are adapted to remaining in heavily ice-covered areas throughout the fall, winter, and spring by using the stout claws on their foreflippers to maintain breathing holes in the ice. Arctic ringed seals do not normally come ashore, but instead use sea ice as a substrate for resting, whelping (birthing), nursing, and molting (shedding and regrowing hair and outer skin layers). The seasonality of ice cover strongly influences Arctic ringed seal movements, foraging, reproductive behavior, and vulnerability to predation. Kelly *et al.* (2010b) referred to three time periods important to Arctic ringed seal seasonal movements and habitat use: The winter through early spring "subnivean period" when the seals rest primarily in subnivean lairs (snow caves on top of the ice); the late spring to early summer "basking period" between abandonment of the lairs and melting of the seasonal sea ice when the seals undergo their annual molt; and the open-water "foraging period" when feeding occurs most intensively during late summer through fall.

Subnivean Period: With the advance of winter, many Arctic ringed seals that summer in the Beaufort and Chukchi seas are thought to move generally west and south with the advancing ice, while others remain in the Beaufort Sea (Frost, 1985). Adult movements during the subnivean period have been reported as typically limited, especially where ice cover is extensive, likely due to maintenance of breathing holes and social behavior during the breeding season (Kelly and Quakenbush, 1990; Kelly *et al.,* 2010b; Crawford *et al.,*

2012). In contrast, subadult Arctic ringed seals have been observed to travel relatively long distances in winter to near the ice edge in the Bering Sea (Crawford *et al.*, 2012).

At freeze up in the fall, ringed seals surface to breathe in the remaining open water of cracks and leads. As these openings in the ice freeze over, the seals push through the ice to breathe until it is too thick (Lukin and Potelov, 1978). They then open breathing holes by abrading the ice with the claws on their foreflippers (Bailey and Hendee, 1926; Smith and Stirling, 1975). As the ice thickens, the seals continue to maintain the breathing holes by scratching at the walls. As snow accumulates and buries the breathing hole, the seals breathe through the snow layer. Ringed seals excavate lairs in the snow above breathing holes where snow depth is sufficient (Chapskii, 1940; McLaren, 1958; Smith and Stirling, 1975). These subnivean lairs are occupied for resting, whelping, and nursing young in areas of annual landfast (shorefast) ice (McLaren, 1958; Burns, 1970) and stable pack ice (Finley *et al.*, 1983; Wiig *et al.*, 1999; Bengtson *et al.*, 2005) that has undergone a low to moderate amount of deformation and where pressure ridges or ice hummocks have caused snow to form drifts of sufficient depth (Smith and Stirling, 1975; Lydersen and Gjertz, 1986; Kelly, 1988; Furgal *et al.*, 1996; Lydersen, 1998).

Females give birth to a single pup in their lairs during mid-March through April (Kelly *et al.*, 2010a) and the pups are nursed in the lairs for an average of 39 days (Hammill *et al.*, 1991). Females continue to forage throughout lactation while making frequent visits to birth lairs (Hammill, 1987; Kelly and Wartzok, 1996; Simpkins *et al.*, 2001). The pups develop foraging skills prior to weaning (Lydersen and Hammill, 1993), and are normally weaned before break-up of spring ice.

Lairs provide protection from cold and predators throughout the winter months, but they are especially important for protecting newborn ringed seals. Lairs conceal ringed seals from predators, an advantage especially important to the small pups that start life with minimal tolerance for immersion in cold water (Smith *et al.*, 1991). Polar bears prey heavily on ringed seals. Other predators include Arctic foxes, common ravens, and glaucous gulls. Pups in lairs with thin snow cover are more vulnerable to polar bear predation than pups in lairs with thick snow cover (Hammill and Smith, 1989; Ferguson *et al.*, 2005). For example, Hammill and Smith (1991) noted that polar bear predation on ringed seal pups increased 4-fold in a year when average snow depths in their study area decreased from 23 to 10 cm. When ringed seal pups are forced out of subnivean lairs prematurely because of low snow accumulation and/or early melts, gulls and ravens can also successfully prey on them (Kumlien, 1879; Gjertz and Lydersen, 1983; Lydersen and Gjertz, 1987; Lydersen *et al.*, 1987; Lydersen and Smith, 1989; Lydersen and Ryg, 1990; Lydersen, 1998). Stirling and Smith (2004) surmised that most pups that survived exposure to cold after their subnivean lairs collapsed during unseasonal rains were eventually killed by polar bears, Arctic foxes, or gulls.

Subnivean lairs also provide refuge from air temperatures too low for survival of ringed seal pups. When forced to flee into the water to avoid predators, the ringed seal pups that survive depend on the subnivean lairs to subsequently warm themselves. When snow cover is insufficient, pups can freeze in their lairs, as documented when roofs of lairs in the White Sea were only 5 to 10 cm thick (Lukin and Potelov, 1978). Stirling and Smith (2004) also documented exposure of ringed seals to hypothermia following the collapse of subnivean lairs during unseasonal rains near southeastern Baffin Island.

During winter and spring, Arctic ringed seals are found throughout the Chukchi and Beaufort seas; and in the Bering Sea, surveys indicate that ringed seals use nearly the entire ice field over the Bering Sea shelf. During an exceptionally high ice year (1976), Braham *et al.* (1984) found ringed seals present in the southeastern Bering Sea north of the Pribilof Islands to outer Bristol Bay, primarily north of the ice front. But they noted that most of these seals were likely immature or nonbreeding animals. Frost (1985) indicated that ringed seals "occur as far south as Nunivak Island and Bristol Bay, depending on ice conditions in a particular year, but generally are not abundant south of Norton Sound except in nearshore areas." However, recent surveys conducted in the Bering Sea during spring have documented ringed seals in both nearshore and offshore habitat including south of Norton Sound, AK (National Marine Mammal Laboratory, 2012, unpublished data). Crawford *et al.* (2012) reported that the adult ringed seals tagged in Kotzebue Sound, AK, remained in the Chukchi Sea and the northern Bering Sea north of St. Lawrence Island during winter and spring. However, movement data for ringed seals tagged near Barrow, AK, indicated that some adults over-wintered farther south toward the shelf break in the Bering Sea (North Slope Borough, 2012, unpublished data). Finally, harvest of ringed seal pups by hunters in Quinhagak, Alaska (Coffing *et al.*, 1998) suggests that some ringed seals may whelp south of Nunivak Island.

Basking Period: Numbers of ringed seals hauled out on the surface of the ice typically begin to increase during spring as the temperatures warm and the snow covering the seals' lairs melts. Although the snow cover can melt rapidly, the ice remains largely intact and serves as a substrate for annual molting, during which time seals spend many hours basking in the sun (Smith, 1973; Smith and Hammill, 1981; Finley, 1979; Kelly and Quakenbush, 1990; Kelly *et al.*, 2010b). Adults generally molt from mid-May to mid-July (McLaren, 1958), although there is regional variation. Kelly and Quakenbush (1990) reported that in the Beaufort and Chukchi seas, most seals begin basking in late May or early June. Usually the largest numbers of basking seals are observed in June (McLaren, 1958; Smith, 1973; Finley, 1979; Smith *et al.*, 1979; Smith and Hammill, 1981; Moulton *et al.*, 2002).

The relatively long periods of time that ringed seals spend out of the water during the molt (Smith, 1973; Smith and Hammill, 1981; Kelly *et al.*, 2010b) have been ascribed to the need to maintain elevated skin temperatures during new hair growth (Feltz and Fay, 1966; Kelly and Quakenbush, 1990). Higher skin temperatures are facilitated by basking on the ice and this may accelerate shedding and regrowth of hair and skin (Feltz and Fay, 1966). Feeding is reduced and the seal's metabolism declines during the molt (Ashwell-Erickson *et al.*, 1986). As seals complete this phase of the annual pelage cycle and the seasonal sea ice melts during the summer, ringed seals spend increasing amounts of time in the water feeding (Kelly *et al.*, 2010b).

Open-Water Foraging Period: Most Arctic ringed seals that winter in the Bering and Chukchi seas are thought to migrate northward in spring with the receding ice edge and spend summer in the pack ice of the northern Chukchi and Beaufort seas (Burns, 1970; Frost, 1985). Arctic ringed seals are also dispersed in ice-free areas of the Bering, Chukchi, and Beaufort seas during the open-water period. Overall, the record from satellite tracking indicates that Arctic ringed seals breeding in landfast ice practice one of two strategies during the open-water foraging period (Freitas *et al.*, 2008). Some seals forage within 100 km of their landfast ice breeding habitat, while others make extensive

movements of hundreds or thousands of kilometers to forage in highly productive areas and along the pack ice edge. Movements during the open-water foraging period by Arctic ringed seals that breed in the pack ice are unknown. High- quality, abundant food is important to the annual energy budgets of ringed seals. Ringed seals typically lose a significant proportion of their blubber mass during the spring to early summer and then replenish their blubber reserves by increasing feeding during late summer, fall, and winter.

*Diet*

Arctic ringed seals eat a wide variety of prey spanning several trophic levels; however, most prey is small and preferred fishes tend to be schooling species that form dense aggregations. Ringed seals rarely prey upon more than 10 to 15 species in any specific geographical location, and not more than 2 to 4 of those species are considered important prey. Despite regional and seasonal variations in the diets of Arctic ringed seals, fishes of the cod family tend to dominate their diet in many areas from late autumn through early spring. Arctic cod (*Boreogadus saida*) is often reported to be among the most important prey species, especially during the ice-covered periods of the year. Crustaceans appear to become more important in many areas during the open water season, and are often found to dominate the diets of young ringed seals.

**Critical Habitat Identification**

In the following sections, we describe the relevant definitions and requirements in the ESA, and our implementing regulations, and the key information and criteria used to prepare this proposed critical habitat designation. In accordance with section 4(b)(2) of the ESA and our implementing regulations at 50 CFR part 424, this proposed critical habitat designation is based on the best scientific data available. Our primary sources of information are the NMFS status review report for the ringed seal (Kelly *et al.*, 2010a) and the proposed and final rules to list four subspecies of the ringed seals, including the Arctic ringed seal (75 FR 77476, December 10, 2010; 77 FR 76706, December 28, 2012). Additional information sources include articles in peer-reviewed journals, other scientific reports, and relevant Geographic Information System (GIS) data (such as shoreline, maritime limits and boundaries, and sea ice extent) for area calculations and mapping.

We followed a five-step process to identify specific areas that may qualify as critical habitat for the Arctic ringed seal: (1) Determine the geographical area occupied by the species; (2) identify physical or biological habitat features essential to the conservation of the species; (3) delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features; (4) determine whether the features in a specific area may require special management considerations or protection; and (5) determine whether any unoccupied areas are essential for conservation. Our evaluation and conclusions are described in detail in the following sections.

*Geographical Area Occupied by the Species*

The range of the Arctic ringed seal was identified in the final ESA listing rule (77 FR 76706; December 28, 2012) as the Arctic Ocean and adjacent seas, except west of 157° E. long. (the Kamchatka Peninsula), where the Okhotsk subspecies of the ringed seal occurs, or in the Baltic Sea where the Baltic subspecies of the ringed seal is found. As noted above, we cannot designate areas outside U.S. jurisdiction as critical habitat. Thus, the geographical area under consideration for this designation is limited to areas under the jurisdiction of the United States that Arctic ringed seals actually occupied at the time of listing. This area extends to the outer boundary of the U.S. Exclusive Economic Zone (EEZ) in the Chukchi and Beaufort seas, and south into the Bering Sea, as far south as Bristol Bay in years with extensive ice coverage (Kelly *et al.*, 2010a). We consider the shoreward extent of this area to be the "coast line" of Alaska as that term has been defined in the Submerged Lands Act ("the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters"), 43 U.S.C. 1301(c).

*Physical or Biological Features Essential to the Conservation of the Species*

Implementing regulations at 50 CFR 424.12(b) state that in determining what areas are critical habitat, the Secretary "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." These features may include: "(1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally: (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species." The regulations further state the Secretary shall "focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types." For the purposes of this proposed rule, the essential features identified are the same as primary constituent elements. Based on the best scientific information available on the physical and biological features and habitat characteristics required to sustain its life history functions, we have determined that the following features are essential to the conservation of the Arctic ringed seal in the United States.

1. Sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as seasonal landfast (shorefast) ice, or dense, stable pack ice, that has undergone deformation and contains snowdrifts at least 54 cm deep.

Sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing is essential to conservation of the Arctic ringed seal because as discussed above, without the protection of lairs, ringed seal pups are more vulnerable to freezing and predation.

Snowdrifts of sufficient depth for birth lair formation and maintenance typically occur in deformed ice where drifting has taken place along pressure ridges or ice hummocks (Smith and Stirling, 1975; Lydersen and Gjertz, 1986; Kelly, 1988; Furgal *et al.*, 1996; Lydersen, 1998). For purposes of assessing potential impacts of projected changes in April Northern Hemisphere snow conditions on ringed seals, Kelly *et al.* (2010a) considered 20 cm to be the minimum average snow depth required on areas of flat ice to form drifts of sufficient depth to support birth lair formation. Further, Kelly *et al.* (2010a, p. 109) discussed that ringed seals require snow drift depths of 50 to 65 cm or more to support birth lair formation. To identify a snow drift depth criterion

for sea ice habitat that we consider essential for Arctic ringed seal birth lair formation and maintenance, we derived a specific depth threshold as follows. At least seven studies have reported minimum snowdrift depth measurements at Arctic ringed seal birth lairs (typically measured near the center of the lairs or over the breathing holes) off the coasts of Alaska (Kelly *et al.*, 1986; Frost and Burns, 1989), the Canadian Arctic Archipelago (Smith and Stirling, 1975; Kelly, 1988; Furgal *et al.*, 1996), Svalbard (Lydersen and Gjertz, 1986), and in the White Sea (Lukin and Potelov, 1978). The average minimum snowdrift depth at birth lairs was 54 cm across all of the studies combined, and 64 cm in the Alaska studies only. The average from studies in Alaska is based on data from fewer years over a shorter time span than from all studies combined (3 years during 1982–1984 versus 11 years during 1971–1993, respectively); consequently, the Alaska-specific average is more likely to be biased if an anomalous weather pattern occurred during its more limited timeframe. For this reason, we conclude that the average minimum snowdrift depth based on all studies combined (54 cm) provides the best estimate of the minimum snowdrift depth that is essential for birth lairs.

Although Arctic ringed seals appear to favor landfast ice as whelping habitat, ringed seal whelping has also been observed on both nearshore and offshore drifting pack ice. As Reeves (1998) noted, nearly all research on Arctic ringed seal reproduction has been conducted in landfast ice, and the potential importance of stable but drifting pack ice has not been adequately investigated. Studies in the Barents Sea (Wiig *et al.*, 1999) and Baffin Bay (Finley et *al.*, 1983) have documented pup production in pack ice, and Smith and Stirling (1975), citing unpublished data from the "Western Arctic" (presumably the Canadian Beaufort Sea), indicated that "the offshore areas of shifting but relatively stable ice are an important part of the breeding habitat." Lentfer (1972) reported "a significant amount of ringed seal denning and pupping on moving heavy pack ice north of Barrow." Arctic ringed seal vocalizations detected throughout the winter and spring in long-term autonomous acoustic recordings collected along the shelf break north-northwest of Barrow also suggest that some ringed seals overwinter and breed in offshore pack ice (Jones *et al.*, in press). We therefore conclude that the best scientific information available indicates that sea ice habitat essential for construction and maintenance of birth lairs includes areas of both shorefast ice and dense, stable pack ice that contain snowdrifts of sufficient depths, *i.e.*, 54 cm.

2. Sea ice habitat suitable as a platform for basking and molting, which is defined as sea ice of 15 percent or more concentration.

Sea ice habitat suitable as a platform for basking and molting is essential to conservation of the Arctic ringed seal because molting is a biologically-important, energy-intensive process that could incur increased energetic costs if it were to occur in water, or increased risk of predation if it were to occur on land. Moreover, we are unaware of any studies establishing whether Arctic ringed seals can molt successfully in water, or reports of healthy Arctic ringed seals basking on land (they are known to come ashore when sick). If Arctic ringed seals were unable to successfully complete their annual molt, they would be at increased risk from parasites and disease.

During their annual molt, Arctic ringed seals transition from lair use to basking on the surface of the ice for long periods of time near breathing holes, lairs, or cracks in the ice. There are limited data available on ice concentrations (percentage of ocean surface covered by sea ice) favored by Arctic ringed seals during the basking period, in particular for the time period following ice breakup. Although a number of studies have reported an apparent preference for consolidated stable ice (*i.e.*, landfast ice and consolidated pack ice), at least during the initial weeks of the basking period, some of these studies have also reported observations of Arctic ringed seals hauled out at low densities in unconsolidated ice (*e.g.*, Stirling *et al.*, 1982; Kingsley *et al.*, 1985; Lunn *et al.*, 1997; Chambellant *et al.*, 2012). Arctic ringed seals in the Chukchi Sea have also been observed basking in high densities on the last remnants of the seasonal sea ice during late June to early July, near the end of the molting period (Shawn Dahle, NMFS, personal communication, 2013). Crawford *et al.* (2012) reported that the average ice concentrations (± standard error [SE]; standard error is a measure of variability in the data) used by ringed seals in the Chukchi and Bering seas during the basking period in June was 20 percent (SE = 7.8 percent) for subadults and 38 percent (SE = 21.4 percent) for adults. Based on the best available information, we conclude that sea ice essential for basking and molting is sea ice of at least 15 percent concentration.

3. Primary prey resources to support Arctic ringed seals, which are defined to be Arctic cod, saffron cod, shrimps, and amphipods.

Primary prey resources are essential to conserving the Arctic ringed seal, because Arctic ringed seals likely rely on these prey resources the most to meet their annual energy budgets. Arctic ringed seals feed on a wide variety of vertebrate and invertebrate prey species, but certain prey species appear to occupy a prominent role in their diets in waters along the Alaskan coast. Quakenbush *et al.* (2011, Table 3) reported that prey items found in at least 25 percent of ringed seal stomachs collected within the 1961 to 1984 and 1998 to 2009 time periods in the Bering and Chukchi seas included Arctic cod, saffron cod (*Eleginus gracilis*), shrimps (from the families Hippolytidae, Pandalidae, and Crangonidae), and amphipods (primarily from the families Gammaridae and Hyperiidae). In the Barrow vicinity, Dehn *et al.* (2007, Table 2) reported that prey items found in at least 25 percent of the stomachs of ringed seals collected between 1996 and 2001 included euphausiids (*Thysanoessa* spp.), cods (primarily Arctic and saffron cod), mysids (*Mysis* and *Neomysis* spp.), amphipods, and Pandalid shrimps. Finally, Lowry *et al.* (1980) found that prey items that were consumed in the greatest quantities (*i.e.*, ≥25 percent of the total food volume in any of the five seasonal samples) by ringed seals in the Bering and Chukchi seas included Arctic cod, saffron cod, shrimp, and amphipods (Chukchi Sea only), and in the central Beaufort Sea included Arctic cod as well as Gammarid and Hyperiid amphipods. Arctic cod, saffron cod, shrimps, and amphipods were identified as prominent prey species for the studies conducted in both the Bering Sea and the Chukchi Sea. As noted above, Arctic cod and amphipods were also identified as the most important prey species by volume for ringed seals sampled in the Beaufort Sea. Therefore, based on these studies, we conclude that Arctic cod, saffron cod, shrimps, and amphipods are the primary prey resources of Arctic ringed seals in U.S. waters. As discussed above, Arctic ringed seals feed on a variety of prey items and regional and seasonal differences in diet have been reported; therefore, we conclude that areas in which the primary prey essential feature occurs will contain one or more of these particular prey resources.

*Specific Areas Containing Physical or Biological Features Essential to the Species*

After determining the geographical area occupied by the Arctic ringed seal at the time of listing, and identifying the physical and biological features essential to its conservation, we then considered which specific area(s) may be eligible for designation as critical habitat. For a specific area to be eligible for designation, it must contain at least one physical or biological feature essential to the conservation of the species that may require special management considerations or protection. When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, a single inclusive area may be designated as critical habitat (50 CFR 424.12(d)).

In identifying these specific areas, we first focused on those physical or biological features that support the critical Arctic ringed seal life history functions of whelping and nursing, when birth lairs are constructed and maintained, and molting (*i.e.*, specific areas that contain the sea ice essential features). As discussed above, Arctic ringed seals are highly associated with sea ice, and are thought to migrate seasonally to maintain access to the ice. Arctic ringed seal whelping, nursing, and molting occur in the Bering, Chukchi, and Beaufort seas. To delineate specific areas that contain one or both of the sea ice essential features we considered where the sea ice essential features occur in all three seas.

The dynamic nature of sea ice and the spatial and temporal variations in sea ice cover and on-ice snow cover constrain our ability to map with precision the specific geographic locations where the ice-associated essential features occur. The specific geographic locations of where essential sea ice habitat occurs vary from year to year, or even day to day, depending on many factors, including time of year, local weather, and oceanographic conditions. In addition, the duration that any given location has sea ice habitat essential for birth lairs or for molting can vary annually depending on the rate of ice melt and other factors. Temporal overlap of Arctic ringed seal molting with whelping and nursing, combined with the dynamic nature of sea ice, also makes it impracticable to separately identify specific areas where each of these essential sea ice features occur. Since the ESA requires the designation of critical habitat where one or more such features occur, the inability to separately identify areas where each essential ice feature occurs is inconsequential. Arctic ringed seals can range widely, which, combined with the dynamic variations in sea ice and snow cover, results in individuals distributing broadly and utilizing different sea ice habitat within a range of suitable conditions. We integrated these physical and biological factors into our identification of specific areas based on the seasonal distribution and movements of Arctic ringed seals and satellite-derived estimates of the position of the ice edge over time. Although this approach allowed us to identify specific areas that contain one or both of the essential sea ice features, the available data supported delineation of specific areas only at a coarse scale. Consequently, we delineated a single specific area that contains the sea ice features essential to the conservation of Arctic ringed seals, as described below.

We first identified the southern boundary of the specific area essential to conservation of the Arctic ringed seal. The information discussed above regarding the distribution of Arctic ringed seals in the Bering Sea (see *Seasonal Distribution and Habitat Use*) suggests that sea ice essential for Arctic ringed seal birth lairs (and potentially for molting) extends to some point south of St. Matthew Island and Nunivak Island. A precise southern boundary for this habitat is unavailable because existing information is limited on the spatial distribution of Arctic ringed seals in the Bering Sea during spring and where they may whelp. In addition, although minimum on-ice snowdrift depths are essential for ringed seal birth lairs, we are not aware of any available data on this particular component of sea ice cover in the Bering Sea that could assist in identifying the southern boundary of essential Arctic ringed seal birth lair habitat. We therefore turned to Sea Ice Index data maintained by the National Snow and Ice Data Center (NSIDC) for information on the estimated median position of the sea ice edge in the Bering Sea during April (Fetterer *et al.*, 2002, updated 2009; accessed December 2012), which is the peak month for Arctic ringed seal whelping activity (peak molting for adults occurs later in the spring). This estimated median ice edge is derived from a time series of satellite records for the 1979 to 2000 reference period. We note that the NSIDC has lengthened this reference period to include more recent data through 2010. However, several of those more recent years had above-average ice extent in the Bering Sea; and use of these data would have resulted in the inclusion of areas that are unlikely to contain the essential sea ice features on a consistent basis in more than a few scattered portions of those areas.

The April median ice edge position is located approximately 135 km (73 nmi) southwest of St. Matthew Island and 110 km (59 nmi) south of Nunivak Island, which is relatively consistent with the information discussed above regarding the spring distribution of Arctic ringed seals in the Bering Sea. We therefore conclude that this estimate of the position of the April median ice edge provides a reasonable estimate of the southern extent of where the sea ice essential features occur. To simplify this southern boundary for purposes of delineation on maps, we modified this median ice edge contour as follows: (1) Line vertices between the intersection point of the median ice extent at the outer extent of the U.S. EEZ at 60°31′ N. lat., 179°13′ W. long., and the point at 58°22′ N. lat., 170°27′ W. long., were removed to form the segment of the southern boundary that extends from the outer extent of the U.S. EEZ southeast approximately 553 km; (2) line vertices between 58°22′ N. lat., 170°27′ W. long., and 59° N. lat., 164° W. long., were removed to form a second segment of the southern boundary that extends east approximately 370 km; and (3) finally, these two contour line segments were connected to the mainland coast southeast of Cape Avinof by 164° W. long. This editing produced a simplified southern boundary that retains the general shape of the original contour line, while including 99 percent of the area encompassed by the more detailed original line.

We note that some Arctic ringed seals may whelp south/southeast of the southern boundary described above, as evidenced by harvest records of ringed seal pups (Coffing *et al.*, 1998). However, variability in the annual extent and timing of sea ice in this southernmost portion of the Arctic ringed seal's range in U.S. waters renders the area south of the boundary described above unlikely to contain the essential sea ice features on a consistent basis in more than a few scattered areas.

We then identified the northern boundary of the specific area essential to conservation of the Arctic ringed seal. As discussed above, the available data suggest that although Arctic ringed seals appear to favor landfast ice, they are widely distributed offshore in the northern Chukchi Sea and Beaufort seas and Arctic Ocean. Molting ringed seals use suitable sea ice as a haul-out platform, and many seals are thought to migrate north with the receding ice. As discussed above, the specific geographic

locations where the sea ice essential features occur vary within and between years. Given the inherent variability in the spatial distribution of sea ice and the widespread distribution of Arctic ringed seals, including in offshore pack ice, we defined the northern and eastern boundaries of the one specific area identified as the outer extent of the U.S. EEZ. We note that Canada contests the limits of the U.S. EEZ in the eastern Beaufort Sea, asserting that the line delimiting the two countries' EEZs should follow the 141st meridian out to a distance of 200 nmi (as opposed to an equidistant line that extends seaward perpendicular to the coast at the U.S.-Canada land border). Because Arctic ringed seals are broadly distributed in suitable habitat, we identified the shoreward extent of this specific area as the coast line of Alaska as defined above (see *Geographical Area Occupied by the Species*).

The primary prey resources essential feature also occurs within the specific area identified above (*e.g.*, North Pacific Fishery Management Council, 2009; NMFS, 2013), as evidenced by the presence of the primary prey species in the stomach contents of Arctic ringed seals sampled in the Bering, Chukchi, and Beaufort seas off Alaska (see *Physical or Biological Features Essential to Conservation of the Species*). This is of particular note with respect to the northern boundary of this specific area. Following molting, some Arctic ringed seals may remain in nearshore waters along the coast to feed, while others travel extensively and feed farther offshore (Frost, 1985; Gjertz *et al.*, 2000; Freitas *et al.*, 2008; Kelly *et al.*, 2010b). Harwood *et al.* (2012) reported that in late summer, several tagged ringed seals that migrated from the Canadian Beaufort Sea to the Beaufort and Chukchi seas off Alaska tended to remain over the continental shelf, almost always remaining within 100 km of shore. However, recent telemetry data documenting Arctic ringed seal movements during the open-water season showed several seals made multiple trips between continental shelf waters and the southern pack ice edge (Herreman *et al.*, 2012), which was well into the Arctic Basin and beyond the outer extent of the U.S. EEZ in some cases. Dive recorders indicated that foraging-type movements occurred over both the continental shelf and deep waters of the Arctic Basin, suggesting that both areas may be important during the open-water foraging period. Thus, the northern boundary of the specific area identified above accounts not only for habitat containing one or both of the sea ice features essential to conservation, but very likely also includes the distributions of the primary prey resources used by foraging Arctic ringed seals in U.S. waters.

*Special Management Considerations or Protection*

An occupied area may be designated as critical habitat only if it contains physical or biological features that "may require special management considerations or protection" (50 CFR 424.12(b)). It is important to note that the phrase "may require special management considerations or protection" refers to the physical or biological features, rather than the area proposed as critical habitat. We interpret this to mean that a feature may presently or in the future require special management considerations or protection. Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define "special management considerations or protection" to mean "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species."

The status review report (Kelly *et al.*, 2010a) and the proposed and final rules listing the subspecies as threatened (75 FR 77476, December 10, 2010; 77 FR 76706, December 28, 2012) comprehensively review the threats affecting the Arctic ringed seal. Based upon that review, we identified several categories of human activities and associated threats that may affect each of the features identified as essential to conservation of Arctic ringed seals. These activities include: Greenhouse gas (GHG) emissions; oil and gas exploration, development, and production; shipping and transportation; and commercial fishing. Below, we evaluate whether each essential feature may require special management considerations or protection due to the potential effects of these activities on the essential features. We note that our evaluation does not consider an exhaustive list of potential effects on the essential features, but rather considers the primary potential effects that we are aware of at this time.

GHG Emissions: The principal threat to the persistence of the Arctic ringed seal is the ongoing and anticipated loss of sea ice and on-ice snow cover stemming from climate change. Climate change related threats to the Arctic ringed seal's habitat are discussed in detail in the ringed seal status review report (Kelly *et al.*, 2010a), as well as in the proposed and final rules listing the Arctic ringed seal as threatened. Activities that release carbon dioxide and other heat-trapping GHGs into the atmosphere, most notably those that involve fossil fuel combustion, are a major contributing factor to climate change and loss of sea ice (IPCC, 2013). Such activities may adversely affect the essential features of Arctic ringed seal habitat by diminishing sea ice suitable for birth lairs and molting, and by causing changes in the distribution and/or species composition of prey resources. The best scientific data currently available do not allow us to identify a causal linkage between any particular single source of GHG emissions and identifiable effects on the physical and biological features essential to Arctic ringed seals. Regardless, given that the quality and quantity of these essential habitat features, in particular sea ice, may be diminished by the effects of climate change, we conclude that special management considerations or protection may be necessary, either now or in the future, even if the exact focus and nature of that management is presently undeterminable.

Oil and Gas Activity: Extensive oil and gas reserves, coupled with rising global demand, make it very likely that oil and gas activity will increase throughout the Arctic in the future. Oil and gas exploration, development, and production activities in the U.S. Arctic may include: Seismic surveys; exploratory, delineation, and production drilling operations; construction of artificial islands, causeways, ice roads, shore-based facilities, and pipelines; and vessel and aircraft operations. These activities have the potential to affect Arctic ringed seals and their habitat, primarily through noise, physical disturbance, and pollution, particularly in the event of an oil spill, and especially a large oil spill.

The Arctic ringed seal's range overlaps with, and is adjacent to, a number of active and planned oil and gas operations. To date, most oil and gas activities conducted off the Alaska coast have occurred in the Beaufort Sea, primarily near Prudhoe Bay. No oil fields have been developed or brought into production in the Chukchi Sea; however, the one recent lease sale in the Chukchi Sea (Lease Sale 193) and exploration drilling programs moving forward in this region signal growing interest in oil and gas development there.

Large oil spills are generally considered to be the greatest threat of oil and gas activities in the Arctic marine environment (Arctic Monitoring and Assessment Program (AMAP), 2007). In contrast to spills on land, large spills at sea are difficult to contain and may

spread over hundreds or thousands of kilometers. Responding to a sizeable spill in the Arctic environment would be particularly challenging. Reaching a spill site and responding effectively would be especially difficult, if not impossible, in winter when weather can be severe and daylight extremely limited. Oil spills under ice or in ice-covered waters are the most challenging to deal with, due to, among other factors, limitations on the effectiveness of current containment and recovery technologies when sea ice is present. The difficulties experienced in stopping and containing the 2010 oil blowout at the Deepwater Horizon well in the Gulf of Mexico, where environmental conditions, available infrastructure, and response preparedness are comparatively good, point toward even greater challenges in attempting a similar feat in a much more environmentally severe and geographically remote location.

Although planning, management, and use of best practices can help reduce risks and impacts, the history of oil and gas activities indicates that accidents cannot be eliminated (AMAP, 2007). Data on large spills (*e.g.*, operational discharges, spills from pipelines, blowouts) in Arctic waters are limited because oil exploration and production there has been limited. The Bureau of Ocean Energy Management (BOEM, 2011) estimated the chance of one or more oil spills greater than or equal to 1,000 barrels occurring if development were to take place in the Beaufort Sea or Chukchi Sea Planning Areas as 26 percent for the Beaufort Sea over the estimated 20 years of production and development, and 40 percent for the Chukchi Sea over the estimated 25 years of production and development.

The introduction of sounds and physical disturbance associated with oil and gas exploration and development could also affect Arctic ringed seals and their habitat. Such activities may include physical presence of vessels, icebreaking activity, aircraft activity, seismic surveys, site clearance and shallow hazards surveys, and drilling and production activities. Icebreaking vessels, which may be used for in-ice seismic surveys or to manage ice near exploratory drilling ships, have the potential to affect Arctic ringed seals and their habitat through both acoustic effects and physical alteration of the sea ice (Richardson *et al.*, 1995). Seismic surveys are a particularly intense source of noise, and thus warrant specific consideration. Arctic ringed seals, like other phocids or "true" seals, have good low-frequency hearing, and so it is expected that they will be susceptible to masking of biologically significant signals by low frequency sounds, such as those from seismic surveys (Gordon *et al.*, 2003). Reported seal responses to seismic surveys have been variable and often contradictory, although they suggest that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays (Brueggeman *et al.*, 1991; Harris *et al.;* 2001, Miller and Davis, 2002). Construction, drilling, and development activities on a manmade artificial island were reported to have had at most minor, short-term, and localized effects on ringed seals (Blackwell *et al.*, 2004; Richardson and Williams, 2004; Moulton *et al.*, 2005); and during a single season of a near shore exploratory drilling operation, Harwood *et al.* (2007) found no detectable effects on ringed seals.

In summary, a major oil spill could render areas containing the identified essential features unsuitable for use by Arctic ringed seals. In such an event, sea ice habitat suitable for whelping, nursing, or molting could be oiled. The primary Arctic ringed seal prey species could also become contaminated, experience mortality, or be otherwise adversely affected by spilled oil. In addition, disturbance effects (both physical disturbance and acoustic effects) could alter the quality of the essential features of Artic ringed seal critical habitat, or render habitat unsuitable. We conclude that the essential features of the habitat of the Arctic ringed seal may require special management considerations or protection in the future to minimize the risks posed to these features by oil and gas exploration, development, and production.

Shipping and Transportation: The reduction in Arctic sea ice that has occurred in recent years has renewed interest in using the Arctic Ocean as a potential waterway for coastal, regional, and trans-Arctic marine operations (Brigham and Ellis, 2004). Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to begin melting earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential shipping routes and a lengthening of the potential navigation season (Arctic Climate Impact Assessment (ACIA), 2004; Khon *et al.*, 2010). At present, the two main navigation routes crossing the Arctic are the Northwest Passage (NWP) and the Northern Sea Route (NSR). Based on an analysis of sea ice model projections, Smith and Stephenson (2013) concluded that, by mid-century, changing sea ice conditions will enable expanded September navigability for common open-water ships along these two navigation routes. By 2100, the navigation season for the NSR is projected to increase from the current period of 20 to 30 days per year to 90 to 100 days per year (ACIA, 2004).

The fact that nearly all shipping activity in the Arctic (with the exception of icebreaking) purposefully avoids areas of ice, and primarily occurs during the ice-free or low-ice seasons, helps to mitigate the risks of shipping to Arctic ringed seal habitat. However, as noted above, icebreakers pose greater risks to ringed seals and their habitat since they are capable of operating year-round in all but the heaviest ice conditions and are often used to escort other types of vessels (*e.g.*, tankers and bulk carriers) through ice-covered areas. Furthermore, new classes of ships are being designed that serve the dual roles of both tanker/carrier and icebreaker (Arctic Council, 2009). Therefore, if icebreaking activities increase in the Arctic in the future, as expected, the likelihood of negative impacts (*e.g.*, oil spills, pollution, noise, disturbance, and habitat alteration) occurring in ice-covered areas where Arctic ringed seals reside will likely also increase.

Increases in international shipping are producing ever-greater levels of underwater noise capable of long-range transmission (Southall, 2005; Götz *et al.*, 2009). All vessels produce sound during operation, which when propagated at certain frequencies and intensities can alter the normal behavior of marine mammals, mask their underwater communications and other uses of sound, cause them to avoid noisy areas, and, in extreme cases, damage their auditory systems and cause death (Marine Mammal Commission, 2007; Arctic Council, 2009; Götz *et al.*, 2009).

In addition to the potential introduction of sound from increased vessel traffic and the physical presence and movements of these vessels, the maritime shipping industry transports various types of petroleum products, both as fuel and cargo, within the proposed critical habitat. If increased shipping involves the tanker transport of crude oil or oil products, there would be an increased risk of spills (ACIA, 2005; U.S. Arctic Research Commission, 2012). Similar to oil and gas activities, the most significant threat posed by shipping activities is considered the accidental or illegal discharge of oil or other toxic substance carried by ships (Arctic Council, 2009).

We conclude that the essential features of the habitat of the Arctic ringed seal may require special management considerations or protection in the future to minimize the

risks posed to these features by potential shipping and transportation activities, because: (1) Both the physical disturbance and noise associated with these activities could displace seals from favored habitat that contains the essential features, thus altering the quantity and/or quality of these features; and (2) in the event of an oil spill, sea ice essential for birth lairs and for molting could become oiled, and the quantity and/or quality of the primary prey resources could be adversely affected.

Commercial Fisheries: The proposed critical habitat area overlaps with waters of the Federal Arctic Management Area and the Bering Sea and Aleutian Islands Management Area. No commercial fishing is permitted within the Arctic Management Area due to insufficient data to support the sustainable management of a commercial fishery there. However, as additional information becomes available, commercial fishing may be allowed in this management area. Two of the primary Arctic ringed seal prey species identified as essential to conservation—Arctic cod and saffron cod—have been identified as likely initial target species for commercial fishing in Federal Arctic waters in the future (North Pacific Fishery Management Council, 2009).

In the northern portion of the Bering Sea and Aleutian Islands Management Area, limited commercial fisheries overlap with the southernmost portion of the proposed critical habitat. Portions of the proposed critical habitat also overlap with certain state commercial fisheries management areas. Commercial catches from waters in the proposed critical habitat area primarily include: Pacific halibut (*Hippoglossus stenolepis*), several other flatfish species, Pacific cod (*Gadus macrocephalus*), several crab species, walleye pollock (*Theragra chalcogramma*), and several salmon species.

Commercial fisheries may affect the primary prey resources identified as essential to the conservation of the Arctic ringed seal, through removal of prey biomass and potentially through modification of benthic habitat by bottom-trawl gear. Given the potential changes in commercial fishing that may occur with the expected increasing length of the open-water season and range expansion of some economically valuable species responding to climate change, we conclude that the primary prey resources essential feature may require special management considerations or protection in the future to address potential adverse effects of commercial fishing on this feature.

*Unoccupied Areas*

Section 3(5)(A)(ii) of the ESA further defines critical habitat to include specific areas outside the geographical area occupied by the species if the Secretary determines them to be essential for the conservation of the species. Our regulations at 50 CFR 424.12(e) emphasize that the Secretary "shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." We have not identified any specific areas outside the geographical area occupied by the Arctic ringed seal that are essential for its conservation; consequently, we are not proposing to designate any specific areas outside its current range.

**Application of ESA Section 4(a)(3)(B)(i)**

ESA section 4(a)(3)(B)(i) states: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 670a of this title [section 101 of the Sikes Act], if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." We contacted the Department of Defense (DOD) and requested information on any facilities or managed areas that are subject to an Integrated Natural Resources Management Plan (INRMP) and are located within areas that could potentially be proposed as critical habitat for the Arctic ringed seal. In response, DOD provided a map of facilities subject to an INRMP. No DOD lands overlap with the area proposed as critical habitat. Therefore, we conclude that there are no properties owned, controlled, or designated for use by DOD that are subject to ESA section 4(a)(3)(B)(i) for this proposed critical habitat.

**Application of ESA Section 4(b)(2)**

Before including areas in a critical habitat designation, section 4(b)(2) of the ESA and our implementing regulations require the Secretary to take into consideration the economic, national security, and other relevant impacts of the designation. Impacts may be quantitatively or qualitatively described, and considered at a scale that the Secretary determines to be appropriate (50 CFR 424.19(b)). Additionally, the Secretary has discretion to exclude any particular area from the critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of designation. The Secretary, however, cannot exclude any particular area if, based on the best scientific and commercial data available, the Secretary determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned. Because the authority to exclude any area from the critical habitat designation is discretionary, exclusion is not required for any particular area. For the reasons set forth below, we do not propose to exercise our discretion to exclude any areas from the proposed critical habitat designation.

The primary impacts of a critical habitat designation arise from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat (*i.e.*, adverse modification standard). Determining these impacts is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence (*i.e.*, the jeopardy standard). One incremental impact of critical habitat designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to adversely modify the critical habitat, beyond any modifications they would make because of listing and the jeopardy standard. Additional impacts of critical habitat designation include any state and/or local protection that may be triggered as a direct result of designation (we did not identify any such impacts), and benefits that may arise from education of the public to the importance of an area for species conservation.

A draft economic report, prepared by an environmental consulting firm (in cooperation with NMFS) with expertise in natural resource economics, describes the impact analyses for this proposed rule in detail (Cardno Entrix, 2014). In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification standard (see *Arizona Cattle Growers* v. *Salazar*, 606 F. 3d 1160 (9th Cir. 2010)) (holding that the FWS permissibly attributed the economic impacts of protecting the northern spotted owl as part of the baseline and was not required to factor those impacts into the economic

analysis of the effects of the critical habitat designation). We analyzed the impacts of this proposed designation based on a comparison of conditions with and without the designation of critical habitat for the Arctic ringed seal. The "without critical habitat" scenario represents the baseline for the analysis. It includes process requirements and habitat protections already extended to the Arctic ringed seal under its ESA listing and under other Federal, state, and local regulations. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the Arctic ringed seal. This analysis assesses the incremental costs and benefits that may arise due to the proposed critical habitat designation, with economic costs estimated within a 10-year post-designation timeframe. The 10-year timeframe was chosen because it is lengthy enough to reflect the planning horizon for reasonably predicting future human activities, yet it is short enough to allow reasonable projections of changes in use patterns in an area, as well as of exogenous factors (*e.g.,* world supply and demand for petroleum, U.S. inflation rate trends) that may be influential. We recognize that economic costs of the designation are likely to extend beyond the 10-year timeframe of the analysis, though we have no information indicating that such costs in subsequent years would be different from those projected for the first 10-year period. Although not quantified or analyzed in detail due to the high level of uncertainty regarding longer-term effects, the draft economic report includes a discussion of the potential types of costs and benefits that may accrue beyond the 10-year time window of the analysis.

*Benefits of Designation*

As noted above, the protection afforded under the ESA section 7 requirement for Federal agencies to ensure their actions are not likely to destroy or adversely modify designated critical habitat is in addition to ESA requirements to protect listed species. Specifically, ESA section 7(a)(1) requires all Federal agencies to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species, and section 7(a)(2) requires Federal agencies to ensure their actions are not likely to jeopardize the continued existence of listed species. Another benefit of critical habitat designation is that it provides specific notice of the features essential to the conservation of the Arctic ringed seal and where they occur. This information will focus future consultations on the key habitat attributes and avoid unnecessary attention on other, non-essential habitat features. By identifying the specific areas where the features essential to conservation of the Arctic ringed seal occur, there may also be enhanced awareness by Federal agencies and the general public of activities that might affect those essential features. Moreover, identification of features essential to the conservation of the species may improve discussions with action agencies regarding relevant habitat considerations of proposed projects.

In addition, the critical habitat designation may result in indirect benefits, as discussed in detail in the draft economic report (Cardno Entrix, 2014), including education benefits and enhanced public awareness, which may help focus and contribute to conservation efforts for the Arctic ringed seal and its habitat. For example, by identifying features essential to conservation of the Arctic ringed seal and where those features are found, complementary protections may be developed under state or local regulations or voluntary conservation plans. These other forms of benefits may be economic in nature (whether market or non-market, consumptive, non-consumptive, or passive), educational, cultural, or sociological, or they may be expressed through beneficial changes in the ecological functioning of the species' habitat, which itself yields ancillary welfare benefits (*e.g.,* improved quality of life) to the region's human population. For example, because the critical habitat designation is expected to result in enhanced conservation of the Arctic ringed seal over time, residents of the region who value these seals, such as subsistence users, are expected to experience indirect benefits. As another example, the geographic area of the proposed critical habitat overlaps substantially with the range of the polar bear in the United States, and the Arctic ringed seal is the primary prey species of the polar bear, so the designation may also provide indirect conservation benefits to the polar bear. Indirect conservation benefits may also extend to other co-occurring species, such as the Pacific walrus and other seal species.

It is not presently feasible to monetize, or even quantify, each component part of the benefits accruing from the designation of critical habitat for the Arctic ringed seal. Therefore, we augmented the quantitative measurements that are summarized here and discussed in detail in the economic report with qualitative and descriptive assessments, as provided for under 50 CFR 424.19(b) and in guidance from the Office of Management and Budget (OMB) (OMB Circular A–4, September 17, 2003). Although we cannot monetize or quantify all of the incremental benefits of the proposed critical habitat designation, we believe that they are not inconsequential.

*Economic Impacts of Designation*

Direct economic costs of the critical habitat designation accrue primarily through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. Those economic impacts may include both administrative costs and project modifications. At this time, on the basis of how protections are currently being implemented for Arctic ringed seals under the MMPA and as a threatened species under the ESA, we do not anticipate that additional requests for project modifications will result specifically from a designation of critical habitat. As a result, the direct incremental costs of the proposed critical habitat designation are expected to be limited to the additional administrative costs of considering Arctic ringed seal critical habitat in future ESA section 7 consultations.

Because the Arctic ringed seal is newly listed and we lack a lengthy consultation history for this species, we needed to make assumptions about the types of future Federal activities that might require section 7 consultations under the ESA. To identify the types of Federal activities that may affect critical habitat for the Arctic ringed seal, and therefore would be subject to the ESA section 7 adverse modification standard, we examined recent incidental take authorizations issued by NMFS under the MMPA and the limited number of ESA section 7 consultations that have addressed Arctic ringed seals. To derive estimates of the maximum number of future oil and gas related consultations, we extrapolated from the maximum exploration activity level described in the supplemental draft environmental impact statement on the effects of oil and gas activities in the Arctic Ocean (NMFS, 2013). We request Federal agencies to provide us with information on future consultations, if our assumptions omitted any future actions likely to affect the proposed critical habitat.

We identified several categories of activities with a Federal nexus that may affect critical habitat for the Arctic ringed seal within the time frame of the

analysis (10 years post-designation) and, therefore, would be subject to the ESA section 7 adverse modification standard. These include oil and gas related activities, dredge mining, navigation dredging, commercial fishing, oil spill prevention and response, and certain military activities. All of the projected future Federal actions that may trigger consultation due to the potential to affect critical habitat also have the potential to affect individual ringed seals. In other words, none of the activities we identified would trigger consultation solely on the basis of the proposed critical habitat designation. Federal action agencies with jurisdiction over projected future actions that may affect the proposed critical habitat area include the U.S. Army Corps of Engineers, BOEM, Bureau of Land Management, DOD, Environmental Protection Agency, U.S. Coast Guard, and NMFS. We would expect the majority of projected consultations due to potential effects on critical habitat to involve NMFS and BOEM authorizations and permitting of oil and gas related activities.

As detailed in the draft economic report (Cardno Entrix, 2014), the total incremental costs associated with this proposed critical habitat designation within the 10-year post-designation timeframe, in discounted present value terms, were estimated at $1.33 million (discounted at 7 percent) to $1.86 million (discounted at 3 percent). Ninety-five percent of the incremental costs attributed to the critical habitat designation are expected to accrue from consultations associated with oil and gas related activities in the Chukchi and Beaufort seas. We note that absent historical experience on consultation frequency involving the proposed critical habitat, in deriving these cost estimates, we assumed that a maximum projected level of oil and gas activity will occur annually (10 formal consultations each and every year; and several other formal and informal consultations over the 10-year post-designation timeframe). However, it is unlikely that this peak level of activity would occur every year. Indeed, in 2011, 2012, and 2013, there were one, five, and three formal consultations, respectively, completed relating to oil and gas activities in the Beaufort and Chukchi seas. While not quantifiable at this time, the draft economic report (Cardno Entrix, 2014) discusses that the oil and gas industry may also incur indirect costs associated with the critical habitat designation if future third-party litigation over specific consultations is successful and creates delays or other sources of regulatory uncertainty.

In summary, we have preliminarily concluded, subject to further consideration based on public comment, that the potential economic impacts of the proposed critical habitat designation would be modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area in the foreseeable future. As a result, and in light of the benefits of critical habitat designation discussed above and in the draft economic report, we are not proposing to exclude any areas pursuant to section 4(b)(2) of the ESA based on economic impacts.

*National Security Impacts of Designation*

Section 4(b)(2) of the ESA also requires consideration of national security impacts. We contacted the DOD regarding any potential impacts of the proposed critical habitat designation to military operations. In a letter dated June 3, 2013, the DOD Regional Environmental Coordinator indicated that no impacts on national security are currently foreseen from the proposed critical habitat designation. As a result, we have not identified any direct impacts from the critical habitat designation on activities associated with national security. We have preliminarily concluded, subject to further consideration based on public comment or additional information from DOD, that we will not exercise our discretionary authority to exclude any areas based on national security impacts.

*Other Relevant Impacts of Designation*

Finally, under ESA section 4(b)(2) we consider any other relevant impacts of critical habitat designation to inform our decision as to whether to exclude any areas. For example, we may consider potential adverse effects on existing management plans or conservations plans that benefit listed species, and we may consider potential adverse effects on tribal lands or trust resources. In preparing this proposed designation, we have not identified any such management or conservation plans, tribal lands or resources, or anything else that would be adversely affected by the proposed critical habitat designation. Accordingly, we have preliminarily concluded, subject to further consideration based on public comment, that we will not exercise our discretionary authority to exclude any areas based on other relevant impacts.

**Critical Habitat Designation**

We propose to designate as critical habitat one specific area of marine habitat in Alaska and offshore Federal waters of the northern Bering, Chukchi, and Beaufort seas within the geographical area presently occupied by the Arctic ringed seal. This critical habitat area contains physical or biological features essential to the conservation of Arctic ringed seals that may require special management considerations or protection. We have not identified any unoccupied areas that are essential to conservation of the Arctic ringed seal and we are not proposing any such areas for designation as critical habitat. We are not proposing to exclude any areas based on economic impacts, impacts to national security, or other relevant impacts of the proposed designation. In accordance with our regulations regarding critical habitat designation (50 CFR 424.12(c)), the map we are including in the proposed regulation, as clarified by the accompanying regulatory text, would constitute the official boundary of the proposed designation.

**Effects of Critical Habitat Designation**

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded, or carried out by the agency does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies must consult with us on any action that may affect listed species or critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat. If we conclude that the agency action would likely result in the destruction or adverse modification of critical habitat, we would suggest reasonable and prudent alternatives to the action that avoid that result.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered (among other reasons for reinitiation). Consequently, following designation of critical habitat for Arctic ringed seals, some Federal agencies may request

reinitiation of consultation or conference with us on actions for which consultation has been completed, if those actions may affect designated critical habitat.

Section 4(c)(2) of the ESA directs the Secretary to review the listing classification of threatened and endangered species, based on the best available scientific information concerning the species' status, at least once every 5 years. The ESA also provides that NMFS may, from time-to-time, revise critical habitat as new data become available to the Secretary (section 4(a)(3)(A)(ii)). Thus, new information considered during a 5-year review may also help inform future consideration of whether the best available information at that time indicates revision of critical habitat may be appropriate.

### Activities That May Be Affected by Critical Habitat Designation

Section 4(b)(8) of the ESA requires that we briefly describe and evaluate, in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat, or that may be affected by such designation. A wide variety of activities may affect the proposed critical habitat for Arctic ringed seals and, if carried out, funded, or authorized by a Federal agency, would require ESA section 7 consultation. Such activities or actions include: In-water and coastal construction; activities that generate water pollution; dredging; commercial fisheries; oil and gas exploration, development, and production; oil spill prevention and response; and certain DOD activities. An evaluation of the economic effects of ESA section 7 consultations regarding the proposed critical habitat is provided in the draft economic report (Cardno Entrix, 2014) and summarized above.

### Public Comments Solicited

To ensure the final action resulting from this proposal will be as accurate and effective as possible, we solicit comments and information from the public, other concerned government agencies, Alaska Native tribes and organizations, the scientific community, industry, and any other interested parties concerning this proposed rule. We particularly seek comments and information concerning: (1) Habitat use of Arctic ringed seals; (2) the identification, location, and quality of physical or biological features essential to the conservation of Arctic ringed seal; (3) the potential impacts of designating the proposed critical habitat, including the types of Federal activities that may trigger ESA section 7 consultation; (4) current or planned activities in the area proposed for designation and their possible impacts on the proposed critical habitat; (5) the potential effects of the designation on Alaska Native cultural practices and villages; (6) any foreseeable economic, national security, Tribal, or other relevant impacts resulting from the proposed designation; and (7) whether any particular areas that we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the ESA and why. For these described impacts or benefits, we request that the following specific information (if relevant) be provided to inform our ESA section 4(b)(2) analysis: (1) A map and description of the affected area; (2) a description of the activities that may be affected within the area; (3) a description of past, ongoing, or future conservation measures conducted within the area that may protect Arctic ringed seal habitat; and (4) a point of contact. You may submit your comments and information concerning this proposed rule by any one of several methods (see **ADDRESSES**). Copies of the proposed rule and supporting documentation, including the draft economic report (Cardno Entrix, 2014), are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*, from the Federal eRulemaking Web site at *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0114*, or upon request (see **ADDRESSES**). We will consider all comments and information received during the comment period for this proposed rule in preparing the final rule. Accordingly, the final decision may differ from this proposed rule.

### Information Quality Act and Peer Review

On December 16, 2004, the OMB issued a Final Information Quality Bulletin for Peer Review (Bulletin) establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of scientific information disseminated by the Federal government, and applies to influential and highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we are obtaining independent peer review of this proposed rule and the draft economic report (Cardno Entrix, 2014), and will address all comments received in developing the final rule and the final version of the economic report.

### Classification

*Regulatory Planning and Review (E.O. 12866)*

The economic costs and benefits of the proposed critical habitat designation are described in our draft economic report (*i.e.*, RIR/4(b)(2) Preparatory Analysis/IRFA; Cardno Entrix, 2014). OMB has determined that this rule is "significant," but not "economically significant," under E.O. 12866(3)(f).

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small not-for-profit organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility act analysis (IRFA), which is included as part of the draft economic report (Cardno Entrix, 2014). The IRFA estimates the potential number of small businesses that may be directly regulated by this proposed rule, and the impact (incremental costs) per small entity for a given activity type. Specifically, based on an examination of the North American Industry Classification System (NAICS), this analysis classifies the economic activities potentially directly regulated by the proposed action into industry sectors and provides an estimate of their number in each sector, based on the applicable NAICS codes. A summary of the IRFA follows.

A description of the action (*i.e.*, proposed designation of critical habitat), why it is being considered, and its legal basis are included in the preamble of this proposed rule. This proposed action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action. Existing Federal laws and regulations overlap with the proposed rule only to the extent that they provide protection to natural resources within the area proposed as critical habitat generally. However, no existing regulations

specifically prohibit destruction or adverse modification of critical habitat for the Arctic ringed seal.

The regulatory mechanism through which critical habitat protections are enforced is section 7 of the ESA, which directly regulates only those activities carried out, funded, or permitted by a Federal agency. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. In some cases small entities may participate as third parties during ESA section 7 consultations (the primary parties being the Federal action agency and NMFS) and thus they may be indirectly affected by the proposed critical habitat designation.

As detailed in the draft economic report (Cardno Entrix, 2014), the oil and gas exploration, development, and production industries participate in activities that are likely to require consideration of critical habitat in ESA section 7 consultations. The Small Business Administration size standards used to define small businesses in these cases are: (1) An average of no more than 500 employees (crude petroleum and natural gas extraction industry); or (2) average annual receipts of no more than $35.5 million (support activities for oil and has operations industry). No independent not-for-profit enterprises were identified that are likely to be affected by the proposed critical habitat designation. None of the parties identified in the oil and gas category appear to qualify as small businesses. Two government jurisdictions with ports appear to qualify as small government jurisdictions (serving populations of less than 50,000). Within the 10-year analytical timeframe, one of these two ports is expected to incur up to $4,000 (discounted at 3 percent) in total incremental consultation costs for authorization of navigation dredging activities, while the other is not expected to incur any costs associated with ESA section 7 consultations. This cost represents less than 0.1 percent of average annual receipts for this port.

We encourage small businesses, small governmental jurisdictions, and other small entities that may be affected indirectly by this rule to provide comment on the estimated number of small entities likely to participate as third parties during ESA section 7 consultations and the potential economic impacts of the proposed critical habitat designation, such as anticipated costs of consultation and potential project modifications, to improve the RFA analysis.

As required by the RFA (as amended by the SBREFA), we considered various alternatives to the proposed critical habitat designation for the Arctic ringed seal. We considered and rejected the alternative of not designating critical habitat for the Arctic ringed seal, because such an alternative does not meet the legal requirements of the ESA. We considered an alternative under which we would exercise discretion pursuant to section 4(b)(2) of the ESA to exclude certain areas, but we are not proposing to do so: the 4(b)(2) analysis identifies that there will be economic impacts from this designation, but we do not believe the benefits of excluding any particular area outweigh the benefits of inclusion. NMFS is seeking comments on the 4(b)(2) analysis, and all comments and information received will be considered in developing our final determination to designate critical habitat for the Arctic ringed seal.

*Energy Supply, Distribution, or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulations that: (1) Is a significant regulatory action under E.O. 12866, and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this action on the supply, distribution, or use of energy (see Cardno Entrix, 2014). The proposed critical habitat designation overlaps with five BOEM planning areas for Outer Continental Shelf oil and gas leasing; however, the Beaufort and Chukchi Sea planning areas are the only areas with existing or planned leases.

Currently, the majority of oil and gas production occurs on land adjacent to the Beaufort Sea and the proposed critical habitat area. Any proposed offshore oil and gas projects likely would have to undergo ESA section 7 consultations to ensure that the actions are not likely to destroy or adversely modify designated critical habitat. However, as discussed in the draft economic report (Cardno Entrix, 2014), such consultations will not result in any new and significant effects on energy supply, distribution, or use. ESA section 7 consultations have occurred for numerous oil and gas projects within the area of the proposed critical habitat (*e.g.*, relative to possible effects on endangered bowhead whales, a species without designated critical habitat) without adversely affecting energy supply, distribution, or use, and we would expect the same relative to critical habitat for Arctic ringed seals. We have, therefore, determined that the energy effects of this proposed rule are unlikely to exceed the impact thresholds identified in E.O. 13211, and that this proposed rulemaking is not a significant energy action.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.)*, we make the following findings:

1. This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation or regulation that would impose an enforceable duty upon state, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the state, local, or tribal governments "lack authority" to adjust accordingly.

"Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal action agency. Furthermore, to the extent that non-Federal entities are indirectly impacted,

because they receive a Federal permit or Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above to State governments.

2. This rule will not significantly or uniquely affect small governments, because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The proposed critical habitat designation falls within marine waters under Federal or State of Alaska jurisdiction. The State of Alaska does not fit the definition of a "small governmental jurisdiction" and thus a Small Government Agency Plan is not required. Waters adjacent to Native-owned lands are owned and managed by the State of Alaska.

*Takings (E.O. 12630)*

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. Private lands do not exist within the proposed critical habitat and would not be affected by this action.

*Federalism (E.O. 13132)*

In accordance with E.O. 13132 (Federalism), we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required.

*Paperwork Reduction Act of 1995*

This proposed rule does not contain new or revised information collections that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations.

*National Environmental Policy Act (NEPA)*

Environmental analysis under NEPA for ESA critical habitat designations is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

*Government-to-Government Relationship With Tribes*

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

As the entire proposed critical habitat area is located seaward of the coast line of Alaska, no tribal-owned lands overlap with the proposed designation. However, this proposed designation overlaps with areas used by Alaska Natives for subsistence, cultural, and other purposes. We coordinate with Alaska Native hunters regarding management issues related to ice seals through the Ice Seal Committee (ISC), a co-management organization under section 119 of the Marine Mammal Protection Act. NMFS discussed the designation of critical habitat for Arctic ringed seals with the ISC and provided updates regarding the timeline for publication of this proposed rule. We also contacted potentially affected tribes by mail and offered them the opportunity to consult on the designation of critical habitat for the Arctic ringed seal and discuss any concerns they may have. We received no requests for consultation in response to this mailing. If we receive any such requests in response to this proposed rule, we will respond to each request prior to issuing a final rule.

**References Cited**

A complete list of all references cited in this rulemaking can be found on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 226**

Endangered and threatened species.

Dated: November 21, 2014.

**Samuel. D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, we propose to amend 50 CFR part 226 as follows:

## PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

■ 2. A new § 226.226 is added to read as follows:

**§ 226.226 Critical Habitat for the Arctic Subspecies (Phoca hispida hispida) of the Ringed Seal (*Phoca hispida*).**

Critical habitat is designated for the Arctic subspecies of the ringed seal as depicted in the map below and described in paragraph (a) of this section. Textual information is included for the purposes of clarifying or refining the location and boundaries of the critical habitat area.

(a) *Critical habitat boundaries.* Critical habitat includes all the contiguous marine waters from the "coast line" of Alaska as that term has been defined in the Submerged Lands Act ("the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters"), 43 U.S.C. 1301(c), to an offshore limit within the U.S. Exclusive Economic Zone (EEZ). The boundary extends offshore from the northern limit of the United States-Canada land border (from the ordinary low water line of the Beaufort Sea at 141° W. long.) and follows the outer extent of the U.S. EEZ boundary north and slightly northeastward; thence westerly and southwesterly; thence southerly and southwesterly to 60°31′ N. lat., 179°13′ W. long. From there it runs southeasterly to 58°22′ N. lat., 170°27′ W. long.; thence easterly to 59° N. lat., 164° W. long. The boundary then follows 164° W. long. due north to the coast line of Alaska southeast of Cape Avinof. Critical habitat does not include permanent manmade structures such as boat ramps, docks, or pilings that were in existence on or before the effective date of this rule.

(b) *Essential features.* The essential features for the conservation of the Arctic ringed seal are:

(1) Sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as seasonal landfast (shorefast) ice, or dense, stable pack ice, that has undergone deformation and contains snowdrifts at least 54 cm deep.

(2) Sea ice habitat suitable as a platform for basking and molting, which is defined as sea ice of 15 percent or more concentration.

(3) Primary prey resources to support Arctic ringed seals, which are defined to be Arctic cod, saffron cod, shrimps, and amphipods.

(c) *Critical habitat map.* The proposed critical habitat boundary was mapped using an Alaska Albers Equal Area Conic projection referenced to the North American Datum of 1983 (NAD83). The map, as clarified by the accompanying regulatory text, establishes the boundaries of the critical habitat designation. The map, along with the coordinates or plot points on which the map is based, is available to the public on *http://www.regulations.gov* at Docket No. NOAA–NMFS–2013–0114, on the NMFS Alaska region Web site at *http://alaskafisheries.noaa.gov*, and at the NMFS office in Juneau, Alaska. The map of critical habitat for the Arctic ringed seal follows:

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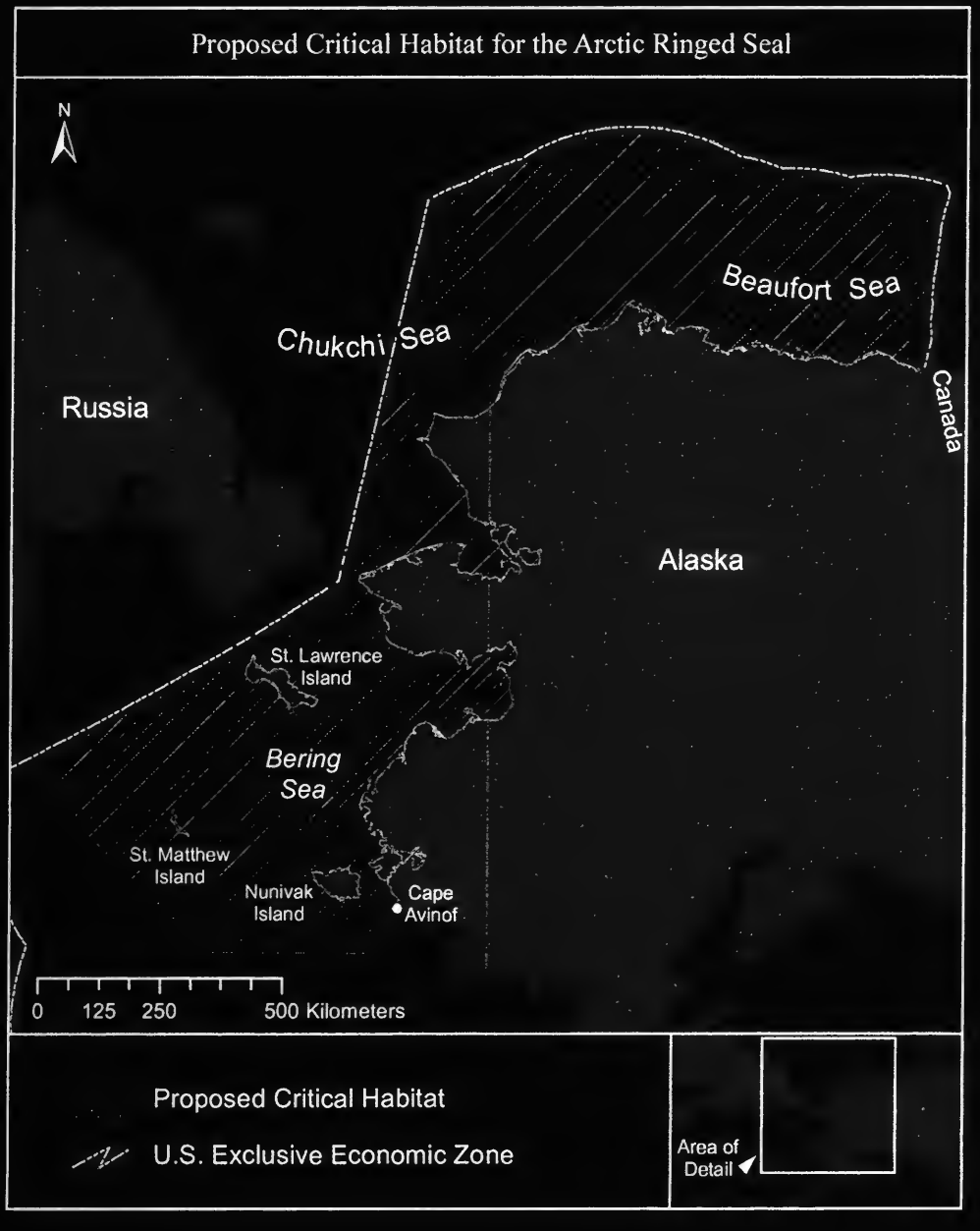

[FR Doc. 2014–28229 Filed 12–2–14; 8:45 am]
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 140724618–4618–01]**

**RIN 0648–BE41**

## Pacific Halibut Fisheries; Revisions to Charter Halibut Fisheries Management in Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations that would revise Federal regulations regarding sport fishing guide services for Pacific halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). The proposed regulations would remove the requirement that a guided sport (charter) vessel guide be on board the same vessel as a charter vessel angler to provide sport fishing guide services. This proposed rule would clarify that all sport fishing for halibut in which anglers receive assistance from a compensated guide would be managed under charter fishery regulations, and all harvest would accrue toward charter allocations. This proposed rule would align Federal regulations with State of Alaska regulations. Additional minor changes to the regulatory text pertaining to the charter halibut fishery would be required to maintain consistency in the regulations with these new definitions. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

**DATES:** Comments must be received no later than January 2, 2015.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2014–0097, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0097*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2014 fishing season was published March 12, 2014 (79 FR 13906). IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, and sport halibut fishery management measures in waters in and off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota Program for the commercial halibut fishery, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

### Background

The proposed rule would align Federal regulations for charter halibut fishing with State of Alaska regulations for sport fishing to clarify the Council's and NMFS' intent for management of charter halibut fisheries in Areas 2C and 3A off Alaska. The proposed regulatory clarifications also would facilitate enforcement and clarify recordkeeping and reporting requirements for the charter halibut fishery. The proposed rule would not revise regulations for unguided sport halibut fishing in Alaska found in sections 3, 25, and 28 of the IPHC annual management measures (March 12, 2014, 79 FR 13906). The following sections of this preamble provide (1) a description of the halibut

fisheries; (2) the need for the proposed rule; and (3) the proposed rule.

*Description of Halibut Fisheries*

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is a fixed gear fishery managed under the Halibut Individual Fishing Quota Program. The sport fishery includes guided and unguided anglers. Guided anglers are commonly called "charter" anglers because they fish from chartered vessels. The subsistence fishery allows rural residents and members of certain Alaska Native tribes to retain halibut for personal use or customary trade. The Council and NMFS have developed specific management policies and programs for each halibut fishery based on participation and harvest in those fisheries.

Sport fishing activities for Pacific halibut in Areas 2C and 3A are subject to different regulations, depending on whether those activities are guided or unguided. Guided sport fishing for halibut is subject to charter restrictions under Federal regulations. These regulations apply if a charter vessel guide is on board the vessel with the charter vessel angler and is providing "sport fishing guide services" during the fishing trip. The term "sport fishing guide services" is defined in Federal regulations at § 300.61 as "assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member." Unguided anglers typically use their own vessels and equipment, or they may rent a vessel and fish with no assistance from a guide.

The Council and NMFS developed specific management programs for the charter halibut fishery to achieve allocation and conservation objectives for the halibut fisheries. These management programs are also intended to maintain stability and economic viability in the charter fishery by establishing (1) limits on the number of participants, (2) allocations of halibut that vary with abundance, and (3) a process for determining charter angler harvest restrictions to limit charter fishery harvest to the established allocations. The charter halibut fisheries in Areas 2C and 3A are managed under the Charter Halibut Limited Access Program (CHLAP) and the Catch Sharing Plan (CSP). The CHLAP limits the number of operators in the charter fishery, while the CSP establishes annual allocations to the charter and commercial fisheries and describes a process for determining annual management measures to limit charter harvest to the allocations in each management area. The CHLAP and the CSP are briefly summarized in the following sections. Section 1.3 of the RIR/IRFA prepared for this action provides additional detail on the charter halibut management programs that have been implemented in Areas 2C and 3A.

*Description of Charter Halibut Limited Access Program*

The CHLAP was adopted by the Council and implemented by NMFS in January 2010 (75 FR 554, January 5, 2010). The CHLAP established Federal charter halibut permits (CHPs) for operators in the charter halibut fishery in Areas 2C and 3A. Since 2011, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and the number of anglers that may catch and retain halibut on a charter vessel fishing trip.

NMFS implemented the CHLAP, based on recommendations by the Council, to meet allocation objectives in the charter halibut fishery. This program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A. Vessel operators had to meet minimum participation requirements to receive an initial issuance of a CHP. Complete regulations for the CHLAP are published at §§ 300.65, 300.66, and 300.67. Additional details on the development and rationale for the CHLAP can be found in the final rule implementing the program and are not repeated here (75 FR 554, January 5, 2010).

*Description of the Catch Sharing Plan and Limits on Charter Anglers*

The CSP was adopted by the Council and implemented by NMFS in January 2014 (78 FR 75844, December 12, 2013). The CSP replaced the Guideline Harvest Level program that was in place from 2004 through 2013 (68 FR 47256, August 8, 2003) as the method for setting pre-season specifications of acceptable annual harvests in the charter fisheries in Areas 2C and 3A. The CSP defines an annual process for allocating halibut between the charter and commercial halibut fisheries in Areas 2C and 3A. The CSP establishes sector allocations that vary proportionally with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance in each area. The CSP describes a public process by which the Council develops recommendations to the IPHC for charter angler harvest restrictions that are intended to limit harvest to the annual charter halibut fishery catch limit in each area. The CSP also authorizes limited annual leases of commercial individual fishing quota for use in the charter fishery as guided angler fish (GAF). GAF authorizes individual charter operators in Area 2C and Area 3A to offer anglers the opportunity to retain additional halibut when charter vessel anglers are subject to a more restrictive daily harvest limit than unguided sport anglers in the same area. Charter vessel anglers have been subject to a more restrictive daily harvest limit than unguided sport anglers since 2007 in Area 2C. In 2014, charter vessel anglers in Area 3A were also managed under more restrictive harvest limits for the first time. Additional detail on the development and rationale for the CSP can be found in the final rule implementing the program and is not repeated here (78 FR 75844, December 12, 2013).

*IPHC Annual Management Measures*

Each year, through a transparent public process, the Council reviews and recommends annual management measures for implementation in the Area 2C and Area 3A charter halibut fishery. Each fall, the Council reviews an analysis of potential charter management measures for the charter halibut fisheries for the upcoming fishing year. The Council considers stakeholder input and the most current information regarding the charter fishery and its management. After reviewing the analysis and considering public testimony, the Council identifies the charter halibut management measures to recommend to the IPHC that will most likely constrain charter halibut harvest for each area to its catch limit, while considering impacts on charter operations. The IPHC considers the Council recommendations, along with the analyses on which those recommendations were based, and input from its stakeholders and staff. The IPHC then adopts charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A to the catch limits specified under the CSP. Once accepted by the Secretary of State with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the

charter halibut management measures for each area as part of the IPHC annual management measures (79 FR 13906, March 12, 2014).

*Catch Monitoring and Estimation in the Sport Halibut Fisheries*

The Alaska Department of Fish and Game (ADF&G) Saltwater Charter Logbook (hereafter, logbook) is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut as well as other state-managed species. Logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual charter anglers. This information is essential to estimate harvest for regulation and management of the charter halibut fisheries in Areas 2C and 3A. ADF&G collects logbook information from charter vessel guides on halibut harvested by charter vessel anglers to accommodate the information requirements for implementing and enforcing Federal charter halibut fishing regulations, such as the Area 2C one-halibut per day bag limit and the CHLAP.

ADF&G uses the Statewide Harvest Survey (SWHS) to estimate halibut harvests in the unguided sport halibut fishery. The SWHS is a mail survey of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

*Description of "Guide Assisted" Sport Fishing Services*

In April 2012, the Council received a report from NOAA's Office of Law Enforcement describing "guide-assisted" sport fishing services for halibut observed in Area 2C that are not subject to the Federal charter halibut fishery regulations. NOAA's Office of Law Enforcement staff first observed guide-assisted sport fishing services for halibut during 2011, the first year of CHLAP implementation. The report noted that a few companies offer guide-assisted sport fishing services in which guides provide assistance to halibut anglers, likely for compensation, from adjacent vessels or shore. A person providing assistance to an angler during a fishing trip, and who is not on board the vessel with the anglers, is not providing sport fishing guide services under the current Federal definition. As a result, persons providing guide-assisted sport fishing services are not required to have CHPs, and guide-assisted anglers are not subject to Federal regulations that limit guided anglers. Guide-assisted anglers are able to retain halibut under the more liberal bag and size limits in place for unguided anglers, while still receiving assistance during the fishing trip from a guide on a nearby, sometimes tethered, vessel, or from shore. Additionally, Federal regulations do not require halibut harvested by guide-assisted anglers to be recorded in the logbook.

In contrast to Federal regulations, State of Alaska (State) regulations do not require a guide to be on board the same vessel as the angler for the trip to be considered guided fishing (Alaska Statute Sec. 16.40.299). If sport fishing guide services (as defined by the State) are provided to the angler during any portion of a sport fishing trip, the State considers those harvests as charter removals and requires harvests to be recorded in the logbook.

ADF&G examined logbook data from Area 2C in an effort to quantify the practice of guiding from a separate vessel or the shore during the period 2009 through 2012. This practice was identified by looking for instances of the harvest of two halibut per charter vessel angler per day in Area 2C as reported in the logbook. ADF&G's methods for quantifying this practice are explained in detail in Section 1.3.6.1.3 of the RIR/IRFA. A minimum of one to three businesses are estimated to have routinely hosted clients that exceeded the one-fish bag limit for charter anglers, suggesting they were offering guide-assisted sport fishing services between 2009 and 2013 in Area 2C that did not meet the Federal definition of sport fishing guide services. This practice may be more widespread than the analysis indicates because Federal regulations do not require a guide to complete a logbook for persons using guide-assisted sport fishing services. Logbook data regarding the numbers of retained halibut could not be used to identify businesses that may be offering guide-assisted sport fishing services in Area 3A because bag limits were identical for guided and unguided anglers until 2014. Instead, ADF&G attempted to identify such businesses by looking for businesses without CHPs that routinely had client harvest of halibut.

**Need for Action**

The Council recommended, and NMFS proposes, this rule to manage guide-assisted sport fishing services for halibut under the CHLAP and the CSP. The following describes the rationale for this action. The Council made its recommendation because it considers guide-assisted sport fishing services for halibut to be a *de facto* form of guided or charter fishing, although this method is currently considered unguided fishing under Federal regulations. A guide who is not on the same vessel with an angler and who provides assistance for compensation to an angler meets the definition of guided fishing in all ways except for the requirement to be on board the same vessel. For example, the guide may still accompany the anglers from a separate vessel, lead them to the fishing location, instruct them in how to bait hooks and reel in the fish, etc. They may even assist in landing and filleting the halibut from a separate vessel, yet under the current Federal definition, these behaviors are not technically considered guiding. In contrast, the State of Alaska definition does not require the guide to be on board the same vessel as the angler to provide sport fishing guide services. The Council considered the State definition in making its recommendation for a change to the Federal definition. The Council was also concerned that guide-assisted sport fishing services may increase if no action is taken to define these fishing activities as charter fishing. This increase could occur because halibut harvest limits are more restrictive for charter vessel anglers than for unguided anglers, particularly in Area 2C. This discrepancy may provide an incentive for charter operators to modify their services to operate as guide-assisted sport fishing services to allow their anglers to fish under the more liberal size and bag limits in place for unguided anglers. Alternatively, it may serve as an incentive for new entrants to provide guide-assisted sport fishing services.

The Council also recommended clarifying that guide-assisted halibut harvests should accrue to the charter sector allocation under the CSP. The Council recognized that under the current Federal definition, halibut harvests by guide-assisted sport fishing services would not be considered guided. Thus, those harvests may currently be counted as unguided harvest instead of charter harvest in the SWHS, or not reported in the logbook. The Council reviewed information suggesting that a relatively small amount of halibut harvested by guide-assisted sport fishing services may be counted as unguided harvest (see Section 1.3.5.2 of the RIR/IRFA).

However, the Council recommended requiring that all guide-assisted halibut harvests be recorded in the logbook, and that harvest accrue to the charter allocation under the CSP, to prevent a potential increase in the amount of guide-assisted halibut harvest counted as unguided harvest. The following discussion provides additional detail on the accounting for halibut harvested by guide-assisted sport fishing services.

Under the status quo, there is potential for inconsistencies and misreporting of guide-assisted halibut harvests. As described in the "Catch Monitoring and Estimation in the Sport Halibut Fisheries" section of this preamble, charter and unguided sport halibut harvests are estimated using different methods. Under the CSP, charter harvests are estimated using logbooks, and all charter harvests must be recorded in the logbook. Unguided harvests are estimated using the SWHS. Guides who are providing guide-assisted sport fishing services for species other than halibut (under the State's definition) are required to complete logbooks for those State-managed species. Guides may also record halibut harvests occurring during these fishing trips in the logbook, even though it is not considered charter halibut harvest under current Federal regulations. In these instances, the harvest would be included in the charter halibut fishery harvest estimate and accrue toward the CSP catch limit for the charter halibut fishery. Likewise, anglers may be confused when responding to the SWHS as to whether they were halibut fishing with or without a charter vessel guide. Anglers can report halibut harvested on a guide-assisted sport fishing trip in the SWHS as either guided or unguided. This proposed rule would clarify logbook reporting requirements and improve harvest estimates by aligning the Federal and State definitions of sport fishing guide services so that halibut harvested by an angler who receives compensated assistance would be required to be recorded in the logbook, whether or not the person providing the assistance is physically present on board the vessel or not.

Despite the potential for reporting charter halibut harvests as unguided harvest, and vice versa, the Council did not identify a conservation concern with regard to sport halibut harvest accounting because all halibut harvests are being estimated based on information submitted in the logbooks and SWHS. See Section 1.3.6.1.3 of the RIR/IRFA prepared for this action for additional details on the anticipated impacts of the proposed rule on sport halibut harvest estimates and fishery reporting requirements.

**Proposed Rule**

The Council initiated analysis of the proposed action in February 2013. In June 2013, the Council reviewed the analysis and clarified its recommended options for revising Federal halibut sport fishing regulations to be consistent with its intent for guide-assisted sport fishing services to be managed under the CHLAP and the CSP. In February 2014, the Council recommended aligning Federal regulations regarding sport fishing guide services for Pacific halibut with State regulations by removing the requirement that the charter vessel guide be on board the same vessel as the charter vessel angler. The Council recognized that NMFS would propose additional regulations necessary to implement the Council's recommendation. The Council's recommendation is available at *http://legistar2.granicus.com/npfmc/meetings/2014/2/876_A_North_Pacific_Council_14-02-03_Meeting_Agenda.pdf*.

The proposed regulations would align Federal regulatory text regarding sport fishing guide services for Pacific halibut with State regulations in a manner that is consistent with Council intent for management of charter halibut fisheries. The proposed revisions would enhance enforcement of sport fishing regulations by an authorized officer by clearly defining when a person is providing sport fishing guide services. This regulatory clarity will also aid anglers and operators providing sport fishing guide services to comply with regulations for the charter halibut fisheries.

This proposed rule would implement clear and consistent regulations that apply to all businesses providing, and all anglers receiving, sport fishing guide services, and improve the accuracy of the data collected on sport fishing harvest. Specifically, this proposed rule would require anglers receiving sport fishing guide services, whether or not a charter vessel guide is on board, to comply with the restrictions in place for charter vessel anglers. This proposed rule would require businesses that provide sport fishing guide services for halibut from separate vessels to obtain CHPs for the vessels on which the anglers are fishing and comply with the restrictions in place for the charter halibut fishery. This proposed rule would not increase the number of CHPs issued under the CHLAP.

As described in Section 1.2 of the RIR/IRFA, the proposed rule is intended only to address fishing activities for the charter halibut sector; no action is proposed to regulate businesses that provide equipment for unguided (or self-guided) sport fishing. The following sections provide greater detail about the three categories of regulatory changes proposed in this rule: 1) Revisions to definitions at § 300.61; 2) revisions to CHLAP and CSP regulations; and 3) other regulatory revisions. The last section describes suggested changes to IPHC annual management measures to aid the implementation of this proposed rule. NMFS solicits public comments on the proposed changes to the regulations described in this preamble.

*Proposed Revisions to Definitions at § 300.61*

Most critically, this proposed rule would revise the definition of "sport fishing guide services," and add definitions for "compensation" and "charter vessel" at § 300.61. Technical revisions would be made to the definitions of "charter vessel angler," "charter vessel fishing trip," "charter vessel guide," and "charter vessel operator" at § 300.61 for added clarity and consistency among definitions. These changes are described in detail in section 2.7 of the RIR/IRFA for this action.

The proposed revision to the definition of "sport fishing guide services" would remove the requirement that a charter vessel guide be on board the same vessel as the charter vessel angler. The Council recommended that the definition be revised to read as follows: "Sport fishing guide services, for purposes of §§ 300.65 and 300.67, means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member."

NMFS proposes the Council's recommendation with two minor changes. First, NMFS proposes to cite § 300.65(d) instead of § 300.65 to specifically reference the section of § 300.65 that pertains to charter halibut fishing. Second, NMFS proposes to revise the current definition of "sport fishing guide services" to clarify that services provided by a crew member working directly under the supervision of, and on the same vessel as, a charter vessel guide are not sport fishing guide services for purposes of CHLAP and CSP regulations.

Under the proposed rule, crew member services would continue to be

excluded from the definition of sport fishing guide services for purposes of CHLAP and CSP regulations, to clearly identify that the charter vessel guide, and not a crew member, is the person responsible for complying with the regulations. The Council and NMFS do not intend for an assistant, deckhand, or other crew member that works directly under the supervision of a charter vessel guide to be the person responsible to comply with CHLAP and CSP regulations. The proposed rule would maintain current requirements specifying that a person providing sport fishing guide services from a charter vessel would be responsible for complying with CHLAP and CSP regulations, whether or not that person has an ADF&G sport fishing guide license or registration on board that vessel. Therefore, NMFS proposes to revise the final sentence of the definition of sport fishing guide services to specify that "sport fishing guide services do not include services provided by a crew member, as defined at § 300.61." This proposed revision would cite the definition of a crew member for added clarity.

The Council recommended, and NMFS proposes, revising the definition of sport fishing guide services as "accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip." This proposed revision is consistent with the State definition for sport fishing guide services (Alaska Statute Sec. 16.40.299). The current Federal definition of charter vessel fishing trip at § 300.61 specifies that a charter vessel fishing trip begins when fishing gear is first deployed into the water and ends when one or more charter vessel anglers or any halibut are offloaded from that vessel. Assistance, under the proposed definition of sport fishing guide services, would therefore be restricted to activities that occur after gear has been deployed. Advice or assistance provided before gear is deployed would not be considered sport fishing guide services. What qualifies as assistance is further constrained by the words "accompanying or physically directing," which likely would require that the charter vessel guide be in proximity to the charter vessel angler. NMFS assumes that while most assistance would be provided from a separate vessel, it is possible that assistance could also be provided from shore. NMFS notes that determination of guided assistance for purposes of Federal regulations likely would depend on a combination of factors that, taken together, would indicate that a charter vessel guide was compensated for assisting an angler in a manner intended to result in the taking of halibut. Section 1.3.6 of the RIR/IRFA provides additional detail on the proposed revision to the definition of sport fishing guide services.

NMFS proposes adding a definition for "compensation" to § 300.61 that matches the State's definition. Federal regulations currently do not define "compensation" in the context of the charter halibut fishery. The Council and NMFS intend for sport fishing to be considered charter fishing only if a person providing assistance to sport anglers is receiving compensation. Compensation would be defined as, "direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source . . . 'benefits' includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait." This definition of compensation would also mean that payments made by a third party, and non-monetary exchanges of goods and services for taking someone halibut fishing, may also be considered compensation, as well as payments or non-monetary exchanges from a person aboard the charter vessel.

The proposed Federal definition would not consider reimbursement for "actual" daily expenses (*e.g.*, bait, fuel, food) to be compensation. Section 1.3.6.2 of the RIR/IRFA provides additional detail on the proposed revision to the definition of compensation.

An interpretive rule (76 FR 19708, April 8, 2011) clarified that a charter vessel guide, operator, or crew member may fish for halibut from a charter vessel if he or she is not being compensated to provide assistance to persons catching and retaining halibut. No changes are proposed to this interpretation that allows guides, operators, and crew members to fish recreationally with friends and family, so long as no charter vessel anglers are on board and receiving sport fishing guide services.

NMFS proposes adding a definition for "charter vessel" to Federal regulations at § 300.61. A charter vessel would be defined as "a vessel used while providing or receiving sport fishing guide services for halibut." Under this proposed definition, a charter vessel guide would not be required to be on board the same vessel as the charter vessel angler to be providing sport fishing guide services. If an angler receives sport fishing guide services during a charter vessel fishing trip (*i.e.*, the time between when gear is deployed and when one or more charter anglers or any harvested halibut are offloaded), even if it is from an adjacent or nearby vessel, that angler would be considered to be fishing from a charter vessel.

Charter vessels are required to be registered with the State and are issued identification decals and logbooks. Under this proposed rule, all charter vessels, including those that would not have charter vessel guides on board, would need to register with the State, display the charter vessel decal while operating as a charter vessel, and have the logbook on board during all charter vessel fishing trips. Each charter vessel from which anglers may catch and retain halibut would also need to have an original CHP on board during charter vessel fishing trips.

*Proposed Revisions to CHLAP and CSP Regulations*

As described above and in Section 2.7 of the RIR/IRFA, the Council recognized that its recommendation for the proposed rule would require NMFS to propose additional revisions to regulations governing the CHLAP and CSP. The following sections summarize these additional proposed regulatory revisions.

Under the proposed rule, the primary responsibility for compliance with charter halibut fishery regulations would continue to be with the charter vessel guide. However, some Federal regulations governing the charter halibut fishery put the burden of compliance on the charter vessel operator. The term "charter vessel operator" in § 300.61 currently refers to the person in charge of the charter vessel on which anglers are catching and retaining halibut. Under the proposed rule, if no charter vessel guide were on board the vessel with the charter anglers, as in guide-assisted sport fishing services, the charter vessel operator could also be a charter vessel angler. To facilitate compliance in these instances, NMFS proposes regulations at § 300.66(s) and (v) to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for compliance with the requirement to have a valid CHP and a logbook on board the charter vessel with the charter vessel anglers if no charter vessel guide is on board the vessel with the charter anglers.

The CHP and logbook are critical enforcement tools used by an authorized officer to verify when anglers are on a charter vessel fishing trip and subject to CHLAP, CSP, and daily bag limit and size restrictions applicable to charter vessel anglers. If the charter vessel guide is on a separate charter vessel or on the shore, or is not in the vicinity of the charter vessel with anglers aboard (*i.e.*, "angler vessel"), an authorized officer must be able to identify a person on board the angler vessel that is responsible for ensuring that a valid CHP and the logbook are on the vessel to authorize that charter vessel fishing trip. NMFS proposes that if the charter vessel guide is on a separate vessel, or on the shore, the charter vessel operator should be the person on board the angler vessel that could be held jointly responsible with the charter vessel guide to ensure that a valid CHP and the logbook are on the angler vessel. NMFS notes that enforcement of this proposed provision would depend on the circumstances of a fishing trip. Authorized agents would evaluate the specific circumstances to determine whether to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for compliance with the requirement to have a valid CHP and a logbook on board the vessel. NMFS requests comments specific to this provision of the proposed rule.

Charter vessel guides would remain responsible for complying with the CHLAP and CSP reporting requirements at § 300.65(d), and the person whose business was assigned a logbook would remain responsible for ensuring that the charter vessel guide complies with those requirements. Under current regulations, before a charter vessel fishing trip begins, the charter vessel guide is required to record in the logbook the first and last names and license numbers of each charter vessel angler who will fish for halibut (exceptions apply for youth, senior, and disabled charter vessel anglers); ensure that the cover of the logbook lists the person named on the CHP(s) and the CHP number(s) being used during that charter vessel fishing trip; and ensure the name and State-issued vessel registration (AK number) or U.S. Coast Guard documentation number of the charter vessel is listed. NMFS proposes to modify regulations at § 300.65(d) to require that the logbook remain on the charter vessel with the anglers during the charter vessel fishing trip, even if the guide is on a separate vessel or on shore. With this proposed change, an authorized officer would be able to verify that all anglers are licensed and listed in the logbook, and that the angler endorsement on the CHP has not been exceeded.

Under existing regulations at § 300.65(d), if halibut is retained during a charter vessel fishing trip, the charter vessel guide is responsible for completing the remainder of the logbook data fields by the end of the calendar day, or by the end of the charter vessel fishing trip, whichever comes first. The charter vessel guide is also responsible for ensuring that charter vessel anglers who retained halibut sign the logbook.

Under this proposed rule, charter vessel guides would remain responsible for complying with the provisions of the GAF program at § 300.65. A GAF permit authorizes a charter vessel angler to retain GAF, and GAF permits are assigned to a single CHP. Under current regulations at § 300.65(c)(5)(iii)(A)(*5*), a legible copy of the GAF permit must be kept on board the charter vessel with the CHP to enable an authorized officer to verify that any GAF retained on the charter vessel were authorized by a valid GAF permit. NMFS proposes to modify regulations at § 300.65(c)(5)(iii)(A)(*5*), to require the guide maintain control of a legible copy of the GAF permit, and require that the CHP and logbook remain on the same charter vessel as the charter vessel anglers.

Existing regulations at § 300.65(c)(5)(iv)(G) require that upon retention of a GAF halibut, the guide must immediately remove the upper and lower tips of the tail fin lobes to mark and identify that fish as a GAF halibut. NMFS proposes revising this regulation to add a requirement that the guide must be physically present when the GAF is harvested to mark the fish. NMFS anticipates that charter vessel anglers without a guide on board would need to summon the guide (*e.g.*, by cell phone or radio) to be in proximity of the charter vessel before any GAF are harvested. Accordingly, charter vessel guides not on charter vessels could not guide from the shore, if GAF fish are being harvested. Regulations at § 300.65(d)(4)(iii)(A)(*1*) require the charter vessel guide to immediately measure and record the total length of the GAF halibut in the GAF permit log on the back of the GAF permit. NMFS does not propose changing this requirement, but proposes adding regulations at § 300.65(d)(4)(iii)(A)(*5*) to require the charter vessel guide to immediately record in the logbook the GAF permit number under which the GAF was caught and retained, and the number of GAF retained by the charter vessel angler who caught and retained it. The term "immediately," for enforcement purposes, means that the stated activity (*e.g.*, marking the fish or recording the GAF in the logbook) must occur before the guide or angler moves on to another activity or resume fishing. For example, if a charter vessel angler harvests a GAF, the guide would need to mark and record it before the angler could continue fishing, transit to another location, etc. This proposed revision would improve the timely recording of GAF.

This proposed rule would revise regulations at § 300.65(d)(4)(iii)(A)(*1*) to require the guide to record harvested GAF immediately in the logbook so a record of the GAF harvest remains on board with the charter vessel angler if the guide leaves the area with the GAF permit and GAF log. If the guide could not be present at the time the GAF is harvested, the charter vessel angler would not be authorized to retain that fish.

Current regulations at § 300.65(d)(4)(iii)(B) through (E) require a charter vessel guide to electronically report GAF harvests at the end of a charter vessel fishing trip in which GAF is retained. This proposed rule would not revise these regulations and the charter vessel guide would continue to be responsible for electronically reporting GAF harvests.

Current regulations at § 300.65(c)(5)(iv)(G) require that if GAF halibut are filleted on board a charter vessel, the carcasses of those GAF halibut must be retained until the end of the charter vessel fishing trip to enable an authorized officer to verify the recorded lengths. NMFS proposes to revise CSP regulations at § 300.65(c)(5)(iv)(G) to specify that if any GAF are harvested and filleted on board the charter vessel, those carcasses would also need to be retained on the charter vessel on which the GAF halibut were caught until the end of the charter vessel fishing trip. In other words, if a GAF halibut were harvested on a charter vessel without a guide on board, it would need to stay on the vessel with the angler who caught it until the end of the fishing trip; it could not be transferred to the vessel that the guide is on for filleting, storage, or otherwise. Similarly, IPHC annual management measures currently require that the carcasses of size-restricted halibut harvested in the charter fishery in Areas 2C and 3A be retained, if those size restricted halibut are filleted on board the charter vessel. NMFS proposes adding this carcass retention requirement to Federal regulations at § 300.65(d)(5).

NMFS notes that not all charter businesses participate in the GAF program, and that it is an optional use of individual fishing quota. There is no requirement that charter vessel guides make GAF available to their anglers.

**Other Regulatory Changes**

Charter vessel guides, operators, and crew are prohibited from harvesting halibut in Areas 2C and 3A during charter vessel fishing trips under existing regulations at § 300.65(d)(3). Under this proposed rule, the charter vessel operator could potentially be a charter vessel angler who is operating a vessel without a charter vessel guide onboard (*e.g.*, the charter vessel guide is on a separate vessel). NMFS assumes that the Council would not want to prohibit charter vessel anglers who are operating charter vessels without a charter vessel guide on board from harvesting halibut. Therefore, NMFS proposes to revise § 300.65(d)(3) to specify that "a charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A, except that charter vessel operators who are charter vessel anglers may catch and retain halibut during a charter vessel fishing trip if the charter vessel guide is on a separate charter vessel." Minor additional changes are proposed to regulations at §§ 300.61, 300.65, 300.66, and 300.67 to maintain existing regulatory responsibilities applicable to specific persons and ensure consistency in the charter halibut regulations to meet the intent of this proposed rule. These changes and the rationale for them are outlined in detail in Section 2.7 of the RIR/IRFA for this action and are briefly summarized here.

As of January 1, 2015, several Alaska Statutes (A.S. 16.40.260 through 16.40.299) pertaining to sport fishing business and guide licensing and reporting through ADF&G are scheduled to expire. At that time, statewide regulations approved by the Board of Fisheries in 2004 to implement these statutes may lack statutory authority. ADF&G is working with the Alaska Board of Fisheries to modify existing statewide regulations to require business and guide registration and continue logbook reporting for the 2015 season. Federal regulations at § 300.65(d)(4)(ii)(B)(*1*), (d)(4)(ii)(D)(*4*), the definition of "charter vessel guide" at § 300.61, and § 300.67(a)(1) all refer to ADF&G sport fishing guide licenses. NMFS proposes changing these regulations to refer to "licenses or registrations" in the event that the licensing program is not reinstated.

The CSP implemented a regulation at § 300.66(h) to prohibit subsistence fishing for halibut while commercial fishing or sport fishing. The regulation was intended to prohibit only subsistence fishing for halibut and commercial or sport fishing for halibut from the same vessel on the same day. However, as written, the regulation could be interpreted to prohibit commercial or sport fishing for any species while subsistence fishing for halibut. NMFS proposes to change the prohibition at § 300.66(h) to clarify that it only prohibits subsistence fishing for halibut while commercial or sport fishing for halibut.

*IPHC Annual Management Measures*

If this proposed rule is approved by the Secretary, the IPHC may decide to change its annual management measures to implement and improve compliance for this proposed rule. See Section 2.7 of the RIR/IRFA.

IPHC annual management measures are designed to facilitate enforcement of charter halibut fishery regulations when halibut have been filleted on board the vessel (March 12, 2014, 79 FR 13906). The IPHC annual management measure at Section 28(1)(d) restricts filleting halibut into no more than two dorsal, two ventral, and two cheek pieces to ensure that an authorized officer can verify a charter vessel angler's daily bag and possession limits for halibut if the fish have been filleted on board the vessel. NMFS anticipates that this restriction on filleting halibut will continue to be implemented in future years. If the proposed rule is approved and implemented and the IPHC adopts halibut size restrictions for charter vessel anglers in the future, the IPHC may decide to change the annual management measures to require that all retained halibut, including GAF, remain on the charter vessel on which they are caught until the end of a charter vessel fishing trip. This would ensure that charter vessel anglers without a guide on board would not be allowed to transfer their harvested halibut to the guide's vessel for processing.

NMFS also notes that the 2014 annual management measures at Section 28(2)(d) and (3)(d) require the carcasses of size-restricted halibut be retained until the end of the charter vessel fishing trip to enable an authorized officer to enforce the size restrictions that are in place for charter vessel anglers in Area 2C and Area 3A. NMFS proposes to add a carcass retention requirement for size-restricted halibut to Federal regulations at § 300.65(d)(5). If this proposed rule is approved and implemented and the IPHC adopts halibut size restrictions for charter vessel anglers in the future, the IPHC may decide to remove the annual management measures requiring carcass retention as unnecessary measures.

**Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed rule is consistent with the Halibut Act and other applicable laws.

*Executive Order 12866*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

*Regulatory Flexibility Act*

An initial regulatory flexibility analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and its legal basis may be found at the beginning of this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from the NMFS (see **ADDRESSES**).

*Number and Description of Small Entities Regulated by the Proposed Rule*

On June 12, 2014, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The new size standards were used to prepare the IRFA for this proposed rule.

The Small Business Administration (SBA) specifies that for charter fishing vessel operations, a small business is one with annual receipts less than $7.5 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations are considered small entities, based on SBA criteria, because NMFS cannot confirm if any entities have gross revenues greater than $7.5 million on an annual basis.

This proposed rule would directly regulate all CHP holders, and businesses offering sport fishing guide services that NMFS believes should hold CHPs. As of July 7, 2014, the date of the most recent information available, there were 975 CHPs issued to 580 permit holders in Areas 2C and 3A. Data on business affiliations among permit holders are not available; therefore, the number of CHP holders that are directly regulated cannot be accurately determined, but would not exceed 580. NMFS notes that because there is little incentive for a business that already holds one or more CHPs to offer sport fishing guide services without a guide on board to anglers, the number of CHP holders (*i.e.*, small entities) affected by this proposed regulation is likely to be very small. The proposed rule is not expected to adversely impact small entities that possess CHPs.

The proposed rule, however, may adversely impact those entities that do not hold CHPs and who provide sport fishing guide services using guides that are not on board the vessel with the anglers (*i.e.*, guide-assisted sport fishing services). A review of logbook data suggests that only a few such entities can be documented. For Area 2C, a minimum of one to three businesses are estimated from logbook data to have routinely offered guide-assisted sport fishing services for halibut that did not meet the Federal definition of sport fishing guide services between 2009 and 2013. Logbook data for Area 3A did not clearly identify any businesses that routinely reported trips in which halibut were harvested and no CHP was recorded as used for the charter vessel fishing trip. It is difficult to estimate how many businesses may be providing guide-assisted sport fishing services because some of these businesses may not be registered as charter businesses with the State and may not be completing logbooks. Under the proposed rule, businesses that provide guide-assisted sport fishing services, but do not hold CHPs, would have to either purchase CHPs or change the services they provide so that they refrain from accompanying or physically assisting anglers in the taking of halibut during any part of a charter vessel fishing trip. Information on availability and price of CHPs is presented in Section 1.3.1.2 of the RIR/IRFA. NMFS does not have or collect data to determine the exact number of guide-assisted sport fishing services or total annual receipts for these entities. NMFS considers all guide-assisted sport fishing services as small entities, based on SBA criteria, because NMFS cannot confirm if any of these entities have gross revenues greater than $7.5 million on an annual basis.

Community quota entities may apply for and receive community CHPs; therefore, this proposed rule may directly regulate entities representing small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 21 hold community CHPs. The proposed action is not expected to adversely impact communities that hold CHPs.

*Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative (Alternative 1) would continue to require that a guide be on board a charter vessel with a charter vessel angler to be providing sport fishing guide services. Maintaining these regulations is believed to result in an unknown, but relatively small number of anglers fishing under unguided sport fishing regulations, rather than the more restrictive charter fishing regulations. The status quo may result in continued inaccuracies in accounting of sport removals by sector and continued confusion by the angling public as to how to report their halibut harvest. The status quo alternative would not accomplish the Council's objective that guide-assisted fishing for halibut be managed under charter halibut fishery regulations.

The Council considered one alternative with three options to the status quo. The first option under Alternative 2 would change the definition of "sport fishing guide services" to remove the requirement that a guide be on board the charter vessel with the charter vessel angler to be providing those services. The second option would add a Federal definition for "compensation" and contained two suboptions. The first suboption would add a Federal definition for compensation that matches the State definition. The second suboption would add a Federal definition that substitutes the word "reasonable" for "actual" expenses from the State definition. These suboptions are described in more detail in Section 1.3.6.2 of the RIR/IRFA. The third option under Alternative 2 would add a Federal definition for "assistance" to describe which types of activities fall under sport fishing guide services. Alternative 2 would better align Federal regulations regarding sport fishing guide services for Pacific halibut with State regulations, would incorporate guide-assisted sport fishing services under the umbrella of charter regulations, and would improve the accuracy of unguided sport and charter halibut harvest estimates.

The Council recommended, and NMFS proposes a preferred alternative (*i.e.*, this proposed rule) that would better align the State and Federal definitions of "sport fishing guide services" (Alternative 2, Option 1), and add a definition for "compensation" (Alternative 2, Option 2) to Federal regulations. Instead of separately defining "assistance" as described in Alternative 2, Option 3, the preferred alternative would add language to the definition of sport fishing guide services to define assistance as "accompanying or physically directing the sport fisherman in sport fishing activities." The preferred alternative incorporates the recommendations developed cooperatively by State and NMFS enforcement and management staff and supported by the discussion of the effects of Alternative 2, Options 1, 2, and 3 in Section 1.3.6 of the RIR/IRFA. The preferred alternative incorporates a description of assistance consistent with State regulations without specifying a list of fishing activities. Broadly defining assistance in this way would eliminate the need to identify all potential activities that could be considered as providing assistance to an angler and the risk that a relevant activity would be inadvertently excluded from the list.

NMFS proposes the Council's preferred alternative, with one exception. Instead of proposing the suboption to Alternative 2, Option 2 that would add a Federal definition for "compensation" that differs from the

State's definition by referring to "reasonable" expenses rather than "actual" expenses, NMFS proposes the suboption that would add a Federal definition that matches the State's definition. The preferred alternative for this option initially incorporated the recommendations developed cooperatively by State and NMFS enforcement and management staff, but upon further discussion, these entities determined that matching the State and Federal definitions for compensation would be more enforceable. Additionally, adopting matching definitions would further the Council's objectives of aligning Federal and State of Alaska regulations.

The entities directly regulated under this action are assumed to be small under the SBA definition. Because the proposed rule serves to benefit the small entities that are directly regulated under the proposed rule by clarifying Federal fishery regulations to better align with Council intent and State fishery regulations, no significant negative economic impacts are expected on directly regulated entities who are CHP holders; however, charter vessel guides who provide sport fishing guide services and are not on board the same charter vessel as the charter vessel angler would be required to change their fishing practices under the proposed rule. These directly regulated entities are also assumed to be small entities. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet these Regulatory Flexibility Act criteria at a lower economic cost to directly regulated small entities.

**Projected Reporting, Recordkeeping Requirements, and Other Compliance Requirements**

This action does not impose any additional reporting requirements on the participants of the charter halibut fishery. Although the public reporting burden will not change, additional participants would be required to comply with existing requirements. The new participants would be subject to the same recordkeeping and reporting requirements as existing participants.

**Duplicate, Overlapping, or Conflicting Federal Rules**

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

*Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

**OMB Control No. 0648–0575**

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this proposed rule. This rule may require a few more businesses that currently do not complete reports and logbooks to do so; however, the public reporting burden for these items in this collection-of-information are not directly affected by this proposed rule.

**OMB Control No. 0648–0592**

Applications for CHPs and applications for GAF transfers are mentioned in this proposed rule. This rule may result in a few more businesses that currently do not have CHPs and GAF transfers to purchase and apply for them, respectively; however, the public reporting burden for these applications in this collection-of-information are not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: November 26, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 2. In § 300.61:

■ a. Revise the definitions of "Charter vessel angler", "Charter vessel fishing trip", "Charter vessel guide", "Charter vessel operator", and "Sport fishing guide services"; and

■ b. Add definitions for "Charter vessel" and "Compensation" in alphabetical order to read as follows:

**§ 300.61 Definitions.**

* * * * *

*Charter vessel,* for purposes of §§ 300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut.

*Charter vessel angler,* for purposes of §§ 300.65, 300.66, and 300.67, means a person, paying or non-paying, receiving sport fishing guide services for halibut.

*Charter vessel fishing trip,* for purposes of §§ 300.65, 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide,* for purposes of §§ 300.65, 300.66 and 300.67, means a person who holds an annual sport fishing guide license or registration issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

*Charter vessel operator,* for purposes of § 300.65, means the person in control of the charter vessel during a charter vessel fishing trip.

* * * * *

*Compensation,* for purposes of sport fishing for Pacific halibut in Commission regulatory areas 2C and 3A, means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; for this definition, "benefits" includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait.

* * * * *

*Sport fishing guide services,* for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member, as defined at § 300.61.

* * * * *

■ 3. In § 300.65,

■ a. Revise paragraphs (c)(5)(iii)(A)(*5*); (c)(5)(iv)(A) and (G); (d)(3); (d)(4)(i); (d)(4)(ii)(B); (d)(4)(ii)(B)(*1*) through (*4*); and (d)(4)(iii)(A)(*1*);

■ b. Add paragraph (d)(4)(iii)(A)(*5*);

■ c. Revise paragraph (d)(4)(iii)(D)(*4*); and

■ d. Add paragraph (d)(5) to read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(A) * * *

(*5*) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, a legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried by the charter vessel operator on board the charter vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the charter vessel guide must retain the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit must be on the charter vessel with the charter vessel angler.

* * * * *

(iv) * * *

(A) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, the charter vessel guide must have on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the valid GAF permit must be on board the same vessel as the charter vessel guide, and the original charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest must be on the charter vessel with the charter vessel angler.

* * * * *

(G) The charter vessel guide must be physically present when the GAF halibut is harvested and must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF. If the GAF halibut is filleted, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which the halibut was caught until all fillets are offloaded.

* * * * *

(d) * * *

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A, except that charter vessel operators who are charter vessel anglers may catch and retain halibut during a charter vessel fishing trip if the charter vessel guide is on a separate charter vessel.

(4) * * *

(i) *General requirements.* Each charter vessel angler and charter vessel guide in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(iii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified:

(ii) * * *

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(*1*) through (*10*) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook.

(*1*) *Guide license number.* The Alaska Department of Fish and Game sport fishing guide license or registration number held by the charter vessel guide who certified the logbook data sheet.

(*2*) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips are taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is required if more than one charter halibut permit is used on a trip.

(*3*) *Charter halibut permit (CHP) number.* The NMFS CHP number(s) authorizing charter vessel anglers on that charter vessel fishing trip to catch and retain halibut.

(*4*) *Guided Angler Fish (GAF) permit number.* The NMFS GAF permit number(s) authorizing charter vessel anglers on that charter vessel fishing trip to harvest GAF.

* * * * *

(iii) * * *

(A) * * *

(*1*) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit log (on the back of the GAF permit) the date that the fish was caught and retained and the total length of that fish as described in paragraphs (d)(4)(iii)(D)(*5*) and (d)(4)(iii)(D)(*7*) of this section. If GAF halibut are retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must also comply with the reporting requirements in paragraph (d)(4)(iii)(A)(*5*) of this section.

* * * * *

(*5*) If a GAF is retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must immediately record in the ADF&G Saltwater Charter Logbook the GAF permit number under which GAF were caught and retained, and the number of GAF kept under the corresponding charter vessel angler's name.

* * * * *

(D) * * *

(*4*) Alaska Department of Fish and Game sport fishing guide license or registration number held by the charter

vessel guide who certified the logbook data sheet.

* * * * *

(5) *Carcass retention requirement for size-restricted halibut.* If a size-restricted halibut is filleted on board the charter vessel, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which it was caught until all fillets are offloaded.

* * * * *

■ 4. In § 300.66:

■ a. Revise paragraph (h) introductory text, and paragraphs (s) and (t);

■ b. Remove paragraph (u);

■ c. Redesignate paragraphs (v) and (w) as (u) and (v), respectively; and

■ d. Revise newly redesignated paragraphs (u) and (v) to read as follows:

**§ 300.66 Prohibitions.**

* * * * *

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day, or possess on board a vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

* * * * *

(s) Be a charter vessel guide with charter vessel anglers on board, or a charter vessel operator if the charter vessel guide is not on board, in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the charter vessel is operating during a charter vessel fishing trip.

(t) Be a charter vessel guide in Commission regulatory area 2C or 3A with more charter vessel anglers catching and retaining halibut during a charter vessel fishing trip than the total angler endorsement number specified on the charter halibut permit(s) or community charter halibut permit(s) in use for that trip.

(u) Be a charter vessel guide of a charter vessel on which one or more charter vessel anglers are catching and retaining halibut in both Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(v) Be a charter vessel guide or a charter vessel operator during a charter vessel fishing trip in Commission regulatory area 2C or 3A with one or more charter vessel anglers that are catching and retaining halibut without having on board the vessel with the charter vessel anglers a State of Alaska Department of Fish and Game Saltwater Charter Logbook in which the charter vessel guide has specified the following:

(1) The person named on the charter halibut permit or permits being used during that charter vessel fishing trip;

(2) The charter halibut permit or permits number(s) being used during that charter vessel fishing trip; and

(3) The name and State-issued vessel registration (AK number) or U.S. Coast Guard documentation number of the charter vessel.

■ 5. In § 300.67, revise paragraphs (a)(1) and (a)(3) to read as follows:

**§ 300.67 Charter halibut limited access program.**

* * * * *

(a) * * *

(1) In addition to other applicable permit, licensing, or registration requirements, any charter vessel guide of a charter vessel during a charter vessel fishing trip with one or more charter vessel anglers catching and retaining Pacific halibut on board must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the charter vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must ensure that the charter vessel operator and charter vessel guide of the charter vessel comply with all requirements of §§ 300.65, 300.66, and 300.67.

* * * * *

(3) *Charter vessel angler endorsement.* A charter halibut permit is valid for up to the maximum number of charter vessel anglers on a single charter vessel for which the charter halibut permit is endorsed.

* * * * *

[FR Doc. 2014–28443 Filed 12–2–14; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 79, No. 232
Wednesday, December 3, 2014

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 28, 2014.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by January 2, 2015. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Agricultural Marketing Service

*Title:* Plan for Estimating Daily Livestock Slaughter under Federal Inspection.

*OMB Control Number:* 0581–0050.

*Summary of Collection:* The Agriculture Marketing Act of 1946 (7 U.S.C. 1621–1627) Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock, Poultry, and Grain market news provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, poultry, meats, eggs, grain, hay and wool. Administered by the U.S. Department of Agriculture's Agricultural marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 28 State departments of agriculture.

*Need and Use of the Information:* AMS will collect information on estimation of the current day's slaughter at their plant(s) and the actual slaughter of the previous day. The report is used to make market outlook projections and maintain statistical data. The up-to-the-minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position. Since the government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed. Collecting this information less frequently would hinder the timely use of this data.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 61.

*Frequency of Responses:* Reporting; Weekly; Other: Daily.

*Total Burden Hours:* 528.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–28450 Filed 12–2–14; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0090]**

### Secretary's Advisory Committee on Animal Health; Notice of Solicitation for Membership

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of solicitation for membership.

**SUMMARY:** We are giving notice that the Secretary is soliciting nominations for membership for this Committee to serve for 2 year terms.

**DATES:** Consideration will be given to nominations received on or before January 20, 2015.

**ADDRESSES:** Completed nomination forms should be sent to the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Mrs. R.J. Cabrera, Designated Federal Officer, VS, APHIS, 4700 River Road Unit 34, Riverdale, MD 20737–1231; (301) 851–3478, email: *rj.cabrera@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Secretary's Advisory Committee on Animal Health (SACAH or the Committee) advises the Secretary of Agriculture on strategies, policies, and programs to prevent, control, or eradicate animal diseases. The Committee considers agricultural initiatives of national scope and significance and advises on matters of public health, conservation of national resources, stability of livestock economies, livestock disease management and traceability strategies, prioritizing animal health imperatives, and other related aspects of agriculture.

The Committee Chairperson and Vice Chairperson are elected by the Committee from among its members.

Terms will expire for the current members of the Committee in May 2015. We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside its membership. Nomination forms are available on the Internet at *http://www.ocio.usda.gov/forms/doc/AD-755.pdf* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 26th day of November 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–28440 Filed 12–2–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–996, A–428–843, A–588–872, A–580–872, A–401–809, A–583–851]**

## Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty (AD) orders on non-oriented electrical steel (NOES) from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.

**DATES:** *Effective Date:* December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun at (202) 482–5760 (the People's Republic of China (PRC)); Patrick O'Connor at (202) 482–0989 (Germany); Thomas Martin at (202) 482–3936 (Japan); Dmitry Vladimirov at (202) 482–0665 (the Republic of Korea (Korea)); Drew Jackson at (202) 482–4406 (Sweden); or Krisha Hill at (202) 482–4037 (Taiwan), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(c), on October 14, 2014, the Department published affirmative final determinations of sales at less than fair value (LTFV) in the investigations of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan.[1] On November 25, 2014, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan.[2] In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC, Germany, Japan, and Sweden that are subject to the Department's final affirmative critical circumstances findings.[3]

### Scope of the Orders

The merchandise subject to these orders consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, $B_{800}$ value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to these orders whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these orders is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of these orders are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings

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[1] *See Non-Oriented Electrical Steel from Germany, Japan, the Peaple's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations af Critical Circumstances, in Part,* 79 FR 61609 (October 14, 2014) (*Germany, Japan, the PRC, and Sweden Final Determinatians*); *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances,* 79 FR 61612 (October 14, 2014) (*Karea Final Determination*); and *Nan-Oriented Electrical Steel Fram Taiwan: Final Determinatian of Sales at Less Than Fair Value,* 79 FR 61614 (October 14, 2014) (*Taiwan Final Determinatian*), respectively.

[2] *See* Letter from the ITC to the Department, dated November 25, 2014; *see alsa Nan-Oriented Electrical Steel fram China, Germany, Japan, Karea, Sweden, and Taiwan* (Investigation Nos. 701–TA–506 and 508 and 731–TA–1238–1243 (Final), USITC Publication 4502, November 2014).

[3] *Id.*

are provided for convenience and customs purposes, the written description of the scope is dispositive.

**Antidumping Duty Orders**

As stated above, on November 25, 2014, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations in its investigations, in which it found that an industry in the United States is materially injured by reason of imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan.[4] Because the ITC determined that imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from the PRC, Germany, Japan, Korea, Sweden, and Taiwan, entered or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan. These antidumping duties will be assessed on unliquidated entries of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan entered, or withdrawn from warehouse, for consumption on or after May 22, 2014, the date of publication of the preliminary determinations,[5] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits at rates equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit at rates equal to the estimated weighted-average dumping margins listed below.[6] The relevant all-others rate (for Germany, Japan, Korea, Sweden, and Taiwan) or the rate for the PRC-wide entity (for the PRC), as applicable, apply to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from the PRC will be adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from the PRC.[7]

**Provisional Measures**

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan, we extended the four-month period to no more than six months in each case.[8] As stated above, in the investigations covering NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan, the Department published the preliminary determinations on May 22, 2014. Therefore, the six-month period beginning on the date of publication of the preliminary determinations ended on November 18, 2014. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan, entered, or withdrawn from warehouse, for consumption on or after November 18, 2014, the date the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation resumes on the date of publication of the ITC's final determination in the **Federal Register**.

**Estimated Weighted-Average Dumping Margins**

The estimated weighted-average dumping margins are as follows:

[4] *Id.*

[5] *See Non-Oriented Electrical Steel From the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 79 FR 29421 (May 22, 2014); *Non-Oriented Electrical Steel From Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014); *Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 29426 (May 22, 2014) (Korea Prelim Determination); and *Non-Oriented Electrical Steel From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 29428 (May 22, 2014) (Taiwan Prelim Determination).

[6] *See* section 736(a)(3) of the Act.

[7] *See Germany, Japan, the PRC, and Sweden Final Determinations*, 79 FR at 61612. *See also Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 14, 2014) (*PRC CVD Final Determination*).

[8] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, and Sweden: Postponement of Final Determinations of Sales at Less Than Fair Value*, 79 FR 37718 (July 2, 2014); *Korea Prelim Determination*, 79 FR at 29428; and *Taiwan Prelim Determination*, 79 FR at 29430.

PRC [9]

| Exporter or producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| PRC-Wide Entity | 407.52 |
| **Germany** | |
| CD Walzholz | 98.84 |
| Thyssenkrupp Electrical Steel EBG GMBH | 98.84 |
| All Others | 86.29 |
| **Japan** | |
| JFE Steel Corporation | 204.79 |
| Sumitomo Corporation | 204.79 |
| All Others | 135.59 |
| **Korea** | |
| POSCO/Daewoo International Corporation | 6.88 |
| All Others | 6.88 |
| **Sweden** | |
| Surahammars Bruks AB | 126.72 |
| All Others | 98.46 |
| **Taiwan** | |
| China Steel Corporation | 27.54 |
| Leicong Industrial Company, Ltd | 52.23 |
| All Others | 27.54 |

### Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of NOES from the PRC, Germany, Japan, and Sweden, we will instruct CBP to lift suspension and to refund any cash deposit made to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after February 21, 2014 (*i.e.*, 90 days prior to the date of publication of the preliminary determinations), but before May 22, 2014, the publication date of the preliminary determinations.

[9] As explained in the *Germany, Japan, the PRC, and Sweden Final Determinations*, the estimated weighted-average dumping margin for the PRC-wide entity will be adjusted for export subsidies. *See Germany, Japan, the PRC, and Sweden Final Determinations*, 79 FR at 61612. Accordingly, we offset the estimated weighted-average dumping margin for the PRC-wide entity of 407.52 percent by the countervailing duty rate attributable to export subsidies (*i.e.*, 10.77 percent) to calculate the cash deposit *ad valorem* rate for the PRC-wide entity of 396.75 percent. For information regarding these export subsidies, *see PRC CVD Final Determination* and accompanying Issues and Decision Memorandum at 8 (countervailed export subsidy programs: Preferential Export Financing from the Export-Import Bank of China (1.06 percent) and Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises (9.71 percent)).

### Notifications to Interested Parties

This notice constitutes the AD orders with respect to NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html*.

These orders are published in accordance with sections 736(a) of the Act and 19 CFR 351.211.

Dated: November 26, 2014.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–28405 Filed 12–2–14; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–932]**

## Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the "Department") published the *Preliminary Results* of the fourth administrative review of the antidumping duty order on certain steel threaded rod from the People's Republic of China ("PRC") on May 28, 2014.[1] We gave interested parties an opportunity to comment on the *Preliminary Results*. Based upon our analysis of the comments and information received, we made changes to the margin calculations for these final results. The final dumping margins are listed below in the "Final Results of Administrative Review" section of this notice. The period of review ("POR") is April 1, 2012, through March 31, 2013.

**DATES:** *Effective Date:* December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–1394 or 202–482–4047, respectively.

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2012–2013*, 79 FR 30543 (May 28, 2014) (*"Preliminary Results"*), and accompanying Decision Memorandum.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published the *Preliminary Results* on May 28, 2014.[2] Between May 21, 2014, and July 15, 2014, the Department issued supplemental questionnaires to RMB Fasteners Ltd., IFI & Morgan Ltd., and Jiaxing Brother Standard Part Co., Ltd. (collectively "the RMB/IFI Group"). On June 18, 2014, and July 22, 2014, the RMB/IFI Group submitted its responses to those supplemental questionnaires.

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. Between August 4, 2014, and August 11, 2014, interested parties submitted case and rebuttal briefs. Additionally, on August 25, 2014, the Department extended the deadline for the final results to November 4, 2014.[3] Moreover, on October 22, 2014, the Department again extended the final results to November 24, 2014.[4]

## Scope of the Order

The merchandise covered by the order includes steel threaded rod. The subject merchandise is currently classifiable under subheading 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order, which is contained in the accompanying Issues and Decision Memorandum ("I&D Memo"), is dispositive.[5]

## Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in these reviews in the I&D Memo, and attached to this notice, in Appendix I, a list of the issues which parties raised. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the I&D Memo can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html*. The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

## Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we revised the margin calculations for the RMB/IFI Group. Specifically, we incorporated into our calculations a revised database that was submitted by the RMB/IFI Group after the *Preliminary Results*.[6] For a list of all issues addressed in these final results, please refer to Appendix I accompanying this notice.

## PRC-Wide Rate and PRC-Wide Entity

For the PRC-Wide Entity, the Department in the *Preliminary Results* assigned the rate of 206 percent, the only rate ever determined for the PRC-Wide Entity in this proceeding.[7] Because this rate is the same as the PRC-Wide rate from previous segments in this proceeding and nothing on the record of the instant review calls into question the reliability of the PRC-Wide rate, we find it appropriate to continue to apply the PRC-Wide rate of 206 percent.[8]

In the *Preliminary Results*, the Department determined that those companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC-Wide Entity.[9] Since the *Preliminary Results*, none of these companies submitted comments regarding these findings. Therefore, we continue to treat these companies as part of the PRC-Wide Entity.[10]

Additionally, in the *Preliminary Results*, for 68 companies, the Department found that, while the request for review had been withdrawn, none of these companies had a separate rate. Accordingly, these 68 companies remained part of the PRC-wide entity, which remained under review for the *Preliminary Results*.[11] Thus, the Department did not rescind the review for any of these 68 companies in the *Preliminary Results*.[12] Since the *Preliminary Results*, no party has presented any information to the contrary and thus, these 68 companies remain part of the PRC-Wide Entity, which remains under review for the final results.[13]

## Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

| Exporter | Weighted-average margin (percent) |
|---|---|
| IFI & Morgan Ltd. and RMB Fasteners Ltd. (collectively "RMB/IFI Group") | 47.62 |
| PRC-Wide Rate[14] | 206.00 |

## Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.212(b), the

[2] *Id.*

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Administrative Review" (August 25, 2014).

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, from Jerry Huang, Senior International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Second Extension of Deadline for Final Results of Administrative Review" (October 22, 2014).

[5] For a full description of the scope of the order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Results of Fourth Antidumping Duty Administrative Review: Certain Steel Threaded Rod from the People's Republic of China" (November 21, 2014) ("I&D Memo").

[6] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office V, from Julia Hancock and Jerry Huang, Senior Case Analysts, Office V, "Final Results for RMB/IFI Group" (November 21, 2014) ("RMB/IFI Group Final Results Analysis Memo").

[7] *See Preliminary Results*, 79 FR at 30544, and accompanying Decision Memorandum at 5–6.

[8] *See, e.g., Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907, 8910 (February 27, 2009).

[9] *See Preliminary Results*, 79 FR at 30544, and accompanying Decision Memorandum at 5–6.

[10] For a list of companies that are subject to this administrative review as part of the PRC-Wide Entity, *see* Appendix II to this notice.

[11] *See Preliminary Results*, 79 FR at 30544, and accompanying Decision Memorandum at 5–6.

[12] *See, e.g., Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 47363, 47365 (August 8, 2012), unchanged in *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 10130 (February 13, 2013). A change in practice with respect to the conditional review of the PRC-wide entity is not applicable to this administrative review. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65964, 65969–70 (November 4, 2013).

[13] For a list of companies that are subject to this administrative review as part of the PRC-Wide Entity, *see* Appendix II to this notice.

[14] The PRC-Wide Entity includes the companies listed in Appendix II to this notice.

Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[15] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[16] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[17] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[18]

The Department announced a refinement to its assessment practice in non-market economy cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-Wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-Wide rate.[19]

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-Wide rate of 206 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 21, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—Issues and Decision Memorandum

Comment I: Selection of the Surrogate Country
Comment II: Surrogate Value for Steel Wire Rod
Comment III: Surrogate Financial Ratio Calculations
Comment IV: Surrogate Value for Brokerage and Handling
Comment V: Denominator for Brokerage and Handling, and Inland Freight
Comment VI: Zeroing Methodology

### Appendix II—Companies Subject to the Administrative Review That Are Part of the PRC-Wide Entity

Aihua Holding Group Co. Ltd.
Autocraft Industry (Shanghai) Ltd.
Autocraft Industry Ltd.
Billion Land Ltd.
C And H International Corporation
Changshu City Standard Parts Factory
China Brother Holding Group Co. Ltd.
China Friendly Nation Hardware Technology Limited
Ec International (Nantong) Co. Ltd.
Fastco (Shanghai) Trading Co., Ltd.
Fastwell Industry Co. Ltd.
Fuda Xiongzhen Machinery Co., Ltd.
Fuller Shanghai Co. Ltd.
Haiyan Dayu Fasteners Co., Ltd.
Haiyan Evergreen Standard Parts Co. Ltd.
Haiyan Hurras Import & Export Co. Ltd.
Haiyan Hurras Import Export Co. Ltd.
Haiyan Jianhe Hardware Co. Ltd.
Hangzhou Everbright Imp. & Exp. Co. Ltd.
Hangzhou Grand Imp. & Exp. Co., Ltd.
Hangzhou Great Imp. & Exp. Co. Ltd.
Hangzhou Lizhan Hardware Co. Ltd.
Hangzhou Tongwang Machinery Co., Ltd.
Jiabao Trade Development Co. Ltd.
Jiangsu Zhongweiyu Communication Equipment Co. Ltd.
Jiashan Steelfit Trading Co. Ltd.
Jiaxing Brother Standard Part
Jiaxing Yaoliang Import & Export Co. Ltd.
Jinan Banghe Industry & Trade Co., Ltd.
Macropower Industrial Inc.
Midas Union Co., Ltd.
Nanjing Prosper Import & Export Corporation Ltd.
New Pole Power System Co. Ltd.
Ningbiao Bolts & Nuts Manufacturing Co.
Ningbo Beilun Milfast Metalworks Co. Ltd.
Ningbo Dexin Fastener Co. Ltd.
Ningbo Dongxin High-Strength Nut Co., Ltd.
Ningbo Fastener Factory
Ningbo Fengya Imp. And Exp. Co. Ltd.
Ningbo Haishu Holy Hardware Import And Export Co. Ltd.
Ningbo Haishu Wit Import & Export Co. Ltd.
Ningbo Haishu Yixie Import & Export Co. Ltd.
Ningbo Jinding Fastening Pieces Co., Ltd.
Ningbo Mpf Manufacturing Co. Ltd.
Ningbo Panxiang Imp. & Exp, Co. Ltd.

[15] *See* 19 CFR 351.212(b)(1).
[16] *Id.*
[17] *Id.*
[18] *See* 19 CFR 351.106(c)(2).
[19] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Ningbo Yinzhou Foreign Trade Co., Ltd.
Ningbo Zhongjiang High Strength Bolts Co. Ltd
Ningbo Zhongjiang Petroleum Pipes & Machinery Co. Ltd.
Orient International Holding Shanghai Rongheng Intl Trading Co. Ltd.
Prosper Business And Industry Co., Ltd.
Qingdao Free Trade Zone Health Intl.
Qingdao Top Steel Industrial Co. Ltd.
Shaanxi Succeed Trading Co., Ltd.
Shanghai East Best Foreign Trade Co.
Shanghai East Best International Business Development Co., Ltd.
Shanghai Fortune International Co. Ltd.
Shanghai Furen International Trading
Shanghai Nanshi Foreign Economic Co.
Shanghai Overseas International Trading Co. Ltd.
Shanghai Printing & Dyeing And Knitting Mill
Shanghai Printing & Packaging Machinery Corp.
Shanghai Recky International Trading Co., Ltd.
Shanghai Sinotex United Corp. Ltd.
T and C Fastener Co. Ltd.
T and L Industry Co. Ltd.
Wuxi Metec Metal Co. Ltd.
Zhejiang Heiter Industries Co., Ltd.
Zhejiang Heiter Mfg & Trade Co. Ltd.
Zhejiang Jin Zeen Fasteners Co. Ltd.
Zhejiang Morgan Brother Technology Co. Ltd.
Zhejiang Yanfei Industrial Co., Ltd (a/k/a Jiangsu Ronry Nico Co., Ltd., Formerly Jiangsu Yanfei Industrial Co., Ltd.)

[FR Doc. 2014–28461 Filed 12–2–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

## Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013/2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* December 3, 2014.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2013, through January 31, 2014. We preliminarily determine that sales made by Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and Zhangzhou Gangchang Canned Foods Co., Ltd. (Gangchang) were made below normal value (NV). We invite interested parties to comment on these preliminary results.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, or Robert James AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.[1]

### No Shipments Certification

On June 2, 2014, (1) Dezhou Kaihang Agricultural Science Technology Co., Ltd., (Dezhou Kaihang), (2) Fujian Haishan Foods Co., Ltd. (Fujian Haishan), (3) Fujian Pinghe Baofeng Canned Foods (Fujian Pinghe), (4) Fujian Zishan Group Co., Ltd. (Fujian Zishan), 5) Inter-Foods (Dongshan) Co., Ltd. (Inter-Foods), (6) Xiamen Longhuai Import & Export Co., Ltd. (Xiamen Longhuai), (7) Xiamen International Trade & Industrial Co., Ltd. (XITIC), and (8) Zhangzhou Hongda Import & Export Trading Co., Ltd. (Zhangzhou Hongda) submitted no shipment certifications. Both XITIC and Zhangzhou Hongda currently have separate rate status. Accordingly, on October 17, 2014, the Department sent an inquiry to U.S. Customs and Border Protection (CBP) to determine whether CBP entry data is consistent with the no shipments certifications from XITIC and Zhangzhou Hongda. The Department received no information contrary to either XITIC's or Zhangzhou Hongda's claims of no shipments. Based on the no-shipment certifications and our analysis of the CBP information, we preliminary determine that both XITIC and Zhangzhou Hongda did not have any reviewable transactions during the POR. In addition, for both XITIC and Zhangzhou Hongda, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (NME) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to both XITIC and Zhangzhou Hongda and issue appropriate instructions to CBP based on the final results of the review.[2] However, since Dezhou Kaihang, Fujian Haishan, Fujian Pinghe, Fujian Zishan, Inter-Foods, and Xiamen Longhuai were part of the PRC-wide entity at the outset of this administrative review, and continue to be part of the PRC-wide entity in this administrative review, we are not making a determination of no shipments with respect to Dezhou Kaihang, Fujian Haishan, Fujian Pinghe, Fujian Zishan, Inter-Foods, and Xiamen Longhuai for the preliminary results of the instant administrative review.

### Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[3]

[1] *See* Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China; 2013/2014 from Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated November 25, 2014 (Preliminary Decision Memorandum), issued concurrently with and hereby adopted by this notice.

[2] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[3] On November 24, 2014, Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov*. The

ACCESS is available to registered users at *https://access.trade.gov* and available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

**Background**

On April 1, 2014, the Department published in the **Federal Register**, a notice of initiation of the antidumping duty administrative review of mushrooms from the PRC for the period February 1, 2013, through January 31, 2014, with respect to the 52 companies named in the review requests submitted by interested parties.[4] The Department has selected Kangfa and Gangchang as mandatory respondents,[5] and the separate rates calculated for both of these exporters are listed *infra*. Additionally, the Department has preliminarily determined that both XITIC and Zhangzhou Hongda did not have any reviewable transactions during the POR. As a result of our preliminary determination of no shipments for XITIC and Zhangzhou Hongda, these companies retain their most recently determined separate rate, as do the two selected mandatory respondents, Kangfa and Gangchang. The Department preliminarily determines that the remaining 48 exporters did not demonstrate their eligibility for separate rate status in this review.[6] As a result, the Department is preliminarily treating these 48 PRC exporters as part of the PRC-wide entity.

**Preliminary Results of the Review**

The Department preliminarily determines that the following dumping margin exists for the period February 1, 2013, through January 31, 2014:

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Linyi City Kangfa Foodstuff Drinkable Co., Ltd. | 78.69 |
| Zhangzhou Gangchang Canned Foods Co., Ltd. | 102.87 |

**Disclosure and Public Comment**

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[7] Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results.[8] Rebuttals to case briefs may be filed no later than five days after the deadline for filing case briefs and all rebuttal comments must be limited to comments raised in the case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs must be filed electronically via ACCESS.[11]

Any interested party may request a hearing within 30 days of publication of this notice.[12] Hearing requests should contain the following information: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[13]

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any briefs, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Assessment Rates**

Upon issuing the final results of the review, the Department shall determine, and. CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate, where appropriate, either an *ad valorem* or per-unit assessment rate for each importer (or customer).[15] The per-unit assessment rate will be based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered quantity of those same sales. The *ad valorem* assessment rate will be based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this

Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part*, 79 FR 18262 (April 1, 2014) (*"Initiation Notice"*).

[5] *See* Memorandum to Richard Weible, Director, AD/CVD Operations, Office VI, from Mike Heaney and Tyler Weinhold, AD/CVD Operations, Office VI, Subject: "Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Respondent Selection Memorandum," dated May 23, 2014.

[6] These 48 exporters are: (1)Ayecue (Liaocheng) Foodstuff Co., Ltd., (2) Blue Field (Sichuan) Food Industrial Co., Ltd., (3) China National Cereals, Oils & Foodstuffs Import & Export Corp., (4) China Processed Food Import & Export Co., (5) Dalian J&N Foods Co., Ltd., (6) Dezhou Kaihang Agricultural Science Technology Co., Ltd., (7) Dujiangyan Xingda Foodstuff Co., Ltd., (8) Fujian Dongshan Changlong Trade Co., Ltd., (9) Fujian Golden Banyan Foodstuffs Industrial Co., Ltd., (10) Fujian Haishan Foods Co., Ltd., (11) Fujian Pinghe Baofeng Canned Foods, (12) Fujian Tongfa Foods Group Co., Ltd., (13) Fuzhou Sunshine Imp. & Exp. Co., Ltd., (14) Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd., (15) Fujian Zishan Group Co., Ltd., (16) Golden Banyan Foodstuffs Co., Ltd., (17) Guangxi Eastwing Trading Co., Ltd., (18) Guangxi Hengyong Industrial & Commercial Dev. Ltd., (19) Guangxi Jisheng Foods, Inc., (20) Inter-Foods (Dongshan) Co., Ltd., (21) Longhai Guangfa Food Co., Ltd., (22) Longhai Jiasheng Food Co., Ltd., (23) Primera Harvest (Xiangfan) Co., Ltd., (24) Qingdao Canned Foods Co., Ltd., (25) Shandong Fengyu Edible Fungus Corporation Ltd., (26) Shandong Jiufa Edible Fungus Corporation, Ltd., (27) Shandong Yinfeng Rare Fungus Corporation, Ltd., (28) Synehon (Xiamen) Trading Co., Ltd., (29) Sun Wave Trading Co., Ltd., (30) Xiamen Carre Food Co., Ltd., (31) Xiamen Choice Harvest Imp., (32) Xiamen Greenland Import & Export Co., Ltd., (33) Xiamen Gulong Import & Export Co., Ltd., (34) Xiamen Gulong Import Export Co. Ltd., (35) Xiamen Jiahua Import & Export Trading Co., Ltd., (36) Xiamen Longhuai Import & Export Co., Ltd., (37) Xiamen Sungiven Import & Export Co., Ltd., (38) Xiamen Yubang Import Export Trading Co. Ltd., (39) Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd., (40) Zhangzhou Lixing Imp. & Exp. Trade Co., Ltd., (41) Zhangzhou Long Mountain Foods Co., Ltd., (42) Zhangzhou Tan Co., Ltd., (43) Zhangzhou Tianbaolong Food Co., Ltd., (44) Zhangzhou Tongfa Foods Industry Co., Ltd., (45) Zhangzhou Yuxing Imp. & Exp. Trading Co., Ltd., (46) Zhangzhou Xiangcheng Rainbow & Greenland Food Co., Ltd., (47) Zhejiang Iceman Food Co., Ltd., and (48) Zhejiang Iceman Group Co., Ltd.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(ii).

[9] *See* 19 CFR 351.309 (d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.303(b).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b).

[15] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

On October 24, 2011, the Department announced a refinement to its assessment practice in NME cases.[16] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.[17]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

### Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Kangfa and Gangchang, which both have a separate rate, will be the cash deposit rate established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for any previously reviewed or investigated PRC and non-PRC exporter not listed above that received a separate rate in a previous segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity (*i.e.*, 303.80 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: November 25, 2014.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Summary
2. Background
3. Respondent Selection
4. Information and Comment Submitted in this Review
5. Scope of the Order
6. Non-Market Economy Country Status
7. Preliminary Determination of No Shipments
8. Separate Rates Determination
9. Absence of De Jure Control
10. Absence of De Facto Control
11. The PRC-wide Entity
12. Surrogate Country
13. Fair Value Comparisons
14. U.S. Price
15. Normal Value
16. Factors Valuation
17. Currency Conversion
18. Conclusion

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[16] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[17] *See id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–801]**

### Certain Frozen Fish Fillets From the Sociallst Republic of Vietnam: Rescission of Antidumping Duty New Shipper Revlew

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") published its *Preliminary Rescission* for the new shipper review ("NSR") of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") on July 14, 2014.[1] The period of review ("POR") is August 1, 2012, through July 31, 2013. As discussed below, we preliminarily found that Thanh Hung Co., Ltd. D/B/A Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.'s ("Thanh Hung") sale was non-*bona fide*, and announced our preliminary intent to rescind Thanh Hung's NSR. For the final results of this review, we continue to find Thanh Hung's sale to be non-*bona fide*. Therefore, because there were no other shipments or entries by Thanh Hung during the POR, we are rescinding this NSR.

**DATES:** *Effective Date:* December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

**SUPPLEMENTARY INFORMATION:**

### Background

As noted above, on July 14, 2014, the Department published the *Preliminary Rescission* of this NSR. Thereafter, the Department extended the time period for issuing the final results to December 1, 2014.[2] On October 2, 2014, the Department received a case brief from Thanh Hung.[3] On October 6, 2014, the Department received a rebuttal brief from the Catfish Farmers of America and individual U.S. catfish processors ("Petitioners").[4] On November 13, 2014,

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012–2013*, 79 FR 40710 (July 14, 2014) ("*Preliminary Rescission*").

[2] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Susan S. Pulongbarit, Sr. International Trade Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review of Thanh Hung Co., Ltd., dated September 18, 2014.

[3] *See* Letter from Thanh Hung to the Department regarding Refile & Redacted Direct Case Brief: New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period—8/1/12–7/31/13, dated October 2, 2014 ("Thanh Hung Case Brief"). We note that this is a refiled and redacted case brief. *See* Memo to File, from Susan Pulongbarit, Sr. International Trade Analyst, regarding New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: New Factual Information, dated October 3, 2014.

[4] *See* Letter from Petitioners to the Department regarding Certain Frozen Fish Fillets from the

the Department conducted a public hearing regarding the NSR.

### Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").[5] Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

For a full description of the scope, *see* "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of New Shipper Review," dated concurrently with this notice ("I&D Memo").

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the I&D Memo, which is hereby adopted by this Notice. A list of the issues which parties raised is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS").[6] ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html*. The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

### Bona Fide Analysis

For the *Preliminary Rescission*, the Department analyzed the *bona fides* of Thanh Hung's sale and preliminarily found it to be non-*bona fide*.[7] Based on the Department's complete analysis of all the information and comments on the record of this review regarding the *bona fides* of Thanh Hung's NSR sale, the Department continues to find Thanh Hung's sale to be non-*bona fide* because of (a) the atypical nature of Thanh Hung's price and quantity; (b) extraordinary expenses arising from the transaction; (c) the importer's regular commercial interest; (d) atypical circumstances surrounding production; and (e) unreported connections to other entities.[8] The Department did not base its analysis on any one factor but instead examined the totality of the evidence and comments on the record of this review to determine that Thanh Hung's sale was not *bona fide*.

### Rescission of New Shipper Review

For the foregoing reasons, the Department finds that the sale of Thanh Hung is non-*bona fide* and that this sale does not provide a reasonable or reliable basis for calculating a dumping margin. Because a non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is rescinding this NSR pursuant to section 351.214(f) of the Department's regulations.

### Cash Deposit Rates

The following cash deposit requirements continue to apply for all shipment of subject merchandise from Thanh Hung entered, or withdrawn from warehouse: (1) For subject merchandise produced and exported by Thanh Hung, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 2.39 U.S. Dollars/kg); (2) for subject merchandise exported by Thanh Hung but not manufactured by Thanh Hung, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 2.39 U.S. Dollars/kg); and (3) for subject merchandise manufactured by Thanh Hung, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements shall remain in effect until further notice.

### Administrative Protective Order

This notice also serves as a reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: November 26, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—Issues and Decision Memorandum



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Socialist Republic of Vietnam: Rebuttal Brief, dated October 6, 2014 ("Petitioners Rebuttal Brief").

[5] Until July 1, 2004, these products were classifiable under HTSUS 0304.20.6030 (Frozen Catfish Fillets), 0304.20.6096 (Frozen Fish Fillets, NESOI), 0304.20.6043 (Frozen Freshwater Fish Fillets) and 0304.20.6057 (Frozen Sole Fillets). Until February 1, 2007, these products were classifiable under HTSUS 0304.20.6033 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra). On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection ("CBP"): 1604.19.2000 and 1604 19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[6] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov*. The Final Rule changing the references to the Regulations can be found at 79 FR 69046.

[7] *See* "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from the Socialist's Republic of Vietnam" from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated June 18, 2014 ("Preliminary Decision Memorandum"), and hereby adopted by this notice.

[8] *Id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–997, C–583–852]**

### Non-Oriented Electrical Steel From the People's Republic of China and Taiwan: Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of

Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing countervailing duty (CVD) orders on non-oriented electrical steel (NOES) from the People's Republic of China (PRC) and Taiwan.

**DATES:** *Effective Date:* December 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** PRC: Joshua Morris or Thomas Schauer, Office I, telephone: (202) 482–1779 and (202) 482–0410, respectively; Taiwan: Patricia Tran or Christopher Hargett, Office III, telephone: (202) 482–1503 and (202) 482–4161, respectively; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 14, 2014, the Department published the final determinations in the CVD investigations of NOES from Korea, PRC, and Taiwan.[1] On November 25, 2014, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(i) and section 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC and Taiwan.[2] The ITC also determined that critical circumstances did not exist for the PRC.[3]

## Scope of the Orders

The merchandise subject to these orders consists of NOES, which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, $B_{800}$ value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to these orders whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these orders is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of these orders are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Countervailing Duty Orders

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing NOES is materially injured by reason of subsidized imports of NOES from the PRC and Taiwan. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing these CVD orders.

Pursuant to section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, CVDs on unliquidated entries of NOES entered, or withdrawn from warehouse, for consumption on or after March 25, 2014, the date on which the Department published its affirmative preliminary CVD determinations in the **Federal Register**, and before July 23, 2014, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of NOES made on or after July 23, 2014, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of CVDs, due to the Department's discontinuation, effective July 23, 2014, of the suspension of liquidation.

With regard to the ITC's negative critical circumstances determination for the PRC, the Department will instruct CBP to lift suspension and refund any cash deposits of estimated CVDs for entries on or after December 25, 2013, (*i.e.*, 90 days prior to the date of the preliminary determination), but before March 25, 2014.

## Suspension of Liquidation

For the PRC, in accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of NOES from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, CVDs for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

| Company | Subsidy rate (%) |
|---|---|
| Baoshan Iron & Steel Co., Ltd ..... | 158.88 |

[1] *See Non-Oriented Electrical Steel From the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 79 FR 61605 (October 14, 2014) (*Korea Final Determination*); *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 14, 2014) (*PRC Final Determination*); *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) (*Taiwan Final Determination*).

[2] *See Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan*, Investigation Nos. 701–TA–506 & 508 and 731–TA–1238–1243 (Final), USITC Publication 4502, November 2014.

[3] *Id.*

| Company | Subsidy rate (%) |
|---|---|
| All Others | 158.88 |

For Taiwan, in accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of NOES from Taiwan, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, CVDs for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. Because China Steel Corporation and its cross-owned affiliates Dragon Steel Corporation, HiMag Magnetic Corporation, and China Steel Global Trading Corporation (collectively, CSC Companies) received a *de minimis* net subsidy rate in the *Taiwan Final Determination*, they are excluded from this Taiwan CVD order. This exclusion will apply only to subject merchandise both produced and exported by CSC Companies. CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

| Company | Subsidy rate (%) |
|---|---|
| Leicong Industrial Company, Ltd (Leicong) | 17.12 |
| All Others | 8.80 |

This notice constitutes the CVD orders with respect to NOES from the PRC and Taiwan, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of CVD orders currently in effect.

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: November 26, 2014.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–28507 Filed 12–2–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and request for OMB review and comment.

**SUMMARY:** The Department of Energy (DOE) has submitted an information collection request to OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Davis-Bacon Semi-annual Labor Compliance Report collection. The collection requests information from certain financial assistance grantees, loan guarantee and loan borrowers, and the Department of Energy Management and Operation (M&O) and Facilities Management Contractors for contract administration and management oversight. The information collection is necessary to allow DOE to comply with a reporting requirement placed on all Federal agencies administering programs subject to the Davis-Bacon Act wage provisions. Department of Labor regulation at 29 CFR 5.7(b) requires all Federal agencies administering programs subject to the Davis-Bacon Act wage provisions to submit to the Department of Labor a semi-annual compliance and enforcement report. In order for the Department of Energy (DOE) to comply with this reporting requirement, it must collect information from certain financial assistance grantees, Loan and Loan Guarantee Borrowers, DOE M&O contractors, and DOE Facilities Management contractors that administer DOE programs subject to Davis-Bacon Act requirements. DOE will ask each of these entities to report to DOE the information it is required to report to DOL on a semi-annual (every 6 months) basis. DOE must ultimately report all this information in a report to DOL, including information on the number of Davis-Bacon Act compliance and enforcement investigations conducted and whether violations were found.

**DATES:** Comments regarding this collection must be received on or before January 2, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

**ADDRESSES:** Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to:

Eva M. Auman, GC–63, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Or by fax at 202–586–0971; or by email to *eva.auman@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to:

Eva M. Auman, Attorney-Advisor (Labor), GC–63, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by fax at 202–586–0971 or by email to *eva.auman@hq.doe.gov.*

The current collection instrument is available for review at the following Web site: *http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1910–5165; (2) This information collection originally provided for Recovery Act grantees receiving grants from the DOE Office of Weatherization and Intergovernmental Programs to submit their reports via the PAGE System, however, those grants are now closed and the PAGE System is no longer available; (3) Type of Request: Extension; (4) Purpose: To provide the information necessary to facilitate DOE compliance with a reporting requirement placed on all Federal agencies administering programs subject to the Davis-Bacon Act wage provisions found at 29 CFR 5.7(b); (5) Annual Estimated Number of Respondents: 75; (6) Annual Estimated Number of Total Responses: 150; (7) Annual Estimated Number of Burden Hours: 2 per respondent for total of 300 hours per year; (8) Annual Estimated Reporting and Recordkeeping Cost *Burden:* $0.00

*Statutory Authority:* 42 U.S.C. 7254, 7256.

Issued in Washington, DC on: November 26, 2014.

**Jean S. Stucky,**

*General Counsel for Labor and Pension Law, Office of the General Counsel.*

[FR Doc. 2014–28454 Filed 12–2–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR15–8–000.
*Applicants:* Liberty Utilities (Midstates Natural Gas) Corp.
*Description:* Tariff filing per 284.123/.224: Compliance Filing to be effective 10/6/2014; TOFC: 790.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5245.
*Comments Due:* 5 p.m. ET 12/4/14.
284.123(g) Protests Due:

*Docket Numbers:* RP12–308–000.
*Applicants:* Golden Pass Pipeline LLC.
*Description:* Compliance filing per 154.501: 2014 Annual Report of Penalty Revenue and Costs of Golden Pass Pipeline.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5119.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–181–000.
*Applicants:* WestGas InterState, Inc.
*Description:* Tariff Withdrawal per 154.205(a): Withdraw WGI Compliance.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5228.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–198–000.
*Applicants:* Southern Natural Gas Company, L.L.C.
*Description:* Annual Storage Cost Reconciliation Mechanism Report of Southern Natural Gas Company, L.L.C.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5171.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–199–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate Releases—Great Western to EDF eff 12–1–2014 to be effective 12/1/2014.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5200.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–200–000.
*Applicants:* Central New York Oil And Gas, L.L.C.
*Description:* § 4(d) rate filing per 154.204: Filing of Negotiated Rate Agreements to be effective 12/1/2014.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5229.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–201–000.
*Applicants:* KPC Pipeline, LLC.
*Description:* Request for Waiver of Tariff Provision Requiring the Filing of an Annual Interruptible Transportation Revenue Crediting Report of KPC Pipeline, LLC.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5273.
*Comments Due:* 5 p.m. ET 12/8/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* PR14–8–001.
*Applicants:* Columbia Gas of Ohio, Inc.
*Description:* Tariff filing per 284.123/.224: Amended Application for Approval of a Baseline Statement of Operating Conditions to be effective 11/21/2013; TOFC: 790.
*Filed Date:* 11/21/14.
*Accession Number:* 20141121–5120.
*Comments Due:* 5 p.m. ET 12/1/14.
284.123(g) Protests Due:

*Docket Numbers:* RP14–972–002.
*Applicants:* Kern River Gas Transmission Company.
*Description:* Compliance filing per 154.203: 2014 OCSC Compliance 2nd Revised Filing to be effective 10/16/2014.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5111.
*Comments Due:* 5 p.m. ET 12/8/14.

*Docket Numbers:* RP15–50–001.
*Applicants:* American Midstream (AlaTenn), LLC.
*Description:* Compliance filing per 154.203: AlaTenn Compliance Filing in RP15–50 to be effective 4/15/2015.
*Filed Date:* 11/24/14.
*Accession Number:* 20141124–5172.
*Comments Due:* 5 p.m. ET 12/8/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 25, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–28431 Filed 12–2–14; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP15–189–000.
*Applicants:* Mojave Pipeline Company, L.L.C.
*Description:* § 4(d) rate filing per 154.403(d)(2): Annual FL&U Filing Effective January 1, 2015 to be effective 1/1/2015.
*Filed Date:* 11/20/14.
*Accession Number:* 20141120–5072.
*Comments Due:* 5 p.m. ET 12/2/14.

*Docket Numbers:* RP15–190–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate eff 11–1–2015 for NJNG Contract 910230 to be effective 11/1/2015.
*Filed Date:* 11/20/14.
*Accession Number:* 20141120–5077.
*Comments Due:* 5 p.m. ET 12/2/14.

*Docket Numbers:* RP15–191–000.
*Applicants:* Colorado Interstate Gas Company, L.L.C.
*Description:* § 4(d) rate filing per 154.403(d)(2): FL&U to be effective January 1, 2015 to be effective 1/1/2015.
*Filed Date:* 11/20/14.
*Accession Number:* 20141120–5111.
*Comments Due:* 5 p.m. ET 12/2/14.

*Docket Numbers:* RP15–192–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate Filing—Eff November 20, 2014—LER 8744 to be effective 11/20/2014.
*Filed Date:* 11/20/14.
*Accession Number:* 20141120–5144.
*Comments Due:* 5 p.m. ET 12/2/14.

*Docket Numbers:* RP15–193–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* § 4(d) rate filing per 154.204: Tenaska's Negotiated Rate to be effective 11/21/2014.
*Filed Date:* 11/20/14.
*Accession Number:* 20141120–5196.
*Comments Due:* 5 p.m. ET 12/2/14.

*Docket Numbers:* RP15–194–000.
*Applicants:* Southern Star Central Gas Pipeline, Inc.
*Description:* Compliance filing per 154.203: Annual Operational Flow Order Report.
*Filed Date:* 11/21/14.
*Accession Number:* 20141121–5040.

*Comments Due:* 5 p.m. ET 12/3/14.

*Docket Numbers:* RP15–195–000.

*Applicants:* Young Gas Storage Company, Ltd.

*Description:* § 4(d) rate filing per 154.403(d)(2): Annual Fuel Reimbursement Percentage Update Filing to be effective 1/1/2015.

*Filed Date:* 11/21/14.

*Accession Number:* 20141121–5063.

*Comments Due:* 5 p.m. ET 12/3/14.

*Docket Numbers:* RP15–196–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* § 4(d) rate filing per 154.204: 11/21/14 Negotiated Rates—Mercuria Energy Gas Trading LLC (HUB) 7540–89 to be effective 12/1/2014.

*Filed Date:* 11/21/14.

*Accession Number:* 20141121–5076.

*Comments Due:* 5 p.m. ET 12/3/14.

*Docket Numbers:* RP15–197–000.

*Applicants:* Ruby Pipeline, L.L.C.

*Description:* § 4(d) rate filing per 154.403(d)(2): FL&U effective January 1, 2015 to be effective 1/1/2015.

*Filed Date:* 11/21/14.

*Accession Number:* 20141121–5158.

*Comments Due:* 5 p.m. ET 12/3/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP15–127–001.

*Applicants:* Viking Gas Transmission Company.

*Description:* Tariff Amendment per 154.205(b): Non-Conforming Agreement AF0022—Wisconsin Gas, LLC to be effective 11/1/2014.

*Filed Date:* 11/21/14.

*Accession Number:* 20141121–5217.

*Comments Due:* 5 p.m. ET 12/3/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 24, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–28430 Filed 12–2–14; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2004–0006; FRL–9920–04–OSWER]**

## Proposed Information Collection Request; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.13, OMB Control Number 2050–0072

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.13, OMB Control Number 2050–0072 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before February 2, 2015.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0006, online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–8019; email address: *jacob.sicy@epa.gov*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard (HCS) to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part

370) to the State Emergency Response Commission (SERC) or Tribal Emergency Response Commission (TERC), Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a facility becomes subject to the regulations or has updated information on the hazardous chemicals that were already submitted by the facility. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC (or TERC), LEPC (or TEPC), and LFD with jurisdiction over their facility. This inventory form, Tier II (Emergency and Hazardous Chemical Inventory Form), is to be submitted on March 1 of each year and must include the inventory of hazardous chemicals present at the facility in the previous calendar year.

On July 13, 2012, EPA finalized revisions to the Tier II inventory form to add some new data elements which would be useful for local emergency planners and responders. The ICR No. 2436.02 was approved by OMB for the burden hours and costs incurred with these revisions.

In this renewal for ICR 1352.13, the burden hours and costs estimated will be merged with the burden estimated for ICR No. 2436.02 since the authority for collection of information is under Sections 311 and 312 of EPCRA.

*Form Numbers:* Tier II Emergency and Hazardous Chemical Inventory Form, EPA Form No. 8700–30.

*Respondents/affected entities:* Entities potentially affected by this ICR are manufacturers and non-manufacturers required to have available a Material Safety Data Sheet (or Safety Data Sheet) under the OSHA HCS.

*Respondent's obligation to respond:* Mandatory (Sections 311 and 312 of EPCRA).

*Estimated number of respondents:* 393,552.

*Frequency of response:* Annual.

*Total estimated burden:* 4,006,632 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $6,389,900 (per year), includes annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is no increase in burden in this renewal. However, the burden hours and costs estimated for the revisions to the Tier II inventory form finalized on July 13, 2012 is merged with the burden estimated for complying with Sections 311 and 312 of EPCRA. The ICR number for the revisions to the Tier II inventory form is ICR No. 2436.02. The authority for ICR No. 1352.13 and 2436.02 is Sections 311 and 312 of EPCRA.

Dated: November 24, 2014.

**Reggie Cheatham,**

*Acting Director, Office of Emergency Management.*

[FR Doc. 2014–28448 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9920–02–OSWER]**

## Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs for FY2015

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) will begin to accept requests, from December 8, 2014 through January 31, 2015, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2015, EPA will consider funding requests up to a maximum of $1.0 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

**DATES:** This action is effective as of December 8, 2014. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2015.

**ADDRESSES:** Mailing addresses for EPA Regional Offices and EPA Headquarters can be located at *www.epa.gov/brownfields* and at the end of this Notice.

**FOR FURTHER INFORMATION CONTACT:** EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, (202) 566–2745 or the applicable EPA Regional Office listed at the end of this Notice.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state [1] and tribal [2] response programs. CERCLA 128(a) response program grants are funded with categorical [3] State and Tribal Assistance Grant (STAG) appropriations. Section 128(a) cooperative agreements are awarded and administered by the EPA regional offices. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. This document provides guidance that will enable states and tribes to apply for and use fiscal year 2015 section 128(a) funds.[4]

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 Subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

[1] The term "state" is defined in this document as defined in CERCLA section 101(27).

[2] The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

[3] Categorical grants are issued by the U.S. Congress to fund state and local governments for narrowly defined purposes.

[4] The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

Requests for funding will be accepted from December 8, 2014 through January 31, 2015. Requests EPA receives after January 31, 2015 will not be considered for FY2015 funding. Information that must be submitted with the funding request is listed in Section VIII of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed at the end of this guidance, prior to submitting their funding request. EPA will consider funding requests up to a maximum of $1.0 million per state or tribe for FY2015.

Requests submitted by the January 31, 2015 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final funding allocation determinations are made. As in previous years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions and unexpended balances are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. Also, EPA will prioritize funding for recipients establishing their response programs.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. For more information, please go to *www.grants.gov*.

## II. Background

State and tribal response programs oversee assessment and cleanup activities at brownfields sites across the country. The depth and breadth of state and tribal response programs vary. Some focus on CERCLA related activities, while others are multi-faceted, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In enacting CERCLA section 128(a),[5] Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfields sites. Section 128(a) provides EPA with an opportunity to strengthen its partnership with states and tribes, and recognizes the response programs' critical role in overseeing cleanups enrolled in their response programs.

This funding is intended for those states and tribes that have the management and administrative capacity within their government required to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the response program establishes and maintains a public record of sites addressed.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

## III. Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

1. demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program described in Section V of this guidance; *or* be a party to a voluntary response program Memorandum of Agreement (VRP MOA)[6] with EPA;

AND

2. maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

## IV. Matching Funds/Cost-Share

States and tribes are *not* required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund (RLF) under CERCLA section 104(k)(3). There is a 20% cost share requirement for 128(a) funds used to capitalize a RLF.

## V. The Four Elements—Section 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements, and to establish and maintain the public record requirement.

The four elements of a response program are described below:

1. *Timely survey and inventory of brownfields sites in state or tribal land.* EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a "list" of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands. Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment. Inventories should be developed in direct coordination with communities, and particular attention should focus on those communities with limited capacity to compete for, and manage a competitive brownfield assessment, revolving loan, or cleanup cooperative agreement.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. *Oversight and enforcement authorities or other mechanisms and resources.* EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

a. A response action will protect human health and the environment, and be conducted in accordance with applicable laws; and

b. the state or tribe will complete the necessary response activities if the person conducting the response fails to complete the necessary response (this

[5] Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

[6] States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

includes operation and maintenance and/or long-term monitoring activities).

3. *Mechanisms and resources to provide meaningful opportunities for public participation.*[7] EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, *at a minimum:*

a. Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing to make cleanup decisions or conduct site activities;

b. prior notice and opportunity for meaningful public comment on cleanup plans and site activities, including the input into the prioritization of sites; and

c. a mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site — located in the community in which the person works or resides — may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

4. *Mechanisms for approval of a cleanup plan, and verification and certification that cleanup is complete.* EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

## VI. Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, as described below, in order to receive funds. The public record should be made available to provide a mechanism for meaningful public participation (refer to Section V.3 above). Specifically, under section 128(b)(1)(C), states and tribes must:

1. Maintain and update, at least annually or more often as appropriate, a record that includes the name and location of sites at which response actions have been completed during the previous year;

2. maintain and update, at least annually or more often as appropriate, a record that includes the name and location of sites at which response actions are planned in the next year; and

3. identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity that will be responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls; and how the responsible entity is implementing those activities (see Section VI.C).

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

### *A. Distinguishing the "Survey and Inventory" Element From the "Public Record"*

It is important to note that the public record requirement differs from the "timely survey and inventory" element described in the "Four Elements" section above. The public record addresses sites at which response actions have been completed in the previous year or are planned in the upcoming year. In contrast, the "timely survey and inventory" element, described above, refers to identifying brownfields sites regardless of planned or completed actions at the site.

### *B. Making the Public Record Easily Accessible*

EPA's goal is to enable states and tribes to make the public record and other information, such as information from the "survey and inventory" element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the "survey and inventory" element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address, and latitude and longitude information for each site.[8] States and tribes should ensure that all affected communities have appropriate access to the public record by making it available on-line, in print at libraries, or at other community gathering places.

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

### *C. Long-Term Maintenance of the Public Record*

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls (such as ensuring the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls is implementing those activities) in their work plans.[9]

## VII. Use of Funding

### *A. Overview*

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use funding to "establish or enhance" its response program. Specifically, a state or tribe may use cooperative agreement funds to build response programs that includes the four elements outline in section 128(a)(2). Eligible activities include, but are not limited to, the following:

- Developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of a response program;
- establishing and maintaining the required public record described in Section VI of this guidance;
- operation, maintenance and long-term monitoring of institutional controls and engineering controls;

[7] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/community/policies.htm.*

[8] For further information on data quality requirements for latitude and longitude information, please see EPA's data standards Web site available at *http://iaspub.epa.gov/sor_internet/registry/datastds/findadatastandard/epaapproved/latitudelongitude.*

[9] States and tribes may find useful information on institutional controls on the EPA's institutional controls Web site at *http://www.epa.gov/superfund/policy/ic/index.htm.*

• conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement under CERCLA section 128(a)(2)(C)(ii) to provide for public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site-specific activities must be part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;

• capitalizing a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match (can be in the form of a contribution of money, labor, material, or services from a non-federal source) on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply; and

• purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

*B. Uses Related to "Establishing" a State or Tribal Response Program*

Under CERCLA section 128(a), "establish" includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, guidance, and a public record.

*C. Uses Related to "Enhancing" a State or Tribal Response Program*

Under CERCLA section 128(a), "enhance" is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact "enhancement" uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, *e.g.*, RCRA or Underground Storage Tanks (USTs). As another example, states and tribal response programs enhancement activities can include outreach to local communities (*e.g.*, distressed, environmental justice, rural, tribal, etc.) to increase their awareness about brownfields, building a sustainable brownfields program, federal brownfields technical assistance opportunities [10] (*e.g.*, holding workshops to assist communities to apply for federal Brownfields grant funding), and knowledge regarding the importance of monitoring engineering and institutional controls. Additionally, state and tribal response programs enhancement activities can include facilitating the participation of the state and local agencies (*e.g.*, transportation, water, other infrastructure) in implementation of brownfields projects. Another example of program enhancement activities can be for states and tribes to assist local communities to collaborate with local workforce development entities or Brownfields job training recipients on the assessment and cleanup of brownfield sites.[11] Other "enhancement" uses may be allowable as well.

Note: EPA anticipates states and tribes will work with their EPA Brownfields Area-Wide Planning, Cleanup, and Revolving Loan Fund recipients to incorporate changing climate conditions in their reuse plans and clean up remedies, as appropriate.[12]

*D. Uses Related to Site-Specific Activities*

1. Eligible Uses of Funds for Site-Specific Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups can be both eligible and allowable if the activities is included in the work plan negotiated between the EPA regional office and the state or tribe, but activities must comply with all applicable laws and are subject to the following restrictions:

a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39). EPA encourages states and tribes to use site-specific funding to perform assessment (*e.g.*, phase II, supplemental assessments and cleanup planning) and cleanup activities that will lead more quickly to the reuse and redevelopment of sites, particularly sites located in distressed, environmental justice, rural or tribal communities. Furthermore, states and tribes that perform site-specific activities should plan to directly engage with and involve the targeted community in the project. For example, a Community Relations Plan (CRP) could be developed to provide reasonable notice to the public about a planned cleanup, as well as opportunities for the public to comment on the cleanup. States and tribes should work towards securing additional funding for site-specific activities by leveraging resources from other sources such as businesses, non-profit organizations, education and training providers, and/or federal, state, tribal, and local governments;

b. absent EPA approval, no more than $200,000 per site assessment can be funded with section 128(a) funds, and no more than $200,000 per site cleanup can be funded with section 128(a) funds;

c. absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and/or clean up sites owned or operated by the recipient or held in trust by the United States Government for the recipient; and

d. assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party

[10] EPA expects states and tribes will familiarize themselves with US EPA's brownfields technical assistance opportunities for brownfields communities. For more information on technical assistance opportunities, please visit: *http://www.epa.gov/brownfields/tools/index.htm.*

[11] For more information about EPA's Brownfields Environmental Workforce Development and Job Training Program, please visit: *http://www.epa.gov/brownfields/job.htm.*

[12] For more information about EPA's Climate Adaptation Plan, please visit: *http://www.epa.gov/climatechange/impacts-adaptation/fed-programs.html.*

pursuant to CERCLA section 107, except:

- At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
- when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

1. At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
2. when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

2. Limitations on the Amount of Funds Used for Site-Specific Activities and Waiver Process

States and tribes may use section 128(a) funds for site-specific activities that improve state or tribal capacity but the amount recipients may request for site-specific assessments and cleanups may not generally exceed 50% of the total amount of funding.[13] In order for EPA to consider a waiver, the total amount of the site-specific request may not exceed the recipient's total funding level for the previous year. The funding request must include a brief justification describing the reason(s) for spending more than 50% of an annual allocation on site-specific activities. An applicant, when requesting a waiver, must include the following information in the written justification:

- Total amount requested for site-specific activities;
- percentage of the site-specific activities (assuming waiver is approved) in the total budget;
- site specific activities that will be covered by this funding. If known, provide site specific information and describe how work on each site contributes to the development or enhancement of your state/tribal site response program. EPA recognizes the role of response programs to develop and provide capacity in distressed, environmental justice, rural or tribal communities, and encourages prioritization for site-specific activities in those communities. Further explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;
- an explanation of how this shift in funding will not negatively impact the core programmatic capacity (*i.e.*, the ability to establish/enhance four elements of a response program) and how related activities will be maintained in spite of an increase in site-specific work. Recipients must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 50% limit on using 128(a) funds for site-specific activities;
- as explanation as to whether the sites to be addressed are those for which the affected community(ies) has requested work be conducted (refer to Section VII.A Overview of Funding for more information). EPA Headquarters will approve waivers based on the information in the justification and other information available to the Agency. The EPA will inform recipients whether the waiver is approved.

3. Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance response programs addressing petroleum brownfield sites. Subject to the restrictions listed above (see Section VII.D.1) for all site-specific activities, the costs of site-specific assessments and cleanup activities at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are both eligible and allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

4. Additional Examples of Eligible Site-Specific Activities

Other eligible uses of funds for site-specific related include, but are not limited to, the following activities:

- Technical assistance to federal brownfields cooperative agreement recipients;
- development and/or review of quality assurance project plans (QAPPs); and
- entering data into the ACRES database

*E. Uses Related to Activities at "Non-Brownfields" Sites*

Costs incurred for activities at non-brownfields sites, *e.g.*, oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. Other uses not specifically referenced in this guidance may also be eligible and allowable. Recipients should consult with their regional state or tribal contact for additional guidance. *Direct assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).*

## VIII. General Programmatic Guidelines for 128(a) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement[14] between EPA and a state or a tribe. The program administers cooperative agreements under the Uniform Administrative Requirements, Cost Principles and Audit requirements for Federal Awards regulations for all entity types including states, tribes, and local governments found in the Code of Federal Regulations at 2 CFR part 200 and any applicable EPA regulations in Title 2 CFR Subtitle B—Federal Agency Regulations for Grants and Agreements Chapter 15[15] as well as applicable provisions of 40 CFR part 35 Subparts A and B. Under these regulations, the cooperative agreement recipient for section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document. Further, unexpended balances of cooperative agreement funds are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. EPA allocates funds to state and tribal response programs under 40 CFR 35.420 and 40 CFR 35.737.

*A. One Application per State or Tribe*

Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested

[13] Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 50% limit.

[14] A cooperative agreement is an agreement to a state/tribe that includes substantial involvement by EPA on activities described in the work plan which may include technical assistance, collaboration on program priorities, etc.

[15] EPA's regulations will take effect December 26, 2014 (2 CFR 200.110).

states or tribes. *EPA will accept only one application from each eligible state or tribe.*

*B. Maximum Funding Request*

For Fiscal Year 2015, EPA will consider funding requests up to a maximum of $1.0 million per state or tribe. Please note the CERCLA 128(a) program's annual budget has remained relatively the same since 2003 while demand has increased over time. Due to the increasing number of entities requesting funding, it is likely that the FY15 states and tribal individual funding amounts will be less than the FY14 individual funding amounts.

*C. Define the State or Tribal Response Program*

States and tribes must define in their work plan the "section 128(a) response program(s)" to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

*D. Separate Cooperative Agreements for the Capitalization of RLFs Using Section 128(a) Funds*

If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, *i.e.*, one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

*E. Authority To Manage a Revolving Loan Fund Program*

If a state or tribe chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the lead authority to manage the program, *e.g.*, hold loans, make loans, enter into loan agreements, collect repayment, access and secure the site in event of an emergency or loan default. If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

*F. Section 128(a) Cooperative Agreements Can Be Part of a Performance Partnership Grant (PPG)*

States and tribes may include section 128(a) cooperative agreements in their PPG 69 FR 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

*G. Project Period*

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan. While not prohibited, pre-award costs are subject to 40 CFR 35.113 and 40 CFR 35.513.

*H. Demonstrating the Four Elements*

As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section V. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these elements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, on progress reports, or on EPA's review of the state or tribal response program.

*I. Establishing and Maintaining the Public Record*

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section VI and below, exists and is being maintained.[16] Specifically for:

- States or tribes that received initial funding prior to FY14: Requests for FY15 funds will not be accepted from states or tribes that fail to demonstrate, by the January 31, 2015 request deadline, that they established and are maintaining a public record. (*Note,* this would potentially impact any state or tribe that had a term and condition placed on their FY14 cooperative agreement that prohibited drawdown of FY14 funds prior to meeting public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds once the public record requirement is met; and
- states or tribes that received initial funding in FY14: By the time of the actual FY15 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY15 cooperative agreement that prohibits the drawdown of FY15 funds until the public record requirement is met).

*J. Demonstration of Significant Utilization of Prior Years' Funding*

States and tribes should be aware that EPA and its Congressional appropriations committees place significant emphasis on the utilization of prior years' funding. Unused funds prior to FY14 will be considered in the allocation process. Existing balances of cooperative agreement funds as reflected in EPA's Financial Data Warehouse could support an allocation amount below a recipient's request for funding or, if appropriate deobligation and reallocation by EPA Regions as provided for in 40 CFR 35.118 and 40 CFR 35.518.

EPA Regional staff will review EPA's Financial Database Warehouse to identify the amount of remaining prior year(s) funds. The requestor should work, as early as possible, with both their own finance department, and with their Regional Project Officer to reconcile any discrepancy between the amount of unspent funds showing in EPA's system, and the amount reflected in the recipient's records. The recipient should obtain concurrence from the Region on the amount of unspent funds requiring justification by the deadline for this request for funding.

*K. Allocation System and Process for Distribution of Funds*

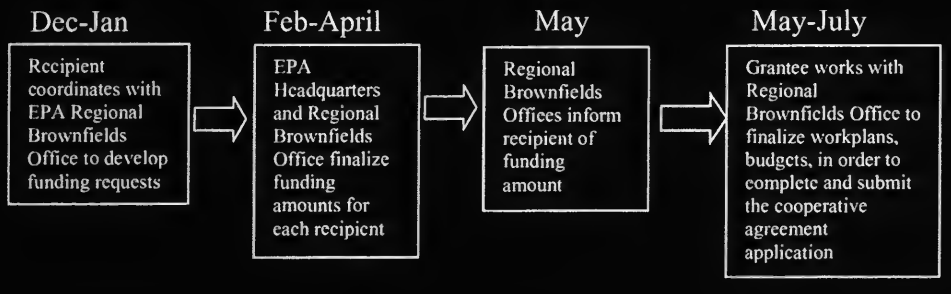
After the January 31, 2015, request deadline, EPA's Regional Offices will submit summaries of state and tribal requests to EPA Headquarters. Before submitting requests to EPA Headquarters, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, *e.g.*, size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of

[16] For purposes of 128(a) funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

current year funding, funds remaining from prior years, etc.

After receipt of the regional recommendations, EPA Headquarters will consolidate requests and make decisions on the final funding allocations.

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below (dates are estimates and subject to change):




## IX. Information To Be Submitted With the Funding Request

### *A. Summary of Planned Use of FY15 Funding*

All states and tribes requesting FY15 funds must submit (to their regional brownfields contact) a summary of the planned use of the funds with associated dollar amounts. Please provide the request in the chart below. The amount of funding requested should be an amount that can be reasonably spent in one year. It is likely that the FY15 state and tribal individual funding amounts will be less than the FY14 individual funding amounts. The requestor should work, as early as possible, with their EPA Regional Program contact to ensure that the funding amount requested and related activities are reasonable.

### *B. Demonstration of Significant Utilization of Prior Years' Funding*

States and tribes that received section 128(a) funds prior to FY14 must provide the amount of the prior years' funding including funds that recipients have not received in payments (*i.e.*, funds EPA has obligated for grants that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process when determining the recipient's programmatic needs under 40 CFR 35.420 and 40 CFR 35.737. The recipient should include a detailed explanation and justification of prior year funds that remain in EPA's Financial Data Warehouse as unspent balances. The recipient should obtain concurrence from the Region on the amount of unspent funds requiring explanation by the January 31, 2015 deadlines for submitting funding requests.

### *C. Optional: Explanation of Overall Program Impacts of any Funding Reductions*

Please explain the programmatic effects of a reduction (to your current funding amount) on significant activities of your response program. Specifically, at what amount (*e.g.*, percentage of your current funding level) would your response program experience core programmatic impacts such as a reduction in staff, a decrease in oversight activities, or other impacts to the environment and health of the communities the program serves, etc.? An EPA Region may require that this information be submitted as part of the request for funding in order to fully understand the individual program impacts associated with decreased funding. These impacts will be considered as part of the decision for the final allocation.

| Funding use | FY14 Awarded | FY15 Requested | Summary of intended use (EXAMPLE USES) |
|---|---|---|---|
| Establish or enhance the four elements: ..... | $XX,XXX | $XX,XXX | |
| 1. Timely survey and inventory of brownfields sites; | ..... | ..... | 1. Examples:<br>• inventory and prioritize brownfields sites.<br>• institutional control (IC)/engineering control (EC) tracking. |
| 2. Oversight and enforcement authorities or other mechanisms; | ..... | ..... | 2. Examples:<br>• develop/enhance ordinances, regulations, procedures for response programs. |
| 3. Mechanisms and resources to provide meaningful opportunities for public participation; | ..... | ..... | 3. Examples:<br>• develop a community involvement process.<br>• community outreach.<br>• issue public notices of site activities. |

| Funding use | FY14 Awarded | FY15 Requested | Summary of intended use (EXAMPLE USES) |
|---|---|---|---|
| | | | • develop a process to seek public input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies to prioritize sites to be addressed. |
| 4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete. | ..... | ..... | 4. Examples:<br>• develop/update cleanup standards.<br>• review cleanup plans and verify completed actions. |
| Establish and maintain the public record ..... | XX,XXX | XX,XXX | • maintain public record.<br>• create web site for public record.<br>• disseminate public information on how to access the public record. |
| Enhance the response program ..... | XX,XXX | XX,XXX | • provide oversight of site assessments and cleanups.<br>• attend training and conferences on brownfields cleanup technologies & other brownfields topics.<br>• update and enhance program management activities.<br>• negotiate/oversee contracts for response programs.<br>• enhance program management & tracking systems. |
| Site-specific activities (*amount requested should be incidental to the workplan, see Section VI.D for more information on what activities should be considered when calculating site specific activities*). | XX,XXX | XX,XXX | • perform site assessments and cleanups.<br>• develop QAPPs.<br>• establish eligibility of target sites.<br>• prepare Property Profile Forms/input data into ACRES database for these sites. |
| Environmental insurance ..... | XX,XXX | XX,XXX | • review potential uses of environmental insurance.<br>• manage an insurance risk pool. |
| Revolving loan fund ..... | XX,XXX | XX,XXX | • create a cleanup revolving loan fund. |
| Total funding ..... | XXX,XXX | XXX,XXX | Performance Partnership Grant? Yes ☐ No ☐ |

## X. Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions, and related reporting that will be required if a cooperative agreement with EPA is awarded.

### *A. Progress Reports*

In accordance with 2 CFR 200.328 and any EPA specific regulations, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan. Reports should also provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information related to establishing or, if already established, maintaining the public record. *Depending upon the activities included in the state's or tribe's work plan,* an EPA regional office may request that a progress report include:

*1. Reporting interim and final progress reports.* Reports must prominently display the following three relevant Essential Elements as reflected in the current EPA strategic plan: *Strategic Plan Goal 3:* Cleaning Up Communities and Advancing Sustainable Development, *Strategic Plan Objective 3.1:* Promote Sustainable and Livable Communities, and *Work plan Commitments and Timeframes.* EPA's strategic plan can be found on the internet at *http://www.epa.gov/planandbudget/strategicplan.html.*

*2. Reporting for Non-MOA states and tribes.* All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
  - Legal authorities and mechanisms (*e.g.,* statutes, regulations, orders, agreements); and
  - policies and procedures to implement legal authorities; and other mechanisms;
- a description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;

• a narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that: A response action will protect human health and the environment; and be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and

• a narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

3. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database for each site assessment and cleanup. In addition, recipients must report how they provide the affected community with prior notice and opportunity for meaningful participation as per CERCLA section 128(a)(2)(C)(ii), on proposed cleanup plans and site activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and to solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote communities, and communities with limited experience working with government agencies.

4. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

• Number and frequency of oversight audits of licensed site professional certified cleanups;

• number and frequency of state/tribal oversight audits conducted;

• number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities; and

• number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

5. *Reporting required when using funding for an RLF.* Recipients with work plans that include funding for revolving loan fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.

6. *Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:

• Number and description of insurance policies purchased (*e.g.,* type of coverage provided; dollar limits of coverage; any buffers or deductibles; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.);

• the number of sites covered by the insurance;

• the amount of funds spent on environmental insurance (*e.g.,* amount dedicated to insurance program, or to insurance premiums); and

• the amount of claims paid by insurers to policy holders.

The regional offices may also request that information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

*B. Reporting of Program Activity Levels*

States and tribes must report, by January 31, 2015, a summary of the *previous federal fiscal year's* work (October 1, 2013 through September 30, 2014). The following information must be submitted to your regional project officer:

• Environmental programs where CERCLA 128(a) funds are used to support capacity building (general program support, non-site-specific work). Indicate as appropriate from the following:

__Brownfields
__Underground Storage Tanks/Leaking Underground Storage Tanks
__Federal Facilities
__Solid Waste
__Superfund
__Hazardous Waste Facilities
__VCP (Voluntary Cleanup Program, Independent Cleanup Program, etc.)
__Other;_____

• number of properties (or sites) enrolled in a response program during FY14;

• number of properties (or sites) where documentation indicates that cleanup work is complete and all required institutional controls (IC's) are in place, or not required;

• total number of acres associated with properties (or sites) in the previous bullet;

• number of properties where assistance was provided, but the property was not enrolled in the response program (OPTIONAL);

• date that the public record was last updated;

And below are three new questions that are optional for the FY14 reporting period but will be required starting in FY15.

• Estimated total number of properties (or sites) in your brownfields inventory;

• Please provide a brief narrative explaining how you ensure that cleanup remedies (including engineering controls and institutional controls) are still protective in the future; and

• Did you develop or revise legislation, regulations, codes, guidance documents or policies related to establishing or enhancing your Voluntary Cleanup Program/Response Program during FY14? If yes, please indicate the type and whether it was new or revised.

EPA may require states/tribes to report specific performance measures related to the four elements that can be aggregated for national reporting to Congress. For example:

1. Timely survey and inventory—estimated number of brownfields sites in the state or on tribal land;

2. oversight and enforcement authorities/mechanisms—number of active cleanups and percentage that received oversight; percentage of active cleanups not in compliance with the cleanup workplan and that received communications from recipient regarding non-compliance;

3. public participation—percentage of sites in the response program where public meetings/notices were conducted regarding the cleanup plan and/or other site activities; number of site assessments requests, and responses to such requests; and

4. cleanup approval/certification mechanisms—total number of "no further action" letters or total number of certificates of completions.

[NOTE: This reporting requirement may include activities not funded with CERCLA Section 128(a) funding, because such information may be helpful to EPA when evaluating whether recipients have met or are taking reasonable steps to meet the four elements of a response program pursuant to CERCLA Section 128(a)(2).]

*C. Reporting of Public Record*

All recipients must report, as specified in the terms and conditions of their cooperative agreement, and in Section VIII.I of this guidance, information related to establishing, or if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, *e.g.,* Web site or other public database to meet the public record requirement. Recipients reporting may only be required to demonstrate that the public record a) exists and is up-to-date, and b) is adequate. A public record may include the following information:

A list of sites at which response actions have been completed in the past year including:

- Date the response action was completed;
- site name;
- name of owner at time of cleanup, if known;
- location of the site (street address, and latitude and longitude);
- whether an institutional control is in place;
- type of institutional control in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- nature of the contamination at the site (*e.g.,* hazardous substances, contaminants or pollutants, petroleum contamination, etc.); and
- size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program in the coming year including:

- Site name and the name of owner at time of cleanup, if known;
- location of the site (street address, and latitude and longitude);
- to the extent known, whether an institutional control is in place;
- type of the institutional control in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- to the extent known, the nature of the contamination at the site (*e.g.,* hazardous substances, contaminants, or pollutants, petroleum contamination, etc.); and
- size of the site in acres

*D. Award Administration Information*

1. Subaward and Executive Compensation Reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at *2 CFR part 25* (*e.g.,* individuals), applicants must:

1. Be registered in SAM prior to submitting an application or proposal under this announcement. SAM information can be found at *https://www.sam.gov/portal/public/SAM/.*

2. Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or proposal under consideration by an agency, and

3. Provide its DUNS number in each application or proposal it submits to the agency. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711, or visiting the D&B Web site at: *http://www.dnb.com.*

If an applicant fails to comply with these requirements, it will, should it be selected for award, affect their ability to receive the award.

Please note that the CCR has been replaced by the System for Award Management (SAM). To learn more about SAM, go to *SAM.gov* or *https://www.sam.gov/portal/public/SAM/.*

3. Use of Funds

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively, and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms and conditions related to implementing this requirement.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

| Region | State | Tribal |
|---|---|---|
| 1—CT, ME, MA, NH, RI, VT | James Byrne, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1389 Fax (617) 918–1291. | AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248 Fax (617) 918–1291. |
| 2—NJ, NY, PR, VI | John Struble, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4291 Fax (212) 637–3083. | Phillip Clappin, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4431 Fax (212) 637–3083. |
| 3—DE, DC, MD, PA, VA, WV. | Michael Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–3371 Fax (215) 814–3015. | |
| 4—AL, FL, GA, KY, MS, NC, SC, TN. | Nicole Comick-Bates, 61 Forsyth Street, S.W, 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–9966 Fax (404) 562–8788. | Cindy J. Nolan, 61 Forsyth Street, S.W, 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–8425 Fax (404) 562–8788. |
| 5—IL, IN, MI, MN, OH, WI | Jan Pels, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 886–3009 Fax (312) 692–2161. | Rosita Clarke-Moreno, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 886–7215 Fax (312) 697–2075. |
| 6—AR, LA, NM, OK, TX | Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660. | Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660. |
| 7—IA, KS, MO, NE | Susan Klein, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone (913) 551–7786 Fax (913) 551–9786. | Jennifer Morris, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone (913) 551–7341 Fax (913) 551–9798. |
| 8—CO, MT, ND, SD, UT, WY. | Christina Wilson, 1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–6706 Fax (303) 312–6065. | Barbara Benoy, 1595 Wynkoop Street (8EPR–SA), Denver, CO 80202–1129, Phone (303) 312–6760 Fax (303) 312–6962. |

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS—Continued

| Region | State | Tribal |
|---|---|---|
| 9—AZ, CA, HI, NV, AS, GU | Eugenia Chow, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3160 Fax (415) 947–3520. | Jose Garcia, Jr., 600 Wilshire Blvd, Suite 1460, Los Angeles, CA 90017, Phone (213) 244–1811 Fax (213) 244–1850. |
| 10—AK, ID, OR, WA ..... | Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513 Phone ((907) 271–3414 Fax ( 907) 271–3424. | Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513 Phone ((907) 271–3414 Fax (907) 271–3424. |

**XI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

Dated: November 25, 2014.

**Gail Ann Cooper,**

*Deputy Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.*

[FR Doc. 2014–28464 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9920–00–ORD; Docket ID No. EPA–HQ–ORD–2014–0859]**

### Notice of Workshop and Call for Information on Integrated Science Assessment for Particulate Matter

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

**ACTION:** Notice of Workshop; Call for Information.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) Office of Research and Development's National Center for Environmental Assessment (NCEA) is preparing an Integrated Science Assessment (ISA) as part of the review of the primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). This ISA is intended to update the scientific assessment presented in the Integrated Science Assessment for Particulate Matter (EPA 600/R–08/139F), published in December 2009. Interested parties are invited to assist EPA in developing and refining the scientific information base for the review of the PM NAAQS by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

EPA is also announcing that a workshop, entitled "Workshop to Discuss Policy-Relevant Science to Inform EPA's Review of the Primary and Secondary NAAQS for PM," is being organized by NCEA and EPA Office of Air and Radiation's Office of Air Quality Planning and Standards (OAQPS). The workshop will be held February 9–February 11, 2015, in Research Triangle Park, North Carolina. The workshop will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

**DATES:** The workshop will be held on February 9–11, 2015. All communications and information submitted in response to the call for information should be received by EPA by February 18, 2015.

**ADDRESSES:** The workshop will be held at U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. An EPA contractor, ICF International, is providing logistical support for the workshop. To register, please visit the Web site: *https://sites.google.com/site/pmworkshop2015/*. Interested parties can participate in person or via webinar. The pre-registration deadline is February 4, 2015. Please direct questions regarding workshop registration or logistics to Whitney Kihlstrom at (919) 293–1646, or *whitney.kihlstrom@icfi.com*. For specific questions regarding technical aspects of the workshop see the section of this notice entitled **FOR FURTHER INFORMATION CONTACT.**

Information in response to the call for information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** For details on the period for submission of research information from the public, contact the Office of Research and Development (ORD) Docket at EPA's Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov*. For technical information, contact Mr. Jason Sacks, NCEA; telephone: (919) 541–9729; facsimile: (919) 541–1818; or email: *sacks.jason@epa.gov* or Dr. Scott Jenkins, OAQPS; telephone: (919) 541–1167; facsimile: (919) 541–0237; or email: *jenkins.scott@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Information About the Project

Section 108(a) of the Clean Air Act (CAA) directs the Administrator to identify and to list certain air pollutants and then to issue "air quality criteria" for those pollutants. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . ." Under section 109 of the CAA, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Particulate matter (PM) is one of six "criteria" pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA), formerly called an Air Quality Criteria Document (AQCD). The evidence and conclusions presented in the ISA directly inform the technical and policy assessments conducted by OAQPS. Collectively, these documents form the scientific and technical bases for EPA's decisions on the adequacy of existing NAAQS and the appropriateness of new or revised standards.

At the start of a NAAQS review, EPA issues an announcement of the review and notes the initiation of the development of the ISA. At that time, EPA also issues a request that the public submit scientific literature that they want to bring to the attention of the Agency for consideration in the review process. The Clean Air Scientific Advisory Committee (CASAC), an independent scientific advisory committee mandated by section 109(d)(2) of the Clean Air Act and part of EPA's Science Advisory Board (SAB), is charged with independent expert scientific review of EPA's draft ISAs and other technical and policy assessments. As the process proceeds, the public will have opportunities to review and comment on draft PM ISAs and other technical and policy assessments. These opportunities will also be announced in the **Federal Register**.

For the review of the PM NAAQS being initiated by this notice, the Agency is interested in obtaining additional new information, particularly concerning: (a) Toxicological studies of effects of controlled exposure to PM on laboratory animals and humans; (b) epidemiologic (observational) studies of health effects associated with ambient exposures of human populations to PM; (c) the quantification of light extinction in urban and non-urban areas—for example, new studies regarding visibility preferences, including studies in additional urban and non-urban areas that disentangle visibility preferences from health preferences, the sensitivity of visibility preferences to survey methods and/or preferences regarding intensity versus frequency of visibility impairment; (d) climate impacts from PM-related aerosols, particularly regarding the quantification of anthropogenic aerosol effects on radiative forcing; and (e) ecological studies that examine the effects on agricultural crops and natural terrestrial and/or aquatic ecosystems from ambient exposures to PM, including information regarding interactions with other ecosystem stressors and co-occurring pollutants. EPA also seeks recent information in other areas of PM research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, and ambient concentrations. This and other selected literature relevant to a review of the NAAQS for PM will be assessed in the forthcoming PM ISA. It is important to note that for the evaluation of PM and ecological effects, this does not include studies that examine effects due to the deposition of oxides of nitrogen ($NO_X$) or sulfur oxides ($SO_X$) in the particulate form (*e.g.*, ammonium sulfate), which will be covered in the ongoing review of the $NO_X/SO_X$ secondary standard. Other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft ISAs that will be reviewed by CASAC.

As part of this review of the PM NAAQS, EPA intends to sponsor a workshop on February 9–February 11, 2015 to provide the opportunity for internal and external experts to highlight significant new and emerging PM research, and to make recommendations to the Agency regarding the design and scope of the review for the primary (health-based) and secondary (welfare-based) PM standards to ensure that it addresses key policy-relevant issues and considers the new and emerging science that is relevant to informing EPA's understanding of these issues. EPA intends that workshop discussions will build upon three prior publications (available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*):

1. *National Ambient Air Quality Standards for Particulate Matter: Final Rule* (78 FR 2086, January 15, 2013). The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review.

2. *Integrated Science Assessment for PM—Final Report. (EPA/600/R–08/139F, December 2009).* The ISA is a comprehensive review, synthesis, and evaluation of the most policy-relevant science, including key science judgments that are important to inform the development of the risk and exposure assessments, as well as other aspects of the NAAQS review. The 2009 PM ISA, completed by EPA's NCEA, included consideration of studies published through mid-2009.

3. *Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure (EPA/600/R–12/056F, December 2012).* This assessment, which was completed by EPA's NCEA, evaluated studies published too late for inclusion in the final PM ISA. The provisional science assessment focused on epidemiologic studies that used $PM_{2.5}$ (*i.e.*, fine PM) or $PM_{10-2.5}$ (*i.e.*, coarse PM) and were conducted in the U.S. or Canada, and toxicological or epidemiologic studies that compared effects of PM from different sources, PM components, or size fractions published through August 2012. The document was not intended to critically review individual studies or integrate the scientific findings to draw causal conclusions as is done for an ISA, but rather to ensure that the Administrator was fully aware of the "new" science that had developed since 2009 before making final decisions on whether to retain or revise the then-existing PM standards.

Workshop participants are encouraged to review these documents thoroughly before the meeting, as they provide important background information on the scientific findings and analytical approaches considered in the previous review, as well as insights into the key policy-relevant questions from that review. In addition, participants may also want to review related documents (available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*), including the *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards* (Final Report, April 2011), *Quantitative Health Risk Assessment for Particulate Matter* (Final Report, June 2010), and *Particulate Matter Urban-Focused Visibility*

*Assessment* (Final Document, July 2010).

Based in large part on the input received during this workshop, EPA will develop a draft Integrated Review Plan (IRP) for the PM NAAQS. This draft IRP will outline the schedule, process, and approaches for evaluating the relevant scientific information and addressing the key policy-relevant issues to be considered in this review. CASAC will be asked to review the draft IRP in the mid-2015 and the public will also have the opportunity to comment on the draft plan. The final IRP, prepared in consideration of CASAC and public comments, will outline the process and schedule for conducting the review and the planned scope of the assessment documents (*e.g.*, an ISA, a risk/exposure assessment, and a policy assessment) as well as the key policy-relevant issues/questions that will guide the review.

**II. How To Submit Technical Comments to the Docket at www.regulations.gov**

Submit your materials identified by Docket ID No. EPA–HQ–ORD–2014–0859 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Research and Development (ORD) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in EPA's Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave. NW., Washington, DC. EPA's Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide materials by mail or hand delivery, please submit three copies of these materials. For attachments, provide an index, number pages consecutively with the materials, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0859. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all materials it receives in the public docket without change and to make the materials available online at *www.regulations.gov,* including any personal information provided, unless materials includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the materials that are placed in the public docket and made available on the Internet. If you submit electronic materials, EPA recommends that you include your name and other contact information in the body of your materials and with any disk or CD–ROM you submit. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider the materials you submit. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA's Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in EPA's Headquarters Docket Center.

Dated: November 24, 2014.

**Gina Perovich,**

*Acting Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2014–28278 Filed 12–2–14; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register.** Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011526–006.

*Title:* M.O.S.K./Hoegh Autoliners Space Charter Agreement.

*Parties:* Hoegh Autoliners AS and Mitsui O.S.K. Lines Ltd.

*Filing Party:* Eric C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004

*Synopsis:* The amendment adds Mexico to the geographic scope of the agreement.

*Agreement No.:* 012233–001.

*Title:* CSCL/UASC/YMUK/CMA CGM/PIL Vessel Sharing and Slot Exchange Agreement—Asia and US/Canada West Coast Services.

*Parties:* China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); United Arab Shipping Company (S.A.G.); Yang Ming (UK) LTD.; CMA CGM S.A.; and Pacific International Lines (Pte) Ltd (PIL).

*Filing Party:* Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave NW., Washington DC 20037.

*Synopsis:* The adds CMA CGM and PIL as parties to the agreement and provides the terms and conditions under which the parties will exchange and charter slots. The amendment also adds Canada to the geographic scope of the agreement.

*Agreement No.:* 012306.

*Title:* DOCE/Seafreight Space Charter Agreement.

*Parties:* Dole Ocean Cargo Express, and Seafreight Line Ltd.

*Filing Party:* Wayne Rohde, Esq; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The Agreement Authorizes Seafreight Line to charter space to Dole Ocean Cargo Express in the trade between the U.S. Atlantic Coast and Central America.

*Agreement No.:* 012307.

*Title:* Maersk/APL Slot Exchange Agreement.

*Parties:* A.P. Moller-Maersk A/S trading under the name of Maersk Line

and APL Co. Pte. Ltd./American President Lines, Ltd. (acting as a single party).

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW. Suite 1100; Washington, DC 20006.

*Synopsis:* The agreement would authorize the parties to exchange space on their respective services between the U.S. Atlantic Coast and the Middle East and would also authorize APL to charter space to Maersk Line in the trade between Asia and the U.S. West Coast.

By Order of the Federal Maritime Commission.

Dated: November 28, 2014.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2014–28442 Filed 12–2–14; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority the extension for three years of the following information collection, with revision:

*Report title:* Government-administered, General-use Prepaid Card Surveys.[1]

*Agency form number:* FR 3063a and FR 3063b.

*OMB control number:* 7100–0343.

*Frequency:* Annual.

*Reporters:* Issuers of government-administered, general-use prepaid cards (FR 3063a) and governments that administer general-use prepaid card programs (FR 3063b).

*Estimated annual reporting hours:* FR 3063a: 375 hours; FR 3063b: 2,700 hours.

*Estimated average hours per response:* FR 3063a: 25 hours; FR 3063b: 15 hours.

*Number of respondents:* FR 3063a: 15; FR 3063b: 180.

*General description of report:* This information collection is authorized by subsection 920(a) of the Electronic Fund Transfer Act (EFTA), which was amended by section 1075(a) of the Dodd-Frank Act. 15 U.S.C. 1693o–2. EFTA Section 920(a) requires the Board to submit an annual report to the Congress on the prevalence of use of general-use prepaid cards in Federal, state, and local government-administered payment programs and on the interchange transaction fees and cardholder fees charged with respect to the use of such prepaid cards. 15 U.S.C. 1693o–2(a)(7)(D). EFTA Section 920(a) also provides the Board with authority to require issuers to provide information to enable the Board to carry out the provisions of the subsection. 15 U.S.C. 1693o–2(a)(3)(B). The obligation of issuers to respond to the issuer survey (FR 3063a) is mandatory. However, the obligation of state and local governments to respond to the government survey (FR 3063b) is voluntary. A limited amount of information collected on the FR 3063a issuer survey is publicly available, and thus, is not accorded confidential treatment. However, most of the information collected on the FR 3063a issuer survey is not publicly available and may be kept confidential as explained herein. Data collected by the issuer survey may be kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA), which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Such data may be kept confidential under exemption 4 if the release of data would cause substantial harm to the competitive position of the issuer. For example, certain issuer survey responses would likely contain information related to an organization's revenue structure and other proprietary and commercial information and the release of such information would cause substantial harm to the competitive position of the issuer and could therefore be kept confidential under exemption 4. The information collected on the government survey (FR 3063b) is not accorded confidential treatment.

*Abstract:* Section 1075(a) of the Dodd-Frank Act provides that the Board shall provide annually a report to the Congress regarding the prevalence of use of general-use prepaid cards in federal, state, and local government-administered payment programs, and the interchange and cardholder fees charged with respect to the use of such prepaid cards.[2] Section 1075(a) of the Dodd-Frank Act also provides the Board with authority to require card issuers to respond to information requests as may be necessary to carry out the provisions of the section.

*Current Actions:* On September 19, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 56368) requesting public comment for 60 days on the extension, with revision, of the Government-Administered, General-Use Prepaid Card Surveys. The comment period for this notice expired on November 18, 2014. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

As noted in the initial **Federal Register** notice (IFR) the Federal Reserve requested specific comment regarding the potential impact of eliminating the government survey (FR 3063b). The Federal Reserve noted in the IFR that the data collected under FR 3063b are used to calculate and report prevalence-of-use metrics, including the ratio of funds disbursed by prepaid cards to funds disbursed by all payment methods. Also, as noted in the IFR, should the Federal Reserve decide to eliminate FR 3063b, it would no longer be able to report this ratio; rather, the Federal Reserve would rely on data from the issuer survey (FR 3063a) to calculate and report alternative prevalence-of-use metrics, including the value of funds loaded onto government-administered

[1] The issuer and government surveys, supporting statement, and other documentation are available on the Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx.*

[2] 15 U.S.C. 1693o–2(a)(7)(D).

prepaid cards, the volume and value of settled purchase transactions, and the volume and value of ATM withdrawals.

As discussed in the IFR, the Federal Reserve believes that eliminating FR 3063b would significantly reduce reporting burden on the public. For this reason, and because the Federal Reserve did not receive any comments on the potential impact of eliminating FR 3063b, the Federal Reserve plans not to conduct this survey in calendar year 2015. Nevertheless, the Federal Reserve will maintain the authority to conduct FR 3063b through the 2015–2018 data-collection cycle. During this period, the Federal Reserve will determine whether the alternative prevalence-of-use metrics derived from FR 3063a are reasonable for satisfying the reporting requirements of the Dodd-Frank Act. Should the Federal Reserve make this determination, a notice would be published in the **Federal Register** requesting public comment on the discontinuance of the FR 3063b information collection for future data-collection cycles.

Board of Governors of the Federal Reserve System, November 28, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–28432 Filed 12–2–14; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

**[Docket No. R–1503]**

## Application of Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for public comment on the application of enhanced prudential standards and reporting requirements to General Electric Capital Corporation.

**SUMMARY:** Pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors of the Federal Reserve System (Board) is inviting public comment on the proposed application of enhanced prudential standards to General Electric Capital Corporation (GECC), a nonbank financial company that the Financial Stability Oversight Council has determined should be supervised by the Board. The Board has assessed the business model, capital structure, risk profile, and systemic footprint of GECC to determine how the enhanced prudential standards should apply, including how to tailor application of the standards to the company. In light of the substantial similarity of GECC's activities and risk profile to that of a similarly-sized bank holding company, the Board is proposing to apply enhanced prudential standards to GECC that are similar to those that apply to large bank holding companies, including: (1) Capital requirements; (2) capital-planning and stress-testing requirements; (3) liquidity requirements; and (4) risk-management and risk-committee requirements. The Board also is proposing to apply certain additional enhanced prudential standards to GECC in light of certain unique aspects related to GECC's activities, risk profile, and structure, including additional independence requirements for GECC's board of directors, restrictions on intercompany transactions between GECC and General Electric Company, and leverage capital requirements that are comparable to the standards that apply to the largest, most systemic banking organizations. In addition, the Board is proposing to require GECC to file certain reports with the Board that are similar to the reports required of bank holding companies.

**DATES:** Comments must be submitted by February 2, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1503, by any of the following methods:

Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Email: *regs.comments@federalreserve.gov.* Include docket number R–1503 in the subject line of the message.

FAX: (202) 452–3819 or (202) 452–3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.; Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Ann Misback, Associate Director, (202) 452–3799, Jyoti Kohli, Senior Supervisory Financial Analyst, (202) 452–2539, or Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2277 or Jahad Atieh, Attorney, (202) 452–3900, Legal Division.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Board of Governors of the Federal Reserve System (Board) to establish enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies that the Financial Stability Oversight Council (Council) has determined should be supervised by the Board (nonbank financial companies supervised by the Board) in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities of, these companies. The enhanced prudential standards must include enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management and

risk-committee requirements, resolution-planning requirements, single-counterparty credit limits, stress-test requirements, and a debt-to-equity limit for companies that the Council has determined pose a grave threat to the financial stability of the United States. Section 165 also permits the Board to establish additional enhanced prudential standards that may include three enumerated standards—a contingent capital requirement, an enhanced public disclosure requirement, a short-term debt limit—and any "other prudential standards" that the Board determines are "appropriate."

For bank holding companies and certain foreign banking organizations, the Board has issued an integrated set of enhanced prudential standards through a series of rulemakings, including the Board's capital plan rule,[1] stress testing rules,[2] resolution plan rule,[3] and the Board's enhanced prudential standards rule under Regulation YY.[4] As part of the integrated enhanced prudential standards applicable to the largest, most complex bank holding companies, the Board also adopted enhanced liquidity requirements through the liquidity coverage ratio (LCR) rule [5] and adopted enhanced leverage capital requirements through a supplementary leverage ratio. Further, the Board issued an enhanced supplementary leverage ratio for the most systemic bank holding companies.[6] This integrated set of standards is designed to result in a more stringent regulatory regime for these companies to increase their resiliency and to mitigate the risk that their failure or material financial distress could pose to U.S. financial stability. The Board expects to issue additional standards through future rulemakings.

In considering the application of enhanced prudential standards to nonbank financial companies supervised by the Board, the Board intends to thoroughly assess the business model, capital structure, risk profile, and systemic footprint of a designated company to determine how the enhanced prudential standards would apply.[7] Consistent with this approach, the Board is considering the application of enhanced prudential standards to General Electric Capital Corporation (GECC), a company that has been designated by the Council for Board supervision.[8] In light of the substantial similarity of GECC's activities and risk profile to that of a similarly-sized bank holding company, the Board is proposing to apply enhanced prudential standards to GECC that are similar to those that apply to large bank holding companies. As described in greater detail below, the Board is proposing to apply: (1) Capital requirements; (2) capital-planning and stress-testing requirements; (3) liquidity requirements; and (4) risk-management and risk-committee requirements. The Board is also proposing to apply certain additional enhanced prudential standards to GECC in light of certain unique aspects related to GECC's activities, risk profile, and structure, including additional independence requirements for GECC's board of directors, restrictions on intercompany transactions between GECC and General Electric Company (GE), and leverage capital requirements that are comparable to the standards that apply to the largest, most systemic banking organizations. In addition, the Board is proposing to require GECC to file certain reports with the Board that are similar to the reports required of bank holding companies.

The Board is inviting public comment on the appropriateness of the proposed enhanced prudential standards that would apply to GECC and on the Board's proposed tailoring of the enhanced prudential standards. The Board believes that it is appropriate to seek public comment on the application of enhanced prudential standards to nonbank financial companies supervised by the Board in order to provide transparency regarding the regulation and supervision of these companies. The public comment process will provide nonbank financial companies supervised by the Board and interested members of the public with the opportunity to comment, and will help guide the Board in future application of enhanced prudential standards to other nonbank financial companies.

## II. Overview of GECC

On July 8, 2013, the Council determined that GECC should be supervised by the Board and subject to enhanced prudential standards. As required by section 113(d) of the Dodd-Frank Act, the Council conducted an annual evaluation of its determination to designate GECC for Board supervision and determined not to rescind that determination on July 31, 2014.

GECC, a wholly owned subsidiary of GE, is one of the largest depository institution holding companies in the United States by assets, with approximately $514 billion in total assets as of September 30, 2014.[9] GECC engages primarily in collateralized lending to middle-market commercial firms and consumers. Approximately 82 percent of GECC's net income in 2013 was derived from its commercial and consumer lending businesses. In its commercial lending operations, GECC focuses primarily on lending and leasing to middle market companies and offers secured commercial loans, equipment financing, and other financial services to companies across a wide range of industries. In its consumer operations, GECC offers European mortgages, auto loans, debt consolidation, private mortgage insurance, and credit cards. GECC is also the largest provider of private label credit cards in the United States. GECC is taking steps to reduce its consumer lending business and focus on businesses that align more closely with GE's commercial and industrial operations. GECC engages in some activities that are not permitted for a bank holding company or a savings and loan holding company.[10] These activities comprise less than 10 percent of GECC's balance sheet and consist of

[1] 12 CFR 225.8.

[2] *See* 12 CFR part 252.

[3] 12 CFR part 243. The Board's resolution plan rule applies by its terms to all nonbank financial companies supervised by the Board. 12 CFR part 243. Under these rules, nonbank financial companies, such as GECC, are required to submit their first resolution plan by July 1 following the date the company is designated by the Council (provided the following July 1 occurs no earlier than 270 days after the date on which the company is designated). GECC submitted its first resolution plan on July 1, 2014. The public portion of GECC's resolution plan can be found on the Board's Web site. *See* Board, *General Electric Capital Corporation Resolution Plan Public Section, available at: http://www.federalreserve.gov/bankinforeg/resolution-plans/ge-capital-1g-20140701.pdf.*

[4] *See* 79 FR 17240 (March 27, 2014).

[5] 12 CFR part 249.

[6] 12 CFR 217.10(a)(5), 217.11(c).

[7] *See* 79 FR 17240, 17245 (March 27, 2014).

[8] At the time the Board issued its proposal to apply enhanced prudential standards to bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more, the Council had not made any final determinations regarding designation of a nonbank financial company. After the close of the comment period for the proposed rules, the Council made a final determination that material financial distress at GECC could pose a threat to U.S. financial stability and that the company should be subject to Board supervision and enhanced prudential standards. Financial Stability Oversight Council, *Basis of the Financial Stability Oversight Council's Final Determination Regarding General Electric Capital Corporation, Inc.* (GECC Determination) (July 8, 2013), *available at: http://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20General%20Electric%20Capital%20Corporation,%20Inc.pdf.*

[9] GECC contributed approximately 51 percent of GE's net earnings in 2013.

[10] GECC is a grandfathered unitary savings and loan holding company under section 10(c)(9)(A) of HOLA and is therefore exempt from the activity and investment restrictions under HOLA. 12 U.S.C. 1467a(c)(9)(A).

equity investments in nonfinancial companies, such as power companies.

Like many large bank holding companies, GECC borrows in the wholesale funding markets. For example, GECC is a large issuer of commercial paper and long-term debt to wholesale counterparties, and uses securitizations of loans and finance receivables as a significant source of funding. Moreover, GECC holds a large portfolio of on-balance sheet financial assets that is comparable to those of the largest bank holding companies, including a large portfolio of investment securities and commercial and consumer loans. Likewise, similar to the largest, most complex banking organizations, GECC makes significant use of derivatives to hedge interest rate risk, foreign exchange risk, and other financial risks.

GE and GECC are savings and loan holding companies by virtue of their control of Synchrony Bank, a federal savings association, and are subject to consolidated supervision by the Board. Synchrony Bank, GECC's largest insured depository institution subsidiary, had approximately $46 billion in total assets and $33 billion in total deposits as of September 30, 2014. Synchrony Bank specializes in consumer lending and consumer deposit products.[11] GECC also has an insured Utah-chartered industrial loan company, GE Capital Bank, which had approximately $20 billion in total assets and $16 billion in total deposits as of September 30, 2014, and specializes in commercial lending and consumer deposit products (other than demand deposit products).[12]

## III. Statutory Requirements for the Application of Enhanced Prudential Standards to Nonbank Financial Companies Supervised by the Board

### *A. Overview*

As the prudential regulator for nonbank financial companies designated by the Council, the Board is charged with establishing enhanced prudential standards to prevent or mitigate risks to the financial stability of the United States that may arise from the material financial distress or failure of such companies. These obligations include helping to ensure the safe and sound operations of the company.[13] In prescribing enhanced prudential standards required by section 165 of the Dodd-Frank Act, section 165(a)(2) permits the Board to tailor the enhanced prudential standards among companies on an individual basis, taking into consideration their "capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board . . . deems appropriate."[14] In addition, under section 165(b)(1), the Board is required to take into account differences among bank holding companies covered by section 165 and nonbank financial companies supervised by the Board, based on statutory considerations.[15]

The factors the Board must consider include: (i) The factors described in sections 113(a) and (b) of the Dodd-Frank Act (12 U.S.C. 5313(a) and (b)); (ii) whether the company owns an insured depository institution; (iii) nonfinancial activities and affiliations of the company; and (iv) any other risk-related factors that the Board determines appropriate.[16] The Board must, as appropriate, adapt the required standards in light of any predominant line of business of a nonbank financial company, including activities for which particular standards may not be appropriate.[17] Section 165(b)(3) also requires the Board, to the extent possible, to ensure that small changes in the factors listed in sections 113(a) and 113(b) of the Dodd-Frank Act would not result in sharp, discontinuous changes in the enhanced prudential standards established by the Board under section 165(b)(1).[18] The statute also directs the Board to take into account any recommendations made by the Council pursuant to its authority under section 115 of the Dodd-Frank Act.[19]

### *B. GECC*

The Board has thoroughly assessed the business model, capital structure, risk profile, and systemic footprint of GECC and has considered the factors set forth in sections 165(a)(2) and 165(b)(3) of the Dodd-Frank Act in proposing the enhanced prudential standards that would apply to GECC. This assessment indicates that GECC's activities and risk profile are similar to those of large bank holding companies, and that enhanced prudential standards similar to those that apply to large bank holding companies would be appropriate.

#### 1. Factors Described in Sections 113(a) and (b) of the Dodd-Frank Act

Section 113(a) provides a list of ten factors[20] that the Council is required to consider in determining whether a nonbank financial company should be supervised by the Board, in addition to any other risk-related factor the Council deems appropriate. The factors include leverage, off-balance sheet exposures, interconnectedness with significant financial counterparties, the nature, scope, size, scale and mix of activities, degree of regulation, and liabilities. In considering these factors the Board notes that, similar to the largest bank holding companies, GECC is a significant participant in the global economy and financial markets, is interconnected to financial intermediaries through its financing activities and its funding model, and is a significant source of credit in the United States. Moreover, GECC's leverage; off-balance sheet exposures; funding and risk profile; asset composition; and the nature, scope, size, scale, concentration, interconnectedness, and mix of its activities are substantially similar to those of many large bank holding companies. As noted above, like many of the largest bank holding companies, GECC's activities focus primarily on

[11] In July 2014, GECC commenced a public offering of approximately 15 percent of the shares of Synchrony Financial, a company that conducts GECC's consumer financing activities and that controls Synchrony Bank. GECC has indicated that it will divest the remaining 85 percent of Synchrony Financial in the near future.

[12] Under section 2(c)(2) of the Bank Holding Company Act (BHC Act), certain industrial loan companies, such as GE Capital Bank, are not included within the definition of "bank" under the BHC Act. Therefore, any company controlling such an industrial loan company is not a bank holding company subject to the BHC Act. *See* 12 U.S.C. 1841(c)(2)(H).

[13] The Board has examination, reporting, and enforcement authority over nonbank financial companies that includes takings actions to ensure the safety and soundness of the nonbank financial company. 12 U.S.C. 5361(b), 5362.

[14] 12 U.S.C. 5365(a)(2).

[15] *See* 12 U.S.C. 5365(b)(3).

[16] 12 U.S.C. 5365(b)(3)(A).

[17] 12 U.S.C. 5365(b)(3)(D).

[18] 12 U.S.C. 5365(b)(3)(B).

[19] 12 U.S.C. 5365(b)(3)(C).

[20] With respect to a domestic nonbank financial company supervised by the Board, the factors include: (A) The extent of the leverage of the company; (B) the extent and nature of the off-balance-sheet exposures of the company; (C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies; (D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system; (E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities; (F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse; (G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company; (H) the degree to which the company is already regulated by one or more primary financial regulatory agencies; (I) the amount and nature of the financial assets of the company; (J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and (K) any other risk-related factors that the Council deems appropriate.

lending and leasing to commercial companies and on consumer financing and deposit products. Moreover, similar to many large bank holding companies, GECC borrows in the wholesale funding markets by issuing commercial paper and long-term debt to wholesale counterparties, and makes significant use of derivatives to hedge interest rate risk, foreign exchange risk, and other financial risks. GECC also holds a large portfolio of on-balance sheet financial assets, such as investment securities and commercial and consumer loans, which is comparable to those of the largest bank holding companies. In terms of the degree to which a company is already regulated, the Board notes that GECC is a savings and loan holding company subject to prudential supervision by the Board, but that sections 165 and 166 do not apply by their terms to savings and loan holding companies with $50 billion or more in total consolidated assets, such as GECC, as they apply to bank holding companies.

Due to the substantial similarity between the activities and risk profile of the largest bank holding companies and GECC as described above, the Board is proposing to apply enhanced prudential standards to GECC that are similar to those that would apply to a large bank holding company. Similar to the standards imposed on the largest bank holding companies, the proposed standards are designed to ensure the continued resiliency of GECC during periods of material financial distress, so that the company would be in a position to continue to meet its obligations to its creditors and counterparties, as well as to continue to serve as a financial intermediary during a period of financial and economic stress.

2. Control of an Insured Depository Institution

GECC controls two insured depository institutions that offer traditional banking products to both consumer and commercial customers.[21] Similar to the insured depository institutions of large bank holding companies, GECC's subsidiary insured depository institutions serve as a source of funding and as a source of credit for a portion of its lending activities. As such, GECC's control of subsidiary insured depository institutions supports application of the enhanced prudential standards to the company in a manner that is similar to how those standards apply to large bank holding companies.

3. Nonfinancial Activities and Affiliations of the Company

The vast majority (approximately 82 percent) of GECC's activities, such as lending and leasing activities, are those that a bank holding company may engage in under sections 4(c) and 4(k) of the BHC Act, and are similar to those in which the largest bank holding companies engage. The remaining portion of GECC's activities are generally limited to those that are permissible for savings and loan holding companies under the Home Owners' Loan Act (HOLA).[22] As noted, only a small portion of GECC's activities (less than 10 percent) are those that would be impermissible for a bank holding company under the BHC Act or for a savings and loan holding company under HOLA. These activities are typically limited to equity investments in certain nonfinancial companies. Accordingly, as the large majority of GECC's activities are similar to those of a bank holding company, the Board believes that it is appropriate to apply prudential standards to GECC that are comparable to those that would apply to a large bank holding company.

4. Any Other Risk-Related Factors That the Board Determines Appropriate

In addition to the factors required under sections 113 and 165 of the Dodd-Frank Act, the Board is permitted to take any other risk-related factors into consideration in the development of the proposed enhanced prudential standards for GECC. As noted, GECC is a wholly owned subsidiary of GE. The Board believes that the enhanced prudential standards applied to GECC should take into account GECC's particular circumstances as a lower-tier designated nonbank financial company. The Council, in making the determination to designate GECC, focused on the adverse effect on the financial stability of the United States that could arise from material financial distress at GECC. The Council found that GECC itself is an entity predominantly engaged in financial activities, is a significant participant in the global economy and financial markets, and is interconnected to financial intermediaries through its financing activities and its funding model. Because the Board's regulation of GECC as a nonbank financial company designated for its supervision must focus on the financial stability implications of potential financial distress at GECC, it is prudent to address the effect of any conflicts of interest that may arise in interactions with GE and its affiliates, including the possibility that such conflicts could have an adverse effect on the financial condition of GECC. Accordingly, the Board is proposing to require GECC to meet certain enhanced prudential standards designed to ensure the safe and sound operations of GECC and to address the potential for conflict with GE and its affiliates. As further discussed below, the Board's proposed enhanced prudential standards would require GECC to have 25 percent or two members, whichever is greater, of its board of directors to be independent of GE's and GECC's management and GE's board of directors. The Board is also proposing to impose a requirement that transactions between GECC and GE be conducted on market terms.

Due to the substantial similarity in the business model, capital structure, and risk profile between GECC and large bank holding companies, the Board is not proposing to consider other risk-related factors in the adoption of enhanced prudential standards for GECC. Nevertheless, consistent with its authority as the prudential supervisor of designated nonbank financial companies, the Board expects to continue to monitor and assess GECC's activities and risk profile, and, in accordance with the requirements of sections 113 and 165 of the Dodd-Frank Act, to take into account any additional factors or considerations, as necessary, in the adoption of future standards, or in the future tailoring of any imposed standards.

1. What other factors, if any, should the Board take into consideration when proposing to apply enhanced prudential standards to GECC, or in tailoring the standards to GECC?

5. Tailoring of Proposed Prudential Standards

As noted, section 165 permits the Board to tailor the application of enhanced prudential standards to companies covered under section 165 based on certain unique characteristics of the company. Although the majority of the enhanced prudential standards the Board is proposing to adopt are identical to those that apply to large bank holding companies, the Board is proposing to tailor certain of the proposed standards, in light of certain characteristics unique to GECC. For example, in developing the proposed capital requirements, the Board has taken into consideration the fact that

[21] As discussed above, GECC is in the process of divesting Synchrony Bank. Nevertheless, following this divestiture, GECC will continue to control GE Capital Bank.

[22] GECC is a grandfathered unitary savings and loan holding company under section 10(c)(9)(A) of HOLA and is therefore exempt from the activity and investment restrictions under HOLA. 12 U.S.C. 1467a(c)(9)(A).

GECC has not previously been subject to regulatory capital requirements and has not developed the infrastructure and systems required to begin calculating its capital ratios under the Board's advanced approaches risk-based capital requirements (advanced approaches rule). Thus, although GECC would meet the relevant asset threshold for application of the advanced approaches rule, the Board is not proposing to require GECC to calculate its capital ratios using the advanced approaches rule. In addition, in light of the Council's determination that material financial distress at GECC could pose a threat to U.S. financial stability, the Board is proposing to impose leverage capital requirements on GECC that are comparable to the standards that apply to the largest, most systemic banking organizations.

Finally, the Board notes that many of the proposed standards, including the risk-management requirements, liquidity risk-management, and liquidity stress-testing requirements of Regulation YY; and capital-planning and stress-testing requirements require the covered company to tailor its compliance framework based on the size, complexity, structure, risk profile, and activities of the organization. Thus, the Board would expect that, in implementing the enhanced prudential standards, GECC would tailor its compliance framework to suit the company's complexity, structure, risk profile, and activities. Accordingly, the Board believes that the proposed enhanced prudential standards discussed below adequately reflect these unique characteristics of GECC.

2. Should the Board consider tailoring any of the other proposed enhanced prudential standards in light of GECC's business model, capital structure, and risk profile?

## IV. Proposed Enhanced Prudential Standards To Apply to GECC

### *A. Capital Requirements*

The Board has long held the view that a bank holding company generally should hold capital that is commensurate with its risk profile and activities, so that the firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress.[23] In July 2013, the Board issued a final rule implementing regulatory capital reforms reflecting agreements reached by the Basel Committee on Banking Supervision (Basel Committee) in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" (Basel III)[24] and certain changes required by the Dodd-Frank Act (revised capital framework).[25] The revised capital framework introduced a new minimum common equity tier 1 risk-based capital ratio of 4.5 percent, raised the minimum tier 1 risk-based capital ratio from 4 percent to 6 percent, introduced a common equity tier 1 capital conservation buffer of 2.5 percent of risk-weighted assets, required all banking organizations to meet a 4 percent minimum leverage ratio (the generally-applicable leverage ratio), implemented stricter eligibility criteria for regulatory capital instruments, and introduced a new standardized methodology for calculating risk-weighted assets. Because these regulatory capital reforms only apply generally to top-tier savings and loan holding companies, GECC is not subject to the revised capital framework.[26] In addition, the revised capital framework would not apply to GE because it substantially engages in commercial activities.

As noted above, the Council has determined that GECC's material financial distress could pose a threat to U.S. financial stability. Section 165 provides that the enhanced prudential standards for nonbank financial companies must include risk-based capital requirements and leverage limits that "are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States" unless the Board, in consultation with the Council, "determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company . . . or structure."[27] Because GECC's activities and balance sheet are substantially similar to those of a large bank holding company, the Board's revised capital framework is appropriate for GECC and will appropriately reflect risks from GECC's activities, balance sheet, and funding profile. Accordingly, other than as described below, the Board is proposing to require GECC to comply with the regulatory capital framework applicable to a large bank holding company including the minimum common equity tier 1, tier 1, and total risk-based capital ratios, the minimum generally-applicable leverage ratio, and any restrictions on distributions or discretionary bonus payments associated with the capital conservation buffer, beginning July 1, 2015, consistent with any transition periods in the revised capital framework.

In addition to the generally applicable capital adequacy requirements described above, the Board's revised capital framework contains measures applicable to the largest, most interconnected bank holding companies. For bank holding companies with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures (advanced approaches banking organizations), these include the advanced approaches rule, a supplementary leverage ratio of tier 1 capital to total leverage exposure of 3 percent, a requirement to include accumulated other comprehensive income (AOCI) in tier 1 capital, and restrictions on distributions and discretionary bonus payments associated with the countercyclical capital buffer. A bank holding company with more than $700 billion in total consolidated assets or $10 trillion in assets under custody also is required to maintain a buffer of at least 2 percent above the minimum supplementary leverage capital requirement of 3 percent, an enhanced supplementary leverage ratio (eSLR), in order to avoid restrictions on capital distributions and discretionary bonus payments to executive officers.[28]

The Board is not proposing to require GECC to calculate its capital ratios using the advanced approaches rule. The advanced approaches rule requires the development of models for calculating advanced approaches risk-weighted assets, and can require a lengthy parallel run period of no less than four

[23] *See* Supervision and Regulation Letter 12–17, *Consolidated Supervision Framework for Large Financial Institutions* (December 12, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm;* 12 CFR part 217; 12 CFR 225.8; Supervision and Regulation Letter 99–18, *Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles* (July 1, 1999), *available at: http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.*

[24] Basel III was published in December 2010 and revised in June 2011. See Basel Committee, Basel III: *A global framework for more resilient banks and banking systems* (December 2010), *available at: http://www.bis.org/publ/bcbs189.pdf.*

[25] *See* 78 FR 62018 (October 11, 2013). The revised capital framework also reorganized the Board's capital adequacy guidelines into a harmonized, codified set of rules, located at 12 CFR part 217. The requirements of 12 CFR part 217 came into effect on January 1, 2014, for bank holding companies subject to the advanced approaches rule, and as of January 1, 2015 for all other bank holding companies.

[26] 12 CFR 217.2.

[27] 12 U.S.C. 5365.

[28] *See* 79 FR 24528 (May 1, 2014).

consecutive calendar quarters during which the institution must submit its models for supervisory approval. While GECC exceeds the threshold for application of the requirements that apply to advanced approaches banking organizations, GECC has not previously been subject to regulatory capital requirements and has not developed the infrastructure and systems required to begin calculating its capital ratios under the advanced approaches rule. Moreover, because GECC will need time to build and implement the internal systems and infrastructure required to comply with other requirements of the Board's order imposing enhanced prudential standards, the Board is not proposing to require GECC to develop the models required to comply with the advanced approaches rule. Rather, the Board is proposing to apply the standardized risk-based capital rules, leverage rules, and capital planning and supervisory stress-testing requirements to GECC.

However, the Board is proposing to require GECC to comply with other requirements that apply to advanced approaches banking organizations, including restrictions on distributions and discretionary bonus payments associated with the countercyclical capital buffer, a minimum supplementary leverage ratio of 3 percent, and the requirement to include AOCI in regulatory capital. These are aspects of the revised capital framework that are appropriate for the largest, most interconnected banking organizations and therefore apply to advanced approaches banking organizations, but are not part of the advanced approaches rule. The proposed application of these requirements to GECC will ensure that GECC holds sufficient capital to withstand financial stress, mitigating its risk to U.S. financial stability. Application of these requirements to GECC would not require GECC to develop models for complying with the advanced approaches rule, would not require completion of a successful parallel run as contemplated in the advanced approaches rule, and would not require the allocation of significant additional operational resources.

As noted above, the Board, as the prudential regulator of nonbank financial companies designated by the Council, is obligated to impose standards that are designed to maintain the safety and soundness of GECC in order to mitigate the risk of material financial distress at GECC. The Board is also proposing to require GECC to comply with the eSLR, which is designed to minimize leverage at banking organizations that pose substantial systemic risk, thereby strengthening the ability of such organizations to remain a going concern during times of economic stress and minimizing the likelihood that problems at these organizations would contribute to financial instability. The Board believes that the maintenance of a strong base of capital by the most systemic U.S. banking organizations and GECC is particularly important because capital shortfalls at these institutions have the potential to result in significant adverse economic consequences and to contribute to systemic distress. While GECC's total consolidated assets are below the asset thresholds for bank holding companies that are subject to the eSLR ($700 billion in total consolidated assets or $10 trillion in assets under custody), the Board has analyzed GECC's size, scope of operations, activities, and systemic importance, and, in light of the Council's determination that material financial distress at GECC could pose a threat to U.S. financial stability, is proposing to require GECC to comply with the restrictions on distributions and discretionary bonuses associated with the eSLR.[29]

The Board is required under section 165 to establish enhanced risk-based and leverage capital requirements for nonbank financial companies supervised by the Board and large bank holding companies that "are more stringent than the standards applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States."[30] For the largest banking organizations, the Board notes that the Financial Stability Board has established a framework to identify global and domestic systemically important banks[31] (G–SIBs and D–SIBs, respectively) that are subject to the Basel Committee's enhanced supervisory framework, which includes enhanced capital surcharges.[32] At this time, the Board is not proposing to categorize GECC as a G–SIB or a D–SIB, or proposing to automatically subject GECC to all of the same standards that apply to the largest, most systemic U.S. banking organizations. With respect to any future requirements, the Board will analyze GECC's size, scope of operations, activities, and systemic importance to determine whether the proposed standard is appropriate in light of these characteristics of the company. For example, the Board expects to seek comment on additional enhancements to the risk-based capital rules for largest, most systemic bank holding companies in the future, and will consider whether applying similar enhancements to the risk-based capital rules to GECC is appropriate after considering GECC's size, scope of operations, activities, and systemic importance. The Board would seek comment on any additional proposed enhancements.

3. Due to the similarity in structure and activities of GECC with that of a bank holding company, the Board has proposed to apply capital standards to GECC that are generally consistent with the requirements imposed on a large bank holding company. Should the Board consider altering any of the proposed capital requirements that it is considering applying to GECC?

4. Should the Board consider applying any additional capital standards to GECC?

*B. Capital Planning Requirements*

1. Capital Plan Rule

The recent financial crisis highlighted a need for large bank holding companies to incorporate into their capital planning forward-looking assessments of capital adequacy under stressed conditions. The crisis also underscored the importance of strong internal capital planning practices and processes among large bank holding companies. The Board issued the capital plan rule to build upon the Board's existing supervisory expectation that large bank holding companies have robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. By helping to ensure that the largest bank holding companies have sufficient capital to withstand significant stress and to continue to operate, capital plan

[29] The restrictions that apply to insured depository institution subsidiaries of companies covered under the eSLR would not apply to GECC's depository institution subsidiaries without action by the appropriate Federal banking agency supervising Synchrony Bank and GE Capital Bank.

[30] 12 U.S.C. 5365.

[31] Financial Stability Board, *Reducing the moral hazard posed by systemically important financial institutions, FSB Recommendations and Time Lines* (October 20, 2010), *available at: http://www.financialstabilityboard.org/publications/r_101111o.pdf;* Financial Stability Board, *Extending the G–SIFI Framework to domestic systemically important banks* (April 16, 2012), *available at: http://www.financialstabilityboard.org/publications/r_120420b.pdf.*

[32] Basel Committee, *Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement* (July 2013), *available at: http://www.bis.org/publ/bcbs255.pdf;* Basel Committee, *A framework for dealing with domestic systemically important banks* (October 2012), *available at: https://www.bis.org/publ/bcbs233.pdf.*

reviews also help the Board meet its macro-prudential supervisory objective of helping to ensure that the financial system as a whole can continue to function under stressed conditions.

The capital plan rule requires each bank holding company with $50 billion or more in total consolidated assets to submit an annual capital plan to the Board describing its planned capital actions and demonstrating its ability to meet a 5 percent tier 1 common capital ratio and maintain capital ratios above the Board's minimum regulatory capital ratios under both baseline and stressed conditions over a forward-looking planning horizon.[33] A capital plan must also include an assessment of a bank holding company's sources and uses of capital reflecting the size, complexity, risk profile, and scope of operations of the company, assuming both expected and stressed conditions.

Under the capital plan rule, the Board annually evaluates a large bank holding company's capital adequacy and capital planning practices and the comprehensiveness of the capital plan, including the strength of the underlying analysis. The Comprehensive Capital Analysis and Review (CCAR) is the Board's supervisory process for reviewing capital plans submitted by bank holding companies under the capital plan rule. As part of CCAR, the Board conducts a quantitative assessment of each large bank holding company's capital adequacy under an assumption of stressed conditions and conducts a qualitative assessments of the company's internal capital planning practices, each of which can provide a basis on which the Board may object to a company's capital plan. If the Board objects to a bank holding company's capital plan, the company may not make any capital distribution other than those approved in writing by the Board or the appropriate Reserve Bank. A bank holding company that receives an objection may submit a revised capital plan for review by the Board.

The Federal Reserve conducts its quantitative assessment of a large bank holding company's capital plan based on the supervisory stress test conducted under the Board's rules implementing the stress tests required under the Dodd-Frank Act, discussed below, combined with the bank holding company's planned capital actions under the baseline scenario. This assessment helps determine whether a bank holding company would be capable of meeting supervisory expectations for its regulatory capital ratios even if stressed conditions emerge and the company does not reduce planned capital distributions.

In the CCAR qualitative assessment, the Board evaluates each large bank holding company's risk-identification, risk-measurement, and risk-management practices supporting the capital planning process, including estimation practices used to produce stressed loss, revenue, and capital ratios, as well as the governance and controls around these practices. In reviewing the company's capital plan, the Board considers the comprehensiveness of the capital plan, the reasonableness of the company's assumptions and analysis underlying the capital plan, and the company's methodologies for reviewing the robustness of its capital adequacy process. The Board may object to a capital plan based on deficiencies in a bank holding company's capital planning processes, even if the company maintained regulatory capital ratios above minimum requirements throughout the planning horizon under stressed scenarios.

2. Proposed Capital Planning Requirements To Be Applied to GECC

To ensure that GECC continues to maintain sufficient capital and has internal processes for assessing its capital adequacy that appropriately account for the company's risks, the Board is proposing to require GECC to comply with the Board's capital plan rule, 12 CFR 225.8, and to submit a capital plan for the capital plan cycle beginning January 1, 2016.

As described above, GECC's activities, risk profile, and balance sheet are similar to those of large bank holding companies. Accordingly, requiring GECC to comply with the Board's capital plan rule as if it were a bank holding company will ensure that GECC holds capital that is commensurate with its risk profile and activities, can meet its obligations to creditors and other counterparties, and can continue to serve as a financial intermediary through periods of financial and economic stress.[34]

The Board recognizes that unlike domestic bank holding companies, GECC is an intermediate holding company of a larger, publicly traded company. The Board's capital plan rule will help ensure that GECC manages its capital, and any capital distributions to its parent, in a manner that is commensurate with its risks and consistent with its safety and soundness through the Federal Reserve's review and non-objection to GECC's capital plan.[35] As discussed above, the capital plan rule will act as a counterweight to pressures that a company may face to make capital distributions during a period of economic stress helping to mitigate the risk of material financial distress at GECC.

The Board recognizes that GECC likely will need time to build and implement the internal systems necessary to fully meet the requirements of the capital plan rule and the CCAR process. Accordingly, for GECC's first capital plan cycle, which would begin on January 1, 2016, the Board's quantitative assessment of GECC's capital plan will not be based on supervisory stress test estimates conducted under the Board's stress test rules, as described below.[36] Instead, the Board intends to conduct a more limited quantitative assessment of GECC's capital plan based on GECC's own stress scenario and any scenarios provided by the Board and a qualitative assessment of GECC's capital planning processes and supporting practices. This approach would be consistent with the capital plan review (CapPR) process that the Board used to evaluate the initial capital plan submissions of bank holding companies that were subject to the capital plan rule but that did not participate in the 2009 Supervisory Capital Assessment Program.

The Board also expects to communicate to GECC the Board's expectations on capital planning practices and capital adequacy processes in connection with its first capital plan submission. Although the Board's stress test and capital plan rules establish requirements for all banking organizations that are subject to the rules, the Board is tailoring its expectations for companies of different sizes, scope of operations, activities, and systemic importance. Notably, the Board has significantly heightened supervisory expectations for the largest and most complex bank holding companies

[33] 12 CFR 225.8.

[34] *See* Supervision and Regulation Letter 12–17, *Consolidated Supervision Framework for Large Financial Institutions* (December 12, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm;* 12 CFR part 217; 12 CFR 225.8; Supervision and Regulation Letter 99–18, *Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles* (July 1, 1999), *available at: http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.*

[35] GECC will not be the only intermediate holding company subject to the capital plan rule and CCAR. Notably, some U.S. bank holding company subsidiaries of foreign banking organizations participate in CCAR. In addition, under the Board's intermediate holding company rule, all foreign banking organizations with $50 billion or more in U.S. non-branch assets will be required to form a U.S. intermediate holding company that will be subject to the capital plan rule. *See* Subpart O to 12 CFR 252.

[36] *See* Subpart E to 12 CFR part 252.

regarding all aspects of capital planning and expects these bank holding companies to have capital planning practices that incorporate existing leading practices.[37] The Board would expect to tailor its supervisory expectations for GECC to account for any material differences between the company and large bank holding companies.

5. Should the Board consider applying any additional capital planning requirements to GECC?

*C. Stress-Testing Requirements*

1. Dodd-Frank Act Stress-Tests Rule

Section 165 of the Dodd-Frank Act requires the Board to conduct annual supervisory stress tests of bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board and also requires the Board to issue regulations that require those companies to conduct company-run stress tests semi-annually. In 2012, the Board, in coordination with the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Insurance Office adopted stress testing rules under section 165(i) for large bank holding companies and nonbank financial companies (stress test rule).[38] The stress test rule establishes a framework for the Board to conduct annual supervisory stress tests and requires these companies to conduct semi-annual company-run stress tests.[39]

The stress tests conducted under the Board's stress test rule are complementary to the Board's review of a large bank holding company's capital plan in CCAR. These stress tests use stylized scenarios and capital action assumptions specified in the stress testing rules to calculate the post-stress capital ratios, while the CCAR post-stress capital ratios use the bank holding company's planned capital actions in the baseline scenario. The capital action assumptions in the Board's stress test rules are intended to make the results of the stress tests more comparable across institutions, which enhances the quality of the required public disclosure of the stress-testing results. There is no post-stress minimum capital ratio requirement for the stress tests required under the stress test rule.

As noted, under the stress test rule, large bank holding companies are also subject to mid-cycle stress tests, in which companies design their own stress scenarios based on the definitions in the Board's stress test rules. For both the annual and mid-cycle company-run stress tests, large bank holding companies must disclose the results of their company-run stress test conducted under the severely adverse scenario.

2. Proposed Stress-Testing Requirements To Be Applied to GECC

The Board is proposing to require GECC to comply with the stress-testing requirements applicable to bank holding companies with $50 billion or more in total consolidated assets under the stress test rule (subparts E and F of Regulation YY) in the stress-testing cycle that would commence on January 1, 2017.[40] Similar to the proposed application of the capital plan rule to GECC, the Board is proposing to apply the Board's stress test rule to GECC in the same manner as it currently applies to large bank holding companies due to the similarity in activities, risk profile, and balance sheet between GECC and large bank holding companies. In addition, because the Board's supervisory stress tests under its stress test rule are conducted on the basis of standardized scenarios and capital assumptions, any supervisory stress testing of GECC would provide a horizontal assessment of GECC's capital adequacy compared with that of large bank holding companies that have comparable activities, risk profiles, and balance sheets. Moreover, the company-run stress testing requirements under the Board's stress test rule will ensure that GECC develops the necessary systems and processes to evaluate its capital adequacy on an ongoing basis.

Subjecting GECC to the stress testing requirements in the stress testing cycle beginning on January 1, 2017, would allow GECC the time to develop appropriate systems and processes to conduct the stress tests and to provide the data and other information that the Board would require in connection with these tests. This approach would be consistent with the approach taken by the Board for bank holding companies with $50 billion or more in total consolidated assets that did not participate in the Supervisory Capital Assessment Program. The Board delayed application of the stress-testing requirements for these companies in order to provide them additional time to develop appropriate systems and to gather relevant information to comply with the stress-testing requirements.

The Board expects to communicate to GECC any further expectation the Board may have regarding the company-run stress tests conducted under the stress test rule. Requiring GECC's compliance with the stress test rule beginning on January 1, 2017, would also allow the Board adequate time to collect data from GECC to further assess its activities and risk profile to help the Board appropriately tailor the stress testing requirements based on GECC's systemic footprint, which may include additional components or scenarios.

6. Should the Board consider applying any additional stress testing requirements to GECC?

7. Should the Board consider an alternate time frame for GECC's compliance with the stress testing requirements? If so, why?

*D. Liquidity Requirements*

Section 165(b) of the Dodd-Frank Act directs the Board to adopt enhanced liquidity requirements for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board.[41] Liquidity is measured by a company's capacity to efficiently meet its expected and unexpected cash outflows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the company. The financial crisis of 2008–2009 illustrated that liquidity can evaporate quickly and cause severe stress in the financial markets, and demonstrated that even solvent financial companies may experience material financial distress if they do not manage their liquidity in a prudent manner. Through recent rulemakings and guidance, the Board has established quantitative liquidity requirements and liquidity risk-management standards in order to ensure financial companies' resiliency during periods of financial market stress.

1. LCR

On September 3, 2014, the Board adopted a final rule that implements a quantitative liquidity requirement consistent with the LCR standard established by the Basel Committee.[42] The requirement is designed to promote the short-term resilience of the liquidity risk profile of internationally active

[37] Board, *Capital Planning at Large Bank Holding Companies: Supervisory Expectations and Range of Current Practice* at pg. 3 (August 19, 2013), *available at: http://www.federalreserve.gov/bankinforeg/bcreg20130819a1.pdf.*

[38] 77 FR 62378 (Oct. 12, 2012); Subparts E and F to 12 CFR part 252.

[39] 77 FR 62378 (Oct. 12, 2012); Subparts E and F to 12 CFR part 252.

[40] Subparts E and F to 12 CFR part 252.

[41] 12 U.S.C. 5365(b)(1)(A)(ii).

[42] 79 FR 61440 (October 10, 2014); 12 CFR part 249.

banking organizations, thereby improving the banking sector's ability to absorb shocks arising from financial and economic stress, and to further improve the measurement and management of liquidity risk. The LCR standard establishes a quantitative minimum LCR that requires a company subject to the rule to maintain an amount of high-quality liquid assets (HQLA) (the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio).[43] The ability to rapidly monetize such high-quality liquid assets enables a covered company to meet its liquidity needs during an acute short-term liquidity stress scenario.

The Board did not apply the LCR standard to nonbank financial companies in the final LCR rule. Rather, similar to the approach the Board followed in the adoption of Regulation YY, the Board indicated that, following designation of a nonbank financial company for supervision by the Board, the Board would thoroughly assess the business model, capital structure, and risk profile of the designated company to determine how the LCR standard should apply, and if appropriate, would tailor application of the standards by order or regulation to that nonbank financial company or to a category of nonbank financial companies.

2. Regulation YY

The liquidity requirements in Regulation YY require bank holding companies with total consolidated assets of $50 billion or more to comply with liquidity risk-management requirements (covered bank holding company), conduct internal liquidity stress tests, and hold a buffer of highly-liquid assets that is sufficient to meet the company's projected net stressed cash-flow need over a 30-day period based on the results of such stress tests.[44]

The liquidity risk-management requirements of Regulation YY include requirements that the board of directors of the bank holding company approve an acceptable level of liquidity risk that the bank holding company may assume in connection with its operating strategies (liquidity risk tolerance), receive and review information from senior management regarding the company's compliance with the established liquidity risk tolerance, and approve and periodically review liquidity risk-management strategies, policies, and procedures established by senior management.[45] Regulation YY requires senior management of a covered bank holding company to establish and implement liquidity risk-management strategies, policies, and procedures, approved by the company's board of directors; review and approve new products and business lines; and evaluate liquidity costs, benefits and risks related to new business lines and products. In addition, Regulation YY requires a covered bank holding company to establish and maintain procedures for monitoring collateral, legal entity, and intraday liquidity risks, and requires an independent review of a covered bank holding company's liquidity risk-management processes and its liquidity stress-testing processes and assumptions.

Regulation YY requires covered bank holding companies to produce comprehensive cash-flow projections at least monthly that project cash flows arising from assets, liabilities, and off-balance sheet exposures, over short-term and long-term horizons.[46] In addition, covered bank holding companies must establish and maintain a contingency funding plan that sets forth strategies for addressing liquidity and funding needs during liquidity stress events.[47] The contingency funding plan must be approved by the bank holding company's risk committee and must include procedures to monitor emerging liquidity stress events.

Regulation YY also requires a covered bank holding company to conduct monthly internal liquidity stress tests, and to maintain a buffer of highly liquid assets based on the results of the stress tests. The liquidity stress test requirements are based on firm-specific stress scenarios and assumptions tailored to the specific products and risk profile of the company. In conducting these liquidity stress tests, the firm must use a minimum of three stress scenarios designed by the firm (market, idiosyncratic or combination) and a minimum of three time horizons (30, 60, 90 day period).[48]

Regulation YY's liquidity requirements are designed to complement the requirements of the LCR, as described above. Regulation YY's internal liquidity stress-test requirements provide a view of an individual firm under multiple scenarios and include assumptions tailored to the specific products and risk profile of the company and the idiosyncratic aspects of the firm's liquidity profile, while the standardized measure of liquidity adequacy under the LCR is designed to facilitate a transparent assessment of a covered bank holding company's liquidity position under a standard stress scenario and facilitates comparison across firms.

3. Supervisory Guidance

Regulation YY builds on the Board's supervisory framework for liquidity, including guidance set forth in the Board's Supervision and Regulation (SR) letter 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management, issued in March 2010.[49] SR 10–6 reiterates the process that institutions should follow to appropriately identify, measure, monitor, and control their funding and liquidity risk. In particular, the guidance re-emphasizes the importance of cash-flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal well-developed contingency funding plan as primary tools for measuring and managing liquidity risk. The guidance also explains the expectation that institutions manage liquidity risk using processes and systems that are commensurate with the institution's complexity, risk profile, and scope of operations.

4. Application to GECC

In designating GECC as a nonbank financial company that should be subject to Board supervision, the Council noted that:

If GECC were unable to access funding markets, GECC could either reduce its

[43] Under the LCR standard, certain categories of assets may qualify as eligible HQLA and may contribute to the HQLA amount if they are unencumbered by liens and other restrictions on transfer and can therefore be converted quickly into cash without reasonably expecting to incur losses in excess of the applicable LCR haircuts during a stress period. A covered company's total net cash outflow amount is determined under the final rule by applying outflow and inflow rates, which reflect certain standardized stressed assumptions, against the balances of a covered company's funding sources, obligations, transactions, and assets over a prospective 30 calendar-day period. Inflows are limited to 75 percent of outflows, to ensure that covered companies are maintaining sufficient on-balance-sheet liquidity and are not overly reliant on inflows, which may not materialize in a period of stress.

[44] 12 CFR 252.34, 252.35.

[45] 12 CFR 252.34(a).

[46] 12 CFR 252.34(e).

[47] 12 CFR 252.34(f).

[48] 12 CFR 252.35.

[49] SR letter 10–6 incorporated the Basel Committee's "Principles for Sound Liquidity Risk Management and Supervision." Basel Committee, *Principles for Sound Liquidity Risk Management and Supervision* (September 2008), *available at: http://www.bis.org/publ/bcbs144.htm.* See *also* Supervision and Regulation Letter SR 10–6, *Interagency Policy Statement on Funding and Liquidity Risk Management*, 75 FR 13656 (March 17, 2010), *available at: http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.pdf.*

provision of credit or be forced to sell assets quickly to fund its operations and meet its obligations. If GECC had to rapidly liquidate assets, the impact could drive down asset prices and cause balance sheet losses for other large financial firms on a scale similar to those that could be caused by asset sales by some of the largest U.S. BHCs. The resulting capital losses across financial firms, particularly during a time of general economic distress, could exacerbate the stresses on the financial system and economy by forcing other firms to sell assets and draw on their credit lines to meet liquidity pressures. If GECC were unable to access funding markets, there could be a reduction in credit availability, which could lead to a broader reduction in economic activity.[50]

In order to promote the short-term resilience of GECC, improve its ability to withstand financial and economic stress, and to mitigate the potential adverse effects on other financial firms and markets, the Board is proposing to require GECC to manage its liquidity in a manner that is comparable to a bank holding company subject to the LCR standard, Regulation YY, and the Board's supervisory guidance.[51] GECC, like a large bank holding company, is primarily a lender and lessor to commercial entities and consumers, and is substantially involved in the provision of credit in the United States. Similar to large bank holding companies, GECC is also an active participant in the capital markets and relies on wholesale funding, such as commercial paper held by institutional investors and committed lines of credit provided by large commercial banks, exposing the company to liquidity risks.

Therefore, to ensure that GECC has sufficient liquidity to meet outflows during a period of significant financial stress, and given the similarities between its operations and risk with those of large bank holding companies, the Board is proposing to apply the LCR standard under 12 CFR part 249 that would apply to advanced approaches banking organizations, without change, to GECC beginning July 1, 2015. GECC would be subject to the same transition periods and compliance timelines as all other advanced approaches banking organizations that do not have $700 billion in total consolidated assets or $10 trillion in assets under custody, including the temporary monthly LCR calculation until July 1, 2016, and the requirement to maintain an LCR of 80 percent from July 1, 2015 to December 31, 2015, an LCR of 90 percent from January 1, 2016 to December 31, 2016, and an LCR of 100 percent thereafter.[52]

The standardized requirements of the LCR would allow for horizontal comparisons between GECC and other companies with similar balance sheets and risk profiles. Because the LCR applies outflow and inflow rates that are based on a covered bank holding company's particular risk profile and activities, the LCR requirements would be tailored to GECC's activities, balance sheet, and risk profile, and would help ensure that GECC holds sufficient HQLA to meet the expected outflows for such activities over a 30 calendar-day period.[53]

To complement the LCR requirements, the Board believes that the individualized liquidity risk-management requirements established in Regulation YY for bank holding companies with $50 billion or more in total consolidated assets are appropriate for GECC, and is proposing to apply them, without change, to GECC beginning July 1, 2015.[54] The firm-specific liquidity risk management and stress testing requirements of Regulation YY would help ensure that GECC develops the necessary compliance infrastructure to evaluate the liquidity risk profile of its operations on a continuing basis. The liquidity risk management and stress testing requirements of Regulation YY require the covered bank holding company to tailor its compliance framework to the particular size, complexity, structure, risk profile, and activities of the organization. Thus, in implementing these requirements, GECC would be expected to tailor its compliance framework to suit the company's structure. Finally, the Board is also proposing to apply SR 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management, and would require GECC to comply with the expectations outlined in this letter by July 1, 2015.

8. Are there other liquidity standards that the Board should consider applying to GECC, and if so, what are they?

9. Should the Board consider tailoring the proposed liquidity requirements to GECC? If so, which of the requirements should the Board consider tailoring based on GECC's activities, balance sheet and risk profile?

*E. Risk-Management and Risk-Committee Requirements*

Sound enterprise-wide risk management by large financial companies reduces the likelihood of their material distress or failure and thus promotes financial stability. During the recent financial crisis, a number of companies that experienced material financial distress or failure had significant deficiencies in key areas of risk management. Senior managers at successful companies were actively involved in risk management, including determining the company's overall risk preferences and creating the incentives and controls to induce employees to abide by those preferences. The boards of directors of these successful companies were actively involved in determining the company's risk tolerance. Successful risk management also depends on senior managers having access to adaptive management information systems to identify and assess risks based on a range of dynamic measures and assumptions.

1. Section 165 and Regulation YY

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish enhanced risk-management requirements for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board.[55] In addition, section 165(h) directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more and publicly traded nonbank financial companies to establish risk committees.[56] Section 165(h) requires the risk committee to be responsible for the oversight of the enterprise-wide risk-management practices of the company, to have such number of independent directors as the Board determines appropriate, and to include at least one risk-management expert with experience in identifying, assessing, and

[50] *See* GECC Determination at 2.

[51] 12 CFR 252.34, 252.35.

[52] 12 CFR 249.50(b).

[53] As indicated in the preamble to final LCR rulemaking, the Board anticipates separately seeking comment upon proposed regulatory reporting requirements and instructions pertaining to the LCR. 79 FR 61440, 61445 (October 10, 2014). The Board expects those reporting requirements and instructions to apply to any nonbank financial company supervised by the Board to which the Board has required by rule or order to comply with the LCR.

[54] 12 CFR 252.34, 35.

[55] 12 U.S.C. 5365(b)(1)(A).

[56] 12 U.S.C. 5365(h).

managing risk exposures of large, complex firms.[57]

Under the Board's Regulation YY, the Board requires all bank holding companies with $50 billion or more in total consolidated assets to establish a risk committee that: Is an independent committee of the company's board of directors; is chaired by an independent director; and includes at least one member who has experience in identifying, assessing and managing risk exposures of large, complex financial firms.[58] The risk committee is required to approve and periodically review the risk-management policies of the bank holding company's global operations, oversee the operation of the bank holding company's global risk-management framework, and oversee the bank holding company's compliance with the liquidity risk-management requirements of Regulation YY.[59] In addition, a covered bank holding company is required to appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms, and who has responsibility for establishing enterprise-wide risk limits for the company and monitoring compliance with such limits.[60] The chief risk officer is also required to develop policies and procedures to ensure the implementation of, and compliance with, the risk management framework. The chief risk officer must be compensated in a manner that is consistent with the provision of an objective assessment of the company's risks, must report directly to both the risk committee and chief executive officer of the company, and must report risk-management deficiencies and emerging risks to the risk committee.

Under Regulation YY, each covered bank holding company is required to establish a global risk-management framework that is commensurate with the company's structure, risk profile, complexity, activities, and size.[61] The risk-management framework is required to include policies and procedures for the establishment of risk-management governance and risk-control infrastructure of the company's global operations. In addition, the risk-management framework must include processes and systems for identifying and reporting risk-management deficiencies in an effective and timely manner, must establish managerial and employee responsibilities for risk management, must ensure the independence of the risk-management function, and integrate risk management and associated controls with management goals and its compensation structure for the global operations of the company.[62]

2. Proposed Risk-Management Standards To Be Applied to GECC

The Board is proposing to require GECC to adopt a risk-management framework that is consistent with the supervisory expectations established for bank holding companies of a similar size because of the similarities between GECC's activities, risk profile, and balance sheet to that of a large bank holding company. Specifically, the Board is proposing to apply the risk-management standards under the Board's Regulation YY to GECC beginning July 1, 2015.[63] The adoption of sound risk-management principles by GECC will reduce the likelihood of material distress or failure of GECC and thus promote financial stability.

The risk-management standards of the Board's Regulation YY require a covered bank holding company to tailor its compliance framework to the particular size, complexity, structure, risk profile, and activities of the organization. Thus, in implementing these requirements, GECC would be expected to tailor its risk-management framework to suit the company's structure. The Board understands that GE has established a dedicated risk committee that oversees the risk management of GE and GECC. However, the Board believes that, consistent with the designation of GECC as a nonbank financial company, GECC's risk-management framework should have a dedicated risk committee at the company that is solely responsible for the oversight of GECC's risk management.

In addition to the proposed application of the risk-management standards under section 252.33 of the Board's Regulation YY, the Board is proposing to apply additional risk-management requirements that are tailored to reflect GECC's structure as an intermediate holding company of a larger, publicly traded company. As GECC is a subsidiary of a larger, publicly traded company, the Board believes that it is necessary to ensure that GECC's board of directors includes members who are independent of GE so that their attention is focused on the business operations and safety and soundness of GECC itself, apart from the needs of its parent GE. These directors also must be independent of GECC's management to provide views apart from management.

In particular, the Board is proposing to require that, beginning July 1, 2015, the board of directors of GECC have the greater of 25 percent or two directors that are independent of GE's and GECC's management and GE's board of directors and that one of these directors serve as the chair of GECC's risk committee established under Regulation YY.[64] Under the proposed order, GECC would be required to maintain, at a minimum, two directors on its board of directors who are independent of GE's and GECC's management and GE's board of directors. One of these directors would be required to chair GECC's risk committee established under Regulation YY. In addition, pursuant to Regulation YY, GECC would be required to maintain at least one director with expertise in "identifying, assessing, and managing risk exposures of large, complex financial firms" on its risk committee.[65] This director may be one of the independent directors required by the proposed order. The Board invites comment on whether the proposed additional GECC governance requirements are appropriate to address the status of GECC as an intermediate holding company and the potential conflict of interests in the relationship between GE and GECC.

Finally, in addition to the risk management standards discussed above, the Board would continue to require GECC to observe the Board's existing risk-management guidance and supervisory expectations for nonbank financial companies supervised by the Board.[66]

[57] Under Regulation YY, publicly traded is defined to mean "*an instrument* that is traded on . . . [a]ny exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)." 12 CFR 252.2(p) (emphasis added). Although GECC does not have publicly traded shares of common equity, the company has debt securities that are publicly traded on the New York Stock Exchange under section 12(b) of the Securities Exchange Act of 1934. The Board is proposing to impose the requirements of Regulation YY and the additional risk management standards discussed below under its authority in section 165(h) to impose risk committee and risk management standards and its authority under section 165(b)(1)(B)(iv) to impose other standards that the Board determines are appropriate. 12 U.S.C. 5365(b)(1)(B)(iv).

[58] 12 CFR 252.33(a)(3), (4).

[59] 12 CFR 252.33(a).

[60] 12 CFR 252.33(b).

[61] 12 CFR 252.33(a)(2).

[62] *Id.*

[63] 12 CFR 252.33.

[64] 12 CFR 252.33(a)(4).

[65] *Id.*

[66] *See* Supervision and Regulation Letter SR 12–17, *Consolidated Supervision Framework for Large Financial Institutions* (December 17, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.*

10. In addition to the requirements discussed above, should the Board consider imposing any additional corporate governance requirements on GECC? For example, should the Board consider requiring that additional directors be independent of GE, GECC, or both?

11. Should the Board require GECC to establish independent committees of its board of directors, such as an audit or compensation committee?

12. Should the Board consider requiring additional directors on GECC's board of directors to have experience in identifying, assessing and managing risk exposures of large, complex financial firms?

*F. Other Prudential Standards: Restrictions on Intercompany Transactions*

Section 165(b)(1)(B) allows the Board to establish additional enhanced prudential standards for nonbank financial companies and bank holding companies with assets of $50 billion or more, including three enumerated standards—a contingent capital requirement, enhanced public disclosures, and short-term debt limit—and any "other prudential standards" that the Board determines are "appropriate."[67] With respect to the three enumerated standards, the Board is currently considering whether it would be appropriate to develop such standards for bank holding companies and nonbank financial companies. During this process, the Board will consider whether it will be appropriate to apply such standards to GECC based on its profile, structure, activities, and risks.

The Board is proposing to apply as an enhanced prudential standard certain restrictions on GECC's transactions with affiliated entities that are not under GECC's control. Like the risk-management standards proposed to be applied to GECC, the Board believes that it is appropriate to apply enhanced prudential standards to GECC that address the potential for conflicts of interest with GE and its affiliates, and to address the possibility of any such conflicts on the financial condition of GECC. Specifically, the Board is proposing to require GECC to comply with restrictions on transactions with affiliated entities in order to address the effect of any conflicts of interest that may arise in interactions between GECC and GE and its affiliates. Specifically, beginning on July 1, 2015, the Board is proposing to apply the requirements of section 23B of the Federal Reserve Act and the corresponding provisions of Regulation W (subpart F of 12 CFR part 223) to transactions between GECC (or any of its subsidiaries) with any affiliate (as defined in the Federal Reserve Act and Regulation W), as if GECC (or any of its subsidiaries) were a "member bank" and GE (or any of its subsidiaries other than GECC and subsidiaries of GECC) were an "affiliate."[68]

As noted above, the Board, as the prudential regulator of nonbank financial companies designated by the Council for its supervision, is required to establish enhanced prudential standards that are designed to prevent or mitigate risks to the financial stability of the United States from the material financial distress or failure of such companies. Section 23B of the Federal Reserve Act is designed to protect the safety and soundness of insured depository institutions by ensuring that an insured depository institution is not engaging in transactions with affiliates that are on terms that are unfavorable to the depository institution. The application of section 23B of the Federal Reserve Act to transactions between GECC and GE and its affiliates is designed to enhance the safety and soundness of GECC and to reduce the risk of material financial distress at GECC by ensuring that GECC is not engaging in transactions with affiliates on terms that are unfavorable to GECC and those that would not have been required, but for the affiliation between the companies.

13. In applying the restrictions of section 23B and the corresponding requirements of Regulation W to transactions between GECC and its subsidiaries with any affiliates, are there any transactions or entities that should be exempted from the restrictions?

14. Are there other enhanced prudential standards that the Board should consider applying to GECC? Specifically, are there other restrictions on transactions between GECC and its affiliates that would be appropriate?

*G. Future Standards*

With respect to the remaining standards required under section 165 of the Dodd-Frank Act, the Board is continuing to develop standards that are designed to further mitigate the risks to the financial stability of the United States presented by large banking organizations and nonbank financial companies supervised by the Board. For example, the Board's initial proposed rules to implement the requirements of section 165 and 166 of the Dodd-Frank Act included single-counterparty credit limits and early remediation requirements for the companies covered under sections 165 and 166 of the Dodd-Frank Act. The Board is working to further develop these requirements and will be considering the tailoring of these requirements to nonbank financial companies supervised by the Board.[69] As the Board develops additional standards related to capital, liquidity, risk management, or other standards, for bank holding companies and savings and loan holding companies, the Board will consider the applicability of these standards to GECC.

## V. Proposed Reporting Requirements

Section 161(a) of the Dodd-Frank Act[70] authorizes the Board to require a nonbank financial company supervised by the Board, and any subsidiary thereof, to submit reports to the Board related to: (1) The financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and (2) compliance by the company or subsidiary with the requirements of Title I of the Dodd-Frank Act, which includes the enhanced prudential standards to which nonbank financial companies are subject.

Pursuant to this authority, the Board is proposing to require GECC to file the following reports:[71] (i) The FR Y–6 report (Annual Report of Holding Companies); (ii) the FR Y–10 report

[67] 12 U.S.C. 5365(b)(1)(B).

[68] 12 U.S.C. 371c–1; subpart F to 12 CFR part 223.

[69] With respect to single-counterparty credit limits, the Board participated in the Basel Committee's initiative to develop a similar large exposure regime for global banks and intends to take into account this effort in implementing the single-counterparty credit limits under the Dodd-Frank Act. With respect to the early remediation framework, the Board is considering how to reflect the revised capital framework as well as how to address other issues presented by commenters.

[70] 12 U.S.C. 5361(a).

[71] GECC is a savings and loan holding company supervised by the Board. So long as GECC remains a savings and loan holding company, GECC continues to be subject to all reporting requirements applicable to a savings and loan holding company. Consistent with section 161(a)(2) of the Dodd-Frank Act, the Board intends to confer with GECC as to whether the information requested in the required reports may be available from other sources, and, to the extent any reporting requirements overlap, GECC will not be subjected to duplicative reporting requirements as both a savings and loan holding company and a nonbank financial company supervised by the Board. 12 U.S.C. 5361(a)(2). The reporting requirements under the proposed order would continue to apply to GECC as a nonbank financial company in the event that GECC ceases to be a savings and loan holding company and ceases to be subject to the reporting requirements applicable to savings and loan holding companies.

(Report of Changes in Organizational Structure); (iii) the FR Y–9C report (Consolidated Financial Statements for Holding Companies) and FR Y–9LP report (Parent Company Only Financial Statements for Large Holding Companies); (iv) the FR Y–11 report and FR Y–11S report (Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies); (v) the FR 2314 report and FR 2314S report (Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations); (vi) the FR Y–14A, FR Y–14M, and FR Y–14Q reports (Capital Assessments and Stress Testing) (together, the FR Y–14 series reporting forms); (vii) the FR Y–15 report (Banking Organization Systemic Risk Report); (viii) the FFIEC 009 report (Country Exposure Report) and FFIEC 009a report (the Country Exposure Information Report); and (ix) the FFIEC 102 report (Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule), if the market risk capital rule becomes applicable to GECC. The Board intends to confer with GECC to identify any report schedules that may not be necessary for GECC to provide based on its profile, structure, activities, risks, or other characteristics and to determine an appropriate phase-in period for report submission by GECC. Other than the FR Y–14 series reporting forms, discussed below, the Board is proposing that, beginning July 1, 2015, GECC would be required to file each of these reports in accordance with the timelines set forth in their respective reporting instructions.

Because the FR Y–14A reporting form relates to the Board's capital planning and stress testing requirements, the Board expects that it would require GECC to file its first FR Y–14A submission on April 5, 2016, to report its first capital plan. The Board expects GECC would be required to submit its first FR Y–14Q and Y–14M reports as of one calendar year before the as-of date of its first supervisory and company-run stress test under the Board's stress test rules.

*A. FR Y–6 Report*

The FR Y–6 (Annual Report of Holding Companies) is an annual information collection currently submitted by top-tier bank holding companies, savings and loan holding companies, securities holding companies, and non-qualifying foreign banking organizations. It collects financial data, an organization chart, verification of domestic branch data, and information about certain shareholders.

With respect to GECC, the Board expects to use this information, in conjunction with the information collected through the FR Y–10 report, to monitor the financial condition and the activities of GECC. This information will also be used by the Board to monitor the extent to which the activities and operations of GECC pose a threat to the financial stability of the United States and GECC's compliance with the requirements of Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law. In addition, this information will be used to capture the legal entity structure of GECC. The Board also expects to use this information, combined with the information collected through the FR Y–9C, FR Y–9LP, FR Y–10, FR Y–11, FR Y–11S, FR 2314, and FR 2314S reports, to monitor intercompany transactions and changes in GECC's legal entity structure over time.

*B. FR Y–10 Report*

The FR Y–10 (Report of Changes in Organizational Structure) is an event-generated information collection currently submitted by top-tier bank holding companies; savings and loan holding companies; state member banks unaffiliated with a bank holding company or a foreign banking organization; Edge and agreement corporations that are not controlled by a state member bank, a domestic bank holding company, or a foreign banking organization; and nationally chartered banks that are not controlled by a bank holding company or a foreign banking organization (with regard to their foreign investments only), to capture changes in their regulated investments and activities. The Board uses this information to ensure that these firms' activities are conducted in a safe and sound manner. The data also provide the Board with information integral to monitoring compliance with the BHC Act, the Gramm-Leach-Bliley Act, the Federal Reserve Act, the International Banking Act, the Sarbanes-Oxley Act, the Board's Regulation Y, the Board's Regulation K, the Board's Regulation LL, and HOLA.

The information in this report, in conjunction with the information in the FR Y–6, will be used to capture the legal entity structure of GECC. As noted above, the FR Y–6 and FR Y–10 reports are the only detailed sources of information on the structure of these top-tier firms. This information will also be used by the Board to monitor the extent to which the activities and operations of GECC pose a threat to the financial stability of the United States and GECC's compliance with the requirements of Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law. In addition, this information will be used to capture the legal entity structure of GECC. The Board also expects to use this information, combined with the information collected through the FR Y–9C, FR Y–9LP, FR Y–10, FR Y–11, FR Y–11S, FR 2314, and FR 2314S reports, to monitor intercompany transactions and changes in GECC's legal entity structure over time.

*C. FR Y–9C and FR Y–9LP Reports*

The FR Y–9C (Consolidated Financial Statements for Holding Companies) and FR Y–9LP (Parent Company Only Financial Statements for Large Holding Companies) reports are standardized financial statements currently submitted by bank holding companies, savings and loan holding companies, and securities holding companies on a quarterly basis. The FR Y–9C consists of standardized financial statements and collects consolidated data from these entities. The FR Y–9LP collects basic financial data from domestic bank holding companies, savings and loan holding companies, and securities holding companies on a consolidated, parent-only basis in the form of a balance sheet, an income statement, and supporting schedules relating to investments, cash flow, and certain memoranda items. Financial information from these reports is used to assess and monitor the financial condition of holding company organizations, which may include parent, bank, and nonbank entities. This information also is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate mergers and acquisitions, and to analyze the overall financial condition of bank holding companies, savings and loan holding companies, and securities holding companies, to ensure safe and sound operations.

With respect to GECC, the Board expects to use the data to monitor the financial condition of the company and subsidiaries and assess the systems of the company and subsidiaries for monitoring and controlling financial, operating, and other risks. This information also may be used to analyze the extent to which the activities and operations of the company or subsidiaries pose a threat to the financial stability of the United States and to monitor GECC's compliance with Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law. The standardized format of these

reports allows for the consistent assessment of financial condition across all firms that are required to report under these forms. The level of detail provided within the supporting schedules of these reports is not available through public financial filings or alternate sources.

*D. FR Y–11 and FR Y–11S Reports*

The FR Y–11 and FR Y–11S (Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies) reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic bank holding companies, savings and loan holding companies, and securities holding companies. This report consists of a balance sheet and income statement; information on changes in equity capital, changes in the allowance for loan and lease losses, off-balance-sheet items, and loans; and a memoranda section. Top-tier bank holding companies, savings and loan holding companies, and securities holding companies file the FR Y–11 and FR Y–11S reports on a quarterly or annual basis according to filing criteria. The information obtained through the FR Y–11 and FR Y–11S reports is used with other bank holding companies, savings and loan holding companies, and securities holding companies data to assess the condition of firms that are engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

With respect to GECC, the Board expects to use this information, in conjunction with the information collected through the FR 2314 and FR 2314S reports, to assess the financial condition of U.S. nonbanking entities within GECC and to monitor their activities. This information also may be used to monitor the financial condition of subsidiaries of GECC and to assess the systems of the company for monitoring and controlling financial, operating, and other risks. This information may further be used to analyze the extent to which the activities and operations of GECC or its subsidiaries pose a threat to the financial stability of the United States and to monitor GECC's compliance with Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law. In addition, the information collected through the FR Y–11, FR Y–11S, FR 2314, and FR 2314 reports serves to identify material legal entities.

*E. FR 2314 and FR 2314S Reports*

The FR 2314 and FR 2314S (Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations) reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks, Edge and agreement corporations, bank holding companies, and savings and loan holding companies. The FR 2314 and FR 2314S reports consist of a balance sheet and income statement; information on changes in equity capital, changes in the allowance for loan and lease losses, off-balance-sheet items, and loans; and a memoranda section. Holding companies file this report on a quarterly or annual basis according to filing criteria. The data is used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular. The FR 2314 and FR 2314S reports are the only source of comprehensive and systematic data on the assets, liabilities, and earnings of the foreign bank and nonbank subsidiaries of U.S. state member banks, holding companies, and Edge Act and agreement corporations.

With respect to GECC, the Board expects to use this information, in conjunction with the information collected through the FR Y–11 and FR Y–11S reports, to assess the financial condition of foreign subsidiaries of GECC and to monitor their activities. This information may be used to assess the systems of GECC and its foreign subsidiaries for monitoring and controlling financial, operating, and other risks. This information also may be used to analyze the extent to which the activities and operations of the foreign subsidiaries pose a threat to the financial stability of the United States and to monitor compliance with Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law. The information collected through the FR Y–11, FR Y–11S, FR 2314, and FR 2314S reports will allow the Board to develop a better understanding of the activities of GECC and its subsidiaries in specific countries, and to develop a better understanding of the activities conducted within the industries in which GECC operates.

*F. FR Y–14A, FR Y–14M, and FR Y–14Q Reports*

Submitted as part of the Board's CCAR and stress testing processes, the FR Y–14A, FR Y–14M, and FR Y–14Q (Capital Assessments and Stress Testing) reports collect detailed financial information from top-tier bank holding companies (other than foreign banking organizations) with $50 billion or more in total consolidated assets, as determined based on: (i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's FR Y–9C reports; or (ii) the average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9C reports, if those bank holding companies have not filed an FR Y–9C report for each of the most recent four quarters.

The FR Y–14A report is an annual collection of these bank holding companies' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios, with certain projections and information collected on a semi-annual basis. The FR Y–14M report is a monthly submission that comprises three loan- and portfolio-level collections of data concerning domestic residential mortgages, domestic home equity loan and home equity lines of credit, and domestic credit card loans, and one detailed address-matching collection to supplement two of the loan- and portfolio-level collections. The FR Y–14Q report is a quarterly collection of granular data on these bank holding companies' various asset classes and pre-provision net revenue for the reporting period, including information pertaining to securities, retail loans, wholesale loans, mortgage servicing rights, regulatory capital instruments, operational risk, and trading, private equity, and other fair-value assets. Collectively, the Y–14 data is used to assess the capital adequacy of large bank holding companies using forward-looking projections of revenue and losses, and to support supervisory stress test models and continuous monitoring efforts.

With respect to GECC, the Board expects to use this information to assess GECC's internal assessments of its capital adequacy under a stressed scenario, and to conduct the Federal Reserve's supervisory stress tests that

assess GECC's ability to withstand stress in a manner consistent with bank holding companies subject to the Board's capital plan and stress testing rules. In addition, this information will be used to support ongoing monitoring of changes in GECC's risk profile and composition.

The Board would require GECC to file its first FR Y–14A submission on April 5, 2016, as part of its capital plan. In addition, the Board would require GECC to submit its first FR Y–14Q and Y–14M reports as of one calendar year before the as of date of its first supervisory and company-run stress test under the Board's stress test rules, which would be as of December 31, 2015, under this proposal.

*G. FR Y–15 Report*

The FR Y–15 (Banking Organization Systemic Risk Report) report collects consolidated systemic risk data from bank holding companies with total consolidated assets of $50 billion or more and the U.S. operations or large foreign banking organizations. The data items collected in this report mirror those developed by the Basel Committee to assess the global systemic importance of banks. The Board uses the information collected annually through the FR Y–15 report to: (i) Facilitate the future implementation of the capital surcharge on global systemically-significant banking organizations through regulation; (ii) identify institutions that may be domestic systemically-significant banking organizations under a future framework; (iii) analyze the systemic risk implications of proposed mergers and acquisitions; and (iv) monitor, on an ongoing basis, the systemic risk profile of the institutions that are subject to enhanced prudential standards under section 165 of the Dodd-Frank Act.[72]

If applied to GECC, the Board expects to use this data to assess and monitor GECC's systemic risk profile and its global systemic importance, as well as its ongoing compliance with Title I of the Dodd-Frank Act, the enhanced prudential standards that are imposed on GECC, and other relevant law.

*H. FFIEC 009 and FFIEC 009a Reports*

The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board, the FDIC, the National Credit Union Administration, the OCC, and the Consumer Financial Protection Bureau and to make recommendations to promote uniformity in the supervision of financial institutions. The FFIEC 009 (Country Exposure Report) and FFIEC 009a (the Country Exposure Information Report) reports are quarterly information collections currently submitted by U.S. commercial banks and bank holding companies holding with $30 million or more in claims on residents of foreign countries. The FFIEC 009 collects detailed information on the distribution, by country, of claims on foreigners held by U.S. banks and bank holding companies. The FFIEC 009a is a supplement to the FFIEC 009 that provides specific information about the reporting institutions' exposures in particular countries.

The FFIEC 009 report consists of four schedules that collect information concerning: (1) Claims on the firm on the basis of the country of residence of the borrower (except claims from the fair value of derivative contracts); (2) the reporting firm's claims on an ultimate-risk basis with additional details related to those claims; (3) the firm's foreign-office liabilities; and (4) the firm's off-balance-sheet exposures from commitments, guarantees, and credit derivatives. The information collected is used to determine the presence of credit and related risks, including transfer and country risk. The FFIEC 009a is filed if exposures to a country exceed 1 percent of total assets or 20 percent of capital at the reporting institution and requires that the respondent also furnish a list of countries in which exposures were between 0.75 percent and one percent of total assets or between 15 and 20 percent of capital.

With respect to GECC, the Board expects to use this information to assess GECC's credit and related risks. Specifically, the information collected on the FFIEC 009 report and the FFIEC 009a report provides additional information on counterparties, the type of claim being reported, and credit derivative exposure. The information also provides details on a limited number of risk mitigants to help provide context for currently reported gross exposure numbers. This information may be used to analyze the extent to which GECC's credit exposures pose a threat to the financial stability of the United States. The information collected through the FFIEC 009 report and the FFIEC 009a report will allow the Board to develop a better understanding of GECC's exposures in specific countries, and to monitor trends in exposures to foreign creditors.

*I. FFIEC 102*

The proposed FFIEC 102 reporting form is designed to implement the reporting requirements for institutions that are subject to the federal banking agencies' market risk capital rule under the revised capital framework.[73] The proposed reports would be quarterly information collections used to assess the reasonableness and accuracy of a market risk institution's calculation of its minimum capital requirements under the market risk capital rule and to evaluate such an institution's capital in relation to its risks.

The market risk information collected in the FFIEC 102 is designed to: (a) Permit the federal banking agencies to monitor the market risk profile of and evaluate the impact and competitive implications of the market risk capital rule on individual market risk institutions and the industry as a whole; (b) provide the most current statistical data available to identify areas of market risk on which to focus for onsite and offsite examinations; (c) allow the federal banking agencies to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk capital rule; and (d) assist market risk institutions to implement and validate the market risk framework.

Although GECC would not currently be subject to the Board's market risk capital rule because it does not meet the applicable aggregate trading assets and trading liabilities thresholds, the proposed order would require GECC to submit the FFIEC 102 should GECC become subject to the Board's market risk capital rule.[74] The information collected on the FFIEC 102 would allow the Board to monitor GECC's market risk profile and the adequacy of GECC's capital under the market risk capital rule should it become applicable.

## VI. Timing of Application

In general, the Board is proposing to require GECC to begin complying with the proposed enhanced prudential standards beginning July 1, 2015, except

[72] 12 U.S.C. 5365.

[73] *See* Subpart F to 12 CFR 217.

[74] The Board's market risk capital rule applies to any state member bank, bank holding company, or savings and loan holding company with aggregate trading assets and trading liabilities (as reporting on the applicable Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable) equal to: (i) 10 percent or more of the quarter-end total assets as reported on the most recent regulatory report; or (ii) $1 billion or more. 12 CFR 217.201(b). As of September 30, 2014, GECC had approximately $229 million in aggregate trading assets and trading liabilities.

for the Board's capital planning and stress testing rules, which the Board has proposed will apply to GECC beginning on the next capital planning and stress testing cycle beginning January 1, 2016, and January 1, 2017, respectively. However, regardless of the transition period for application of the enhanced prudential standards, GECC will continue to be subject to the Board's examination and oversight authority, and any other prudential requirements imposed under HOLA.[75]

15. Should the Board consider providing a longer transition period for any of the standards that it has proposed to apply to GECC?

**VII. Paperwork Reduction Act**

Certain provisions of the Board's proposed order contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed order under the authority delegated to the Board by OMB.

The proposed order contains reporting requirements subject to the PRA and would require GECC to submit the following reporting forms in the same manner as a bank holding company:

(1) Country Exposure Report and Country Exposure Information Report (FFIEC 009 and FFIEC 009a; OMB No. 7100–0035);

(2) Proposed Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102; OMB No. to be obtained) (See the initial **Federal Register** notice (79 FR 52108) published on September 2, 2014.);

(3) Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations; and Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314; and FR 2314S OMB No. 7100–0073);

(4) Annual Report of Holding Companies (FR Y–6; OMB No. 7100–0297);

(5) Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128);

(6) Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP; OMB No. 7100–0128);

(7) Report of Changes in Organizational Structure (FR Y–10; OMB No. 7100–0297);

(8) Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies; and Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y–11; and FR Y–11S OMB No. 7100–0244);

(9) Capital Assessments and Stress Testing (FR Y–14A; FR Y–14M; and FR Y–14Q OMB No. 7100–0341); and

(10) Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–0352).

The proposed order contains reporting, recordkeeping, or disclosure requirements subject to the PRA and would require GECC to comply with the following information collections in the same manner as a bank holding company:

(1) Funding and Liquidity Risk Management Guidance (FR 4198; OMB No. 7100–0326). See the Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations final rule (79 FR 17239) published on March 27, 2014.

(2) Risk-Based Capital Standards: Advanced Capital Adequacy Framework Information Collection (FR 4200; OMB No. 7100–0313). See the Regulatory Capital Rules final rule (78 FR 62017) published on October 11, 2013, and the Regulatory Capital Rules final rule (79 FR 57725) published on September 26, 2014.

(3) Risk-Based Capital Guidelines: Market Risk (FR 4201; OMB No. 7100–0314). See the Regulatory Capital Rules final rule (78 FR 62017) published on October 11, 2013.

(4) Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans) (Reg Y–13; OMB No. 7100–0342). See the Capital Plans final rule (76 FR 74631) published on December 1, 2011, the Supervisory and Company-Run Stress Test Requirements for Covered Companies final rule (77 FR 62377) published on October 12, 2012, and the Capital Plan and Stress Test Rules final rule (79 FR 64025) published on October 27, 2014.

(5) Reporting and Recordkeeping Requirements Associated with Regulation WW (Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring) (Reg WW; OMB No. to be obtained). See the Liquidity Coverage Ratio final rule (79 FR 61439) published on October 10, 2014.

(6) Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards) (Reg YY; OMB No. 7100–0350). See the Supervisory and Company-Run Stress Test Requirements for Covered Companies final rule (77 FR 62377) published on October 12, 2012, and the Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations final rule (79 FR 17239) published on March 27, 2014.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this proposed order that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section above. A copy of the comments may also be submitted to the OMB desk officer: By mail to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by facsimile to 202–395–6974, Attention, Federal Reserve Desk Officer.

**VIII. Proposed Order**

**FEDERAL RESERVE SYSTEM**

**General Electric Capital Corporation, Inc.**

**Norwalk, Connecticut**

**Order Imposing Enhanced Prudential Standards and Reporting Requirements**

Pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board of Governors of the Federal Reserve System (Board) is required to apply enhanced prudential standards to General Electric Capital Corporation (GECC), a nonbank financial company that the Financial Stability Oversight Council has determined should be supervised by the Board (nonbank

[75] 12 U.S.C. 1467a, 5361.

financial company supervised by the Board).

After consideration of all of the relevant factors set forth in sections 165(a) and 165(b) of the Dodd-Frank Act, for the reasons set forth in the preamble to this order, the Board is applying the following enhanced prudential standards and reporting requirements to GECC that the Board has tailored, where appropriate, in light of those factors.

*Capital Requirements*

Beginning on July 1, 2015, GECC shall comply with the Board's capital framework, set forth in 12 CFR part 217,[1] as if GECC were a bank holding company that is an "advanced approaches Board-regulated institution" and a "covered BHC," each as defined under 12 CFR 217.2, *provided, however,* that notwithstanding 12 CFR 217.100(b), GECC will not be required to comply with subpart E of 12 CFR part 217 or to calculate an advanced measure for market risk.[2]

*Capital Planning*

GECC shall comply with the capital plan rule set forth in 12 CFR 225.8 as a nonbank financial company supervised by the Board, pursuant to 12 CFR 225.8(b)(1)(iv), and shall submit a capital plan for the capital plan cycle beginning on January 1, 2016.[3]

*Stress Testing*

GECC shall comply with the stress testing requirements set forth in subparts E and F of Regulation YY (12 CFR part 252, subparts E and F) as a nonbank financial company supervised by the Board, pursuant to 12 CFR 252.43(a)(1)(iii) and 12 CFR 252.53(a)(1)(iii), beginning with the stress testing cycle beginning on January 1, 2017.[4]

*Liquidity Requirements*

1. Beginning on July 1, 2015, GECC shall comply with the liquidity requirements, set forth in sections 252.34 and 252.35 of the Board's Regulation YY, as though it were a bank holding company with $50 billion or more in total consolidated assets.[5]

2. Beginning on July 1, 2015, GECC shall comply with the liquidity coverage ratio (LCR) standard, set forth in 12 CFR part 249, as a covered nonbank company, pursuant to 12 CFR 249.1(b)(1)(iv) and 12 CFR 249.3, subject to the transition periods set forth under 12 CFR 249.50(b).[6]

3. Beginning on July 1, 2015, GECC shall comply with the Board's supervisory guidance on principles of sound liquidity risk management, as set forth in the Board's Supervision and Regulation letter 10–6, "Interagency Policy Statement on Funding and Liquidity Risk Management," issued in March 2010.[7]

*Risk Management*

1. Beginning on July 1, 2015, GECC shall comply with the risk-management standards under section 252.33 of the Board's Regulation YY as though it were a bank holding company with $50 billion or more in total consolidated assets.[8]

a. In addition, beginning on July 1, 2015, GECC is required to maintain a board of directors that has the greater of 25 percent of directors or two directors who are independent of General Electric Company's management and board of directors and GECC's management, one of whom may satisfy the independent director requirement under section 252.33(a)(4) of Regulation YY; and

b. GECC shall ensure that the chair of the risk committee established at GECC pursuant to Regulation YY is among the directors who are independent of General Electric Company's management and board of directors and GECC's management.[9]

2. GECC shall continue to comply with the Board's existing risk-management guidance and supervisory expectations applicable to nonbank financial companies supervised by the Board.[10]

*Restrictions on Intercompany Transactions*

Beginning on July 1, 2015, all transactions between GECC (or any of its subsidiaries) and GE (or any of its subsidiaries other than GECC or subsidiaries of GECC) shall be subject to the requirements of section 23B of the Federal Reserve Act and the corresponding provisions of Regulation W (subpart F of 12 CFR part 223) as if GECC (or any of its subsidiaries) were a "member bank" and GE (or any of its subsidiaries other than GECC and subsidiaries of GECC) were an "affiliate" as defined in section 23B of the Federal Reserve Act and Regulation W.[11] However, this restriction would not apply to transactions between GECC and any person the proceeds of which are used for the benefit of, or transferred to, an affiliate, which would otherwise be a covered transaction under section 23A(a)(2) of the Federal Reserve Act and section 223.16 of Regulation W.[12]

*Future Standards*

Nothing herein limits the Board's authority to impose additional enhanced prudential standards to apply to GECC in the future.

*Reporting Requirements*

1. Beginning on July 1, 2015, pursuant to section 161(a) of the Dodd-Frank Act,[13] GECC shall file the following reports with the Board:

a. FFIEC 102 report (Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule);[14]

b. FFIEC 009 report (Country Exposure Report) and FFIEC 009a report (Country Exposure Information Report);

c. FR Y–6 report (Annual Report of Holding Companies);

d. FR Y–10 report (Report of Changes in Organizational Structure);

e. FR Y–9C report (Consolidated Financial Statements for Holding Companies) and FR Y–9LP report (Parent Company Only Financial Statements for Large Holding Companies);

f. FR Y–11 and FR Y–11S reports (Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies);

g. FR 2314 and FR 2314S reports (Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations);

h. FR Y–14A, FR Y–14M, and FR Y–14Q reports (Capital Assessments and Stress Testing); and

i. FR Y–15 report (Banking Organization Systemic Risk Report).

2. Other than the FR Y–14A, FR Y–14M, and FR Y–14Q reports, GECC

[1] 12 CFR part 217.

[2] 12 CFR 217.204.

[3] 12 CFR 225.8.

[4] Subparts E and F of 12 CFR part 252.

[5] 12 CFR 252.34, 252.35.

[6] 12 CFR part 249.

[7] Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation (2010), "Interagency Policy Statement on Funding and Liquidity Risk Management," Supervision and Regulation Letter SR 10–6 (March 17); 75 FR 13656 (March 22, 2010); *available at: http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.pdf.*

[8] 12 CFR 252.33.

[9] 12 CFR 252.33(a).

[10] *See* Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation (2012), "Consolidated Supervision Framework for Large Financial Institutions," Supervision and Regulation Letter SR 12–17 (December 17), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.*

[11] 12 U.S.C. 371c–1; subpart F of 12 CFR part 223.

[12] 12 U.S.C. 371c(a)(2); 12 CFR 223.16.

[13] 12 U.S.C. 5361(a).

[14] GECC shall become subject to the FFIEC 102 report in the event the company meets the aggregate trading assets and trading liabilities threshold for application of the Board's market risk capital rule. 12 CFR 217.201(b).

shall file each of the reports in accordance with the timelines set forth in the applicable instructions to each reporting form.

3. GECC shall submit its first FR Y–14A report on April 5, 2016, in connection with its first submission under the capital plan rule (12 CFR 225.8).

4. GECC shall submit its first FR Y–14Q and FR Y–14M reports one calendar year before the as of date of its first supervisory and company-run stress test under the Board's stress testing requirements under Regulation YY (12 CFR part 252, subparts E and F).

5. The Board intends to confer with GECC to determine whether GECC should modify any reporting schedules that may not be necessary for GECC to provide, based on its profile, structure, activities, risks, or other characteristics.

By order of the Board of Governors of the Federal Reserve System, November 25, 2014.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2014–28414 Filed 12–2–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 15, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Byron B. Webb, III, Emden, Missouri, as Trustee of the Byron B. Webb, III Separate Property Trust, dated April 26, 2004, and Victoria Webb Sack, Del Mar, California, as Trustee of the Victoria Webb Sack Separate Property Recoverable Stock Trust, dated June 12, 2008;* to acquire voting shares of Byron B. Webb, Inc., and thereby indirectly acquire voting shares of HomeBank, both in Palmyra, Missouri.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Virgil A. Lair and Mary A. Lair Irrevocable Trust dated August 15, 2013, Chanute, Kansas; Gregory D. Lair, Piqua, Kansas; Casey A. Lair, Neodesha, Kansas; Mark T. Lair, Chanute, Kansas; and Jill A. Aylward,* Chanute, Kansas; all individually and as trustees; to retain voting shares of Southeast Bancshares, Inc., and thereby indirectly retain voting shares of Bank of Commerce, both in Chanute, Kansas; Chetopa State Bank & Trust Company, Chetopa, Kansas; and First Neodesha Bank, Neodesha, Kansas.

Board of Governors of the Federal Reserve System, November 28, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–28433 Filed 12–2–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 2014.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *HF Financial Corp.*, Sioux Falls, South Dakota; to become a bank holding company by converting its wholly-owned subsidiary Home Federal Bank, Sioux Falls, South Dakota, from a federal savings bank to a South Dakota state-chartered bank.

Board of Governors of the Federal Reserve System, November 28, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–28435 Filed 12–2–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 2014.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *First Financial Northwest, Inc. ("FFNW"),* to engage *de novo* though its subsidiary, First Financial Diversified Corporation, both of Renton, Washington, in extending, acquiring,

brokering, or servicing of loans, and for acting as trustee on the deeds of trust of FFNW's subsidiary savings bank, First Savings Bank Northwest, Renton, Washington, pursuant to sections 225.28(b)(1) and 225.28(b)(2)(viii).

Board of Governors of the Federal Reserve System, November 28, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–28434 Filed 12–2–14; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Notice of Hearing: Reconsideration of Disapproval Ohio Medicaid State Plan Amendment (SPA) 14–002

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

**ACTION:** Notice of Hearing: Reconsideration of Disapproval.

**SUMMARY:** This notice announces an administrative hearing to be held on January 7, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Chicago Regional Office, 233 N. Michigan, Avenue Suite 600 Chicago, Illinois 60601–5519, to reconsider CMS' decision to disapprove Ohio's Medicaid SPA 14–002.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the presiding officer by December 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Benjamin R. Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Ohio's Medicaid SPA 14–002 which was submitted to the Centers for Medicare and Medicaid Services (CMS) on February 28, 2014 and disapproved on August 29, 2014. In part, this SPA requested CMS approval of the state's proposal to exclude from the definition of an inmate any individual under age 19 who is residing in a juvenile detention facility and has not yet been adjudicated.

The issues to be considered at the hearing are:

- Whether Ohio Medicaid SPA 14–002 complied with the statutory requirement in section 1902(a)(10)(A) of the Social Security Act (the Act), which provides that the state plan must provide for making "medical assistance" available to eligible individuals. This section incorporates by reference the definition of medical assistance in section 1905(a) of the Act, which specifically provides, in the text following paragraph (29), that ". . . such term does not include—(A) any such payments with respect to care and services for any individual who is an inmate of a public institution (except as a patient in a medical institution). . . ." This exclusion is not limited based on the age of the inmate.
- Whether the individuals specified in Ohio 14–002 are not inmates because they are individuals "in a public institution for a temporary period, pending other living arrangements appropriate to his needs," as specified in 42 CFR 435.1010 when they are involuntarily incarcerated in a public institution who have not yet been adjudicated.

Section 1116 of the Act and federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Ohio announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John McCarthy
Director
Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, OH 43215

Dear Mr. McCarthy:

I am responding to your request for reconsideration of the decision to disapprove Ohio's Medicaid state plan amendment (SPA) 14–002, which was submitted to the Centers for Medicare and Medicaid Services (CMS) on February 28, 2014 and disapproved on August 29, 2014. I am scheduling a hearing on your request for reconsideration to be held on January 07, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Chicago Regional Office, 233 N. Michigan, Avenue Suite 600 Chicago, Illinois 60601–5519.

In part, this SPA requested CMS approval of the state's proposal to exclude from the definition of an inmate any individual under age 19 who is residing in a juvenile detention facility and has not yet been adjudicated. In its submission the state included the proposed change in the eligibility section of the state plan. However, this is not an eligibility issue, but is related to availability of federal financial participation (FFP) for services.

In the event that CMS and the state come to agreement on resolution of the issues, which formed the basis for disapproval, these SPAs may be moved to approval prior to the scheduled hearing. During the reconsideration process, no federal financial participation (FFP) is available for services provided to individuals under age 19 residing in juvenile detention centers or other correctional institutions; except for inpatient care in a medical institution.

The issues to be considered at the hearing are:

- Whether Ohio Medicaid SPA 14–002 complied with the statutory requirement in section 1902(a)(10)(A) of the Social Security Act (the Act), which provides that the state plan must provide for making "medical assistance" available to eligible individuals. This section incorporates by reference the definition of medical assistance in section 1905(a) of the Act, which specifically provides, in the text following paragraph (29), that ". . . such term does not include—(A) any such payments with respect to care and services for any individual who is an inmate of a public institution (except as a patient in a medical institution) . . ." This exclusion is not limited based on the age of the inmate.
- Whether the individuals specified in Ohio 14–002 are not inmates because they are individuals "in a public institution for a temporary period, pending other living arrangements appropriate to his needs," as specified in 42 CFR 435.1010 when they are involuntarily incarcerated in a public institution who have not yet been adjudicated.

If the hearing date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR part 430.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact the Mr. Cohen at (410) 786–3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: November 26, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2014–28427 Filed 12–2–14; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–EA–2014–N246; FF09F42300–FVWF97920900000–XXX]**

### Sport Fishing and Boating Partnership Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of teleconference.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

**DATES:** *Teleconference:* Friday, December 19, 2014, 10:30 a.m. to 12 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see "Public Input" under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Brian Bohnsack, Council Coordinator, via U.S. mail at 5275 Leesburg Pike, Mailstop FAC, Falls Church, VA 22041; via telephone at (703) 358–2435; via fax at (703) 358–2487; or via email at *brian_bohnsack@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a teleconference.

#### Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

#### Meeting Agenda

The Council will hold a teleconference to:

- Consider and approve the Council's Boating Infrastructure Grant Program Review Committee's funding recommendations for fiscal year 2015 proposals;
- Discuss a proposed pilot project associated with permitting recreational projects;
- Schedule an upcoming winter meeting; and
- Consider other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

#### Public Input

| If you wish to | You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Listen to the teleconference | Monday, December 15, 2014. |
| Submit written information or questions before the teleconference for the council to consider during the teleconference. | Monday, December 15, 2014. |
| Give an oral presentation during the teleconference | Monday, December 15, 2014. |

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in "Public Input" under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, or one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be

accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

**Meeting Minutes**

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

**Rowan W. Gould,**

*Acting Director.*

[FR Doc. 2014–28436 Filed 12–2–14; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NCR–NACA–15371; PX.P0136318C.00.1]**

### Final Anacostia Park Wetlands and Resident Canada Goose Management Plan/Environmental Impact Statement

**AGENCY:** National Park Service, U.S. Department of the Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Anacostia Park Wetlands and Resident Canada Goose Management Plan, Anacostia Park, Washington, DC The plan provides integrated tools to protect and manage previously restored wetlands in the park, as well as other park resources, including management of the resident Canada goose population.

**DATES:** The NPS will execute a Record of Decision (ROD) no sooner than 30 days from the date of publication of the Notice of Availability of the FEIS and Plan by the Environmental Protection Agency.

**ADDRESSES:** The FEIS and Plan is available in electronic format online at *http://parkplanning.nps.gov/anac.* This Web site also provides information where public review copies of the FEIS and Plan are available for viewing. A limited number of compact discs and hard copies of the FEIS and Plan are available at National Capital Parks-East, 1900 Anacostia Drive SE., Washington, DC 20020. You may also request a CD or hard copy by contacting Gopaul Noojibail, Acting Superintendent of National Capital Parks-East, 1900 Anacostia Drive SE., Washington, DC 20020, or by telephone at (202) 690–5127.

**FOR FURTHER INFORMATION CONTACT:** Gopaul Noojibail, Acting Superintendent of National Capital Parks-East, 1900 Anacostia Drive SE., Washington, DC 20020, or by telephone at (202) 690–5127.

**SUPPLEMENTARY INFORMATION:** The FEIS and Plan responds to, and incorporates as appropriate, agency and public comments received on the Draft Environmental Impact Statement (DEIS) and Plan which was available for public review from July 21, 2011, to September 26, 2011. A public meeting, including hearing, was held on September 7, 2011, to gather input on the DEIS and Plan. Thirteen pieces of correspondence were received during the public review period. Agency and public comments and NPS responses are provided in Appendix F of the FEIS and Plan.

The FEIS and Plan evaluates five alternatives for managing wetlands and resident Canada geese in the park. The document describes and analyzes the environmental impacts of the no-action alternative and four action alternatives. When approved, the Plan will guide wetland and resident Canada goose management actions in Anacostia Park (including Kenilworth Park & Aquatic Gardens) over the next 15 years.

The alternatives included in this plan and FEIS are presented as a two-tiered approach, which includes techniques for wetland vegetation management and also for goose management. Wetland vegetation management includes the following elements: hydrology, vegetation, cultural/education, wetland restoration, and park operations.

Alternative B has been identified as the NPS preferred alternative. This alternative combines high wetland management and high goose management techniques, including lethal control. This alternative would provide the park with the maximum number of techniques to implement at most locations to best protect park resources.

This alternative includes the following wetland management techniques: Using adaptive management to monitor and manage vegetation for impacts due to excessive goose herbivory; working with the Washington, DC harbormaster to enforce no wake zones, which would minimize shoreline erosion; managing invasive species; a high density planting effort with persistent, native species at variable growth heights; removing the sheet piling along the Anacostia River Fringe Wetlands; increasing education and interpretation; improving trash management; reducing impervious areas; and creating new rain gardens for improving stormwater management. The NPS would also commit to using adaptive management to monitor and manage the resident Canada goose population. Management actions are: lethal control (round-up, capture, euthanasia, and shooting) until the resident Canada goose population goal of 54 is met planting new buffers along the shorelines throughout the park; increasing the width of existing vegetation buffers; and reproductive control (egg addling). Additional wetland and resident Canada goose techniques available to the park are described in detail in the FEIS and plan, and would be implemented on as needed basis to achieve wetland and goose desired conditions. Many of these additional techniques would be subject to further planning and compliance.

Alternative B would fully meet the plan objectives and has more certainty of success than the other alternatives analyzed. The potential for implementing the maximum wetland and resident Canada goose management techniques would ensure that benefits to natural resources of the park are realized and sustained over the life of the plan.

Dated: May 2, 2014.

**Stephen E. Whitesell,**

*Regional Director, National Park Service, National Capital Region.*

[FR Doc. 2014–28437 Filed 12–2–14; 8:45 am]

**BILLING CODE 4312–JK–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–CACO–17197; PPNECACOS0, PPMPSD1Z.YM0000]**

### Notice of January 12, 2015, Meeting for Cape Cod National Seashore Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** This notice sets forth the date of the 297th Meeting of the Cape Cod National Seashore Advisory Commission.

**DATES:** The public meeting of the Cape Cod National Seashore Advisory Commission will be held on Monday, January 12, 2015, at 1:00 p.m. (EASTERN).

**ADDRESSES:** The Commission members will meet in the conference room at park headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667.

The 297th meeting of the Cape Cod National Seashore Advisory Commission will take place on Monday, January 12, 2015, at 1:00 p.m., in the conference room at Headquarters, 99 Marconi Station Road, in Wellfleet, Massachusetts to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (November 17, 2014)
3. Reports of Officers
4. Reports of Subcommittees
   - Update of Pilgrim Nuclear Plant Emergency Planning Subcommittee
   - State Legislation Proposals
5. Superintendent's Report
   - Nauset Spit Update
   - Recreational Fee Increase
   - Kiteboarding Update
   - Shorebird Management Planning
   - National Park Service Centennial
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Highlands Center Update
   - Ocean Stewardship Topics—Shoreline Change
   - Climate Friendly Parks
6. Old Business
   - Continue Discussion of NSTAR Spraying Plans, Clearing Alternatives and Utility Right-of-Ways
   - Live Lightly Campaign Progress Report
7. New Business
8. Date and Agenda for Next Meeting
9. Public Comment
10. Adjournment

**FOR FURTHER INFORMATION CONTACT:** Further information concerning the meeting may be obtained from George E. Price, Jr., Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, or via telephone at (508) 771–2144.

**SUPPLEMENTARY INFORMATION:** The Commission was reestablished pursuant to Public Law 87–126, as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 25, 2014.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2014–28438 Filed 12–2–14; 8:45 am]

**BILLING CODE 4310–EE–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations, 30 CFR part 44, govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before January 2, 2015.

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

#### II. Petitions for Modification

*Docket Number:* M–2014–020–M.

*Petitioner:* Barrick Goldstrike Mine, Inc., the KOIN Center, Suite 1500, 222 SW Columbia Street, Portland, Oregon 97201.

*Mine:* Arturo Mine, MSHA I.D. No. 26–02767, 27 Miles North of Carlin, Carlin, Nevada 89822, located in Eureka County, Nevada.

*Regulation Affected:* 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

*Modification Request:* The petitioner requests a modification of the existing standard to allow the use of recycled used waste oil blended with diesel fuel (hereinafter "blended oil") to prepare ammonium-nitrate fuel oil (ANFO). Blended oil has been approved for use to prepare ANFO at Barrick's Goldstrike mine pursuant to MSHA's Amended Decision and Order of December 1, 1998, reinstated by Decision and Order November 4, 2011, granting modification of the application of 30 CFR 56.6309(b) at Goldstrike (hereinafter "Goldstrike Modification Order"). The petitioner states that it seeks only to use the blended oil that has already been recycled and tested at Goldstrike according to the conditions set out in the Goldstrike Modification

Order in its ANFO blasting agents, and use the blended oil prepared and approved for use at Goldstrike in ANFO mixtures at the Arturo Mine. The petitioner states that:

(1) Barrick operates several gold mines in Elko, Nevada, including Goldstrike Mine and soon-to-be launched Arturo Mine.

(2) In its capacity as manager for Barrick/Dee Mining Venture, a joint venture between Barrick Gold Exploration, Inc., and Goldcrop Dee LLC, Barrick will commence mining operations at the Arturo Mine, I.D. No. 26–02767, on January 2, 2015.

(3) The Arturo Mine is an open-pit gold mine that consists of a series of sediment hosted Carlin-style gold deposits adjacent to and including the former Dee gold mine, 35 kilometers northwest of Elko, Nevada. The mining methods at Arturo will involve using heavy equipment to dig blasted rock and ore, similar to the mining methods at Goldstrike Mine. The ore will be transferred to either a leach pad or stockpile, and ultimately to Goldstrike for further processing. Waste rock will be transferred to a waste dump.

(4) The principle blasting method to be applied at Arturo Mine involves the use of ANFO loaded in pre-drilled blast holes, also similar to the blasting methods at Goldstrike Mine. Barrick intends to ignite approximately 1,000 blast holes per month at Arturo Mine, the number of which would fluctuate depending on targets and gold prices.

(5) Barrick seeks a modification of the application of 30 CFR 56.6309(b) at the Arturo Mine to allow it to utilize blended oil in lieu of conventional diesel fuel when preparing ANFO for blasting.

(6) It is important to note that MSHA has already determined that there is no diminution of safety when using blended oil that meets the EPA criteria of 40 CFR 279.11, and does not contain hazardous waste material listed in 40 CFR 261 to prepare ANFO under the conditions set forth in the Goldstrike Modification Order—the very same conditions that Barrick intends to follow when using blended oil in its ANFO mixtures at the Arturo Mine.

(7) On March 14, 1997, Barrick filed a Petition for Modification of 30 CFR 56.6309(b) for its Goldstrike Mine, I.D. No. 26–01089, on the grounds that utilizing used waste oil, collected from diesel equipment at Goldstrike and recycled and tested according to certain conditions, in lieu of conventional diesel fuel when preparing ANFO blasting agents would at all times guarantee no less than the same measure of protection afforded by the standard.

(8) On December 1, 1998, MSHA granted Barrick's petition and issued the Goldstrike Modification Order, granting modification of the application of 30 CFR 56.6309(b) based upon an alternative method of compliance involving 22 requisite conditions.

(9) Since the issuance of the Goldstrike Modification Order, Barrick has followed the 22 requisite conditions when collecting and recycling waste oil into used oil, and ultimately combining it with diesel fuel to create blended oil for use in its ANFO mixtures at Goldstrike Mine as an approved alternative method of compliance with 30 CFR 56.6309(b).

(10) Barrick likewise seeks a modification of the application of this standard to its Arturo Mine and states that this petition for modification is premised on Barrick's intent only to utilize in its ANFO blasting agents the blended oil that has already been recycled and tested at Goldstrike according to the conditions in the Goldstrike Modification Order.

(11) The petitioner proposes to use the following procedures at the Arturo Mine to achieve the goal of 30 CFR 56.6309(b):

(a) The ANFO blasting agents the petitioner seeks to load in its blast holes at Arturo Mine will consist of blended oil prepared at Goldstrike Mine according to the conditions set forth in the Goldstrike Modification Order, combined with ammonium nitrate. The blended oil and ammonium nitrate will be taken to the blast site in separate containers and will be combined only as part of the actual process of loading the blast holes.

(b) After the blended oil has been sampled and tested at Goldstrike in accordance with the Goldstrike Modification Order, Barrick will transport 6,000 gallons of blended oil from Goldstrike to Arturo Mine using the same dedicated truck already in use at Goldstrike for hauling oil from the storage tank to the blend facility, to ensure safe and secure transport of the same to Arturo Mine. The distance the truck will travel from the Goldstrike storage facility to Arturo Mine measures 5.3 miles.

(c) Once the blended oil arrives at Arturo Mine, Barrick will store that blasted oil in a 6,000 gallon tank that is dedicated for diesel and/or used oil blend storage. The tank will be designed with an automatic stirring system that keeps the blend mixed. This tank will be placed inside of the Arturo magazine compound.

(d) The ammonium nitrate to be combined with the blended oil to create ANFO will be stored separate and apart from the blended oil in two 100 ton silos in a locked and secured compound in the same vicinity. Only authorized blasting personnel will have access to the blended oil and ammonium nitrate storage facilities.

(e) The blended oil and ammonium nitrate will be taken to the blast site in separate containers and will be combined only as part of the actual process of loading the blast holes. The same certified blasting personnel operating at Goldstrike Mine will perform blasting operations at Arturo Mine.

The petitioner proposes that procedures set forth in this petition constitute a fully appropriate and safe method for transporting, storing, and utilizing recycled used waste oil to prepare ANFO without any diminution of safety.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M–2014–045–C.

*Petitioner:* Eastern Associated Coal, LLC, 1144 Market Street, Suite 400, Wheeling, West Virginia 26003.

*Mine:* Federal No. 2 Mine, MSHA I.D. No. 46–01456, Monongalia County, West Virginia.

*Regulation Affected:* 30 CFR 75.1400–3(b)(5) (Daily examination of hoisting equipment).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance for daily examination of skips that are used periodically as hoisting equipment to transport persons. The petitioner seeks modification of the existing standard as it pertains to daily examinations and observations of the lining and all other equipment and appurtenances installed in a shaft where persons are transported, and as the standard applies to the use of skips to transport persons at the Federal No. 2 Mine. The petitioner states that:

(1) Eastern Associated Coal uses skips primarily to transport mined material out of the mine, but the skips at Federal No. 2 mine are equipped with appropriate features and safety mechanisms to be used to also transport persons.

(2) The transport of persons by skip will only occur when maintenance work or shaft inspection is required. Such work is required periodically and on an "as needed" basis.

(3) In lieu of the daily examination required by the standard, the lining and appurtenances installed in the shaft will be examined on a weekly basis. The

examination will be used to trend conditions in the shaft and may be performed more frequently if deemed necessary by the operator.

(4) The examination on the day(s) the skip is to be used to transport persons will occur prior to the maintenance being performed.

(5) The petitioner will comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and it corresponding regulations.

The petitioner asserts that the proposed alternative method of examining the lining of the shaft will guarantee no less than the same measure of protection to the miners as would be provided by the existing standard, and will not result in a diminution of safety to the miners.

**Sheila McConnell,**

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 2014–28441 Filed 12–2–14; 8:45 am]

**BILLING CODE 4510–43–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–022 and 52–023; NRC–2013–0261]**

## Duke Energy Progress; Combined License Application for Shearon Harris Nuclear Power Plants Units 2 and 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 1, 2014, letter from Duke Energy Progress (DEP), which requested an exemption from certain regulatory requirements that requires DEP to submit an update to the Final Safety Analysis Report (FSAR) included in their combined license (COL) application by December 31, 2014. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the update to the FSAR must be submitted prior to, or coincident with the resumption of the COL application review or by December 31, 2015, whichever comes first.

**DATES:** The exemption is effective on December 3, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2013–0261 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Brian Hughes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6582; email: *Brian.Hughes@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 18, 2008, DEP submitted to the NRC a COL application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site (ADAMS Accession No. ML080580078). The NRC docketed the Shearon Harris Units 2 and 3 COL application (Docket Numbers 52–022 and 52–023) on April 23, 2008. On April 15, 2013, (ADAMS Accession No. ML13112A761) DEP submitted Revision 5 to the COL application including updates to the FSAR, per subsection 50.71(e)(3)(iii) of Title 10 of the *Code of Federal Regulations* (10 CFR). On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 COL application. On August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update, which NRC granted through December 31, 2014. On August 1, 2014 (ADAMS Accession No. ML14216A431), DEP requested another exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update by December 31, 2015.

### II. Request/Action

Paragraph 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of

10 CFR part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the Harris Units 2 and 3 COL application would be due by December 31, 2014. In a letter dated August 1, 2014 (ADAMS Accession No. ML14216A431), DEP requested that the Harris Units 2 and 3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements until December 31, 2015, or prior to a request to reactivate the Harris Units 2 and 3 COL application review.

The exemption would allow DEP to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and, in any event, by December 31, 2015. The current requirement to submit an FSAR update could not be changed, absent the exemption.

### III. Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including Section 50.71(e)(3)(iii) when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)) and if "[t]he exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most

up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on DEP, and the purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review, and in any event by December 31, 2015.

The requested exemption to defer submittal of the next update to the FSAR included in the Harris Units 2 and 3 COL application would provide only temporary relief from the regulations in 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on June 23, 2009 (ADAMS Accession No. ML091810540), April 12, 2010 (ADAMS Accession No. ML101120592), April 14, 2011 (ADAMS Accession No. ML080580078), April 12, 2012 (ADAMS Accession No. ML12122A656) and April 15, 2013 (ADAMS Accession No. ML13112A761), DEP has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. In its subsequent request dated August 1, 2014, DEP asked the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until December 31, 2015, or prior to any request to reactivate Harris Units 2 and 3 COL application review. For the reasons stated above, the application of § 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

*Authorized by Law*

The exemption is a schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow DEP to submit the next Harris Units 2 and 3 COL application FSAR update on or before December 31, 2015, in lieu of the required scheduled submittal in December 31, 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting DEP the requested exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by DEP will not be reviewed by the NRC at this time. Plant construction cannot proceed until the NRC's review of the application is completed, a mandatory hearing is completed, and a license is issued. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

*Consistent With Common Defense and Security*

The requested exemption would allow DEP to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2015. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever: (1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and the Shearon Harris Units 2 and 3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and DEP were then required to update its FSAR by December 31, 2015, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Special circumstances in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2015, DEP's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the Shearon Harris Units 2 and 3 COL application. Additionally DEP submitted the required annual updates to its FSAR throughout the application process until asking for suspension of its review.

Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

*Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) provided that:

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by DEP and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

### IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the Shearon Harris Nuclear Power Plant Units 2 and 3 COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event no later than December 31, 2015.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24 day of November 2014.

For The Nuclear Regulatory Commission.

**Frank Akstulewicz,**

*Director, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–28456 Filed 12–2–14; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–022 and 52–023; NRC–2013–0261]**

## Duke Energy Progress Inc; Combined License Applications for Shearon Harris Nuclear Plant Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 1, 2014, letter from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On August 1, 2014, DEP requested an exemption from certain regulatory requirements which, if granted, would allow them to revise their COL application in order to address enhancements to the Emergency Preparedness (EP) rules by December 31, 2015, rather than by December 31, 2013, as the regulations currently require. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption to the EP update requirements until December 31, 2015, but stipulated that the updates to the Final Safety Analysis Report (FSAR) must be submitted prior to requesting the NRC resume its review of the COL application, or by December 31, 2015, whichever comes first.

**DATES:** The exemption is effective on December 3, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2013–0261 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Brian Hughes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6582; email: *Brian.Hughes@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 18, 2008 (ADAMS Accession No. ML080580078), DEP submitted to the NRC a COL application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site (Docket Numbers 52–22 and 52–23). The NRC docketed the Harris Units 2 and 3 COL application on April 23, 2008. On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. On July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements in Part 50 Appendix E Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), as referenced by 10 CFR 52.79(a)(21), to

submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2013, which the NRC granted through December 31, 2014. On August 1, 2014, DEP requested another exemption to December 31, 2015, from the requirements of 10 CFR part 50, Appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2013.

**II. Request/Action**

Appendix E of 10 CFR part 50 requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** on November 23, 2011 (76 FR 72560). An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Since DEP will not hold a COL prior to December 31, 2013, it is therefore required to revise its application to be compliant with the new EP rules by December 31, 2013. Similar to an earlier exemption request it submitted, as described above, by letter dated August 1, 2014 (ADAMS Accession No. ML14216A432), DEP requested another exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5, to submit the required COL application revision to comply with the new EP rules. The requested exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2015, rather than the initial December 31, 2013, date required by 10 CFR part 50, Appendix E, Section I.5. The current requirement to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

**III. Discussion**

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50, Appendix E, Section I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)).

*Authorized by Law*

The exemption is a one-time schedule exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5. The exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2015, in lieu of the initial December 31, 2013, the date required by 10 CFR part 50, Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting DEP the requested one-time exemption from the requirements of 10 CFR 50, Appendix E, Section I.5 will not result in a violation of the Atomic Energy Act of 1954, as amended, or NRC regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

The underlying purpose of the enhancements to Emergency Preparedness found in 10 CFR part 50, Appendix E, is to amend certain EP requirements to enhance protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

*Consistent With Common Defense and Security*

The requested exemption would allow DEP to submit the revised COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2015. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

*Special Circumstances*

Special Circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever: (1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(ii); or (2) The exemption would only provide temporary relief from the applicable regulation or the applicant has made good faith efforts to comply with the regulation (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR part 50, Appendix E, Section I.5 is to ensure that applicants and new COL holders updated their COL applications or COLs to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to receiving a license, or, for licensees, prior to operating the plant. The targets of Section I.5 of the rule were those applications that were being actively reviewed by the NRC staff when the rule went into effect on November 23, 2011. Since the Harris Units 2 and 3 COL application is now suspended compelling DEP to revise its COL application in order to meet the compliance deadline would result in unnecessary burden and hardship for the applicant to meet the compliance date. If the NRC were to grant this exemption, and DEP were then required to update its application to comply with the EP rule enhancements by December 31, 2015, or prior to any request to restart their review, the purpose of the rule would still be achieved. For this reason, the application of 10 CFR part 50, Appendix E, Section I.5, for the suspended Harris 2 and 3 COL application is deemed unnecessary and, therefore, special circumstances are present.

*Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

provided that:

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the

submission of an update to the application for which the licensing review has been suspended. Therefore, there are no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by DEP and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

## IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5 pertaining to the Harris Units 2 and 3 COL application to allow submittal of the revised COL application that complies with the enhancements to the EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2015.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25 day of November 2014.

For The Nuclear Regulatory Commission.

**Frank Akstulewicz,**

*Director, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–28458 Filed 12–2–14; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–0036; NRC–2012–0054]**

## Westinghouse Electric Company, LLC; Decommissioning Project, Hematite, Missouri

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; request for exemption; opportunity to request a hearing and to petition for leave to intervene; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application from Westinghouse Electric Company, LLC dated July 11, 2014, and subsequently modified by submittal dated September 25, 2014, for amendment of the Hematite Fuel Cycle Facility license (License No. SNM–33), which authorizes decommissioning of the facility. The amendment would allow disposal of an additional 87,100 $m^3$ (cubic meters) of debris and contaminated soil, concrete and asphalt, filter media, ion exchange resin and piping containing NRC-licensed source, byproduct and special nuclear material at U.S. Ecology Idaho, Inc.

**DATES:** A request for a hearing or petition for leave to intervene must be filed by February 2, 2015. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) is necessary to respond to this notice must request document access by December 15, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0054 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0054. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852.

**FOR FURTHER INFORMATION CONTACT:** John J. Hayes, Office of Nuclear Materials and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5928; email: *John.Hayes@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC has received a license amendment application from Westinghouse Electric Company, LLC (WEC or the licensee), dated July 11, 2014 (ADAMS Accession No. ML14193A008). The licensee holds NRC License No. SNM–33 and is authorized to conduct decommissioning activities at the facility. The licensee requests NRC authorization under 10 CFR

20.2002 for alternate disposal of an additional 87,100 $m^3$ (cubic meters) of buried debris and contaminated soil, concrete and asphalt, filter media, ion exchange resin and piping containing NRC-licensed source, byproduct and special nuclear material. The amendment requests authorization for WEC to transfer decommissioning waste from the facility to U.S. Ecology Idaho, Inc. (USEI), a Resource Conservation and Recovery Act Subtitle C disposal facility, located near Grand View, Idaho. The USEI facility is regulated by the Idaho Department of Environmental Quality and is not an NRC-licensed facility.

An NRC administrative review, documented in a letter to WEC dated August 29, 2014 (ADAMS Accession No. ML14188B647), found the application acceptable to begin a technical review. On September 25, 2014, Westinghouse submitted a revision (ADAMS Accession No. ML14293A614) to their July 11, 2014, request. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SNM–33. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

**II. Opportunity To Request a Hearing and Petition for Leave To Intervene**

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for hearing and petitions for leave to intervene shall be filed under 10 CFR part 2, "Agency Rules of Practice and Procedure." Interested person(s) should consult a current copy of 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions," which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided. Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by February 2, 2015. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by February 2, 2015.

**III. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software. If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resrouce@nrc.gov or* by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded under an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

*Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this

Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov, respectively.*[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C. (1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–7000.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 630–829–9565, or by email to *Forms.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), as well as Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $238.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

**Note:** Copies of documents and materials required by paragraphs C. (4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, ATTN: Personnel Security Branch, Mail Stop TWFN–03–B46M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Managements adjustable billing rates.

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E. (1) and E. (2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311, "Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information."

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 24th day of November, 2014.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections. |
| 25 | If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| 190 | (Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information. |
| 205 | Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv). |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–133; NRC–2014–0225]**

## Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from certain emergency planning requirements in response to an August 14, 2012, request from the Pacific Gas and Electric Company.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0225 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** John B. Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017, email: *John.Hickman@nrc.gov.*

## I. Background

On July 2, 1976, Humboldt Bay Power Plant (HBPP) Unit 3 was shut down for annual refueling and to conduct seismic modifications. The unit was never restarted. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, Pacific Gas and Electric Company (PG&E) announced its intention to decommission the unit. On July 16, 1985, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate. (ADAMS Accession No. 8507260045.) In December of 2008, the transfer of spent fuel from the fuel storage pool to the dry-cask Independent Spent Fuel Storage Installation (ISFSI) was completed, and the decontamination and dismantlement phase of HBPP Unit 3 decommissioning commenced. Active decommissioning is currently underway.

## II. Request/Action

Section 50.47, "Emergency Plans," of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR part 50) provides in part, ". . . no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to 10 CFR part 50 provides in part, "This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness."

On November 23, 2011, the NRC issued a Final Rule modifying or adding emergency planning (EP) requirements in Section 50.47, Section 50.54, and Appendix E of 10 CFR part 50 (76 FR 72560). The EP Final Rule was effective on December 23, 2011, with specific implementation dates for each of the rule changes, varying from the effective date of the Final Rule through December 31, 2015.

The EP Final Rule codified certain voluntary protective measures contained in NRC Bulletin 2005–02, "Emergency Preparedness and Response Actions for Security-Based Events," and generically applicable requirements similar to those previously imposed by NRC Order EA–02–026, "Order for Interim Safeguards and Security Compensatory Measures," dated February 25, 2002. In addition, the EP Final Rule amended other licensee emergency plan requirements to: (1) Enhance the ability of licensees in preparing and in taking certain protective actions in the event of a radiological emergency; (2) address, in part, security issues identified after the terrorist events of September 11, 2001; (3) clarify regulations to effect consistent emergency plan implementation among licensees; and (4) modify certain EP requirements to be more effective and efficient. However, the EP Final Rule was only an enhancement to the NRC's regulations and was not necessary for adequate protection. On page 72563 of the **Federal Register** notice for the EP Final Rule, the Commission "determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security."

By letter dated August 14, 2012, (ADAMS Accession No. ML12236A327) PG&E submitted a, "Request for Exemption from Specific 10 CFR 50 Requirements Regarding Enhancements to Emergency Preparedness Regulations," requesting exemption from specific emergency planning requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 for the HBPP ISFSI.

## III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The NRC staff reviewed the licensee's request and determined that exemptions were previously granted or should be granted from the following requirements: the requirement: "*arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made*" of 10 CFR 50.47(b)(3); the requirement: "*and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures*" of 10 CFR 50.47(b)(4); the requirement of 10 CFR 50.47(b)(10); the requirement: "*and onsite protective actions during hostile action*" of 10 CFR part 50, Appendix E, Section IV.1; the requirement of 10 CFR part 50, Appendix E, Section IV.2; the requirement of 10 CFR part 50, Appendix E, Section IV.3; the requirement of 10 CFR part 50, Appendix E, Section IV.4; the requirement of 10 CFR part 50, Appendix E, Section IV.5; the requirement of 10 CFR part 50, Appendix E, Section IV.6; the requirement: "*By June 23, 2014,*" "*a description of the,*" and "*including hostile action at the site. For purposes of this appendix, "hostile action" is defined as an act directed toward a nuclear power plant or its personnel that include the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force*" of 10 CFR part 50, Appendix E, Section IV.A.7; the requirement of 10 CFR part 50, Appendix E, Section IV.A.9; the requirements: "*and outside, and offsite,* and, *By June 20, 2012, for nuclear power reactor licensees, these action levels must include hostile action that may adversely affect the nuclear power plant*" of 10 CFR part 50, Appendix E, Section IV.B.1; the requirements: *By June 20, 2012,*" "*within 15 minutes*" and "*to protect public health and safety provided that any delay in declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety*" of 10 CFR part 50, Appendix E, Section IV.C.2; the requirement: "*within 15 minutes*" and "*The licensee shall demonstrate that the appropriate governmental authorities have the capability to make a public alerting and notification decision promptly on being informed by the licensee of an emergency condition. Prior to initial operation greater than 5 percent of rated thermal power of the first reactor at the site, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public with the plume exposure pathway EPZ. The design objective of the prompt public alert and notification system shall be to have the capability to essentially complete the initial alerting and notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this alerting and notification capability will range from immediate alerting and*

*notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the appropriate governmental authorities to make a judgment whether or not to activate the public alert and notification system. The alerting and notification capability shall additionally include administrative and physical means for a backup method of public alerting and notification capable of being used in the event the primary method of alerting and notification is unavailable during an emergency to alert or notify all or portions of the plume exposure pathway EPZ population. The backup method shall have the capability to alert and notify the public within the plume exposure pathway EPZ, but does not need to meet the 15 minute design objective for the primary prompt public alert and notification system. When there is a decision to activate the alert and notification system, the appropriate governmental authorities will determine whether to activate the entire alert and notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public alert and notification system shall remain with the appropriate governmental authorities*'' of 10 CFR part 50, Appendix E, Section IV.D.3; the requirement: ''*onsite technical support center and an emergency operations*'' of 10 CFR part 50, Appendix E, Section IV.E.8.a.(i); the requirement of 10 CFR part 50, Appendix E, Section IV.E.8.a.(ii); the requirement of 10 CFR part 50, Appendix E, Section IV.E.8.b; the requirement of 10 CFR part 50, Appendix E, Section IV.E.8.c; the requirement of 10 CFR part 50, Appendix E, Section IV.E.8.d; the requirement of 10 CFR part 50, Appendix E, Section IV.E.8.e, the requirement of 10 CFR part 50, Appendix E, Section IV.F.2.a; the requirement: ''*Nuclear power reactor licensees shall submit exercise scenarios under § 50.4 at least 60 days before use in an exercise required by this paragraph 2.b*'' and ''*and offsite*'' and ''*(Technical Support Center (TSC), Operations Support Center (OSC), and the Emergency Operations Facility (EOF))*'' of 10 CFR part 50, Appendix E, Section IV.F.2.b; the requirement: ''*Such scenarios for nuclear power reactor licensees must include a wide spectrum of radiological releases and events, including hostile action*'' of 10 CFR part 50, Appendix E, Section IV.F.2.i; and the requirement of 10 CFR part 50, Appendix E, Section IV.I.

The exemption request was reviewed against the acceptance criteria included in 10 CFR 50.47, Appendix E to 10 CFR part 50, 10 CFR 72.32 and Interim Staff Guidance—16. The review considered the permanently shut-down and defueled status of the reactor, and the low likelihood of any credible accident resulting in radiological releases requiring offsite protective measures. These evaluations were supported by the previously documented licensee and staff accident analyses. The staff concludes that the Humboldt Bay Site Emergency Plan provides: (1) An adequate basis for an acceptable state of emergency preparedness, and (2) in conjunction with arrangements made with offsite response agencies, provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Humboldt Bay Site.

The Commission has concluded that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR part 50, Appendix E, Section IV as specified above are acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut-down and spent nuclear fuel is stored in an ISFSI.

The NRC has determined that other requirements from which PG&E requested exemptions were not applicable to the HBPP and ISFSI or are being met by the Humboldt Bay Site Emergency Plan or an exemption was not appropriate. Therefore, an exemption was not necessary or was denied for those requirements. Additional information regarding the NRC staff evaluation is documented in a Safety Evaluation Report (ADAMS Accession No. ML13016A210).

*A. Exemption Is Authorized by Law*

The NRC has found that PG&E meets the criteria for an exemption in § 50.12. The NRC has determined that granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

*B. The Exemption Presents No Undue Risk to Public Health and Safety Is Consistent With the Common Defense and Security*

As noted in Section II., ''*REQUEST/ ACTION,*'' above, PG&E's compliance with the EP requirements in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection of the public health and safety and common defense and security. In the Safety Evaluation Report, the NRC staff explains that PG&E's implementation of the Humboldt Bay Site Emergency Plan, with the exemptions, will continue to provide this reasonable assurance of adequate protection. Thus, granting the exemptions will not present an undue risk to public health or safety and is not inconsistent with the common defense and security.

*C. Special Circumstances Are Present*

For the Commission to grant an exemption, special circumstances must exist. Under § 50.12(a)(2)(ii), special circumstances are present when ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' These special circumstances exist here. The NRC has determined that PG&E's compliance with the regulations listed above is not necessary for the licensee to demonstrate that, under its emergency plan, there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Consequently, special circumstances are present because requiring PG&E to comply with the regulations listed above is not necessary to achieve the underlying purpose of the EP regulations.

*D. Environmental Considerations*

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to this exemption was published in the **Federal Register** on October 24, 2014 (79 FR 63647). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

**IV. Conclusion**

The NRC staff reviewed the licensee's submittals and concludes that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and Appendix E to10 CFR part 50 as specified above is acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut down and spent nuclear fuel is stored in an ISFSI.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, are consistent with

the common defense and security, and special circumstances are present.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of November, 2014.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2014–28423 Filed 12–2–14; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0248]**

### Performance Review Boards for Senior Executive Service

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Appointments.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has announced appointments to the NRC Performance Review Board (PRB) responsible for making recommendations on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees and appointments to the NRC PRB Panel responsible for making recommendations to the appointing and awarding authorities for NRC PRB members.

**DATES:** December 3, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0248 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0248. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Miriam L. Cohen, Secretary, Executive Resources Board, telephone: 301–287–0747, email: *Miriam.Cohen@nrc.gov*, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:** The following individuals are appointed as members of the NRC PRB responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Mark A. Satorius, Executive Director for Operations
Margaret M. Doane, General Counsel
Darren B. Ash, Deputy Executive Director for Corporate Management, Office of the Executive Director for Operations
Cynthia A. Carpenter, Director, Office of Administration
Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards
Michael R. Johnson, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations
Nader L. Mamish, Director, Office of International Programs
Cynthia D. Pederson, Regional Administrator, Region III
Brian W. Sheron, Director, Office of Nuclear Regulatory Research
Glenn M. Tracy, Director, Office of New Reactors
Maureen E. Wylie, Chief Financial Officer
Roy P. Zimmerman, Acting Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, Office of the Executive Director for Operations

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

William M. Dean, Director, Office of Nuclear Reactor Regulation
Marian L. Zobler, Deputy General Counsel
James T. Wiggins, Director, Office of Nuclear Security and Incident Response

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

Dated at Rockville, Maryland, this 24th day of November, 2014.

For the Nuclear Regulatory Commission.

**Miriam L. Cohen,**

*Secretary, Executive Resources Board.*

[FR Doc. 2014–28419 Filed 12–2–14; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–458 and 50–382; NRC–2014–0258]**

### River Bend Station, Unit 1, and Waterford Steam Electric Station, Unit 3; Consideration of Approval of Transfer of License and Conforming Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for direct and indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Entergy Gulf States Louisiana, L.L.C. (ESGL) and Entergy Louisiana, LLC (ELL) on June 10, 2014, as supplemented by letter dated October 9, 2014. The application seeks NRC approval of the direct transfers of Facility Operating License No. NPF–47 for River Bend Station, Unit 1 (River Bend), from the current holder, ESGL, and Facility Operating License No. NPF–38 for Waterford Steam Electric Station, Unit 3 (Waterford), from current holder ELL to new company Entergy Louisiana Power, LLC (ELP). In connection with these actions, ELP would change its name to new company Entergy Louisianan, LLC.

**DATES:** Comments must be filed by January 2, 2015. A request for a hearing must be filed by December 23, 2014.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID: NRC–2014–0258. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- Email comments to: *Hearingdocket@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alan Wang, Office of Nuclear Reactor Regulation, telephone: 301–415–1445, email: *Alan.Wang@nrc.gov* or Michael Orenak, Office of Nuclear Reactor Regulation, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov*, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2014–0258 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID: NRC–2014–0258.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2014–0258 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC is considering the issuance of an order under § 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR) approving the direct and indirect transfers of control of Waterford NPF–38, currently held by ELL, and River Bend, NPF–47, currently held by ESGL. In a series of related transactions, Waterford would be directly transferred to Entergy Louisiana, LLC from ELL pursuant to a merger under the Texas Business Organizations Code (TXBOC), and indirectly transferred in connection with the contribution of ELP's membership interests to Louisiana Power & Light Company, LLC ("LP&L"), resulting in ELP becoming a subsidiary of LP&L. River Bend would be (1) directly transferred to Entergy Louisiana, LLC pursuant to a merger under the TXBOC, (2) indirectly transferred in connection with the contribution of EGSP's membership interests to LP&L, resulting in EGSP becoming a subsidiary of LP&L, and (3) directly transferred to ELP pursuant to a merger under the TXBOC. As noted above, ELP would change its company name to a new company Entergy Louisianan, LLC. In addition, the general license for the ISFSI held by ELL for Waterford and ESGL for River Bend under 10 CFR part 72 will transfer with the 10 CFR part 50 license.

Following approval of the proposed direct and indirect transfers of control of the licenses, Entergy Louisiana, LLC would acquire ownership of Waterford and River Bend. The proposed transfers will not result in any change in the role of Entergy Operations, Inc. as the licensed operator of Waterford and River Bend and will not result in any changes to its technical qualifications.

No physical or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. In addition, the Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed merger and establishment of a new holding company will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an Independent Spent Fuel Storage Installation, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

### III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

### IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC's E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309, which is available at the NRC's PDR, located at O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file contentions after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the new or amended filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 23, 2014. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by February 2, 2015.

### V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated June 10, 2014 (ADAMS Accession No. ML14161A698), as supplemented by letter dated October 9, 2014 (ADAMS Accession No. ML14294A487).

Dated at Rockville, Maryland, this 13th day of November 2014.

For the Nuclear Regulatory Commission.

**Alan Wang,**

*Project Manager, Plant Licensing IV–2 and Decommissioning Transition Branch, Division of Operating Reactor Licensing, Office Nuclear Reactor Regulation.*

[FR Doc. 2014–28422 Filed 12–2–14; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–12 and CP2015–15; Order No. 2259]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 20 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 20 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

## II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–12 and CP2015–15 to consider the Request pertaining to the proposed Priority Mail Express Contract 20 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Bzhilyanskaya to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2015–12 and CP2015–15 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 4, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28399 Filed 12–2–14; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 20 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

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## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–9 and CP2015–12; Order No. 2264]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 99 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 99 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

## II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–9 and CP2015–12 to consider the Request pertaining to the proposed Priority Mail Contract 99 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2015–9 and CP2015–12 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 4, 2014.

[1] Request of the United States Postal Service to Add Priority Mail Contract 99 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28402 Filed 12–2–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2015–11; Order No. 2262]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

On November 25, 2014, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket No. CP2015–11 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth Moeller to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2015–11 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 4, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28400 Filed 12–2–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–11 and CP2015–14; Order No. 2263]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 101 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 101 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–11 and CP2015–14 to consider the Request pertaining to the proposed Priority Mail Contract 101 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–11 and CP2015–14 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 25, 2014 (Notice).

[1] Request of the United States Postal Service to Add Priority Mail Contract 101 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

these proceedings (Public Representative).

3. Comments are due no later than December 4, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28401 Filed 12–2–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–10 and CP2015–13; Order No. 2265]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 100 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 100 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–10 and CP2015–13 to consider the Request pertaining to the proposed Priority Mail Contract 100 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2015–10 and CP2015–13 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 4, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28403 Filed 12–2–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2012–66; Order No. 2266]**

### Amendment to Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing of an amendment to Priority Mail Express & Priority Mail Contract 10 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 4, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

On November 25, 2014, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Express & Priority Mail Contract 10 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment as Attachment A. Notice at 1. The Postal Service states that the supporting financial documentation and financial certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5, remain applicable. *Id.*

The Postal Service also filed the unredacted Amendment under seal. *Id.* The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of customer-identifying information that it has filed under seal. *Id.*

The Amendment clarifies the definition of Customer and extends the contract expiration date. In all other respects, the existing contract remains unchanged. *Id.*, Attachment A at 1.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not affect the cost coverage of the Agreement. *Id.*

[1] Request of the United States Postal Service to Add Priority Mail Contract 100 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

[1] Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 10, with Portions Filed Under Seal, November 25, 2014 (Notice).

## II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 4, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to represent the interests of the general public (Public Representative) in this docket.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2012–66 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 4, 2014.

4. The Secretary shall arrange for publication of this order in the Federal Register.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–28404 Filed 12–2–14; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release Nos. 33–9683; 34–73709; File No. 265–27]**

### SEC Advisory Committee on Small and Emerging Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Wednesday, December 17, 2014, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:30 a.m. (EST) and will be open to the public, except for a period of approximately 90 minutes when the Committee will meet in an administrative work session during lunch. The public portions of the meeting will be Webcast on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

**DATES:** The public meeting will be held on Wednesday, December 17, 2014. Written statements should be received on or before December 15, 2014.

**ADDRESSES:** The meeting will be held at the Commission's headquarters, 100 F Street NE., Washington, DC. Written statements may be submitted by any of the following methods:

*Electronic Statements*

- Use the Commission's Internet submission form (*http://www.sec.gov/spotlight/acsec-spotlight.shtml* ); or
- Send an email message to *rule-comments@sec.gov*. Please include File Number 265–27 on the subject line; or

*Paper Statements*

- Send paper statements in triplicate to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov/spotlight/acsec-spotlight.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Julie Z. Davis, Senior Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Keith Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: December 1, 2014.

**Brent J. Fields,**

*Committee Management Officer.*

[FR Doc. 2014–28495 Filed 12–1–14; 4:15 pm]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 4, 2014 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution settlement of administrative proceedings;

Settlement of injunctive actions;

Litigation matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 1, 2014.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–28532 Filed 12–1–14; 4:15 pm]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73697; File No. SR–CBOE–2014–088]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to SPX End-of-Month Closing Procedures

November 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2014, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make minor changes to Interpretation and Policy .06 to Rule 6.2B (Hybrid Opening System ("HOSS")) relating to month-end pricing procedures for non-expiring S&P 500 Index ("SPX") options.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.2B. Hybrid Opening System ("HOSS")

(a)–(h) No change.

. . . *Interpretations and Policies:*

.01–.05 No change.

.06 Following the [3:15 p.m. Chicago time] close of trading on the last business day of each calendar month, the Exchange will conduct special non-trading closing rotations for each series of S&P 500 Index ("SPX") options in order to determine the theoretical "fair value" of such series as of [3:00 p.m. Chicago time] *time of the close of trading in the underlying cash market.* During such special non-trading closing rotations, an LMM in the SPX options designated by the Exchange in each series of SPX options, will provide bid and offer quotations, the midpoint of which will reflect the theoretical fair value of the series of SPX options, as determined by the LMM pursuant to the LMM's algorithmic analysis of relevant and available data. Notwithstanding that trading in SPX options on the Exchange continues until [3:15 p.m.] *fifteen minutes after the close of trading in the underlying cash market,* on the last business day of each month, after [3:15 p.m.] *the close of trading,* the Exchange shall disseminate the [3:00 p.m.] fair value quotations *as of the close of trading in the underlying cash market* provided by the designated LMM as the quotations used to calculate the theoretical fair value for each series of SPX options, provided, however, that the Exchange may determine, in the interest of fair and orderly markets, not to disseminate such quotations.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make minor changes to its SPX end-of-month pricing procedures in Interpretation and Policy .06 to Rule 6.2B ("Interpretation and Policy .06") to account for the fact that the SPX cash market may close at a time other than 3:00 p.m. Chicago time on the last business day of each calendar month. The Exchange believes that the proposed rule will help ensure consistency in the S&P 500 Index-related markets and make it easier for investors to trade SPX options.

Background

In 2001, the Chicago Mercantile Exchange ("CME") adopted special settlement procedures to determine end-of-month settlement prices for its domestic futures contracts.[3] Specifically, CME adopted end-of-month valuation procedures to calculate the price of S&P 500 futures contracts based on the value of the underlying S&P 500 Index at the close of trading. CME has termed these procedures "End-of-Month Special Fair Value" ("EOM FV") or "Fair Value" ("FV") settlement procedures.

According to CME, "[f]air value is the theoretical assumption of where a futures contract should be priced given such things as the current index level, index dividends, days to expiration and interest rates."[4] Pursuant to its EOM FV settlement procedures, CME calculates the end-of-month final settlement value of S&P 500 futures contracts based on the value of the underlying S&P 500 Index cash market, rather than the actual final trading prices of S&P 500 futures contracts. CME uses its end-of-month theoretical fair value settlement prices for all purposes, including account value reporting and end-of-day variation margin calls.[5] These procedures mitigate issues caused by the misalignment of valuations in the S&P 500 futures market and the underlying S&P 500 Index cash market due to the extended trading hours for S&P 500 futures contracts after the close of trading in the cash market.

The Exchange understands that CME adopted its EOM FV procedures at the request of institutional investors (active in both the S&P 500 futures and S&P 500 Index cash markets), who wanted the end-of-month value of their futures positions to align with prices in the underlying S&P 500 Index cash market. If the month-end settlement price of investors' futures positions were based on the actual closing trading prices as of the close of futures trading fifteen minutes after the close of trading in the underlying S&P 500 Index cash market while the month-end closing price of their cash positions were based on the close of trading in the underlying S&P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CME originally instituted this practice for the December 31, 1999 year-end, but has adopted the practice for each month-end closing date since January 2001. *See generally* CME Group, Month-End Fair Value Procedures, *available at http://www.cmegroup.com/trading/equity-index/fairvaluefaq.html.*

[4] *See generally* CME Group, Calculating Fair Value, *available at http://www.cmegroup.com/trading/equity-index/fairvalue.html.*

[5] *See generally* CME Group, End of Month Settlement Procedures, *available at http://www.cmegroup.com/trading/equity-index/fairvaluefaq.html.*

500 Index cash market fifteen minutes prior to the close of trading in the S&P 500 futures market, investors might experience tracking errors and/or financial reporting incongruities that do not reflect actual portfolio performance. Pricing model discrepancies or misaligned pricing between the S&P 500 futures and S&P 500 Index cash market could also lead to unnecessary and/or unwarranted margin calls and returns as well as other hedging and accounting problems. The EOM FV settlement procedures adopted by CME mitigate these issues by aligning the end-of-month settlement prices of S&P 500 futures contracts with closing prices in the underlying cash market as of the close of trading in the cash market.[6]

The S&P 500 futures market and SPX options market are highly interconnected. Many investors use SPX options to hedge S&P 500 futures positions. Because of the interconnectedness between the S&P 500 futures and SPX options markets, the Exchange believed that the use of end-of-month pricing procedures that diverged significantly from the CME's EOM FV pricing procedures would be disruptive to fair and orderly markets. Although the Exchange could have aligned the end-of-month settlement prices of standard non-expiring SPX options with the end-of-month prices of the related S&P 500 futures contracts (and the underlying S&P Index cash market) by simply ending trading at the close of trading in the cash market on the last trading day of each month, the Exchange determined that closing trading in SPX options market prior to the close of trading at the CME would also be disruptive to fair and orderly markets. In particular, the Exchange believed that closing trading for standard non-expiring SPX options during S&P 500 futures trading hours would be disruptive to many market participants who hedge S&P 500 futures positions with SPX options. Accordingly, the Exchange adopted end-of-month settlement practices designed to align its end-of-month pricing with CME's EOM FV settlement procedures. The Exchange's end-of-month pricing procedures were adopted through a series of Regulatory Circulars and subsequently codified in the Exchange's rules in Interpretation and Policy .06.[7]

Currently, on the last business day of each month, the Exchange conducts special end-of-month non-trading rotations for series of standard non-expiring SPX options pursuant to Interpretation and Policy .06. These special non-trading closing rotations are conducted on the same month-end business days on which CME calculates the EOM FV settlement prices of the S&P 500 futures contracts based on the theoretical fair value of the underlying S&P 500 Index cash market at the close of trading.[8] On such days, a designated Lead Market-Maker ("LMM") calculates non-trading closing bid and offer quotations to reflect the theoretical fair value of each SPX option series using pricing algorithms with a number of relevant inputs, in particular, the EOM FV settlement prices of the related S&P 500 futures contracts at CME.[9] The theoretical fair value prices are then disseminated to the Options Clearing Corporation ("OCC") via the Options Price Reporting Authority ("OPRA") after the close of trading on the last business day of each month (on the same day that CME performs its end-of-month fair market valuations for the S&P 500 futures). Consistent with CME's practices, the Exchange considers the end-of-month theoretical fair value closing prices of SPX options to be the final month-end settlement prices for all purposes, including OCC margin calculations, even though no actual trades occur at these prices.[10]

## Proposed Rule Change

The Exchange proposes to make minor changes to its SPX end-of-month pricing procedures in Interpretation and Policy .06 to account for the fact that the SPX cash market may close at a time other than 3:00 p.m. Chicago time on the last business day of each calendar month. Despite the fact that the close of trading on the last business day of each month may occur prior to 3:00 p.m. Chicago time in the S&P 500 Index cash market (and thus, before 3:15 p.m. Chicago time in the options market) on certain holidays or other abbreviated trading days, the Exchange's current rules do not account for this discrepancy. Rather, current Interpretation and Policy .06 specifically provides that "[f]ollowing the 3:15 p.m. Chicago time close of trading on the last business day of each calendar month, the Exchange will

[6] CME has explained the reason for maintaining its fair value procedure as follows: Stock index products on the . . . [CME] normally close and settle fifteen minutes after the daily close of trading in cash equities. The cash/futures basis may be affected to the extent that futures may fluctuate—sometimes sharply—during those final fifteen minutes. As such, this may become a difficulty for institutional traders practicing coordinated cash/futures strategies. Still, the opportunity to lay off equity market exposure during those fifteen minutes subsequent to the cash close has proven quite beneficial. The use of 3:00 p.m. "Fixing Price" settlement procedures at month end is intended to address this so-called "tracking error" while still permitting trade to continue past the 3:00 p.m. cash close. Conceptually, the 3:00 p.m. settlement is determined at the same time as the cash market close at 3:00 p.m., since any new information following 3:00 p.m. will not affect the closing price of the stocks or the futures 3:00 p.m. Fixing Price. However, information or events subsequent to the cash market close may still impact futures prices. Market participants should be aware of the possibility that futures may trade at prices apart from the 3:00 p.m. Fixing Price based settlement prices between 3:00 p.m. and the close of the futures market at 4:15 p.m. on days on which end of month settlement procedures are applied. *See id.*

[7] *See* CBOE Interpretation and Policy .06 to Rule 6.2B; Securities and Exchange Act Release No. 34–67992 (October 5, 2012), 77 FR 62277 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Closing Rotation Procedures for S&P 500 Index Options) (SR–CBOE–2012–095). *See also* CBOE Regulatory Circular RG99–233 (Dec. 21, 1999), *available at https://www.cboe.org/publish/regcir/rg99-233.pdf;* CBOE Regulatory Circular RG00–049 (Mar. 29, 2000), *available at https://www.cboe.org/publish/regcir/rg00-049.pdf;* CBOE Regulatory Circular RG01–014 (Jan. 25, 2001), *available at http://www.cboe.com/publish/RegCir/RG01-014.pdf;* CBOE Regulatory Circular RG01–040 (Mar. 29, 2001), *available at https://www.cboe.org/publish/regcir/rg01-040.pdf;* CBOE Regulatory Circular RG01–058 (Apr. 27, 2001), *available at https://www.cboe.org/publish/regcir/rg01-058.pdf;* CBOE Regulatory Circular RG02–019 (Apr. 4, 2002), *available at http://www.cboe.com/publish/RegCir/RG02-019.pdf;* CBOE Regulatory Circular RG02–039 (June 12, 2002), *available at http://www.cboe.com/publish/RegCir/RG02-039.pdf;* CBOE Regulatory Circular RG02–073 (Sept. 17, 2002), *available at http://www.cboe.com/publish/RegCir/RG02-073.pdf;* CBOE Regulatory Circular RG02–118 (Dec. 19, 2002), *available at http://www.cboe.org/publish/regcir/rg02-118.pdf;* CBOE Regulatory Circular RG03–016 (Mar. 19, 2003), *available at http://www.cboe.com/publish/RegCir/RG03-016.pdf;* CBOE Regulatory Circular RG03–039 (June 11, 2003), *available at http://www.cboe.com/publish/RegCir/RG03-039.pdf;* CBOE Regulatory Circular RG03–075 (Sept. 10, 2003), *available at http://www.cboe.com/publish/RegCir/RG03-075.pdf;* CBOE Regulatory Circular RG03–082 (Sept. 22, 2003), *available at http://www.cboe.com/publish/RegCir/RG03-082.pdf;* CBOE Regulatory Circular RG03–110 (Dec. 17, 2003), *available at http://www.cboe.com/publish/RegCir/RG03-110.pdf;* CBOE Regulatory Circular RG04–132 (Dec. 30, 2004), *available at http://www.cboe.com/publish/RegCir/RG04-132.pdf;* CBOE Regulatory Circular RG05–130 (Dec. 29, 2005), *available at http://www.cboe.com/publish/RegCir/RG05-130.pdf;* CBOE Regulatory Circular RG06–130 (Dec. 19, 2006), *available at http://www.cboe.org/publish/regcir/rg06-130.pdf;* CBOE Regulatory Circular RG08–004 (Jan. 8, 2008), *available at http://www.cboe.com/publish/RegCir/RG08-004.pdf;* CBOE Regulatory Circular RG09–151 (Dec. 30, 2009), *available at http://www.cboe.org/publish/regcir/rg09-151.pdf;* and CBOE Regulatory Circular RG12–023 (Jan. 30, 2012), *available at http://www.cboe.org/publish/regcir/rg12-023.pdf.*

[8] *See* CBOE Interpretation and Policy .06 to Rule 6.2B.

[9] *See* Securities and Exchange Act Release No. 34–67992 (October 5, 2012), 77 FR 62277 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Closing Rotation Procedures for S&P 500 Index Options) (SR–CBOE–2012–095).

[10] Notably, when the Exchange codified Interpretation and Policy .06, the Exchange stated that it anticipated disseminating end-of-month non-trading closing rotation quotations for each series of SPX options so long as doing so remains consistent with CME's end-of-month pricing practices in the S&P 500 futures. *See id.*

conduct special non-trading closing rotations for each series of S&P 500 Index ("SPX") options in order to determine the theoretical "fair value" of such series as of 3:00 p.m. Chicago time." Notably, CME will conduct its EOM FV procedures prior to 3:15 p.m. Chicago time on certain holidays and abbreviated trading days that fall on the final business day of a calendar month.[11]

In order to resolve this discrepancy, the Exchange proposes to amend Interpretation and Policy .06 to eliminate all references to a 3:15 p.m. close of trading and instead provide that following the close of trading on the last business day of each calendar month, the Exchange will conduct special non-trading closing rotations for each series of SPX options in order to determine the theoretical "fair value" of such series as of as of [sic] the time of the close of trading in the underlying cash market. Similarly, the Exchange proposes to amend Interpretation and Policy .06 to provide that notwithstanding that trading in SPX options on the Exchange continues until fifteen minutes after the close of trading in the underlying cash market, on the last business day of each month, after the close of trading, the Exchange shall disseminate the fair value quotations as of the close of trading in the underlying cash market provided by the designated LMM as the quotations used to calculate the theoretical fair value for each series of SPX options, provided, however, that the Exchange may determine, in the interest of fair and orderly markets, not to disseminate such quotations. The Exchange believes that the proposed changes would ensure consistency in the S&P 500 Index-related markets and further the intended goals served by the alignment of the S&P 500 futures and SPX options markets as described above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act,[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange is proposing to make minor changes to its SPX end-of-month pricing procedures in Interpretation and Policy .06 to account for the fact that the SPX cash market may close at a time other than 3:00 p.m. Chicago time on the last business day of each calendar month. The Exchange believes that its end-of-month FV pricing procedures remove impediments to perfecting the mechanism of a free and open national market system by allowing traders and investors to realize consistency across the different S&P 500 Index-related markets at the end of each month. Because Interpretation and Policy .06 contains specific references to 3:15 p.m. Chicago time, it does not allow the Exchange to conduct end-of-month FV pricing procedures in a manner consistent with CME based on the value of the cash market if there is an abbreviated trading day on the final business day of the month.

The Exchange's SPX end-of-month FV pricing procedures were adopted to smooth pricing inconsistencies in the S&P 500 Index-related markets due [sic] market events during the 15 additional minutes of extended trading hours in the SPX options and S&P 500 futures markets after the close of trading in the cash market. The Exchange's end-of-month FV procedures are designed to foster consistency in the S&P 500 Index-related markets by aligning the price of SPX options and S&P 500 futures prices at the end of trading at 3:15 p.m. Chicago time with the closing price of the cash market as of 3:00 p.m. Chicago time. When it adopted Interpretation and Policy .06, however, the Exchange did not contemplate the possibility of the final business day the month falling on an abbreviated trading day or on a day with a close at a time other than 3:15 p.m. Chicago time. Thus, on days such as the day after Thanksgiving, Friday, November 28, 2014, Interpretation and Policy .06 does not afford the Exchange the flexibility needed to conduct its SPX end-of-month FV pricing procedures at or near the close of trading at 12:15 p.m. Chicago time. The Exchange believes that the proposed amendment will add consistency to the markets and help promote fair and orderly markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that better aligning its end-of-month fair value settlement procedures with the S&P 500 futures market will adversely affect investors. These procedures will be equally applied and will equally affect all market participants in the SPX options market. Furthermore, the Exchange believes that the proposed rule will bolster competition and contribute to more robust markets by making it easier for investors to trade SPX options and use SPX options to hedge S&P 500 futures positions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)(iii) thereunder.[18]

[11] In such cases, the Exchange has followed its EOM FV procedures in the interest of fair and orderly markets. *See, e.g.*, CBOE Regulatory Circular RG13–150 *available at http://www.cboe.com/publish/RegCir/RG13-150.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

Continued

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal rule change may become operative immediately upon filing. In its request for a waiver of the 30-day operative delay, the Exchange represents that on Friday, November 28, 2014, in observance of the Thanksgiving holiday, trading in the underlying S&P 500 Index cash market will close at 12:00 p.m. Chicago time and trading in the S&P 500 futures cash market will close at 12:15 p.m. Chicago time. The Exchange also represents that CME will conduct its EOM FV settlement procedures prior to 3:15 p.m. Chicago time on certain holidays and abbreviated trading days that fall on the final business day of the calendar month.[21] The Exchange believes that consistency with CME's EOM FV settlement procedure is necessary to ensure fair and orderly markets, and therefore, requests that the Commission waive the 30-day operative delay to allow the Exchange to conduct special non-trading closing rotations for each series of SPX options in order to determine the theoretical "fair value" of such series as of the time of the close of trading in the underlying cash markets on Friday, November 28, 2014. The Commission notes that the Exchange failed to file this proposed rule change more than 30 days prior to the early close of the underlying S&P 500 Index cash and S&P 500 futures cash markets on Friday, November 28, 2014, and therefore, the Exchange needs the operative delay to be waived in order for its rules to allow it to conduct the non-trading closing rotation earlier than usual on November 28, 2014. The Commission believes that waiver of the operative delay, in this instance, is consistent with investor protection and the public interest. In particular, waiver of the operative delay will enable the Exchange to meet investor expectations by customizing its rule to account for early closure during holiday periods like November 28, 2014, when literal compliance with the current rule text would be illogical and contrary to the intent of the original rules as adopted. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–088 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–088, and should be submitted on or before December 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–28426 Filed 12–2–14; 8:45 am]

**BILLING CODE 8011–01–P**

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at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See supra*, note 11 and accompanying text.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

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## DEPARTMENT OF STATE

**[Public Notice 8962]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Man Ray—Human Equations: A Journey From Mathematics to Shakespeare" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Man Ray—Human Equations: A Journey from Mathematics to Shakespeare," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, DC, from on or about February 7, 2015, until on or about May 10, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public

Notice of these Determinations be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, including lists of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 24, 2014.

**Kelly Keiderling,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2014–28455 Filed 12–2–14; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 290 (Sub-No. 373X)]**

### Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Adams and Scioto Counties, Ohio

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately 31.5 miles of rail line extending from milepost CT 73.50 at Plum Run to milepost 105.00 at Vera (West Portsmouth), in Adams and Scioto Counties, Ohio (the Line). The Line traverses United States Postal Service Zip Codes 45652, 45657, 45660, and 45663.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 40 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective January 2, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued service under 49 CFR 1152.27(c)(2)[1] must be filed by December 15, 2014.[2] Petitions to reopen must be filed by December 23, 2014, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 25, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Brendetta S. Jones,**

*Clearance Clerk.*

[FR Doc. 2014–28222 Filed 12–2–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 303 (Sub-No. 45X]**

### Wisconsin Central, Ltd.—Discontinuance of Service Exemption—in Ashland and Iron Counties, Wis., and Gogebic and Ontonagon Counties, Mich.

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately 77.8 miles of rail line, known as the White Pine Subdivision, between milepost 332.4 at Marengo Junction, Wis., and milepost 254.6 at White Pine, Mich., in Ashland and Iron Counties, Wis., and Gogebic and Ontonagon Counties, Mich. (the Line). The Line traverses United States Postal Service Zip Codes 49910, 49911, 49938, 49947, 49953, 49968, 54534, 54559, 54806, and 54855.

WCL has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on January 2, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2),[1] must be filed by December 12, 2014.[2] Petitions to reopen must be filed by December 23, 2014, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Robert A. Wimbish,

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because NSR is seeking to discontinue service, not to abandon the line, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL. 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: November 26, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Brendetta S. Jones,**

*Clearance Clerk.*

[FR Doc. 2014–28410 Filed 12–2–14; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Tribal Consultation Policy

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of Interim Tribal Policy.

**SUMMARY:** This notice announces an interim policy outlining the guiding principles for all Treasury bureaus and offices engaging with Tribal Governments on matters with Tribal implications. The policy will be updated periodically and refined as needed to reflect ongoing engagement and collaboration with Tribal partners.

**DATES:** Comments must be received no later than April 2, 2015. *Effective date:* December 3, 2014.

*Electronic Comments:* Use the Federal eRulemaking Portal (*www.regulations.gov*) and follow the instructions for submitting comments through the Web site. You may download this proposed rule from *www.regulations.gov* or *www.treasurydirect.gov.* You may also submit electronic comments to *TRIBAL.CONSULT@treasury.gov.*

We will post all comments received to *www.regulations.gov* and on the TreasuryDirect Web site at *www.treasurydirect.gov.* The interim policy and comments will also be available for public inspection and copying at the Treasury Department Library, Treasury Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Elaine Buckberg, Deputy Assistant Secretary for Policy Coordination, Office of Economic Policy and Point of Contact for Tribal Consultation, Department of the Treasury at 202–622–2200 or by email at *TRIBAL.CONSULT@treasury.gov.*

**SUPPLEMENTARY INFORMATION:**

### Department of the Treasury Tribal Consultation Policy

In furtherance of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67,249, issued by President Clinton on November 6, 2000, and the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881, signed by President Obama on November 5, 2009, the U.S. Department of the Treasury (Treasury) establishes this Tribal Consultation Policy (Policy). The Policy outlines the guiding principles for all Treasury bureaus and offices engaging with Tribal Governments on matters with Tribal Implications. The Policy will be updated periodically and refined as needed to reflect ongoing engagement and collaboration with Tribal partners.

### I. Definitions

A. *Indian Tribe* refers to an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

B. *Tribal Government* refers to the recognized governing body of an Indian Tribe.

C. *Tribal Consultation (or Consultation)* involves the direct, timely, and interactive process of receiving input from Indian Tribes regarding proposed Treasury actions on policy matters that have Tribal Implications.

D. *Policies that have Tribal Implications* shall have the same meaning as used in Executive Order 13175, and refers to Treasury regulations, published guidance, or other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. It does not include policy matters of general applicability that may have an impact on Indian Tribes or their members.

E. *Tribal Officials* refers to elected or duly appointed officials of Tribal Governments or authorized inter-tribal organizations.

### II. Guiding Principles

A. The United States recognizes the right of Indian Tribes to self-government, and their inherent sovereign powers over their members and territories. The principle of consultation has its roots in the unique relationship between the federal government and the governments of Indian Tribes. This government-to-government relationship has a more than 200-year history, and is built on the foundation of the U.S. Constitution, treaties, legislation, executive action, and judicial rulings. Most recently, consultation was recognized in Executive Order 13175 and in the November 5, 2009 Presidential Memorandum on Tribal Consultation.

B. Treasury is committed to strengthening the government-to-government relationships between the United States and Indian Tribes. Treasury recognizes that agency policies, programs, and services may impact Indian Tribes and is committed to consulting with Tribal Officials with regard to Treasury Policies that have Tribal Implications. This Policy will complement, not supersede, any existing laws, rules, or regulations that guide existing consultation processes with Indian Tribes.

C. Tribal Consultation will inform Treasury's development of regulations, published guidance, and other policy statements or actions, as it will enhance Treasury's understanding of the potential impacts of these activities on Indian Tribes.

D. Treasury is committed to developing and issuing regulations and guidance in a timely manner.

### III. Consultation Policy

*A. Statement of Policy*

Treasury will endeavor to consult with Tribal Governments prior to issuing regulations, published guidance, and Policies with Tribal Implications. Treasury may also conduct listening sessions, meetings with individual Tribes, and informal discussions with Tribal Officials on matters of concern.

The Tribal Consultation process should achieve the following core objectives: (1) Timely identification of matters that may warrant Tribal Consultation; (2) implementation of a process that is accessible and convenient to Tribal participants; and (3) development of meaningful, transparent, and accountable dialogue involving the appropriate participants. Consistent with Executive Order 13175, Tribal Consultation is not required for actions to enforce requirements administered by the agency or actions to

penalize violations of these requirements, even if the actions impact multiple Indian Tribes or members of multiple Indian Tribes. Actions that do not require Tribal Consultation include, but are not limited to:

- Administrative orders, practices, or litigation involving penalties or equitable or similar relief to ameliorate the effects of prior violations or ensure compliance;
- Administrative orders that impose specialized requirements of limited duration;
- Audits, examinations, or investigations; and
- Internal agency guidelines with respect to such matters.

*B. Role of the POCTC*

The Treasury Point of Contact for Tribal Consultation (POCTC) is the Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy, or another official as designated by the Secretary or the Deputy Secretary. Treasury bureaus and policy offices, as well as the Office of the General Counsel (OGC) and the Executive Secretariat, may assist the POCTC in identifying policy matters that may require Tribal Consultation.

The POCTC is available to assist Treasury bureaus and offices in the identification of policy matters that may be appropriate for Tribal Consultation. OGC is also available to assist in resolving internal questions related to Tribal Consultation matters.

*C. Procedures for Evaluating and Initiating Consultation*

1. Treasury bureaus and offices should endeavor to conduct Tribal Consultation with respect to policies that have Tribal Implications, including early outreach to solicit comments from appropriate Tribal Officials who may be substantially affected by changes in Treasury regulations, published guidance, or other policies under consideration. Program staff and legal counsel should assist in the identification of policy matters that are likely to require Tribal Consultation. Generally, every effort should be made to provide sufficient notice prior to scheduling Consultation, and the POCTC or Treasury office or bureau conducting a Consultation should inform Tribal Officials as soon as practicable if exceptional circumstances, such as legislative or regulatory deadlines or other factors beyond Treasury's control, warrant an abbreviated period of advance notice.

2. Tribal Consultation with Tribal Officials will be conducted by Treasury officials who are knowledgeable about the matters at hand and authorized to speak for the Department.

3. A phased approach to Tribal Consultation may be appropriate in some matters, in which a plan for more extensive Tribal Consultation is identified and a commitment is made to consult within a specified time frame.

4. Treasury bureaus and offices should notify the POCTC in advance of final actions on policies that have Tribal Implications. The POCTC may advise on the potential need for Tribal Consultation with respect to such matters.

5. With respect to policies that have Tribal Implications regulations and published guidance, to the extent practicable and permitted by law, Treasury should consult with Tribal Officials early in the process of developing such regulations or guidance. These Consultations should seek comment on compliance costs as appropriate to the nature of the regulation or guidance under development. The timing, nature, detail, and extent of Consultation will depend on the regulation or guidance involved.

*D. Methods of Consultation*

Tribal Consultation may include, but is not limited to, one or more of the following:

- ***Federal Register*** *(FR) notices or other published guidance soliciting comments.* Tribal Consultation may be announced in FR notices and other published guidance, including guidance published in the Internal Revenue Bulletin, with respect to policies that have Tribal Implications. FR notices and other published guidance requesting comments from Tribal Governments should be published as soon as practicable after Treasury determines that Tribal Consultation is appropriate. When practicable, a comment period of 60 to 120 days will be provided, to allow sufficient time for Tribal Governments to consult with their members and legal counsel on any matters of concern.
- *Meetings, written correspondence, conference calls, videoconferences, and workshops to encourage an exchange of views.* Tribal Consultation may also be conducted through email, regular mail, telephone calls (including conference calls), video conferences, and in-person meetings or conferences, as schedules and resources permit. Where appropriate, intra- and inter-agency meetings also may be utilized to address areas of concern, conserve resources, and ensure comprehensive coverage of an issue. Disparities in time zones and travel costs, including those of Alaskan Native tribes, will be taken into account when scheduling phone calls and conferences.
- *Targeted outreach.* Treasury officials or the POCTC may also directly contact Tribal Officials to discuss matters with Tribal Implications. In addition, as resources and schedules permit, Treasury officials may attend conferences sponsored by inter-tribal organizations to participate in agency listening sessions and/or to present on issues of concern to Indian Tribes.

*E. Process for Tribal Officials To Request Consultation*

Tribal Officials are encouraged to contact directly the appropriate Treasury officials, on a government-to-government basis, to seek Consultation on matters with Tribal Implications. Consultation requests may also be addressed to the POCTC, who will direct the matter to additional Treasury officials as appropriate. The POCTC also may be contacted with general concerns or requests for information, and may refer specific policy matters to the Treasury bureaus or offices with direct jurisdiction, as appropriate. The POCTC can be reached at *Tribal.Consult@treasury.gov.*

## IV. Judicial Review

This policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person.

Dated: November 26, 2014.

**Elaine Buckberg,**

*Deputy Assistant Secretary for Policy Development, Office of Economic Policy.*

[FR Doc. 2014–28383 Filed 12–2–14; 8:45 am]

BILLING CODE 4810–25–P


# FEDERAL REGISTER

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Part II

## Department of Education

34 CFR Parts 612 and 686
Teacher Preparation Issues; Proposed Rule

## DEPARTMENT OF EDUCATION

**34 CFR Parts 612 and 686**

**[Docket ID ED–2014–OPE–0057]**

**RIN 1840–AD07**

## Teacher Preparation Issues

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes new regulations to implement requirements for the teacher preparation program accountability system under title II of the Higher Education Act of 1965, as amended (HEA), that would result in the development and distribution of more meaningful data on teacher preparation program quality (title II reporting system). The Secretary also proposes to amend the regulations governing the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program under title IV of the HEA so as to condition TEACH Grant program funding on teacher preparation program quality and to update, clarify, and improve the current regulations and align them with title II reporting system data.

**DATES:** We must receive your comments on or before February 2, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Sophia McArdle, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Sophia McArdle, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 219–7078 or by email: *sophia.mcardle@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Purpose of This Regulatory Action*

Section 205 of the HEA requires States and institutions of higher education (IHEs) annually to report on various characteristics of their teacher preparation programs. These reporting requirements exist in part to ensure that members of the public, prospective teachers and employers (districts and schools), and the States, IHEs, and programs themselves have accurate information on the quality of these teacher preparation programs. These requirements also provide an impetus to States and IHEs to make improvements where they are needed and recognize excellence where it exists. Thousands of new teachers enter the profession every year, and their students depend on having well-prepared teachers.

Research from States such as Louisiana, Tennessee, North Carolina, and Washington has concluded that a teacher's preparation program significantly impacts the learning gains of a teacher's students.[1] Statutory reporting requirements on teacher preparation program quality for States and IHEs are broad. The Department's existing reporting framework has not ensured sufficient quality feedback to various stakeholders on program performance. States must report on the criteria they use to assess whether teacher preparation programs are low-performing or at-risk of being found to be low-performing, but it is difficult to identify programs deserving of recognition or in need of remediation or closure because few of the reporting requirements ask for information indicative of program quality. The Secretary is committed to ensuring that the measures by which States judge the quality of teacher preparation programs reflect the true quality of these programs and provide information that facilitates program self-improvement, and by extension, student achievement.

These proposed regulations would address shortcomings in the current system by defining the indicators of quality that States will use to assess the performance of their teacher preparation programs, including more meaningful indicators of program inputs and program outcomes, such as the ability of the program's graduates to produce gains in student learning (understanding that not all students will learn at the same rate). To maintain alignment with definitions we use in other Departmental initiatives and to maintain consistency for the various entities that work with the Department, including States and school districts, we propose definitions that are almost identical to definitions used in initiatives such as ESEA Flexibility, the Teacher Incentive Fund, and Race to the Top. These proposed regulations would build on current State systems and create a much-needed feedback loop to facilitate program improvement and provide valuable information to prospective teachers, potential employers, and the general public.

These proposed regulations would also link assessments of program performance under title II to eligibility for the Federal TEACH Grant program. The TEACH Grant program, authorized by section 420M of the HEA, provides grants to eligible IHEs, which in turn, use the funds to provide grants of up to $4,000 annually to eligible teacher preparation candidates who agree to serve as full-time teachers in high-need fields and schools for not less than four academic years within eight years after completing their courses of study. If a TEACH Grant recipient fails to complete his or her service obligation, the grant is converted into a Federal Direct Unsubsidized Stafford Loan and must be repaid with interest.

Pursuant to section 420L(1)(A) of the HEA, a teacher preparation program must provide high-quality teacher preparation in order to be eligible to award TEACH Grants. However, of the 38 programs identified by States as "low-performing" or "at-risk," 22 programs were based in IHEs participating in the TEACH Grant program. These proposed regulations would limit TEACH Grant eligibility to only those programs that States have identified as "effective" or higher.

Please refer to the *Background* and *Significant Proposed Regulations* sections of this preamble for a more complete discussion of the purpose of this regulatory action.

[1] See, for example, Tennessee Higher Education Commission, *"Report Card on the Effectiveness of Teacher Training Programs,"* Nashville, TN (2010); Dan Goldhaber, et al. "The Gateway to the Profession: Assessing Teacher Preparation Programs Based on Student Achievement." *Economics of Education Review*, 34 (2013), pp. 29–44.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Establish necessary definitions, requirements for IHEs and States on the quality of teacher preparation programs, and requirements that States develop measures for assessing teacher preparation performance. The proposed regulations would support the Administration's goal of measuring program performance based on meaningful indicators.
- Establish required indicators that States must use to report on teacher preparation program performance and, in doing so, ensure that the quality of teacher preparation programs is judged on reliable and valid indicators of program performance.
- Establish the required areas States must consider in identifying low-performing and at-risk teacher preparation programs, the actions States must take with respect to those programs, and the consequences for a low-performing program that loses State approval or financial support. These proposed regulations would also establish the conditions under which a program that loses State approval or financial support would regain its eligibility for title IV, HEA funding.
- Establish a link between the State's classification of a teacher preparation program under the title II reporting system and that program's identification as "high-quality" for TEACH Grant eligibility purposes. The proposed regulations would support Congress's intent and the Administration's goal of ensuring that only high-quality teacher preparation programs may award TEACH Grants.
- Establish provisions that would allow TEACH Grant recipients to satisfy the requirements of their agreement to serve by teaching in a high-need field that was designated as high-need at the time of the grant.
- Establish conditions that would allow TEACH Grant recipients to discharge the requirements of their agreements to serve if they are totally and permanently disabled. The proposed regulations would also establish conditions that would allow these recipients to regain eligibility for new TEACH Grants under certain circumstances.

Please refer to the *Significant Proposed Regulations* section of this preamble for a more complete discussion of the major provisions contained in this NPRM. Please refer to the Delayed Implementation Date and Revised Reporting Calendar section of this preamble for a schedule of when these regulations would affect State and institutional reporting.

**Costs and Benefits**

Chart 1 summarizes the proposed regulations and related benefits, costs, and transfers that are discussed in more detail in the *Regulatory Impact Analysis* section of this preamble. Significant benefits of these proposed regulations include an improved accountability system that would enable prospective teachers to make more informed choices about their enrollment in a teacher preparation program and employers of prospective teachers to make more informed hiring decisions. Further, the proposed regulations would also create incentives for States and IHEs to monitor and continuously improve the quality of their teacher preparation programs, informed by more meaningful data. Most importantly, elementary and secondary school students would benefit from these proposed regulations because the feedback loop created would lead to better prepared, higher quality teachers in classrooms, especially for students in high-need schools and communities who are disproportionately taught by newer teachers.

The net budget impact of the proposed regulations is approximately $0.67 million in reduced costs over the TEACH Grant cohorts from 2014 to 2024. We estimate that the total cost annualized over 10 years of these regulations would be between $42.0 million and $42.1 million (see the Accounting Statement section of this document).

*Invitation To Comment*

As discussed in the section of this notice entitled *Negotiated Rulemaking*, through a series of three regional hearings and four negotiated rulemaking sessions, there has been significant public participation in developing this notice of proposed rulemaking. In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while ensuring the effective, efficient, and faithful administration of the title II reporting system and TEACH Grant program.

During and after the comment period, you may inspect all public comments regarding these proposed regulations by accessing Regulations.gov. You may also inspect comments, in person, in room number 8022, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record*

On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Negotiated Rulemaking*

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in, or affected by, the proposed regulations, the Secretary must further develop the proposed regulations through a negotiated rulemaking process. In addition, section 207(c) of the HEA requires the Secretary to submit any proposed regulations implementing section 207(b)(2) to a negotiated rulemaking process. These proposed regulations would implement section 207(b)(2) of the HEA, which provides that any teacher preparation program from which a State has withdrawn approval or terminated financial support due to low performance may not accept or enroll any student who receives aid under title IV of the HEA in the IHE's teacher preparation program.

All proposed regulations that the Department publishes must conform to final agreements resulting from the negotiated rulemaking process unless

the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process may be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

The Department developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in testimony at a series of three public hearings and four roundtable discussions held on:

May 12, 2011, at Tennessee State University in Nashville, Tennessee (roundtable only);

May 16–17, 2011, at Pacific Lutheran University in Tacoma, Washington;

May 19–20, 2011, at Loyola University, Lake Shore Campus in Chicago, Illinois; and

May 26–27, 2011, at the College of Charleston in Charleston, South Carolina.

In addition, the Department accepted written comments on possible regulatory changes submitted directly to the Department by interested parties and organizations. Transcripts of all regional meetings and a summary of all comments received orally and in writing are posted as background material in the Regulations.gov docket and may also be accessed at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/hearings.html.* Staff within the Department also identified issues for discussion and negotiation by the negotiated rulemaking committee.

On October 26, 2011, the Department published a notice in the **Federal Register** (76 FR 66248) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations under titles II and IV of the HEA. The notice requested nominations of individuals for membership on the committee who could represent the interests of key stakeholders.

To develop proposed regulations, the Teacher Preparation Issues Committee (the Committee) met in three face-to-face sessions that took place on: January 18–20, 2012; February 27–29, 2012; and April 3–5, 2012. The Committee met in an additional fourth session that was conducted via a webinar on April 12, 2012.

At the first meeting, the Committee agreed on the protocols for the negotiations. The protocols provided that, for each community identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the constituency listed before their names in the protocols to the negotiated rulemaking process.

The Committee was made up of the following members:

Eric Mann, Sandpoint High School, Idaho, and Eric Gregoire (alternate), Boston University School of Education, representing postsecondary students.

Katie Hartley, Miami East Junior High, Ohio, and Qualyn McIntyre (alternate), Atlanta Urban Teacher Residency, representing teachers.

Segun Eubanks, National Education Association, and James Alouf (alternate), Association of Teacher Educators, representing organizations that represent teachers and teacher educators.

Joseph Pettibon, Texas A&M University, and David Smedley (alternate), The George Washington University, representing financial aid administrators at postsecondary institutions.

Julie Karns, Rider University, and Karl Brockenbrough (alternate), Bowie State University, representing business officers and bursars at postsecondary institutions.

George Noell, Louisiana State University, and Vance Rugaard (alternate), Tennessee Office of Licensing, representing State officials.

Glenn DuBois, Virginia Community Colleges, and Ray Ostos (alternate), Maricopa Community College, representing two-year public institutions.

David Steiner, Hunter College, and Ronald Marx (alternate), University of Arizona, representing four-year public institutions.

David Prasse, Loyola University Chicago, and Mary Kay Delaney (alternate), Meredith College, representing private nonprofit institutions.

Meredith Curley, University of Phoenix, and Bonnie Copeland (alternate), Walden University, representing private for-profit institutions.

Cindy O'Dell, Salish Kootenai College, representing tribal institutions.

Leontye Lewis, Fayetteville State University, and VerJanis Peoples (alternate), Southern University of Louisiana, representing Historically Black Colleges and Universities (HBCUs).

Beverly Young, California State University System, and Michael Morehead (alternate), New Mexico State University, representing Hispanic-Serving Institutions (HSIs).

Heather Harding, Teach for America, and Diann Huber (alternate), iteachU.S., representing operators of programs for alternative routes to teacher certification.

Jim Cibulka, National Council for the Accreditation of Teacher Education and the Council for Accreditation of Educator Preparation, and Frank Murray (alternate), Teacher Education Accreditation Council and the Council for Accreditation of Educator Preparation, representing accrediting agencies.

Sarah Almy, Education Trust, and Charmaine Mercer (alternate), Communities for Teaching Excellence, representing elementary and secondary students and parents.

Thalia Nawi, Denver Teacher Residency, Denver Public Schools, representing school and local education agency (LEA) officials.

Sophia McArdle, U.S. Department of Education, representing the Federal Government.

The Committee's protocols provided that the Committee would operate by consensus, defined to mean unanimous agreement; that is, no dissent by any member of the Committee. Under the protocols, if the Committee reached final consensus, the Department would use the consensus language in the proposed regulations and members of the Committee and the organizations whom they represented would refrain from commenting negatively on the package.

During its meetings, the Committee reviewed and discussed drafts of the proposed regulations. At the final meeting in April 2012, the Committee did not reach consensus on the proposed regulatory changes discussed at that meeting, which are now the subject of the proposed regulations in this NPRM.

More information on the work of this Committee may be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/teacherprep.html.*

This NPRM proposes regulations relating to the teacher preparation program accountability system under title II of the HEA and the TEACH Grant program under title IV of the HEA as discussed by the Committee.

## Background

In title II of the HEA, as amended in 2008 by the Higher Education Opportunity Act (Pub. L. 110–315), Congress enacted detailed public reporting requirements for States and IHEs that conduct traditional or alternative route teacher preparation programs. Section 205(a) requires each IHE that conducts a teacher preparation program and that enrolls students receiving Federal assistance provided

under the HEA to report annually on specified information about its teacher preparation programs to its State and the general public. Similarly, section 205(b) requires each State that receives HEA funding to report annually to the Secretary and the general public specified information about those teacher preparation programs, as well as other information about State certification or licensure requirements and the teaching needs of LEAs. Section 205(c) requires the Secretary to report annually to Congress on the content of these State reports, including a comparison of States' efforts to improve the quality of the current and future teaching force.

These IHE and State reporting requirements cover a wide range of information about a State's teacher preparation programs and new teacher certification or licensure process. IHEs must report on areas that include the characteristics of students' clinical experiences, pass rates of students who take assessments needed to become teachers, and how well the programs are meeting their goals in specified areas, such as addressing needs of English language learners and students with special education needs. States must also report on their certification or licensure procedures, the validity and reliability of assessments that the State requires for teacher certification or licensure, the availability of alternative route programs, the pass rates for students of each teacher preparation program on the State certification and licensure assessments, and the students' scaled scores on those assessments.

In section 205(b)(1)(F) of the HEA, Congress required States to continue annually to provide a "description of their criteria for assessing the performance of teacher preparation programs within institutions of higher education in the State" and required that "[s]uch criteria shall include indicators of the academic content knowledge and teaching skills of students enrolled in such programs." As with all other elements of these reports, States must report their criteria for assessing the performance of teacher preparation programs "in a uniform and comprehensible manner that conforms to the definitions and methods established by the Secretary" (HEA § 205(b)). Further, section 207(a) of the HEA requires States to disclose in their annual reports those teacher preparation programs that they had identified as either low-performing or at-risk of being considered low-performing, and to provide technical assistance to those they identified as low-performing. Section 207(b) requires the loss of Federal financial support to any teacher preparation program for which the State has withdrawn its approval or terminated State financial support. Section 205(c) directs the Secretary to establish regulations to ensure the validity, reliability, integrity and accuracy of data submitted.

The statutory reporting requirements for States and IHEs in section 205(a) and (b) are thus extensive, with a chief purpose of improving the overall quality of teacher preparation programs and the programs' ability to produce teachers who are well-prepared to teach when they enter the classroom. See, *e.g.*, H. Rep. 100–803, the House-Senate conference report accompanying H.R. 4137, which was enacted as Pub. L. 110–315.

Notwithstanding the focus that Congress has placed on improving the quality of new teachers produced by teacher preparation programs and improving or closing programs that are low-performing, these State and IHE reporting requirements have not produced information that is sufficiently helpful to programs, the public, or the Secretary in improving low-performing teacher preparation. To date, the Department has relied exclusively upon each State to establish, implement, and report upon its own criteria and indicators thereof for determining the effectiveness of teacher preparation programs in that State and for identifying and improving low-performing teacher preparation programs. In 2011, the most recent year for which data are available, States identified only 38 teacher preparation programs as low-performing or at-risk. Twenty-nine of these programs were identified as at-risk and nine were designated as low-performing. Thirty-two of the 38 low-performing or at-risk teacher preparation programs were located in traditional teacher preparation institutions, and six were alternative route teacher preparation programs not based at an IHE. Additionally, of the 38 programs identified by States as low-performing or at-risk, 22 were based in IHEs that participate in the TEACH Grant Program. Over the last dozen years, 34 States have never identified a single low-performing or at-risk program at a single IHE.[2]

The data that are collected and reported have not led to an identification of significant improvements in teacher preparation program performance in part because the data are not based on meaningful indicators of program effectiveness. Rather than focusing on outcome measures of program quality, the title II reporting system currently relies on States to establish their own indicators of program effectiveness, while at the same time directing States and IHEs to fill out annual questionnaires having a combined total of almost 600 fields. There are more than 400 fields in the State report card (SRC) and more than 150 fields in the institutional report card (IRC). These questions focus heavily on teacher preparation program inputs—such as admission requirements (including whether a program applicant must submit a resume as a condition of admission), student demographic information, and clock-hour requirements for participation in the program's supervised clinical experience—and not on outcomes or program impact.

Through these proposed regulations, the Department aims to provide teacher preparation programs, local educational agencies (LEAs), prospective teachers, and the general public with access to more meaningful indicators of teacher preparation program performance. These indicators would be based not only on program inputs but also program outcomes, including the ability of the program's graduates to produce gains in student learning. These indicators would also include employment outcomes such as placement and retention rates of program graduates and survey data from past graduates and their employers. Creating a feedback loop between school districts and higher education will not only facilitate program improvement, but will also provide information that can be used, for example, by potential employers to guide their hiring decisions and by prospective teachers to guide their application decisions.

The Department also intends to use information gathered through the title II reporting system to determine institutional and program eligibility for the Federal TEACH Grant program. Authorized under title IV of the HEA, the TEACH Grant program provides aid to students at IHEs who are preparing to become teachers. Pursuant to section 420L(1)(a) of the HEA, eligible IHEs must provide "high-quality" teacher preparation services at the baccalaureate, post-baccalaureate, or master's degree level to be eligible for TEACH Grants (see 34 CFR part 686 for the regulations governing this program). In exchange for a TEACH Grant, a student must teach in a low-income school and in a high-need field for four years. The student must complete the service obligation within eight years of

[2] See the Secretary's annual reports at: *https://title2.ed.gov/Public/SecReport.aspx.*

completing the program for which the student obtained the grant, or the student's TEACH Grant converts to a Federal Direct Unsubsidized Stafford Loan.

The term "high-quality teacher preparation program," which is used in section 420L(1)(A) of the HEA and throughout part 686 pertaining to the TEACH Grant program, is not currently defined by statute or in the TEACH Grant program regulations. The Department seeks to define "high-quality teacher preparation program" in part because, of the 38 programs identified by States as "low-performing" or "at-risk," 22 programs were based in IHEs participating in the TEACH Grant program. Further, based on data from national surveys and existing teacher loan forgiveness programs, the Department currently estimates that approximately 75 percent of participating students will not complete the required service obligation. The Department intends to limit TEACH Grants to students enrolled in teacher preparation programs deemed by States to be of "effective" quality or higher in part because we believe that a larger percentage of TEACH Grant recipients will be able to fulfill their service obligations if they have been prepared by strong teacher preparation programs that: (1) Provide to prospective teachers the knowledge and skills necessary to succeed in the classroom; and (2) have high placement and retention rates.

**Summary of Proposed Changes**

These proposed regulations would establish specific indicators that States would use to assess and report on the quality of teacher preparation programs under the title II reporting system. The indicators would ensure the collection of more meaningful data that can be used to improve teacher preparation programs. These proposed regulations also would amend the TEACH Grant program regulations to link TEACH Grant program eligibility to the determinations of quality made and reported by States under the title II reporting system.

These proposed regulations would address teacher preparation issues by:

- Establishing definitions for the terms "at-risk teacher preparation program," "candidate accepted into a teacher preparation program," "candidate enrolled in a teacher preparation program," "content and pedagogical knowledge," "effective teacher preparation program," "employer survey," "employment outcomes," "exceptional teacher preparation program," "high-need school," "low-performing teacher preparation program," "new teacher," "quality clinical preparation," "recent graduate," "rigorous teacher candidate entry and exit qualifications," "student achievement in non-tested grades and subjects," "student achievement in tested grades and subjects," "student growth," "student learning outcomes," "survey outcomes," "teacher evaluation measure," "teacher placement rate," "teacher preparation entity," "teacher preparation program," "teacher retention rate," and "teacher survey" (see proposed § 612.2(d)).
- Establishing reporting requirements for IHEs on the quality of their teacher preparation programs (see proposed § 612.3).
- Establishing reporting requirements for States on the quality of teacher preparation programs, and requirements that States develop measures for assessing the performance of teacher preparation programs in consultation with stakeholders (see proposed § 612.4).
- Establishing requirements related to the indicators States must use to report on teacher preparation program performance (see proposed § 612.5).
- Establishing requirements related to the areas States must consider in identifying low-performing and at-risk teacher preparation programs and the actions States must take with respect to those programs (see proposed § 612.6).
- Establishing the consequences for a low-performing teacher preparation program that loses State approval or financial support (see proposed § 612.7).
- Providing for the conditions under which a low-performing teacher preparation program that has lost State approval or financial support may regain its eligibility for title IV, HEA funding and may resume accepting and enrolling students who receive title IV, HEA funds (see proposed § 612.8).
- Adding or amending definitions of the terms "classification of instructional programs," "educational service agency," "high-quality teacher preparation program," "school or educational service agency serving low-income students (low-income school)," "TEACH Grant-eligible institution," "TEACH Grant-eligible program," "TEACH Grant-eligible science, technology, engineering, and mathematics (STEM) program" and "teacher preparation program" to § 686.2.
- Using the States' determination of teacher preparation program quality under proposed §§ 612.4 and 612.5 to determine whether a teacher preparation program is a "high-quality teacher preparation program" for the purpose of establishing TEACH Grant eligibility (see proposed definition of "high-quality teacher preparation program" in § 686.2(e)).
- Establishing a requirement that to continue to be TEACH Grant-eligible, a science, technology, engineering, or mathematics (STEM) program must not be identified by the Secretary as having fewer than sixty percent of its TEACH Grant recipients completing at least one year of teaching that fulfills the service obligation pursuant to § 686.40 within three years of completing the program (see proposed definition of "TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program" in § 686.2(e)).
- Clarifying the conditions under which TEACH Grant recipients may receive additional TEACH Grants to complete a teacher preparation program, even if that program is no longer considered a TEACH Grant-eligible teacher preparation program or a TEACH Grant-eligible STEM program under these proposed regulations (see proposed § 686.3(c)).
- For teaching service performed on or after July 1, 2010, providing that a TEACH Grant recipient who otherwise meets the requirements of his or her agreement to serve may satisfy the requirement to teach in a high-need field if that field was listed, as of the date the grant recipient signed the agreement to serve or received the TEACH Grant, in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) for the State in which the grant recipient begins teaching (see proposed § 686.12).
- Establishing the conditions under which a student would be eligible to receive a new TEACH Grant if the student's previous TEACH Grant was discharged based on total and permanent disability (see proposed § 686.11(d)).
- Amending the provisions for discharging a TEACH Grant recipient's service obligation based on total and permanent disability to conform to changes made to the discharge process in the title IV, HEA loan programs (see proposed § 686.42(b)).

**Significant Proposed Regulations**

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address the regulatory provisions that are technical or otherwise minor in effect.

*Part 612—Title II Reporting System*

Subpart A—Scope, Purpose and Definitions

*Statute:* Sections 205 through 208 of the HEA establish the teacher

preparation program accountability system through which IHEs and States report on the performance of their teacher preparation programs.

*Current Regulations:* None.

*Proposed Regulations:* In proposed subpart A of part 612, we describe the scope and purpose of part 612 and define key terms. In proposed § 612.2(a), (b) and (c), we identify those definitions from 34 CFR parts 600 and 668, and 34 CFR 77.1, respectively, that would apply to part 612. In proposed § 612.2(d), we define: "at-risk teacher preparation program," "candidate accepted into a teacher preparation program," "candidate enrolled in a teacher preparation program," "content and pedagogical knowledge," "effective teacher preparation program," "employer survey," "employment outcomes," "exceptional teacher preparation program," "high-need school," "low-performing teacher preparation program," "new teacher," "quality clinical preparation," "recent graduate," "rigorous teacher candidate entry and exit qualifications," "student achievement in non-tested grades and subjects," "student achievement in tested grades and subjects," "student growth," "student learning outcomes," "survey outcomes," "teacher evaluation measure," "teacher placement rate," "teacher preparation entity," "teacher preparation program," "teacher retention rate," and "teacher survey."

*Reasons:* We have included proposed § 612.1 to summarize the purpose of new part 612 and to lay out the organization of the part. Proposed § 612.2 defines key terms that are used, but not defined, in title II of the HEA as well as other important terms that are introduced in this part. We discuss our reasoning for each proposed term under the section of the regulations in which the term would first be used, except for the terms "content and pedagogical knowledge," "quality clinical preparation," and "rigorous teacher candidate entry and exit qualifications," all of which are discussed in the *Reasons* section for proposed § 612.5.

Subpart B—Reporting Requirements

**§ 612.3 What are the regulatory reporting requirements for the institutional report card?**

*Statute:* Section 205(a) of the HEA requires that each IHE that conducts a traditional teacher preparation program or an alternative route to State certification or licensure program and enrolls students receiving Federal assistance under the HEA annually report on the quality of its teacher preparation to the State and the general public in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary. Section 205(a)(1), (a)(2) and (a)(4) of the HEA identify the minimum content requirements for the IRC.

*Current Regulations:* None.

*Proposed Regulations:* Under proposed § 612.3, according to a revised reporting calendar, starting October 1, 2017, and annually thereafter, each IHE that conducts a traditional teacher preparation program or an alternative route to State certification or licensure program and enrolls students receiving Federal financial assistance under the HEA would be required to report to the State and general public on the quality of its teacher preparation using an institutional report card prescribed by the Secretary. As suggested by several non-Federal negotiators, the IHE would be required to provide this information to the general public by prominently and promptly posting the IRC information on the IHE's Web site, and, if applicable, on the teacher preparation program portion of the IHE's Web site. The IHE could also provide that information in promotional materials it makes available to prospective students and others.

*Reasons:* This section would codify in regulations the statutory requirement governing reporting by IHEs that conduct a traditional teacher preparation program or an alternative route to State certification or licensure program. There are no current regulations that do this. The Department is not proposing regulations related to the specific reporting requirements for the IRC. Rather, the Secretary would continue to prescribe the specific reporting requirements for IHEs in the IRC itself. Being an information collection instrument, the IRC is subject to a separate approval process that includes an opportunity for public comment under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.*

While annual title II reporting is required by section 205(a) of the HEA, the mechanisms IHEs use to report are determined by the State. However, to ease reporting burdens, the Department developed the IRC system. The IRC system is an online tool that States, IHEs, and other organizations with State-approved teacher preparation programs can use to fulfill the annual reporting requirements on teacher preparation and other matters mandated by title II of the HEA.

As explained in the *Delayed Implementation Date and Revised Reporting Calendar* discussion under § 612.4, we are proposing to revise the reporting calendar in order to ensure that the public and programs receive more timely feedback on program performance. Thus, we are proposing that institutional reporting will occur in October of each calendar year covering data from the prior academic year, rather than (as currently) April of the following calendar year. In order to have time to prepare for this change, the first year for this new reporting schedule will be in 2017 covering data from the 2016–2017 academic year. Prior to October 2017, IHEs will continue to report, as currently, in April of each calendar year covering data from the prior academic year.

In proposed § 612.3(b), we would require IHEs to prominently and promptly post the IRC information on the IHE's Web site and, if applicable, on the teacher preparation program's portion of the IHE's Web site. This proposed requirement is also based on information we obtained during the negotiated rulemaking process. Non-Federal negotiators stated that a reasonable way for IHEs to share the IRC information with the general public was for IHEs to post the information promptly and prominently on their Web sites, thus providing easy access for anyone seeking report card information. We agreed.

In proposed § 612.3(c), we would clarify that at its discretion, an IHE may also provide the IRC information to the general public in promotional materials it makes available to prospective students and others. While regulatory language is not needed to permit IHEs to do so, we propose to include this provision because we believe that many people rely on promotional materials instead of, or in addition to, Web sites in their decision-making process, and we wish to specifically encourage IHEs to consider providing as much information as possible in their promotional materials.

**§ 612.4 What are the regulatory reporting requirements for the State report card?**

*Statute:* Section 205(b)(1) of the HEA provides that each State that receives funds under the HEA must report annually, in a State report card, on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative routes to State certification or licensure programs. Each State must report this information to the Secretary and make it widely available to the general public in a uniform and comprehensible manner that conforms to the definitions and methods established by the Secretary. By virtue of the definition of "State" in section 103(16) of the HEA, the statutory reporting requirements

apply to each of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Section 205(b)(1)(A) through (b)(1)(L) of the HEA lists the minimum content requirements for the State report card. In particular, section 205(b)(1)(F) requires each State to include in its State report card a description of the State's criteria for assessing the performance of teacher preparation programs within IHEs in the State. This provision further requires that the criteria include indicators of the academic content knowledge and teaching skills of students enrolled in the teacher preparation programs. Section 200(23) of the HEA defines the term "teaching skills" as those skills that enable a teacher, among other competencies, to effectively convey and explain academic content. In addition, section 205(b)(1) authorizes the Secretary to include other reporting elements in the State report card beyond those set forth in paragraphs (b)(1)(A) through (b)(1)(L).

Finally, section 205(c) requires the Secretary to prescribe regulations to ensure the reliability, validity, integrity, and accuracy of the data submitted in the institutional and State report cards, and section 208(a) requires the Secretary to ensure that States and IHEs use fair and equitable methods in reporting the data required by the institutional and State report cards.

*Current Regulations:* None.

**Proposed Regulations**

*Proposed § 612.4(a)—General State Report Card Reporting*

The Department proposes to add new § 612.4(a) to require that, beginning on April 1, 2018, and annually thereafter, each State that receives funds under the HEA report to the Secretary and the general public, using a SRC prescribed by the Secretary, (1) the quality of all approved teacher preparation programs in the State, including distance education programs, whether or not they enroll students receiving Federal assistance under the HEA, and (2) all other information consistent with section 205(b)(1) of the HEA. As explained further in the discussion of Pilot Reporting, during the first reporting year for this regulation, States would be permitted to pilot the new reporting requirements and would not be required to classify programs in at least four levels of program performance using the indicators in proposed § 612.5, although a State could do so at its option. Regardless of whether a State chooses to pilot program classification according to the new requirements, States would nevertheless be required to identify low-performing programs and programs at risk of being low-performing, using current indicators, as required by section 207(a) of the HEA. Each State would be required to post the SRC information on the State's Web site.

*Proposed § 612.4(b)—Reporting of Information on Teacher Preparation Program Performance*

Under proposed § 612.4(b), the Department would identify specific content requirements, criteria, and data that a State would use, beginning in April 2019 and annually thereafter, to assess the performance of each teacher preparation program in addition to the reporting elements expressly identified in section 205(b) of the HEA. The Department proposes to define a number of terms used in those proposed requirements in § 612.2(d). Because the definitions affect the discussion that follows of proposed regulations to govern assessments of the performance of teacher preparation programs, we first note two proposed definitions—"teacher preparation entity" and "teacher preparation program"—that identify the universe of affected programs. "Teacher preparation entity" would be defined as an IHE or other organization that is authorized by the State to prepare teachers. "Teacher preparation program" would be defined as a program, whether traditional or alternative route, offered by a teacher preparation entity that leads to a specific State teacher certification or licensure in a specific field.

Additionally, under § 612.2(d), we propose definitions for the terms "new teacher" and "recent graduate." We propose to define the term "new teacher" as a recent graduate or alternative route participant who, within the last three title II reporting years, has received a level of certification or licensure that allows him or her to serve in that State as a teacher of record. Under the definition, States would only be required to report on the student learning outcomes, employment outcomes, and survey outcomes of new teachers who teach K–12 students unless, in the State's discretion, the State chooses to define "new teacher" to include teachers of preschool students, and thereby include reporting on the student learning outcomes, employment outcomes, and survey outcomes of such teachers. The term "recent graduate" would refer to an individual whom a teacher preparation program has documented as having met all the requirements of a teacher preparation program within the last three title II reporting years. The definition would provide that documentation may take the form of a degree, institutional certificate, program credential, transcript, or other written proof of having met the program's requirements. The definition would also clarify that whether an individual has been hired as a full-time teacher or been recommended to the State for initial certification or licensure may not be used as a criterion for determining who is a recent graduate.

*Proposed § 612.4(b)(1)—Meaningful Differentiations in Teacher Preparation Program Performance*

Under proposed § 612.4(b)(1), beginning in April, 2019 and annually thereafter, each State would be required to report how it has made meaningful differentiations of teacher preparation program performance using at least four performance levels: "low-performing," "at-risk," "effective," and "exceptional" that are based on the indicators in proposed § 612.5 including, in significant part, employment outcomes for high-need schools and student learning outcomes. At its discretion, a State could choose to identify teacher preparation program performance using more than these four levels.

The Department would define key classifications and related terms. First, the Department would include in § 612.2(d) definitions of the terms "exceptional teacher preparation program," "effective teacher preparation program," "at-risk teacher preparation program," and "low-performing teacher preparation program." These definitions would reflect that those performance levels are based upon the State's assessment of the teacher preparation program's performance using, at a minimum, the teacher preparation program performance indicators in proposed § 612.5. Second, the Department would define the term "student learning outcomes" as data, for each teacher preparation program in a State, on the aggregate learning outcomes of students taught by new teachers that are calculated by the State using one or both of the following: "student growth" and "teacher evaluation measures," both of which also would be defined in proposed § 612.2(d). Finally, the Department would define the term "high-need school" as used in the requirement for "employment outcomes for high-need

schools" as the placement and retention rates calculated for high-need schools as those terms would be defined in proposed § 612.2(d). For a complete discussion of these terms, please see the discussion under proposed § 612.5.

*Proposed § 612.4(b)(2)—Satisfactory or Higher Student Learning Outcomes for Programs Identified as Effective or Higher*

Under proposed § 612.4(b)(2), a State would not be permitted to identify a teacher preparation program as having a performance level of effective or higher unless the State determined the program had satisfactory or higher student learning outcomes. Our proposed regulation reflects the recommendation of non-Federal negotiators and ensures that States consider student performance when they classify programs by levels of performance.

*Proposed § 612.4(b)(3)—Disaggregated Data, Assurances of Accreditation or Quality of Program Characteristics, Weighting, and Rewards or Consequences*

Under proposed § 612.4(b)(3)(i), each State would, for each teacher preparation program in its State, (1) report disaggregated data that corresponds to each of the indicators in proposed § 612.5, and (2) provide an assurance that the teacher preparation program is either accredited by a specialized agency pursuant to § 612.5(a)(4)(i), or produces teacher candidates with quality clinical preparation and content and pedagogical knowledge, and who have met rigorous teacher candidate entry and exit qualifications. Each of these terms ("quality clinical preparation," "content and pedagogical knowledge," and "rigorous teacher candidate entry and exit qualifications") would be defined in § 612.2(d). The definitions of each of these terms reflect the specific and detailed suggestions of non-Federal negotiators. For a complete discussion of these terms, please see the discussion under proposed § 612.5.

Under proposed § 612.4(b)(3)(ii) and (iii), each State would be required to report how it weighted the teacher preparation program performance indicators in proposed § 612.5, and the State-level rewards or consequences associated with each teacher preparation program performance level.

*Proposed § 612.4(b)(4) Reporting the Performance of All Teacher Preparation Programs*

Under proposed § 612.4(b)(4), except for certain programs subject to proposed § 612.4(b)(4)(ii)(D) or (E), each State would ensure that all of its teacher preparation programs are represented in the SRC. In this regard, each State would be required to report annually and separately on the performance of each teacher preparation program that produces a total of 25 or more new teachers in a title II reporting year. Proposed § 612.4(b)(4) would permit a State, at its discretion, to establish a program size threshold lower than 25. For example, a State might determine that it has the capacity to report on programs with 15 new teachers.

Proposed § 612.4(b)(4)(ii) describes the reporting requirements for teacher preparation programs in the State that do not meet the program size threshold of 25 new teachers in a title II reporting year (or such lower program size threshold that the State chooses to use). States would annually report performance results for these programs, using one of three methods. Under proposed § 612.4(b)(4)(ii)(A), a State could aggregate teacher preparation program performance data among teacher preparation programs that are operated by the same teacher preparation entity and are similar to or broader than the program. For example, if a teacher preparation entity had two different special education programs and both had 13 new teachers, the State could combine performance results of the two programs and report them as a single teacher preparation program with 26 new teachers, which would meet the program size threshold of 25 (or a lower program size threshold, at the State's discretion).

Alternatively, under proposed § 612.4(b)(4)(ii)(B), the State could report on a teacher preparation program's performance by aggregating performance data for that program over multiple years, up to a total of four years, until the size threshold is met. For example, if a teacher preparation program had ten new teachers each year, the State could combine performance results of that year with the results of the preceding two years and report the results as a single teacher preparation program with 30 new teachers, which would meet the program size threshold of 25 (or a lower program size threshold, at the State's discretion).

Under § 612.4(b)(4)(ii)(C), States also could use a combination of both of these methods if neither method alone would be sufficient to permit the State to meet the program size threshold (or for a State that chooses a lower program size threshold, to permit the State to meet the lower program size threshold) described in § 612.4(b)(4)(i).

Proposed § 612.4(b)(4)(ii)(D) would allow States to refrain from reporting data on any program that cannot meet the program size threshold (or the State's lower program size threshold) for reporting using one of the three options.

Finally, proposed § 612.4(b)(4)(ii)(E) would exempt States from reporting data under § 612.4(b) on a particular teacher preparation program in cases where reporting of such data would be inconsistent with Federal or State privacy and confidentiality laws and regulations.

*Proposed § 612.4(b)(5)—Procedures for Assessing and Reporting Teacher Preparation Program Performance Data*

Under proposed § 612.4(b)(5), each State would be required to report, beginning on April 1, 2018, and every four years thereafter, and at any other time that the State makes substantive changes to either the weighting of the indicators or the procedures for assessing and reporting the performance of each teacher preparation program in the State described in § 612.4(c)(2). These procedures would be established by the State in consultation with a group of stakeholders in accordance with § 612.4(c)(1).

*Proposed § 612.4(c)—Fair and Equitable Methods*

To assist in the development of the State's procedures for assessing and reporting teacher preparation program performance, each State would be required under § 612.4(c)(1) to consult with a representative group of stakeholders, including, at a minimum, representatives of leaders and faculty of traditional and alternative route teacher preparation programs; students of teacher preparation programs; superintendents; school board members; elementary and secondary school leaders and instructional staff; elementary and secondary school students and their parents; IHEs that serve high proportions of low-income or minority students, or English language learners; advocates for English language learners and students with disabilities; and officials of the State's standards board or other appropriate standards body. In developing its procedures in consultation with stakeholders as provided by § 612.4(c)(1), each State would be required under § 612.4(c)(2) to address (a) its weighting of the indicators identified in proposed § 612.5, (b) its process for aggregating data such that all teacher preparation programs would be represented in the SRC, (c) State-level rewards or consequences associated with each teacher preparation program

designation, and (d) the method by which teacher preparation programs may challenge the accuracy of their performance data and program classification. Under proposed § 612.4(c)(2), each State would also be required to examine the quality of the data collection and reporting activities it conducts and modify those activities as appropriate to improve deficiencies.

*Proposed § 612.4(d)—Inapplicability to Certain Insular Areas*

Proposed § 612.4(d) would provide that the regulatory reporting requirements in § 612.4(b) and (c) regarding indicators of academic content knowledge and teaching skills would not apply to the insular areas of American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands.

**Reasons**

*Proposed § 612.4(a)—General State Report Card Reporting*

Proposed § 612.4 would codify in regulations the statutory requirement that States that receive funds under the HEA report annually to the Secretary, in a SRC prescribed by the Secretary, on (1) the quality of all approved teacher preparation programs in the State for both traditional teacher preparation programs and alternative routes to State certification or licensure programs, and (2) basic data about teaching in the State, and make this information widely available to the general public.

*Scope of Programs Covered by Reporting*

Because section 205(b)(1) of the HEA requires each State to report data on all teacher preparation programs in its State, we have included language in § 612.4(a) to underscore that this requirement applies to all teacher preparation programs, regardless of whether they enroll students receiving Federal assistance under the HEA, or whether they are traditional or alternative route programs. Our goal is for States to report equivalent information needed for program improvement, transparency, and accountability for all teacher preparation programs in the State, including both traditional and alternative route programs. We invite comment specifically on whether the proposed regulation would adequately provide alternative route programs with the information about their participants and graduates that they need in order to facilitate program improvement, and whether the proposed regulation provides equivalent accountability for both traditional and alternative route programs.

We are specifically interested in the potential scenario in which an IHE is deemed to be the "teacher preparation entity," as defined in § 612.2(d), for an alternative route program or provider in a particular State because the IHE is authorized by the State to recommend teacher candidates for certification, while the alternative route provider is not. We invite comment on whether, in such a scenario, the State would be able to report separately on the performance of alternative route program participants who are enrolled at an IHE-based teacher preparation program so as to provide sufficient transparency and accountability at the program level not only to the IHE-based teacher preparation program that is enrolling the alternative route program participants, but also to the alternative route program itself, which in this scenario would not be a teacher preparation entity as defined in § 612.2. If commenters do not believe that a State could report separately on the performance of alternative route program participants, we invite comment on whether there are other data, or changes that should be made to the proposed regulations, that would provide adequate transparency and accountability for both the IHE-based teacher preparation program and the alternative route program, and whether States have the capacity to report such data.

In addition, during the negotiated rulemaking process, some non-Federal negotiators stated that it was not clear whether States had to report on the performance of distance education programs under this requirement. Non-Federal negotiators requested that we specify in the regulations that distance education programs must be included in a State's reporting. We have therefore included language in § 612.4(a) to clarify that, for purposes of State reporting, States must report on distance learning programs that are being provided in the State.

Further, as addressed in our explanations for proposed § 612.4(b), annual State reporting of indicators and criteria for assessing program performance would extend to all teacher preparation programs—whether or not they are within IHEs. Section 205(b)(1)(F) of the HEA provides for such reporting only for programs within IHEs. However, the introductory language in section 205(b)(1) provides that the content of the SRC is not limited to the elements Congress has prescribed, and also expressly includes alternative route providers in the reporting system. Because the Secretary believes it is important that States report on the performance of all of their teacher preparation programs—including programs that are not based at IHEs—using the same criteria, we propose to extend the State's reporting requirements in §§ 612.4(b)(1) and 612.5 to cover all teacher preparation programs in the State.

*Delayed Implementation Date and Revised Reporting Calendar*

Because the proposed regulations make changes to current State reporting obligations under title II of the HEA, we believe that it is appropriate to provide a year for States and institutions to design and set-up their data reporting systems. Such set-up would take place during the 2015–2016 academic year. During the negotiated rulemaking, a number of non-Federal negotiators indicated that the minimum amount of time States would need to set up the new processes and systems would be six months. Thus, this delay will provide sufficient time for States that do not already have the processes and systems necessary to implement the new reporting to develop processes and systems to do so. We are also proposing to implement a new reporting calendar. Currently, institutions report to States in April about data from the prior academic year, and States report to the Department the following October. Under these regulations, beginning in October 2017, we are proposing to require annual institutional reporting on data from the prior academic year in October of each calendar year, rather than April of the following calendar year, and annual State reporting in April of the following calendar year rather than October. We believe that this revised reporting calendar will ensure more timely feedback on program performance to programs and the public, and thus more rapid program improvement.

*Pilot Reporting Year*

The system design and set-up period during the 2015–2016 academic year would be followed by a pilot reporting year for State report cards in April 2018. The pilot reporting year cycle would begin with the institutional report card in October 2017 (for data pertaining to IHE programs and new teachers in the 2016–2017 academic year) and the pilot State report card would be due in April 2018. During the pilot reporting year, States would publically report new data required by the regulations, but would

not be required to use the data to assign programs to one of four levels of performance (exceptional, effective, at-risk for low-performing, or low-performing). As required by section 207(a) of the HEA, States would still be required to identify programs that are at-risk of being low-performing or low-performing, but States would not be required to use the indicators in proposed § 612.5 to make such determinations, although a State could do so at its option.

Additionally, during the pilot reporting year, any State ratings of program performance would not have implications for that program's eligibility to participate in the TEACH Grant program. As discussed further under proposed *§ 686.2 Definitions* in the explanation of the term "high-quality teacher preparation program," to ensure adequate time for program improvement, no program would be in danger of losing eligibility to participate in the TEACH Grant program until the program is rated as lower than "effective" for two out of the previous three reporting years. Thus, a program could first lose eligibility to participate in the TEACH Grant program in July, 2020, if the program received a rating of lower than "effective" in both the State's April 2019 and April 2020 report cards.

In summary, the Department is proposing that pilot reporting by States under these regulations occur in the State report cards due in April 2018, over two years from the expected date that final regulations take effect in 2015, and that full reporting by States under these regulations for the State report cards begin in April 2019, over three years from the expected date that the final regulations take effect. Finally, the Department is proposing that programs would first be ineligible to participate in the TEACH Grant program in July 2020, if they receive two consecutive ratings of lower than "effective" under the proposed regulations, four years from the expected date the final regulations take effect. The following table summarizes the timeline for the implementation of the reporting requirements in the proposed regulations by teacher preparation program cohort and reporting year. The Department particularly invites comment on whether this timetable is reasonable.

IMPLEMENTATION DATES

| | | | | | |
|---|---|---|---|---|---|
| Academic Year in which data systems are designed and set up. | 2015–16. | | | | |
| Academic year in which data is collected. | ..... | 2016–17 ..... | 2017–18 ..... | 2018–19 ..... | 2019–20. |
| Student Learning ..... | ..... | C1 ..... | C1,2 ..... | C1,2,3 ..... | Rolling. |
| Job Placement ..... | ..... | C1 ..... | C1,2 ..... | C1,2,3 ..... | Rolling. |
| Job Retention ..... | ..... | C1 ..... | C1,2 ..... | C1,2,3 ..... | Rolling. |
| Program Completer Survey ..... | ..... | C1 ..... | C2 ..... | C3 ..... | Rolling. |
| Cohort Employer (CE) Survey ..... | ..... | CE of C1 ..... | CE of C2 ..... | CE of C3 ..... | Rolling. |
| Year in Which Data Reported in State Report Card. | ..... | April 2018 Pilot Report.<br>Required<br>Report all new data required by regulations.<br>Identify and report low-performing or at-risk programs (does not have to be based on new data).<br>Optional .....<br>Report program performance ratings based on new data. | April 2019 Full Report.<br>Required<br>Report all new data required by regulations.<br>Report 4-level program performance ratings based on new data.<br>Ratings do not impact TEACH Grant eligibility for the 2019–2020 Award Year. | April 2020 Full Report.<br>Required<br>Report all new data required by regulations.<br>Report 4-level program performance ratings based on new data.<br>Ratings could impact TEACH Grant eligibility for 2020–2021 Award Year (if second rating of lower than effective). | April 2021 Full Report. |

C1: Cohort 1, graduates from teacher preparation program in 2016, earliest first year of teaching is 2016–2017 academic year.
C2: Cohort 2, graduates from teacher preparation program in 2017, earliest first year of teaching is 2017–2018 academic year.
C3: Cohort 3, graduates from teacher preparation program in 2018, earliest first year of teaching is 2018–2019 academic year.
CE: Cohort employer.

**Making the State Report Card Available on the State's Web Site**

Non-Federal negotiators stated that it was reasonable to require States to make their report card information widely available to the general public by posting the information on the State Web site. We find this request reasonable in light of the statutory directive in section 205(a)(1) of the HEA. Accordingly, proposed § 612.4(a)(2) would require the State to make its SRC information widely available to the general public by posting it on its Web site.

*Program-Level Reporting*

Under the current title II reporting system, a teacher preparation program is defined as a State-approved course of study, the completion of which signifies that an enrollee has met all of the State's educational or training requirements for initial certification or licensure to teach in the State's elementary, middle, or secondary schools. A teacher preparation program may be either a traditional program or an alternative route to certification program, as defined by the State. It may be within or outside an IHE. Additionally, for the purposes of current title II reporting, all traditional teacher preparation programs at a single IHE are considered to be a single program. Likewise, under the current title II reporting system, all alternative route to initial teacher certification programs administered by any IHE or organization are considered to be a single program. As a result,

States (and IHEs in their own report cards) currently do not provide data on individual teacher preparation programs offered by a single IHE, such as an elementary education program or a secondary mathematics program.

Many non-Federal negotiators stated that collecting and reporting data at the level of the individual teacher preparation program would assist IHEs and alternative route providers in improving specific programs. Reporting at this level would also aid prospective students and employers in making informed choices about the quality of particular teacher preparation programs. Non-Federal negotiators stated that reporting at the individual program level would prevent the dilution of data on individual program quality by the "averaging" effect of combined ratings for a number of teacher preparation programs within a single IHE or other teacher preparation program entity, and instead would reveal potential variations in program quality among different teacher preparation programs within a single IHE or entity.

We agree with this view and believe that by requiring States to report on teacher preparation program performance at the individual program level, the proposed performance levels required under proposed § 612.4(b)(1) would be more meaningful to IHEs and the public. Knowing the performance classification of an individual teacher preparation program, rather than simply the combined performance rating of all such programs at an IHE, also would be much more useful to IHEs in deciding where to focus improvement efforts, and much more useful to the public in choosing a teacher preparation program. In addition, identification of teacher preparation program performance at the individual program level (*e.g.*, early education, elementary education program or a secondary mathematics program) is necessary so that eligibility to participate in the TEACH Grant program is linked to high-quality teacher preparation programs consistent with the statutory directive of title IV. Finally, program level reporting ensures that teacher preparation programs that prepare teachers to work in particular educational settings (*e.g.*, teachers of students with disabilities or English Language Learners), receive their own focus and can be compared to like programs.

For these reasons, we propose to require States to report on performance at the individual teacher preparation program level, rather than on the overall performance of all of an entity's teacher preparation programs. We would accomplish this by referring to a "teacher preparation program" in proposed § 612.4 (and elsewhere in part 612), and defining that term, as well as the term "teacher preparation entity" in § 612.2, to differentiate between a program that leads to a specific State teacher certification in a specific field and an IHE or organization that is authorized by the State to prepare teachers.

*Proposed § 612.4(b)—Reporting of Information on Teacher Preparation Program Performance*

In proposed § 612.4(b), we would identify the minimum content reporting requirements for the SRC. This regulatory approach differs from how the Department currently implements the statutory SRC requirements under the title II reporting system, under which specific reporting requirements are established solely through the review of public comment under the Paperwork Reduction Act. We propose to codify the substantive framework of a State's title II reporting obligations in new part 612 in order to clarify the effect these requirements would have, support TEACH program implementation, and to create a more meaningful reporting system to facilitate improvement in teacher preparation programs and services.

*Proposed § 612.4(b)(1)—Meaningful Differentiations in Teacher Preparation Program Performance*

Currently, States meet the reporting requirements that concern the quality of teacher preparation programs under title II of the HEA primarily by reporting and considering input-based measures (*e.g.*, an admission criterion that asks whether a prospective student submits a resume). In fact, while States must report the criteria they use to identify programs that are low-performing or at-risk, the only data on program performance currently collected by the title II reporting system are input data. However, there is little empirical support to suggest that these measures are good predictors of a teacher's eventual success in the classroom.

The Department believes that this input-based reporting provides insufficient information with which to differentiate among the quality of teacher preparation programs. Because the Department strongly believes that reporting on teacher preparation program quality should consider multiple measures, especially outcome measures, we have structured the State reporting requirements in § 612.4(b) to require that States report criteria for assessing program performance that include specific outcome and input-based indicators proposed in § 612.5. States would be required to report on their criteria for determining teacher preparation program performance and to differentiate teacher preparation program performance using these indicators. (We discuss our proposed outcome-based indicators in the preamble discussion related to proposed § 612.5.)

Specifically, under proposed § 612.4(b)(1), following a pilot reporting year in 2018, beginning in April 2019 and annually thereafter, States would be required to report a teacher preparation program's performance using at least four performance levels ("exceptional," "effective," "at-risk," or "low-performing"). We have proposed that States use at least four performance levels because two of these levels (at-risk and low-performing) are already identified in section 207(a) of the HEA as levels on which States must report, and a third level is identified by title IV of HEA, which provides that to be eligible to distribute TEACH Grants, IHEs must provide "high quality" teacher preparation. Several non-Federal negotiators suggested that only having three classifications (*i.e.*, low-performing, at-risk of being low-performing, and high-quality) would not allow for meaningful distinctions of quality. Therefore, several non-Federal negotiators suggested, and we agree, that to permit identification of the best programs, at least one additional classification should be created by States to ensure meaningful differentiation between programs whose performance is satisfactory and those whose performance is truly exceptional. For reasons explained under proposed § 612.6, the Secretary proposes that employment outcomes for high-need schools and student learning outcomes be included, in significant part, in determining teacher preparation program performance.

*Proposed § 612.4(b)(2)—Satisfactory or Higher Student Learning Outcomes for Programs Identified as Effective or Higher*

The Secretary proposes that States may identify the performance level for a teacher preparation program as effective or higher quality only if the program has satisfactory or higher student learning outcomes. The Secretary believes, and many non-Federal negotiators agreed, that a program's ability to train future teachers who produce positive results in student learning is a clear and important standard of teacher preparation program quality.

In order to assess teacher preparation program performance in terms of student learning outcomes, States would need to collect data on student growth of students assigned to each new teacher, defined in proposed § 612.2 as the change in student achievement for an individual student between two or more points in time. For student learning outcomes, data would be calculated by the State using a student growth measure, a teacher evaluation measure, or both.

Because many States are adopting comprehensive teacher evaluation systems that consider student growth in significant part, as well as other measures of a teacher's instructional practice, we have proposed a definition of "student learning outcomes" in § 612.2 that would give States the option of using the results of those evaluation systems in identifying a program's performance level. To ensure that States weigh student learning outcomes as a significant part of the system, the non-Federal negotiators proposed language with which the Secretary agreed. Under that language, as noted at the outset of this discussion, States could only identify the quality of a teacher preparation program as effective or higher if the State determined that the program's graduates produce student learning outcomes that are satisfactory or higher. The Department believes that this provision will encourage States to classify programs with the utmost integrity while still preserving State discretion as to the setting of performance levels.

*Proposed § 612.4(b)(3)—Disaggregated Data, Assurances of Accreditation on Quality of Program Characteristics, Weighting, and Rewards and Consequences*

Section 205(b)(1)(F) of the HEA requires that a State provide a description of its criteria for assessing the performance of teacher preparation programs, which must include indicators of the academic content knowledge and teaching skills of students enrolled in these programs. Section 207(a) requires the State to provide a list of IHEs with programs that are low-performing or at-risk of becoming low-performing. We believe that these two requirements provide insufficient information about the quality of teacher preparation programs in a State and focus only on the negative. As noted in our discussion of proposed § 612.4(b)(1), we believe States should be required to identify not only programs that are low-performers but also programs that are high-performers, with gradations of success, in order to recognize and reward excellence, help other programs learn from best practices, and facilitate faithful implementation of the TEACH Grant program.

The Secretary further believes that to document the basis on which a State makes its determination of teacher preparation performance levels and to facilitate self-improvement by teacher preparation programs and entities, a State should be required to report data on each of the indicators in proposed § 612.5, disaggregated for each teacher preparation program. These reports would include an assurance that the teacher preparation program is either accredited by a specialized agency recognized by the Secretary for accreditation of professional teacher education programs, or produces teacher candidates with content and pedagogical knowledge and quality clinical preparation who have met rigorous teacher candidate entry and exit qualifications. Non-Federal negotiators emphasized that specialized agencies base accreditation on these same factors regarding knowledge and entry and exit requirements, and thus, an assurance of such accreditation is tantamount to a State finding that the teacher preparation program has these other attributes.

The availability of these data in State reports, which States and the Secretary would make available to the public, can help guide potential employers in their hiring decisions and prospective teachers in their application decisions. For example, a superintendent may be particularly interested in hiring teachers from programs with a history of placing teachers who stay in their positions. A prospective special education teacher may want to look at which special education programs in the State have the highest success rates in placing program graduates.

More generally, the Secretary also believes that a State should be required to include in its State report card its weighting of the various indicators of program performance included in proposed § 612.5. This information will show how that State arrived at its overall assessment of a teacher preparation program's performance and provide a way for the Secretary and the public to understand the relative value that a State places on each of the indicators of program quality. This reporting also will be an important transparency tool that will permit programs and the general public to understand how States make their performance-level determinations.

Lastly, the Secretary believes that as a further mechanism for making the State assessment of teacher preparation performance levels more meaningful, States should be required to identify any State-level rewards or consequences associated with each teacher preparation program performance level.

*Proposed § 612.4(b)(4)—Reporting the Performance of All Teacher Preparation Programs*

Proposed § 612.4(b)(4)(i) would require separate reporting of the performance of any teacher preparation program that annually produces 25 or more new teachers, and establishes permissible procedures for data aggregation that would result in reporting on all of the State's teacher preparation programs (except for those programs that are particularly small and for which aggregation procedures cannot be applied or where State or Federal privacy or confidentiality laws and regulations prevent it). In developing this proposed requirement, the Department considered the current processes used by States that already assess teacher preparation program performance using student growth data for students of new teachers from those programs. Those States use program size thresholds that range from as few as 10 to as many as 25 new teachers. The proposed regulations would set a program size threshold for reporting of 25, which we believe would ensure that each State will report results each year for the largest number of programs consistent with what the State would find to be logistically feasible and statistically valid. The Secretary specifically invites comment on an appropriate program size threshold.

While proposed § 612.4(b)(4) would not require separate annual reporting on the effectiveness of individual teacher preparation programs that produce 24 or fewer new teachers, we recognize that some States may find it logistically feasible and statistically valid to establish a lower threshold, and may prefer to do so in order to recognize the quality of smaller teacher preparation programs. In order to encourage these States to do so, the provision would expressly permit a State to report the effectiveness of these smaller programs by allowing a State to set a program size threshold lower than 25.

We also recognize, however, that the smaller the size of a teacher preparation program, the greater the challenge of generating data on program effectiveness that can be valid and reliable and meet the reporting threshold. Because we strongly believe that it is important that States report annually to the public, and to IHEs and other entities that operate teacher

preparation programs, on the quality of these smaller programs, we have proposed alternative methods through which States could report performance of programs that annually produce a number of new teachers that is fewer than 25 (or whatever lower program size threshold the State establishes). As proposed in § 612.4(b)(4)(ii)(A)–(C), these methods involve annually meeting the program size threshold of 25 (or any lower threshold a State establishes) by aggregating performance data for each of these smaller programs with performance data (1) of like programs that the teacher preparation entity operates (thus, in effect, reporting on a broader-based teacher preparation program), (2) for the same program generated over multiple years for up to four years, or (3) generated under a combination of these first two methods. For this second method, we have proposed to set a four-year cap on the number of years over which such aggregation may occur so that the performance levels are not based on data that are too old to be a reflection of current program performance. The Department particularly invites comment on whether such a cap should exist, and if so, how many years should be aggregated to report data on a single program.

We believe that a State's use of these alternative methods would produce more reliable and valid measures of quality for each of these smaller programs and reasonably balance the need annually to report on program performance with the special challenges of generating a meaningful annual snapshot of program quality for programs that annually produce few new teachers. Even with multiple options for reporting on smaller teacher preparation programs, we recognize that it is possible that some States will still be unable to aggregate the program performance data for some small programs based on a program size threshold of 25 or such lower size threshold as a State may establish. Through proposed § 612.4(b)(4)(ii)(D), we would accommodate this situation by not requiring that a State include performance information on these particular programs in their annual State report until aggregation allows reporting with validity, reliability, accuracy, and integrity commensurate with the program size threshold of 25 or such lower threshold the State has chosen to use.

Finally, we recognize that reporting data on program performance under § 612.4(b)(4) could be inconsistent with Federal or State privacy and confidentiality laws or regulations. For example, in cases where a teacher is both a participant in an alternative route teacher preparation program and concurrently enrolled as a student in an IHE, data regarding that student/teacher could be considered education records and, therefore, implicate the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g. Additionally, States may have privacy laws that protect employment records, including protections that could implicate data related to a number of the measures outlined in this proposed regulation. Because we do not intend the proposed regulations to require reporting that would be inconsistent with these other legal requirements, proposed § 612.4(b)(4)(ii)(E) would provide that a State would not need to report on the performance of a particular program in the SRC if doing so would be inconsistent with Federal or State privacy and confidentiality laws or regulations.

*Proposed § 612.4(b)(5)—Implementing Procedures Established by the State*

While requiring each State to report on both the level of performance of each teacher preparation program and the data the State used to determine the program's level of performance is important, so too is the transparency of the process the State used to make these determinations. For this reason, we propose in § 612.4(b)(5) to have States report periodically on the procedures they used to make decisions about program performance. Specifically, we propose that States report annually (1) their procedures for assessing and reporting the performance of each teacher preparation program, (2) the weighting they apply to the indicators identified in proposed § 612.5 to determine each teacher preparation program's resulting performance level, (3) their procedures under § 612.4(b)(4)(ii) for aggregating data for small programs, (4) State-level rewards or consequences associated with the designated performance levels, and (5) their provision of appropriate opportunities for programs to challenge the accuracy of their performance data and classification of the program.

We would require each State to report these procedures in its report card to be submitted by October 1, 2017, to inform the public at the outset how each State assessed teacher preparation program performance. We think it is reasonable to require States to review, and inform the public about any changes to, their procedures at least once every four years, and so would have the State report on this subject again every four years thereafter. In addition, to promote transparency, under proposed § 612.4(b)(5)(ii), at any time a State made significant changes to its procedures for assessing program performance, we would have the State include a description of those significant changes in the next report card.

*Proposed § 612.4(c)—Fair and Equitable Methods*

Proposed § 612.4(c)(1) would require that each State consult with a representative group of stakeholders when developing procedures for assessing and reporting the performance of each teacher preparation program in the State under § 612.4. This wide-ranging consultation process was suggested by non-Federal negotiators as the best way for a State to develop fair and equitable procedures for assessing and reporting the performance of each teacher preparation program.

Consistent with the non-Federal negotiators' recommendations, § 612.4(c)(1)(i) identifies those entities and groups that are likely to be affected by the way a State assesses and reports teacher preparation program performance under these proposed regulations. Those stakeholders would minimally include leaders and faculty of traditional and alternative route teacher preparation programs; students of teacher preparation programs; superintendents; school board members; elementary and secondary school leaders and instructional staff; elementary and secondary school students and their parents; IHEs that serve high proportions of low-income or minority students, or English language learners; advocates for English language learners and students with disabilities; and officials of the State's standards board or other appropriate standards body. Each State would consult with these stakeholders as it develops its system and makes decisions about its procedures for assessing and reporting teacher preparation program performance. The Secretary also agrees with many non-Federal negotiators that requiring States to have a process by which teacher preparation programs can challenge data accuracy and performance-level classification, and to consult with stakeholders on that process, will help to ensure fair and equitable treatment of teacher preparation programs and the reliability, validity, integrity, and accuracy of the data reported about such programs.

Proposed § 612.4(c)(2) would require each State to examine the quality of its data collection and reporting activities and to modify the data collection and reporting activities, as appropriate. We

developed these proposed regulatory provisions in response to feedback received during the negotiated rulemaking sessions. A number of non-Federal negotiators suggested that we build into our regulations this type of State review process to ensure the continued fairness of the process for collecting and analyzing data required under §§ 612.4(b) and 612.5, and thereby further promote the reliability, validity, integrity, and accuracy of the data relating to teacher preparation program quality reported in the SRC.

*Proposed § 612.4(d)—Inapplicability to Certain Insular Areas*

Finally, we propose that the reporting requirements in § 612.4(b) and (c) regarding reporting of a teacher preparation program's indicators of academic content knowledge and teaching skills would not apply to the insular areas of American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam and the United States Virgin Islands. We believe that these entities are so small that the cost of reporting data relating to these entities' small teacher preparation programs is unwarranted.

§ 612.5 What indicators must a State use to report on teacher preparation program performance for purposes of the State report card?

*Statute:* Section 205(b)(1)(F) of the HEA requires each State to include in its State report card a description of the State's criteria for assessing the performance of teacher preparation programs within IHEs in the State. This provision further requires that the criteria include indicators of the academic content knowledge and teaching skills of students enrolled in the teacher preparation programs. Section 200(23) of the HEA defines the term "teaching skills" as those skills that enable a teacher, among other competencies, to effectively convey and explain academic content. Each State must report the information identified in section 205(b)(1)(F) to the Secretary and make it widely available to the general public in a uniform and comprehensible manner that conforms to the definitions and methods established by the Secretary.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 612.5(a) would require that, for reporting purposes under proposed § 612.4, a State must assess, for each teacher preparation program in the State, indicators of academic content knowledge and teaching skills of new teachers or recent graduates from that program. As discussed earlier in this preamble, we would define the term "new teacher" to mean a recent graduate or alternative route participant who, within the last three title II reporting years, has received a level of certification or license that allows him or her to serve in that State as a teacher of record for K–12 students and, at a State's discretion, for preschool students (see proposed § 612.2(d)). We would define "recent graduate" to mean an individual whom a teacher preparation program has documented as having met all the requirements of a teacher preparation program within the last three title II reporting years, without regard to whether the individual has passed a licensure examination, been hired as a full-time teacher, or been recommended to the State for initial certification or licensure (see proposed § 612.2(d)).

In proposed § 612.5(a)(1) through (a)(4), we identify those indicators that a State would be required to use to assess the academic content knowledge and teaching skills of new teachers from each of the teacher preparation programs in the State's jurisdiction. While a State would be able to use additional indicators and establish its own "cut-scores," it would be required to use the following indicators of teacher preparation program performance: (i) Student learning outcomes (ii) employment outcomes, (iii) survey outcome data, and (iv) an assurance that the program is accredited by a specialized accreditation entity recognized by the Secretary for accreditation of professional teacher education programs, or an assurance by the State that the teacher preparation program provides teacher candidates with content and pedagogical knowledge and quality clinical preparation who have met rigorous teacher candidate entry and exit qualifications. In proposed § 612.2(d), we would define several key terms used in proposed § 612.5(a), including "student learning outcomes," "employment outcomes," "survey outcomes," "content and pedagogical knowledge," "quality clinical preparation," and "rigorous teacher candidate entry and exit qualifications."

Student Learning Outcomes

The first required indicator of academic content knowledge and teaching skills would be student learning outcomes (see proposed § 612.5(a)(1)). "Student learning outcomes" would be defined as data on the aggregate learning outcomes of students taught by new teachers (as that term would be defined in § 612.2(d)) trained by each teacher preparation program in the State. The State would choose to calculate the data on student learning outcomes using measures of student growth (as that term would be defined in § 612.2(d)), teacher evaluation measures (as that term would be defined in § 612.2(d)), or both.

Definitions of "student growth" and "teacher evaluation measure" would also be added to proposed § 612.2. "Student growth" would be defined as the change in student achievement in tested grades and subjects and the change in student achievement in non-tested grades and subjects for an individual student between two or more points in time. This could be a simple comparison of achievement between two points in time or a more complex "value-added model" [3] that some States already use to assess teacher preparation program performance based on levels of student growth associated with new teachers from those programs.

For the purpose of determining student growth, definitions of "student achievement in tested grades and subjects" and "student achievement in non-tested grades and subjects" would also be included in proposed § 612.2. Under the former, for grades and subjects in which assessments are required under section 1111(b)(3) of the ESEA, student achievement would be determined using (a) a student's score on the State's assessments under section 1111(b)(3) of the ESEA, and, (b) as appropriate, other measures of student learning described in the definition of "student achievement in non-tested grades and subjects" that are rigorous and comparable across schools and consistent with State requirements.

Under the definition of "student achievement in non-tested grades and subjects," for grades and subjects that do not require assessments under section 1111(b)(3) of the ESEA, student achievement would be determined by measures of student learning and performance, such as students' results on pre-tests and end-of-course-tests, objective performance-based assessments, student learning objectives, student performance on English language proficiency assessments, and other measures of

[3] A value-added model is a statistical technique developed by researchers to estimate a teacher's unique contribution to student achievement. Briefly, VAM predicts (estimates) student achievement based on prior student test scores and other observable characteristics and then takes the difference between the predicted student test score and the actual student score and attributes this difference to the teacher.

student achievement, that are rigorous and comparable across schools and consistent with State requirements.

In order to create as much consistency as possible for States, LEAs, and other entities that work with the Department of Education, these definitions are nearly identical to the ones used in other Department initiatives, including ESEA flexibility,[4] the Teacher Incentive Fund, and the Race to the Top program.

Under the proposed definition of "student learning outcomes" in proposed § 612.2, a State would be permitted to choose an alternative approach to calculating data on aggregate student learning outcomes of students using a "teacher evaluation measure." We would define a "teacher evaluation measure" as the percentage of new teachers (as that term would be defined in § 612.2(d)), by grade span and subject level, rated at each performance level under an LEA teacher evaluation system consistent with statewide parameters that differentiates teachers on an annual basis using at least three performance levels and multiple valid measures in determining the performance levels. For the purpose of this definition, "multiple valid measures" of performance level would include data on student growth (as that term would be defined in § 612.2(d)) for all students as a significant factor as well as observations based on rigorous teacher performance standards and other measures of professional practice.

Employment Outcomes

The second indicator of the academic content knowledge and teaching skills of new teachers and recent graduates would be their employment outcomes (see proposed § 612.5(a)(2)). Under proposed § 612.2(d), we would define "employment outcomes" to include the teacher placement rate (as the term "teacher placement rate would be defined in § 612.2(d)), the teacher placement rate calculated for high-need schools (as the term "high-need schools" would be defined in § 612.2(d)), the teacher retention rate (as that term would be defined in § 612.2(d)), and the teacher retention rate calculated for high-need schools (as the term "high-need schools" would be defined in § 612.2(d)). The Department proposes to include in § 612.2(d) definitions for the terms "teacher placement rate," "teacher retention rate," and "high-need school."

"Teacher placement rate" would be defined as the combined non-duplicated percentage (calculated annually and pursuant to § 612.5(a)) of new teachers (as that term would be defined in § 612.2(d)) and recent graduates (as that term would be defined in § 612.2(d)) who have been hired in a full-time teaching position for the grade level, span, and subject area in which the teachers were prepared. Under this definition, one or more of the following could, at the State's discretion, be excluded from the calculation of teacher placement rate, provided that the State uses a consistent approach to assess and report on all of its preparation programs: (a) New teachers or recent graduates who have taken teaching positions in another State, (b) new teachers or recent graduates who have taken teaching positions in private schools, (c) new teachers or recent graduates who have taken teaching positions that do not require State certification, or (d) new teachers or recent graduates who have enrolled in graduate school or entered military service.

"Teacher retention rate" would be defined as any of the following three rates (calculated annually and pursuant to § 612.5(a)) as determined by the State, provided that the State uses a consistent approach to assess and report on all teacher preparation programs in the State. The first rate would be the percentage of new teachers (as that term would be defined in § 612.2(d)) who have been hired in full-time teaching positions and who have served for periods of at least three consecutive school years within five years of being granted a level of certification that allows them to serve as teachers of record. The second rate would be the percentage of new teachers who have been hired in full-time teaching positions and reached a level of tenure or other equivalent measure of retention within five years of being granted a level of certification that allows them to serve as teachers of record. The third rate would be one hundred percent less the percentage of new teachers who have been hired in full-time teaching positions and whose employment was not continued by their employer for reasons other than budgetary constraints within five years of being granted a level of certification that allows the teachers to serve as teachers of record. In addition, under this proposed definition of "teacher retention rate," a State would have the discretion to exclude one or more of the following from the calculation of the teacher retention rate, provided that the State uses a consistent approach to assess and report on all of its teacher preparation programs: (a) New teachers who have taken teaching positions in other States, (b) new teachers who have taken teaching positions in private schools, (c) new teachers who are not retained due to market conditions or circumstances particular to the LEA and beyond the control of teachers or schools, or (d) new teachers who have enrolled in graduate school or entered military service.

"High-need school" would be defined by using the definition of "high-need school" from section 200(11) of the HEA. Specifically, under proposed § 612.2(d), "high-need school" would be defined as a school that, based on the most recent data available, meets one or both of the following definitions. First, a "high-need school" is in the highest quartile of schools in a ranking of all schools served by a local educational agency, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the local educational agency based on a single or a composite of two or more of the following measures of poverty: (a) The percentage of students aged 5 through 17 in poverty counted; (b) the percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; (c) the percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act; and (d) the percentage of students eligible to receive medical assistance under the Medicaid

[4] On September 23, 2011, the Department invited each State educational agency (SEA) to request flexibility on behalf of itself, its LEAs, and schools, in order to better focus on improving student learning and increasing the quality of instruction. This voluntary opportunity has provided to educators and State and local leaders flexibility regarding specific requirements of the Elementary and Secondary Education Act (ESEA) in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. In particular, States requesting flexibility committed to, by the 2014–15 school year, developing, adopting, piloting, and implementing teacher and principal evaluation and support systems that, among other things, use multiple valid measures in determining performance levels, including as a significant factor data on student growth for all students. As of September 1, 2014, the Secretary has granted 43 States, the District of Columbia, California Office to Reform Education (CORE), and the Commonwealth of Puerto Rico flexibility on key provisions of the ESEA in exchange for State-developed plans to prepare all students for college and career, focus aid on the neediest students, and support effective teaching and leadership. States with waivers include Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. Three additional requests, from Iowa, Wyoming, and the Department of the Interior's Bureau of Indian Education, are still under review.

program. Additionally, or alternatively, a school may be considered a "high-need school," if, in the case of an elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or in the case of any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

Proposed § 612.5(a)(2) would clarify that, in using the employment outcomes measure as an indicator of academic content knowledge and teaching skills of new teachers and recent graduates, a State could, at its discretion, assess traditional and alternative route teacher preparation programs differently based on whether there are differences in the programs that affect employment outcomes, provided that varied assessments result in equivalent levels of accountability and reporting.

Survey Outcomes

The third indicator of the academic content knowledge and teaching skills of new teachers produced by a teacher preparation program would be survey outcome data (see proposed § 612.5(a)(3)). Under proposed § 612.2(d), we would define the term "survey outcomes" as qualitative and quantitative data collected through survey instruments, including, but not limited to, a teacher survey (as that term would be defined in § 612.2(d)) and an employer survey (as that term would be defined in § 612.2(d)), designed to capture perceptions of whether new teachers (as that term would be defined in § 612.2(d)) who are employed as teachers in their first year of teaching in the State where the teacher preparation program is located have the skills needed to succeed in the classroom.

"Teacher survey" would be defined as a survey of new teachers (as that term would be defined in § 612.2(d)) serving in full-time teaching positions for the grade level, span, and subject area in which the teachers were prepared that is designed to capture their perceptions of whether the preparation that they received was effective.

"Employer survey" would be defined as a survey of employers or supervisors designed to capture their perceptions of whether the new teachers (as that term would be defined in § 612.2(d)) they employ or supervise, who attended teacher preparation programs in the State where the teachers are employed or supervised, were effectively prepared.

Accreditation or State Approval To Provide Teacher Candidates With Content and Pedagogical Knowledge and Quality Clinical Preparation and as Having Rigorous Teacher Candidate Entry and Exit Qualifications

The fourth indicator of academic content knowledge and teaching skills of a program's new teachers, reflected in proposed § 612.5(a)(4), would be a determination of whether (a) the teacher preparation program is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs or, alternatively, (b) that the program:

- Produces teacher candidates with content and pedagogical knowledge (as that term would be defined in § 612.2(d));
- Produces teacher candidates with quality clinical preparation (as that term would be defined in § 612.2(d)); and
- Produces teacher candidates who have met rigorous teacher candidate entry and exit qualifications (as that term would be defined in § 612.2(d)).

To implement this requirement, the Department proposes to include in proposed § 612.2(d) definitions of the terms "content and pedagogical knowledge," "quality clinical preparation," and "rigorous teacher candidate entry and exit qualifications."

"Content and pedagogical knowledge" would be defined as an understanding of (a) the central concepts and structures of the discipline in which a teacher has been trained, and (b) how to create effective learning experiences that make the discipline accessible and meaningful for all students, including a distinct set of instructional skills to address the needs of English language learners and students with disabilities, in order to assure mastery of the content by the students, as described in applicable professional, State, or institutional standards.

"Quality clinical preparation" would be defined as training that integrates content, pedagogy, and professional coursework around a core of pre-service clinical experiences that at a minimum must (a) be provided, at least in part, by qualified clinical instructors who meet established qualification requirements and who use a training standard that is made publicly available; (b) include multiple clinical or field experiences, or both, that serve diverse, rural, or underrepresented student populations, including English language learners and students with disabilities, and that are assessed using a performance-based protocol to demonstrate candidate mastery of content and pedagogy; and (c) require that teacher candidates use research-based practices, including observation and analysis of instruction, collaboration with peers, and effective use of technology for instructional purposes.

"Rigorous teacher candidate entry and exit qualifications" would be defined as teacher candidate qualifications established by a teacher preparation program using, at a minimum—(a) rigorous entrance requirements based on multiple measures, and (b) rigorous exit criteria based on an assessment of candidate performance that relies on validated professional teaching standards and measures of candidate effectiveness including, at a minimum, measures of curriculum planning, instruction of students, appropriate plans and modifications for all students, and assessment of student learning.

Other Indicators Predictive of a Teacher's Effect on Student Performance

Under proposed § 612.5(b), among the indicators of academic content knowledge and teaching skills of new teachers and recent graduates it uses for purposes of reporting each teacher preparation program's performance under § 612.4, a State could, at its discretion, include other indicators predictive of a teacher's effect on student performance, such as student survey results, provided that the State uses a consistent approach for all of its teacher preparation programs.

Just as we exclude American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands from reporting on the indicators of academic content knowledge and teaching skills used to determine a program's level of performance in proposed § 612.4(b) and (c), proposed § 612.5(c) makes the required use of the indicators described in proposed § 612.5(a) and (b) inapplicable to these jurisdictions as well.

Summary of Proposed § 612.5

Under proposed § 612.5, in determining the performance of each teacher preparation program, each State (except for insular areas identified in proposed § 612.5(c)) would need to use student learning outcomes, employment outcomes, survey outcomes, and the program characteristics described above as its indicators of academic content knowledge and teaching skills of the

program's new teachers or recent graduates. In addition, the State could use other indicators of its choosing, provided the State uses a consistent approach for all of its teacher preparation programs and these other indicators are predictive of a teacher's effect on student performance. Also, as discussed above under proposed § 612.4(b)(1), each State would need to classify the performance of each teacher preparation program using at least four performance levels—low-performing, at-risk, effective, and exceptional—and meaningfully differentiate those classification levels.

*Reasons:*

Proposed § 612.5(a) would define how each State would implement its statutory responsibility to include in its report card a description of the criteria the State uses to assess the performance of teacher preparation programs in the State, which must include indicators of the academic content knowledge and teaching skills of students enrolled in the teacher preparation programs. (See section 205(b)(1)(F) of the HEA.) Proposed § 612.5(b) would also describe other indicators that a State would be permitted to use to evaluate the program's performance, which could include any indicator that is predictive of the effect of the new teachers it produces on student performance. We define these other indicators in this way consistent with the general agreement of non-Federal negotiators that the true performance of any teacher preparation program should be assessed in terms of how well the teachers it produces perform.

In defining these indicators of teacher preparation program performance in this way, the Department would be (1) exercising its responsibility under section 205(b) of the HEA to have States report "in a uniform and comprehensible manner that conforms with the definitions [of terms] and methods established by the Secretary"; (2) establishing those indicators of academic content knowledge and teaching skills that would best ensure the reliability, validity, integrity, and accuracy of the data submitted in the SRCs consistent with section 205(c) of the HEA; and (3) ensuring that States and IHEs use fair and equitable methods in reporting the data required by the IRC and SRC consistent with section 208(a) of the HEA. Moreover, we are proposing that States base their assessment of a teacher preparation program's performance on all of these measures of new teachers' and recent graduates' academic content knowledge and teaching skills because, as explained in the discussion of each measure that follows, each measure offers a different lens on whether the program has succeeded in providing new teachers and recent graduates with the content knowledge and teaching skills they need, and because the Department believes that using multiple measures provides more valid and reliable assessments of program quality. In implementing this proposed requirement, States would exercise their own reasonable discretion on just how these measures would be implemented and weighted in order to determine performance levels.

Under proposed § 612.5, the Department would require that each State utilize these indicators for "new teachers" and, where applicable, "recent graduates" who have completed any teacher preparation program in its State. As explained previously, in proposed § 612.2 we would define a "new teacher" as a recent graduate or alternative route participant who, within the last three title II reporting years, received a level of certification or licensure that would allow him or her to serve in the State as a teacher of record for K–12 students and, at the State's discretion, for preschool students. We would define "recent graduate" as an individual whom a teacher preparation program has documented as meeting all the program's requirements within the last three title II reporting years, without regard to whether the individual has been hired as a full-time teacher, has passed a licensure examination, or has been recommended to the State for initial certification or licensure.

We propose this definition of "recent graduate" because an individual could meet all of a teacher preparation program's requirements, but never be hired as a full-time teacher or be recommended to the State for initial certification or licensure. This distinction between new teachers and recent graduates is necessary in order to accurately track teacher placement rates. Without this distinction, a State could define a "recent graduate" as including only those who have received their teaching license or certificate and begun to teach, thereby nullifying the intended ability of that indicator to capture a program's ability to prepare teacher candidates who actually go on to become teachers.

In the following paragraphs, we explain our rationale for proposing the specific indicators we have included in proposed § 612.5, why we believe they are valid and reliable indicators of the academic content knowledge and teaching skills of teacher preparation program graduates, and why we believe these required and optional State indicators proposed in § 612.5(b) will reflect with integrity the level of the program's performance.

Rationale for Student Learning Outcomes

The Secretary believes that student learning outcomes should be included in the criteria States report and use under section 205(b)(1)(F) of the HEA to determine teacher preparation program performance. That provision requires each State to identify in its report card the criteria it is using to identify the performance of each teacher preparation program within an IHE in the State, including its indicators of the academic knowledge and teaching skills of the program's students. We would supplement the required content of the SRC by having States report this same information for all teacher preparation programs in the State—whether operated by an IHE or another entity.

Research from Tennessee and the State of Washington has shown that a teacher's preparation program has a significant effect on the learning gains of a teacher's Kindergarten through 12th grade (K–12) students. In Tennessee, for example, the most effective teacher preparation programs produced graduates who were two to three times more likely to be in the top quintile of teacher effectiveness scores in the State, while the least effective programs produced graduates who were two to three times more likely to be in the bottom quintile. In Washington, the top-performing teacher preparation programs produced new teachers who, on average, raised K–12 student achievement by an amount equal to levels seen in classes that are 20 percent smaller. In both of these States, as well as in Louisiana and North Carolina, which also track data linking student growth to the programs where the students' teachers were prepared, some teacher preparation programs consistently produce new teachers who are able to achieve strong student learning gains, while other programs consistently produce teachers associated with lower levels of growth. We believe that evidence from these States provides a strong basis for including student learning outcomes as an indicator of academic content knowledge and teaching skills of teachers produced by a teacher preparation program.[5]

[5] See, for example, Tennessee Higher Education Commission, "Report Card on the Effectiveness of Teacher Training Programs," Nashville, TN (2010); Dan Goldhaber, et al. "The Gateway to the Profession: Assessing Teacher Preparation Programs Based on Student Achievement." *Economics of Education Review*, 34 (2013), pp. 29–44.

We believe that for the purpose of title II reporting, States are well positioned to be able to include by April 1, 2018, student growth in tested grades and subjects of the new teachers that come from the program in the data they annually report on a teacher preparation program, and be able to incorporate student learning outcomes into the program's overall performance measure by April 1, 2019. For example, all 50 States and the District of Columbia received State Fiscal Stabilization Fund (SFSF) awards designed to fund, in part, the collection and reporting of student growth data relating to individual teachers in tested grades and subjects by the end of 2013. We believe this will enable States to meet the April 1, 2018, reporting deadline for student growth in tested grades and subjects, as the 2018 SRC will report primarily on data from the 2016–2017 academic year.

Having identified student learning outcomes as a required indicator in proposed § 612.5(a), we have proposed a definition that includes relevant data on student growth, which States could reliably use to assess the academic content knowledge and the teaching skills of new teachers. In particular, we are mindful of the definition of the term "teaching skills" in section 200(23) of the HEA, which includes those skills that enable a teacher to increase student learning, achievement, the ability to apply knowledge, and to effectively convey and explain academic subject matter. Our proposed indicator of student learning outcomes reflects both of these key aspects of the definition of "teaching skills," which is itself an important element of the criteria required by section 205(b)(1)(F) for assessing teacher preparation program performance.

Specifically, under this measure as defined in proposed § 612.2(d), States would calculate a program's student learning outcomes for each new teacher using (1) aggregate student growth data for students taught by new teachers, (2) a teacher evaluation measure that as defined in § 612.2(d) must, in significant part, include data on student growth for all students, or (3) both. Where a State has already adopted measures of student growth as part of a comprehensive teacher evaluation system, we would permit the State to build its indicators of academic content knowledge and teaching skills linked to student learning outcomes from data provided by these existing teacher evaluation systems. In this regard, we believe that comprehensive teacher evaluations provide richer and more accurate information on teacher quality than student growth data alone. Our proposed definition of "teacher evaluation measure" would ensure that these evaluations are meaningful by requiring that they (1) differentiate teachers on a regular basis using at least three performance levels, (2) use multiple valid measures in determining each teacher's performance level, and (3) include, as a significant factor, data on student growth for all students and other measures of professional practice. We recognize that not all State evaluation systems currently meet our proposed definition, and that States may prefer to use a stand-alone measure of student growth. Alternatively, or in addition, provided that a State's existing measures of student growth are part of a comprehensive teacher evaluation system, a State may use the results of its teacher evaluation system as its indicator of student learning outcomes.

Rationale for Employment Outcomes

The employment outcomes indicator in proposed § 612.5(a)(2) would measure the effectiveness of a teacher preparation program in carrying out another of its pivotal missions—preparing and placing recent graduates as new teachers consistent with local school needs. Under our proposed regulatory framework, a program's employment outcomes would be determined based on its teacher placement rate, teacher placement rate calculated for high-need schools, teacher retention rate, and teacher retention rate calculated for high-need schools. These measures would identify the extent to which a program is successfully placing new teachers who stay in the profession. The requirement to report disaggregated employment outcome measures for high-need schools reflects the need to ensure transparency about which programs are encouraging placement at high-need schools and which schools' recent graduates are succeeding in these placements as reflected by retention rates.

We believe that the use of the employment outcomes indicator is necessary for assessing the effectiveness of teacher preparation programs for several reasons. The goal of teacher preparation programs is to provide prospective teachers with the skills and knowledge needed to pursue a teaching career and remain successfully employed as a teacher, and to produce graduates who meet the needs of local educational agencies. Therefore, the rate at which a program's graduates become and remain employed as teachers is a critical indicator of program quality for prospective students, as well as policymakers and the general public. Acknowledging this, non-federal negotiators suggested including teacher placement and retention as indicators of program performance because such measures reflect employment outcomes for teacher preparation programs consistent with local educational agency needs.

We understand that teacher placement rates and teacher retention rates are affected by some considerations outside of the program's control. Individual teachers may decide to leave the teaching profession either before they begin to teach or afterwards. Such decisions may be due to family considerations, working conditions at their school, or other reasons that do not necessarily reflect upon the quality of their teacher preparation program or the level of content knowledge and teaching skills of the program's graduates. However, we believe that programs that persistently produce teachers who fail to find jobs or, once teaching, fail to remain in teaching, may not be providing the level of content knowledge and teaching skills that new teachers need to succeed in the classroom. Correspondingly, we believe that high placement and retention rates suggest that a teacher preparation program's graduates do have the requisite content knowledge and teaching skills that enable them to demonstrate sufficient competency to find a job, earn positive reviews, and stay in the profession.

This view is also evidenced by higher education accrediting agencies' use of employment outcomes as an indicator of program performance. For example, in 2013, the Council for the Accreditation of Educator Preparation (CAEP) adopted new accreditation standards and annual monitoring and reporting requirements, which include the "ability of completers to be hired in education positions for which they were prepared" as a measure of program outcome and consumer information.[6] The rate of teacher retention is thus included in the accreditation standards and the accompanying report urges "collaboration with States on preparation measures of common interest, such as employment and retention rates." Several other institutional and programmatic accrediting agencies also use employment outcomes to assess a program's quality, including the American Bar Association and the Council on Education for Public Health. In addition, some States use

[6] Council for the Accreditation of Educator Preparation, "Annual Reporting and CAEP Monitoring," (2013). *http://caepnet.org/accreditation/standards/annual-reporting-and-caep-monitoring/.*

employment outcomes in performance-based higher education funding formulas.[7]

Congress has also recognized the importance of employment outcome information in connection with higher education programs generally, including with respect to teacher preparation programs specifically. For example, under section 485(a)(1)(R) of the HEA, institutions "must make available to current and prospective students information regarding the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs." In addition, "an institution that advertises job placement rates as a means of recruiting students to enroll must make these rates available to prospective students, at or before the time the prospective student applies for enrollment."[8] Additionally, the Title II Teacher Quality Partnership (TQP) Program requires, under section 204(a)(2) of the HEA, that grant applicants establish an evaluation plan that includes strong and measurable performance objectives, including objectives and measures for "increasing teacher retention in the first three years of a teacher's career." In addition to TQP, retention metrics are included in the statutory requirements for several Department grant programs such as Transition to Teaching, Teachers for a Competitive Tomorrow, and the National Professional Development Program.

Congress has also included statutory requirements intended to ensure that teacher preparation programs produce new teachers who will address areas of need in local educational agencies and States. Congress's expectations are manifested in statutory requirements that each program provide assurances to the Secretary in its IRC that it is training prospective teachers to fill these needs (sections 205(a)(1)(A)(ii) and 206 of the HEA). Specifically, IHEs that conduct teacher preparation programs are required to provide an assurance in the institutional report card that the IHE is providing training to prospective teachers that "responds to the identified needs of the local educational agencies or States where the institution's graduates are likely to teach based on past hiring and recruitment trends."

The Department believes that teacher placement and retention data can provide important information on whether there is a labor market alignment between the new teachers and the teacher preparation program's ability to place teachers in areas of teacher shortage and high-need fields and in schools serving high-need populations. Currently, research shows that there are important mismatches in the teacher labor market. For example, one study found that there is a sufficient supply of qualified teachers to compensate for teacher turnover in English, but not for math and science. Additionally, principals were roughly ten percentage points more likely to report serious difficulties filling math and science vacancies than English vacancies.[9] New York State also reported that while elementary education accounted for 44 percent of the initial teaching certifications awarded, only 17 percent of certified program completers received an elementary and early childhood job placement in the State within two years. This contrasts with an in-subject placement rate of 63 percent for teachers of foreign languages, 59 percent for teachers of English as a second language, and 50 percent for secondary science teachers, suggesting a significant demand and supply mismatch by teaching area in the State.[10] The Department believes that requiring reporting on placement and retention rates will promote greater transparency about this mismatch where it exists in order to help IHEs and policymakers better understand and address this problem.

In regard to teacher retention, we believe that this measure reflects, to a significant extent, the degree to which teachers are adequately prepared for the schools that employ them. In a survey of American Federation of Teachers members, 50 percent indicated that their teacher preparation program did not adequately prepare them for the challenges of teaching in the "real world."[11] This lack of preparation is a concern not only because of the potential impact on the learning outcomes of the students taught by such teachers, but because the Department believes that inadequately prepared teachers are less likely to remain in the classroom, and teacher attrition entails significant costs for States, districts, and schools. Although hard to quantify, research suggests that a conservative estimate of the cost of teacher turnover is 30 percent of the leaving teacher's salary.[12] By requiring reporting on teacher retention rates by program, the Department believes that employers will be able to better understand which teacher preparation programs have strong track records for placing recent graduates as new teachers who stay, and succeed, in the classroom. This information will in turn help employers make informed hiring decisions and may ultimately help districts reduce teacher turnover rates and cut some of the high costs associated with such turnover.

The requirement to report disaggregated employment outcome measures for high-need schools reflects the need to ensure transparency about which programs are encouraging placement at high-need schools and which programs' recent graduates are succeeding in these placements as reflected by retention rates. High-need schools face unique challenges and experience much higher vacancy and attrition rates, compared to other schools. More than 90 percent of high minority concentration districts reported challenges recruiting qualified applicants to teach math and science compared with roughly 40 percent of low minority districts.[13] High-poverty schools have some of the highest rates of attrition among public schools, and high-poverty schools experience roughly 50 percent higher turnover rates than low-poverty schools.[14] In addition to experiencing larger proportions of teachers leaving the profession, four times as many math and science teachers transfer from high-poverty schools to low-poverty schools than transfer from low-poverty schools to

[7] Southern Regional Education Board, "Essential Elements of State Policy for College Completion: Outcomes-Based Funding," (2012). *http://publications.sreb.org/2012/Outcomes_Based_Funding.pdf.*

[8] National Postsecondary Education Cooperative, "Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination (Updated)," Washington, DC. (2009). *http://nces.ed.gov/pubs2010/2010831rev.pdf.*

[9] Richard M. Ingersoll and David Perda, "Is the Supply of Mathematics and Science Teachers Sufficient?" *American Education Research Journal* (May 2010). *http://aer.sagepub.com/content/47/3/563.*

[10] New York Board of Regents, "Teacher Demand and Supply Reports," (2013). *http://www.regents.nysed.gov/meetings/2013Meetings/November2013/TeacherSupplyDemandReports.pdf.*

[11] American Federation of Teachers Teacher Preparation Task Force, "Raising the Bar: Aligning and Elevating Teacher Preparation and the Teaching Profession," (2012). *http://files.eric.ed.gov/fulltext/ED538664.pdf.*

[12] Barnes et al, "The Cost of Teacher Turnover in Five School Districts: A Pilot Study," National Commission on Teaching and America's Future (2007). *http://files.eric.ed.gov/fulltext/ED497176.pdf.*

[13] US Department of Education, "State and Local Implementation of the No Child Left Behind Act: Volume VIII—Teacher Quality Under NCLB," (2009). *http://www2.ed.gov/rschstat/eval/teaching/nclb-final/report.pdf.*

[14] Richard Ingersoll, "Teacher Turnover and Teacher Shortages: An Organizational Analysis," *American Educational Research Journal* (2001). *http://www.gse.upenn.edu/pdf/rmi/TeacherTurnoverTeacherShortages-RMI-Fall-2001.pdf.*

high-poverty schools. Similarly, three-and-a-half times as many math and science teachers transfer from urban to suburban schools as transfer from suburban to urban schools.[15] A limited body of research also suggests that differences in turnover rates result in a higher relative cost to high-need schools than their more advantaged counterparts.[16]

Recognizing these unique challenges faced by high-need schools, we believe that it is essential to promote transparency in the reporting of employment outcomes through disaggregated information about high-needs schools and requiring that it be factored in significant part in a program's performance rating. In turn, this transparency will inform program improvement and encourage teacher preparation programs to increase their employment retention rates in high-need schools, such as by strengthening their partnerships with high-need schools and districts.

In our discussions about employment outcomes during negotiated rulemaking, we spent a considerable amount of time examining questions and issues concerning the calculation of teacher placement and retention rates for different types of programs.

For example, both the Department and non-Federal negotiators agreed that, in order to minimize the burden associated with calculating teacher placement and teacher retention rates and to better focus the data collection, States should be allowed to include or exclude, at their discretion, certain categories of new teachers from the teacher placement and teacher retention rate calculations for their teacher preparation programs, provided that each State uses a consistent approach to assess and report on all of the teacher preparation programs in the State. These categories include teachers who leave the State, teach in private schools or other settings that do not require State certification or licensure, are not retained due to market conditions or other circumstances particular to the LEA and beyond the control of the teachers or schools, or join the military or enroll in graduate school.

We anticipate that States will have varying circumstances and capacities that would make it difficult for some States to provide data regarding these categories of teachers, while other States would like to analyze this data. For example, some States may have systems in place to track teachers in private schools and others may not, and some States have strong relationships with nearby States where a substantial proportion of out-of-state graduates work and others may not. For this reason, the definitions of "teacher placement rate" and "teacher retention rate" allow a State to exclude one or more of these categories from its calculations, provided that the State uses a consistent approach to assess and report on all of the teacher preparation programs in the State. The Department, however, encourages States to develop appropriate data linkages across States, when possible, to capture teachers that are employed outside of the State in which their teacher preparation programs are located.

Some non-Federal negotiators argued that, because teacher placement rates and teacher retention rates could vary based solely on the kind, rather than quality, of a teacher preparation program, States should be permitted to assess teacher placement and teacher retention rates for traditional programs differently than the way they assess them for alternative route programs. The Department agreed that this flexibility would be appropriate if there are differences in the programs that affect employment outcomes (such as employment requirements for entry into an alternative route program). Therefore, in proposed § 612.5(a)(2), States are permitted, at their discretion, to assess traditional and alternative route teacher preparation programs differently based on whether there are differences in the programs that affect employment outcomes, provided that varied assessments result in equivalent levels of accountability and reporting.

To achieve equivalent standards of accountability in assessments of employment outcomes for traditional programs and alternative route programs, States could employ a variety of approaches. For example, a State might choose to use a single uniform standard for all teacher preparation programs in the State, but apply that standard differently to traditional programs (relative to other traditional programs) compared to alternative route programs (relative to other alternative route programs). Thus, when assessing teacher retention rates, for example, a State might choose to apply a uniform standard to all teacher preparation programs in the State (*i.e.*, to achieve an "exceptional" designation of program quality, a program would need to produce a retention rate in the top quartile of like programs), or it might apply that standard differently for traditional versus alternative route programs (*i.e.*, to attain top quartile status a traditional program would need to meet an 80 percent retention rate threshold relative to other traditional programs, while to reach top quartile status an alternative route program would need to meet a 60 percent retention rate threshold relative to other alternative route programs).

Alternatively, in assessing employment outcomes a State might choose to weight indicators differently for traditional programs versus alternative route programs in order to achieve equivalent standards of accountability. Thus, in States where employment is a prerequisite to entry into alternative route programs, a State might recognize that, by definition, all alternative route programs would have nearly 100 percent placement rates, thereby reducing the value of placement rate as a valid and reliable indicator of such programs' performance. Accordingly, because all alternative route programs in that context would, by definition, have similarly high placement rates, when assessing and reporting on employment outcomes under § 612.5, a State could assess alternative route programs relative to other alternative route programs in order to effectively or explicitly reduce the weight given to placement rate as an indicator of program quality. In doing so, by necessity, the relative weight of other indicators of program performance, which might prove more valid and reliable in that context, would increase.

Non-Federal negotiators were initially divided on whether teacher retention was an accurate measure of teacher preparation program quality. However, given these allowances for calculating teacher retention, the various ways a State might calculate this measure, and State discretion in relative weighting of this indicator as compared to other indicators, a majority of the non-Federal negotiators eventually expressed support for using the measure as one of a comprehensive set of indicators of the academic content knowledge and teaching skills of a program's new teachers and recent graduates as part of a State's criteria for assessing teacher preparation program performance.

Rationale for Survey Outcomes

We propose to use survey outcome data as an indicator of academic content knowledge and teaching skills of new teachers from teacher preparation

[15] Richard Ingersoll and Henry May, "The Magnitude, Destinations, and Determinants of Mathematics and Science Teacher Turnover," *Educational Evaluation and Policy Analysis* (2012). *http://epa.sagepub.com/content/34/4/435.*

[16] Barnes et al, "The Cost of Teacher Turnover in Five School Districts: A Pilot Study," National Commission on Teaching and America's Future (2007). *http://files.eric.ed.gov/fulltext/ED497176.pdf.*

programs that we would require States to assess under proposed § 612.5(a) in determining program performance. Specifically, through this indicator, States would examine whether employers and the new teachers themselves are satisfied that a teacher preparation program has provided new teachers with the skills needed to succeed in the classroom. Survey outcome data would provide another, more qualitative measure for examining the effectiveness of a teacher preparation program in producing new teachers with requisite academic content and teaching skills.

Two of the major national organizations focused on teacher preparation are now incorporating this kind of survey data as an indicator of program quality. The National Council on Teacher Quality (NCTQ) relies on the use of surveys in its rankings of teacher preparation programs. In its recently adopted accreditation standards, CAEP—which serves as the accreditor of the largest number of teacher preparation programs—requires in its standards that teacher preparation programs measure employer and completer satisfaction and recommend valid and reliable surveys as a method of collecting these data. Just as research shows that K–12 student surveys are a valid means for assessing aspects of teacher effectiveness,[17] the use of satisfaction surveys by employers and program completers, as required by the CAEP standards, is aimed at assessing "the results of preparation at the point where they most matter—in classrooms and schools." CAEP has also recommended the development of common survey items and instruments for employers and completers and suggests that it could participate in the validation of survey instruments. Specifically, CAEP believes that "much efficiency might be gained through CAEP collaboration with states on preparation measures of common interest, such as employment and retention rates, and perhaps completer and employer surveys." The use of surveys is thus a practice that is becoming increasingly prevalent and one that the Department expects to contribute to future research on teacher preparation program quality.

In addition, it is important to note that graduating student and employer surveys are also employed in the higher education world more broadly, including by accrediting agencies. For example, the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions requires its accredited programs to conduct surveys of each group of graduating students and the employers of those graduates within 6–12 months after graduation using required graduate survey and employer survey items.[18] Also, the Committee on Accreditation for Education in Neurodiagnostic Technology requires all accredited programs to survey both graduates and employers of graduates six months following graduation using, at a minimum, all items contained in its graduate and employer surveys.[19] Finally, many IHEs conduct graduate and alumni surveys, as well as employer surveys, to help improve their programs.[20]

We believe that this indicator is a useful measure of teacher preparation program quality because many teachers report entering the profession feeling unprepared for classroom realities. Collecting survey data from new teachers and their employers would provide important qualitative information about a teacher's ability to transfer the knowledge and skills acquired in their preparation program to their classrooms. We believe it is important to collect this information from both teachers and their employers because each group represents a different perspective on the quality of the teacher's preparation. We propose that the survey outcome data would be collected through, at a minimum, surveys of new teachers and surveys of employers and supervisors of new teachers, in each case for those new teachers in their first year of teaching who attended a teacher preparation program in the State where the new teachers are employed or supervised.

Non-Federal negotiators discussed at great length the potential burden to States in requiring the use of survey outcomes as an indicator of academic content knowledge and teaching skills of new teachers. Some non-Federal negotiators expressed concern about the potential costs and burdens associated with the requirement.

During the negotiations, non-Federal negotiators broadly rejected a proposal by the Department that the Department take responsibility for, including responsibility for costs of, conducting the surveys of new teachers and their employers and supervisors. These non-Federal negotiators believed that States are better positioned to know what data should be collected and why. Given the reaction of the non-Federal negotiators, the Department is not proposing to take on this responsibility.

*Rationale for Accreditation or State Approval To Provide Teacher Candidates With Content and Pedagogical Knowledge and Quality Clinical Preparation and as Having Rigorous Teacher Candidate Entry and Exit Qualifications*

The required indicators of teachers' academic content knowledge and teaching skills in proposed § 612.5(a)(1) through (a)(3) are outcome-based measures that we believe will provide strong and clear evidence of the quality of each teacher preparation program. During negotiations, many non-Federal negotiators expressed the view that States should also assess the quality of teacher preparation programs based on indicators of program inputs that provide signals of the program's quality before outcome data are available. In addition, outcome indicators measure results but do not suggest a cause for favorable or unfavorable results, nor do they inform programs about steps they should take in order to improve. For these reasons, we added input measures recommended by non-Federal negotiators as an additional indicator of content knowledge and teaching skills that States would use to determine a program's quality.

Specifically, we propose in § 612.5(a)(4) that, for purposes of its reporting indicators of, and data on, the performance of each teacher preparation program under proposed § 612.4, a State must include as an indicator whether the teacher preparation program either is accredited by a specialized accrediting agency that the Secretary recognizes for accrediting professional teacher education programs or, consistent with § 612.4(b)(3)(i)(B), the program produces teacher candidates with content and pedagogical knowledge and quality clinical preparation, who have met rigorous entry and exit qualifications. Non-Federal negotiators also told us that accrediting agencies base accreditation on these same factors regarding knowledge, clinical preparation, and entry and exit requirements, and thus, an accreditation is tantamount to a

[17] Council for the Accreditation of Educator Preparation, "CAEP Accreditation Standards," (2013). *http://caepnet.files.wordpress.com/2013/09/final_board_approved1.pdf.*

[18] "Evaluation Instruments/Program Resources," Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions. *http://coaemsp.org/Evaluations.htm.*

[19] "Standardized Graduate and Employer Surveys," Committee on Accreditation for Education in Neurodiagnostic Technology. *http://coa-end.org/?page_id=27.*

[20] See, for example, "Graduate/Employer Survey Data," California State University-Fullerton, College of Education. *http://ed.fullerton.edu/about-us/accreditation-and-assessment/assessments/graduateemployer-survey-data/.*

State's assurance that the teacher preparation program has these attributes. Accordingly, programs that receive such accreditation would already be determined to have satisfied the indicator.

The non-Federal negotiators proposed these two options not only to give States discretion in how they determined that a program had these input qualities, but also to provide them with a way to determine that alternative route programs, which often are not eligible for specialized accreditation, have these input qualities and so may be designated as exceptional teacher preparation programs using the same indicators as other programs.

The Department agrees with the suggestions of the non-Federal negotiators and believes that use of multiple input-based measures in the assessment of teacher preparation program quality would complement the outcome-based measures in proposed § 612.5(a)(1)–(3).

*Rationale for Other Indicators Predictive of a Teacher's Effect on Student Performance*

Under proposed § 612.5(b), a State also could use other indicators of academic content knowledge and teaching skills predictive of a teacher's effect on student performance to assess a teacher preparation program's performance. However, in order to be able to compare programs as reflected in proposed § 612.5(b), if a State utilizes such other indicators, we believe the State should apply the same indicators for all of its teacher preparation programs. This would ensure consistent evaluation of a State's teacher preparation programs.

The Department believes that the indicators of academic content knowledge and teaching skills that States are required to collect and report under these proposed regulations would significantly improve the reliability, validity, integrity, and accuracy of teacher preparation program performance evaluation. However, the Department acknowledges that future research may show that other indicators beyond those that are required could provide additional information on teacher preparation program performance. For example, recent research has found that results from surveying students can provide additional reliability in measuring teacher performance, especially when included in a combined measure, and that these data may provide more robust feedback for teachers of non-tested grades and subjects.[21] This proposed regulatory provision would permit a State, at its discretion, to use this or other such indicators.

*§ 612.6 What must a State consider in identifying low-performing teacher preparation programs or at-risk teacher preparation programs, and what regulatory actions must a State take with respect to those programs identified as low-performing?*

*Statute:* Section 205(b)(1)(F) of the HEA requires that the State include in its annual report card a description of the State's criteria for assessing the performance of teacher preparation programs within IHEs in the State, including the indicators of the academic content knowledge and teaching skills of students enrolled in the teacher preparation programs. Furthermore, section 205(b) of the HEA provides that States must report not less than the information specified in section 205(b)(1)(A) through (b)(1)(L) of the HEA, and requires States to provide this information in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary.

In addition, section 207(a) of the HEA requires States to identify low-performing teacher preparation programs in the State, and provide to the Secretary in the report card an annual list of low-performing teacher preparation programs as well as those programs at risk of being placed on the low-performing teacher preparation program list. Section 207(a) of the HEA further requires a State to provide technical assistance to low-performing teacher preparation programs.

*Current Regulations:* None.

*Proposed Regulations:* Under proposed § 612.6(a), we would require States to use criteria that, at a minimum, include the indicators of academic content knowledge and teaching skills from proposed § 612.5, including, in significant part, employment outcomes for high-need schools and student learning outcomes when determining whether a teacher preparation program should be identified as a low-performing teacher preparation program or an at-risk teacher preparation program. (Consistent with our approach in proposed §§ 612.4 and 612.5, the required use of these indicators would not apply to the identification of low-performing or at-risk teacher preparation programs by American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands).

Under proposed § 612.6(b), States would also be required to provide technical assistance to improve the performance of any teacher preparation program in its State that has been identified as a low-performing teacher preparation program. Technical assistance may include, but would not be limited to: Providing programs with information on the specific indicators used to determine the program's rating (*e.g.*, specific areas of weakness in student learning, job placement and retention, and new teacher or employer satisfaction); assisting programs to address the rigor of their entry and exit criteria; helping programs identify specific areas of curriculum or clinical experiences that correlate with gaps in graduates' preparation; helping identify potential research and other resources to assist program improvement (*e.g.*, evidence of other successful interventions, other university faculty, other teacher preparation programs, nonprofits with expertise in educator preparation and teacher effectiveness improvement, accrediting organizations, or higher education associations); and sharing best practices from exemplary programs.

*Reasons:* This section implements the statutory requirement that States conduct an assessment to identify low-performing teacher preparation programs in the State and help those programs to improve their performance by providing technical assistance to them. So that proposed § 612.6 reflects all applicable requirements, we also would reiterate the relevant requirement under proposed § 612.4(b)(1) that the State's criteria include, at a minimum, the indicators of academic content knowledge and teaching skills from § 612.5, including, in significant part, employment outcomes for high-need schools and student learning outcomes. The Department includes a requirement to factor in the placement and retention of new teachers in high-need schools, in significant part, in determining teacher preparation performance because the Secretary believes that a program's ability to train future teachers who succeed in high-need schools is a critical standard for assessing a teacher preparation program's effectiveness. The Secretary believes that a State's reliance

[21] Thomas Kane and Douglas Staiger, "Gathering Feedback for Teaching: Combining High-Quality Observations with Student Surveys and Achievement Gains," Bill and Melinda Gates Foundation Measures of Effective Teaching (MET) Project (January, 2012). *http://www.metproject.org/downloads/MET* Gathering Feedback Practioner Brief.pdf.

in significant part on employment outcomes in high-need schools will encourage teacher preparation programs to improve and strengthen their efforts to prepare new teachers for high-need schools, and thus, will help to address unmet demand and improve learning outcomes in such schools, which is the primary policy objective of the TEACH Grant program. With respect to student learning outcomes, consistent with the approach the Department has taken in promoting educator evaluation systems in programs and initiatives such as ESEA Flexibility, Race to the Top, and the Teacher Incentive Fund, the Secretary believes that the performance of teacher preparation programs should also weight student outcomes, in significant part, because, as with educator evaluation systems, student outcomes are an important, but not exclusive, factor for measuring performance.

The statute also requires that States identify programs that are at-risk of being identified as low-performing, and proposed § 612.6 would state this requirement as well.

*Subpart C—Consequences of Withdrawal of State Approval or Financial Support*

§ 612.7 What are the consequences for a low-performing teacher preparation program that loses the State's approval or the State's financial support?

*Statute:* Section 207(b) of the HEA describes the consequences that occur when a teacher preparation program, that the State finds to be low-performing based on its assessment of program performance, loses State approval or financial support. Low-performing teacher preparation programs that have lost State approval or financial support are ineligible for funding awarded by the Department for professional development activities. In addition, these teacher preparation programs may not accept or enroll any student who receives HEA title IV student financial assistance. Further, the affected teacher preparation program must provide transitional support, including remedial services if necessary, for students enrolled when the loss of State approval or financial support occurs.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 612.7(a)(1) and (a)(2) would codify in regulations the statutory requirements that a teacher preparation program from which the State has withdrawn its approval or terminated its financial support because of the State's identification of the program as a low-performing teacher preparation program—

(a) Is ineligible for professional development funding awarded by the Department, and

(b) is not permitted to include any candidate accepted into the teacher preparation program (as defined in proposed § 612.2(d)) or any candidate enrolled in the teacher preparation program (as defined in proposed § 612.2(d)) who receives HEA title IV, student financial assistance in the IHE's teacher preparation program as of the date that the State's approval was withdrawn or the State's financial support was terminated. In proposed § 612.2(d), we would define the term "candidate accepted into a teacher preparation program" as an individual who has been admitted into a teacher preparation program but who has not yet enrolled in any coursework that the IHE has determined to be part of that teacher preparation program. In that section, we would also define the term "candidate enrolled in a teacher preparation program" as an individual who has been accepted into a teacher preparation program and is in the process of completing required coursework but has not completed the teacher preparation program.

Under proposed § 612.7(a)(3), any teacher preparation program from which the State has withdrawn its approval or terminated its financial support because of the State's identification of the program as a low-performing teacher preparation program would also be required to provide transitional support (including remedial services, if necessary) to students enrolled in the teacher preparation program at the IHE at the time of the withdrawal of approval or termination of financial support for a period of time no longer than 150 percent of the published length of the program, but not less than the period of time a student continues in the program (up to 150 percent of the published program length).

Proposed § 612.7(b) would describe the requirements that apply to any IHE administering a teacher preparation program that has lost State approval or financial support based on being identified by the State as a low-performing teacher preparation program. First, under proposed § 612.7(b)(1), such an IHE would be required to notify the Secretary of the loss of State approval or financial support within 30 days of such designation. Second, under proposed § 612.7(b)(2), the IHE would be required to immediately notify each affected student that the IHE is no longer eligible to provide funding to them under title IV, HEA commencing with the next payment period. Finally, under proposed § 612.7(b)(3), the IHE would be required to disclose on its Web site and in promotional materials that it makes available to prospective students the fact that the teacher preparation program has been identified by the State as a low-performing teacher preparation program, has lost State approval or financial support, and that students accepted or enrolled in that program may not receive title IV, HEA funding.

*Reasons:* Proposed § 612.7(a) implements the statutory requirement that low-performing teacher preparation programs that have lost State approval or financial support are ineligible for funding for professional development activities awarded by the Department, may not accept or enroll any student who receives title IV student financial assistance, and must provide transitional support for students enrolled when the loss of State approval or financial support occurred.

In proposed § 612.7(a)(3), we would require a teacher preparation program that has lost State approval or financial support under this part to provide affected students (such as students currently enrolled in the teacher preparation program) with transitional support for a period of time no longer than 150 percent of the published program length, but not less than the period of time a student continues in the program (up to 150 percent of the published program length). We expect such transitional support to include such services as remedial services, career counseling, or assistance with locating another teacher preparation program for the student.

Regulations governing satisfactory academic progress under § 668.34(b), which apply to all title IV federal student aid, establish a maximum timeframe of no longer than 150 percent of the published length of the educational program relative to the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe. To be consistent with the maximum timeframe used for other title IV Federal student aid programs, the Secretary believes that the transitional support under this section should also be provided for a period of time no longer than 150 percent of the published program length. Hence, we propose this same timeframe for transitional support in § 612.7(a)(3).

In addition, given the consequences students face when a teacher preparation program loses State approval or financial support, it is

imperative that any IHE administering such a program make this information widely available and do so promptly. For this reason, and to be consistent with other notifications related to HEA title IV programs, we would require such an IHE to notify the Secretary within 30 days.[22] This notification is necessary and reasonable because the students in the affected program would no longer be eligible for title IV, HEA funding, and the Department would need to take action to ensure that no further title IV, HEA funds are disbursed to students accepted or enrolled in the affected teacher preparation program. In addition, because a student enrolled or accepted for enrollment in such a program would be unable to receive title IV, HEA funding if he or she remains with the program, we would require under proposed § 612.7(b)(2) that IHEs administering such a program immediately notify each student who is enrolled or accepted into the low-performing teacher preparation program and who receives title IV, HEA financial assistance that, commencing the next payment period, the IHE is no longer eligible to provide such funding to students enrolled or accepted into the low-performing teacher preparation program. Finally, we would require any IHE administering a teacher preparation program that has been identified as low-performing and has lost State approval or financial support to disclose that information on its Web site and in any promotional materials it makes available to prospective students so that prospective students and employers have current information about program quality in order to make informed choices.

§ 612.8 How does a low-performing teacher preparation program regain the eligibility to accept or enroll students receiving Title IV, HEA funds after loss of the State's approval or the State's financial support?

*Statute:* Section 207(b)(4) of the HEA provides that a low-performing teacher preparation program, from which the State has withdrawn State approval or terminated the State's financial support but which has sufficiently improved its performance, shall have its eligibility for title IV, HEA funds reinstated upon the State's determination of improved performance.

*Current Regulations:* None.

*Proposed Regulations:* Under proposed § 612.8(a), a low-performing teacher preparation program that has lost State approval or financial support may have its title IV eligibility and its eligibility for Department funding for professional development activities reinstated if it can demonstrate (1) improved teacher preparation program performance, as determined by the State based on the teacher preparation program performance indicators under proposed § 612.5 and (2) reinstatement by the State of its approval or financial support. In proposed § 612.8(b), we would clarify that, to meet the requirements of proposed § 612.8(a), the IHE must submit an application to the Secretary with supporting documentation that would allow the Secretary to determine that the teacher preparation program that had previously lost State approval or financial support based on poor performance has improved performance as measured using the indicators in proposed § 612.5, and that the State has reinstated its approval or financial support.

*Reasons:* This section would implement the statutory provision that low-performing teacher preparation programs that have lost State approval or financial support can regain eligibility to accept or enroll students receiving title IV, HEA funding by demonstrating improved performance, as determined by the State. Consistent with the State's reporting of the performance level of each teacher preparation program, as required under proposed § 612.4, we would link improved performance under this requirement with the State's determination of the performance level of the teacher preparation program, using the indicators under proposed § 612.5 and the State's decision to reinstate approval or financial support of the program. Because reinstatement of the authority to award financial assistance under title IV of the HEA would require the Secretary's approval, proposed § 612.8(b) would provide the process by which an IHE would submit an application for reinstatement to the Secretary that will enable the Secretary to determine that the teacher preparation program previously identified by the State as low-performing has met the requirements under proposed § 612.8(a). The Secretary will evaluate an IHE's application to participate in the title IV, HEA programs consistent with 34 CFR 600.20. In the event that an IHE is not granted eligibility to participate in the title IV, HEA programs, that IHE may submit additional evidence to demonstrate to the satisfaction of the Secretary that it is eligible to participate in the title IV, HEA programs.

*Part 686—Teacher Education Assistance for College and Higher Education (TEACH) Grant Program*

Subpart A—Scope, Purpose and General Definitions

**§ 686.2 Definitions**

High-Quality Teacher Preparation Program and TEACH Grant-Eligible STEM Program

*Statute:* Section 420L(1)(A) of the HEA provides that in order to be eligible to participate in the TEACH Grant program, an IHE must, among meeting other requirements, provide "high-quality teacher preparation and professional development services, including extensive clinical experience as part of pre-service preparation" as determined by the Secretary.

*Current Regulations:* Section 686.2 provides definitions for key terms used for 34 CFR part 686. It does not currently include a definition of "high-quality teacher preparation" or "TEACH Grant-eligible STEM program."

*Proposed Regulations:* The Department proposes to include in proposed § 686.2(e) (current § 686.2(d)) a definition for the term "high-quality teacher preparation program" to mean a teacher preparation program that (1) for purposes of the 2020–2021 title IV HEA award year, a State has classified as effective or of higher quality under proposed § 612.4 in either or both the April 2019 and/or the April 2020 State Report Card and for purposes of the 2021–2022 title IV HEA award year and subsequent award years, a State has classified as effective or of higher quality under proposed § 612.4, beginning with the April 2019 State Report Card, for two out of the previous three years, (2) meets the exception from State reporting of teacher preparation performance under 34 CFR 612.4(b)(4)(ii)(D) or (b)(4)(ii)(E), or (3) is a TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program at a TEACH Grant-eligible institution. We propose to define a TEACH Grant-eligible STEM program as a program in one of the physical, life, or computer sciences; technology; engineering; or mathematics as identified by the Secretary that has not been identified by the Secretary as having fewer than 60 percent of its TEACH Grant recipients completing at least one year of teaching that fulfills the service obligation pursuant to § 686.40 within three years of completing the program for the most recent three years for which data are

[22] See, for example, 34 CFR 600.40(d)(1), which requires that any IHE that has lost institutional eligibility to enroll students receiving title IV aid notify the Secretary within 30 days.

available. The definition of "teacher preparation program" is discussed elsewhere in this notice.

In proposed § 686.2(d), we would also add a cross-reference to the definition of the term "effective teacher preparation program" in proposed 34 CFR part 612.

*Reasons:* The term "high-quality teacher preparation program" is not explicitly defined in either the statute or the TEACH Grant program regulations. Currently, TEACH Grants are awarded at more than 800 of the approximately 2,124 IHEs that house a teacher preparation program without, for many of these programs, a specific determination of teacher preparation program quality being made. In addition, some IHEs with teacher preparation programs that have been designated by States as low-performing or at-risk of being low-performing are currently awarding TEACH Grants.

Under the proposed definition of "high-quality teacher preparation program," the Secretary would determine that a program is a high-quality teacher preparation program only if it has been classified by the State to be an effective teacher preparation program or of higher quality under § 612.4 in either or both the April 2019 and/or the April 2020 State Report Card for the 2020–2021 title IV HEA award year and in two out of the previous three years beginning with the April 2019 State Report Card for the 2021–2022 title IV HEA award year; meets the exception from State reporting of teacher preparation program performance under 34 CFR 612.4(b)(4)(ii)(D) or (b)(4)(ii)(E); or is a TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program at a TEACH Grant-eligible institution. "Effective or of higher quality" under this definition refers to teacher preparation program performance levels of effective or higher as defined in proposed part 612. New § 686.2(d) includes a cross-reference to the definition of the term "effective teacher preparation program" in part 612 to clarify what we mean by this term in the context of part 686. The proposed language refers to a program being classified as "effective or of higher quality" rather than as an "effective teacher preparation program" or "exceptional teacher preparation program" because States have discretion to classify teacher preparation programs in performance levels other than the four required in part 612. For example, a State could create a performance level above effective, but below exceptional. For the purpose of TEACH Grant eligibility, we intend to require only that a program has been identified as at least an "effective teacher preparation program."

The Department believes that the proposed definition of high-quality teacher preparation program, which would connect the assessment of teacher preparation program quality under the title II reporting system in proposed part 612 with TEACH Grant program funding, would help ensure that TEACH Grants are awarded only to students in high-quality teacher preparation programs. Research from States that have linked student achievement data to teacher preparation programs such as Louisiana, Tennessee, North Carolina, and Washington State show there are significant and lasting differences in quality between teacher preparation programs, and that high-quality programs can consistently produce teachers who obtain larger student achievement gains than teachers from other preparation programs.[23] For example, in 2003–2004, the Louisiana Board of Regents began examining the growth in achievement of K–12 students and linking the growth in student learning to teacher preparation programs. They began by using achievement data for students from ten school districts, and, over time, have added all school districts in the State and all public and private universities with teacher preparation programs. They have found that some teacher preparation programs prepare new teachers who are equivalent to experienced teachers, while other programs prepare new teachers whose effectiveness is at or below other new teachers.

Tennessee passed legislation in 2007 requiring the State Board of Education to analyze the effectiveness of teacher preparation programs. Annually, the Tennessee Higher Education Commission produces "report cards" on each teacher preparation program in the State with information such as teacher preparation program placement and retention rates and the student growth of K–12 students taught by teacher preparation program graduates.

The proposed definition of "high-quality teacher preparation program" includes teacher preparation programs that meet the exception from State reporting of teacher preparation program performance under 34 CFR 612.4(b)(4)(ii)(D), which exempts programs unable to meet the threshold size, or 34 CFR 612.4(b)(4)(E), which exempts programs if reporting of their performance data would be inconsistent with Federal or State confidentiality laws or regulations. We believe that programs that meet one or both of these exceptions should not be excluded from TEACH Grant eligibility because of their small size or the fact that they are subject to privacy laws or regulations that would temporarily delay them from reporting on their performance until they reach an acceptable program size threshold by enrolling more students or aggregating across programs or years under proposed 612.4(b)(4)(ii).

Under this proposed definition for high-quality teacher preparation program, the levels of program performance as reported in State report cards in both the April 2019 and the April 2020 State Report Card for the 2020–2021 title IV HEA award year would determine TEACH Grant eligibility for the 2020–2021 academic year. Subsequently, beginning with the 2021–2022 title IV HEA award year, a program's eligibility would be based on the level of program performance reported in the State Report Card for two out of three years. For example, program eligibility for the 2021–2022 title IV HEA award year, would be based on the level of performance reported in the April 2019, 2020, and 2021 State Report Cards. The State Report Card ratings from April 2018 (if the State exercised its option to report the ratings using the new indicators) and April 2019 would not immediately impact TEACH Grant eligibility. Instead, the loss of TEACH Grant eligibility for low-performing or at-risk programs would become effective July 1, 2020. In addition, the proposed definition of "high-quality teacher preparation program" would include a TEACH Grant-eligible STEM program at a TEACH Grant-eligible institution. A TEACH Grant-eligible STEM program would be defined, in part, as an eligible program, as defined in 34 CFR 668.8, in one of the physical, life, or computer sciences; technology; engineering; or mathematics as identified by the Secretary. This definition is consistent with the definition that was used in the National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program's definition of SMART Grant-eligible program.

To meet the proposed definition of a TEACH Grant-eligible STEM program, a program also must, over the most recent three years for which data are available, not have been identified by the Secretary as having fewer than sixty percent of its TEACH Grant recipients complete at least one year of teaching

[23] See, for example, Tennessee Higher Education Commission, "Report Card on the Effectiveness of Teacher Training Programs," Nashville, TN (2010); Dan Goldhaber, et al. "The Gateway to the Profession: Assessing Teacher Preparation Programs Based on Student Achievement." *Economics of Education Review*, 34 (2013), pp. 29–44.

that fulfills the service obligation pursuant to § 686.40 within three years of completing the STEM program. In addition, the definition of TEACH Grant-eligible STEM program would specify that the Secretary will publish an annual list of TEACH Grant-eligible STEM programs identified by Classification of Instructional Program (CIP) codes as defined in the proposed regulations. Publishing this list will enable the public to determine easily whether a specific STEM program is eligible to participate in the TEACH Grant program.

If otherwise eligible, a student who intends to be a teacher may receive a TEACH Grant if the student majors in one of the STEM areas identified by the Secretary using the CIP codes promulgated by the National Center for Education Statistics (which generally include programs in the physical, life, or computer sciences; technology; engineering; or mathematics). Majoring in a STEM field allows a prospective teacher to develop content knowledge in that field. Research has found that a teacher's content specialization in mathematics or science has a positive impact on student achievement in those subjects.[24] One way to encourage STEM majors to become teachers is to make TEACH Grants available to them. Note that while research shows that math and science teachers benefit from obtaining a content-area degree rather than a degree in education, research on other content areas such as history and English language arts does not show a similar relationship between content area degrees and teaching success.[25]

To ensure that all eligible programs provide high-quality teacher preparation, we believe it is appropriate to require that, over the most recent three years for which data are available, the Secretary has not identified that fewer than sixty percent of a STEM program's TEACH Grant recipients have taught full-time as a highly-qualified teacher in a high-need field in a low-income school in accordance with § 686.40 for at least one year within three years of completing the STEM program. The Secretary believes that sixty percent is the appropriate percentage because we believe TEACH Grant recipients in the STEM fields should enter the teaching profession at the same rates that education majors secure a teaching placement within ten years of receiving their bachelor's degree.[26] The Department acknowledges that the overall rate of teaching is not the same as teaching in a high-need field in a low-income school, as is required under TEACH, but we think the rate is nonetheless reasonable because TEACH is designed to support students who have committed to fulfilling their service obligations, and because TEACH recipients are high-achieving students who attended high-quality programs. We have chosen a three-year window in order to allow students time to complete their content training and to enter into and complete a teacher preparation program. For example, we expect that some of these students would need to enroll in and complete a Master's degree to earn a teaching license. A three-year window would allow these students time to complete a Master's degree and then begin fulfilling their TEACH Grant service obligations.

The Secretary requests comments about this framework and particularly on the three-year window and on whether the sixty percent placement rate is a reasonable and realistic placement rate, or whether another rate, such as seventy-five percent, would be more reasonable or could be supported with research, data, or other analysis. The Secretary also requests comments about whether the definition of the term "high-quality teacher preparation program" should include other content majors, such as foreign language programs, at a TEACH Grant-eligible institution. In particular, we invite comment as to whether strong empirical evidence exists that demonstrates that having a teacher with a content specialization in those fields leads to positive effects on student achievement in those subjects.

TEACH Grant-Eligible Institution

*Statute:* Section 420(L)(1) of the HEA provides that an eligible IHE for TEACH Grant program purposes is an IHE as defined in section 102 of the HEA that is financially responsible and that provides high-quality teacher preparation and professional development services, including extensive clinical experience as part of pre-service preparation; pedagogical coursework or assistance in the provision of such coursework, including the monitoring of student performance, and formal instruction related to the theory and practices of teaching; and supervision and support services to teachers, or assistance in the provision of such services, including mentoring focused on developing effective teaching skills and strategies.

Section 420L(2) of the HEA defines "post-baccalaureate" as a program of instruction for individuals who have completed a baccalaureate degree, that does not lead to a graduate degree, and that consists of courses required by a State in order for a teacher candidate to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that such term does not include any program of instruction offered by an eligible IHE that offers a baccalaureate degree in education.

*Current Regulations:* Current § 686.2(d) defines a "TEACH Grant-eligible institution" as an eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under alternative standards in 34 CFR 668.175, and that meets one of the following four options:

*Option 1:* The IHE provides a high-quality teacher preparation program at the baccalaureate or master's degree level that is either (a) accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs or (b) is approved by a State and includes a minimum of 10 weeks of full-time pre-service clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework.

To meet Option 1, the IHE must also provide supervision and support services to teachers, or assist in the provision of services to teachers, such as identifying and making available information on effective teaching skills or strategies; identifying and making information on effective practices in the supervision and coaching of novice teachers available; and mentoring focused on developing effective teaching skills and strategies.

*Option 2:* The IHE provides a two-year program acceptable for full credit in a baccalaureate teacher preparation program under Option 1 in this section or acceptable for full credit in a baccalaureate degree program in a high-need field under Option 3 (described in the following paragraph).

*Option 3:* The IHE provides a baccalaureate degree that, in

[24] Robert Floden and Marco Meniketti, "Research on the Effects of Coursework in the Arts and Sciences and in the Foundations of Education," Studying Teacher Education: The Report of the AERA Panel on Research and Teacher Education, Mahwah, NJ (2006): 261–308.

[25] Ibid.

[26] Sharon Anderson, "Teacher Career Choices: Timing of Teacher Careers Among 1992–93 Bachelor's Degree Recipients, Postsecondary Education Descriptive Analysis Report," National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC (2008). *http://nces.ed.gov/pubs2008/2008153.pdf.*

combination with other training or experience, will prepare an individual to teach in a high-need field and has entered into an agreement with an IHE under Option 1 or Option 4 to provide courses necessary for students to begin a teaching career.

*Option 4:* The IHE provides a post-baccalaureate program of study.

*Proposed Regulations:* The Department proposes to amend the definition of "TEACH Grant-eligible institution" in current § 686.2(d) to provide that, to be TEACH Grant-eligible, an IHE must provide at least one teacher preparation program at the baccalaureate or master's degree level that is a high-quality teacher preparation program, as that term would be defined in proposed § 668.2(e). (Note that we would redesignate current § 686.2(d) as proposed § 686.2(e), and the definition of "TEACH Grant-eligible institution" would now be in § 686.2(e).

We would remove from paragraph (1)(i) of the current definition of "TEACH Grant-eligible institution" in current § 686.2(d) the requirement that an IHE provide a program that (1) is accredited by a specialized accrediting agency or (2) is approved by a State and includes a minimum of 10 weeks of full-time pre-service clinical experience, and provides either pedagogical coursework or assistance in the provision of such coursework. The substance of this removed language would be captured in the proposed indicators of teacher preparation program performance determined under proposed §§ 612.5(a)(4)(i) and (a)(4)(ii), respectively, and reported under the title II reporting system under proposed § 612.4(b)(3)(i)(B). We believe that these requirements, while important, should be part of a broader examination of a program's quality and not considered separate from other measures. For a full discussion of these proposed provisions, please refer to the preamble discussion related to proposed §§ 612.4 and 612.5 earlier in this notice.

In paragraph (iii) of the proposed definition of "TEACH Grant-eligible institution," we would include any eligible IHE that offers a TEACH Grant-eligible science, technology, engineering or mathematics (STEM) program (as defined in proposed § 686.2(e)). In addition to offering a TEACH Grant-eligible STEM program, such an IHE would be required to have an agreement with an IHE that either provides at least one high-quality teacher preparation program at the baccalaureate or master's degree level that also provides supervision and support services to teachers or assists in the provision of services to teachers, or that provides a high-quality teacher preparation program that is a post-baccalaureate program of study to provide courses necessary for students in the TEACH Grant-eligible STEM program to begin a career in teaching.

We propose removing from the definition of TEACH Grant-eligible institution in current § 686.2(d) paragraphs (2)(ii) and (3) so that a financially responsible IHE that (1) offers only a two-year program acceptable for full credit in a baccalaureate degree program in a high-need field in a TEACH-Grant eligible institution or (2) offers only a baccalaureate degree that in combination with other training or experience will prepare an individual to teach in a high-need field would no longer be considered a TEACH Grant-eligible institution. However, a financially responsible IHE that offers a two-year program acceptable for full credit in a TEACH Grant-eligible program offered by an IHE described in paragraph (1) of the definition of TEACH Grant-eligible institution, or a TEACH Grant-eligible STEM program, offered by an IHE described in paragraph (iii) of the definition of TEACH Grant-eligible institution, would be considered a TEACH Grant-eligible institution.

Finally, we propose amending paragraph (4) (to be redesignated as paragraph (iv)) of the definition of "Teach Grant-eligible institution" to provide that, for a post-baccalaureate program of study to meet the definition, it must be a high-quality teacher preparation program.

*Reasons:* The Department is proposing these changes in order to consistently implement—at the pre-baccalaureate, baccalaureate, and post-baccalaureate levels—the requirement that, to be a TEACH-Grant eligible institution, an IHE must provide high-quality teacher preparation. We explain in the previous section the reasons for our focus on high-quality teacher preparation under part 686. We also explain in the previous section why TEACH Grant-eligible STEM programs at TEACH Grant-eligible institutions meet the proposed definition of high-quality teacher preparation program.

An IHE that is an eligible institution as defined in 34 CFR part 600 and meets the financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 would be considered a TEACH Grant-eligible institution if it provides a TEACH Grant-eligible STEM program and has entered into an agreement with an IHE described in paragraph (i) or (iv) under the definition of TEACH Grant-eligible institution to provide courses necessary for its students to begin a career in teaching. While teacher preparation programs are evaluated under the title II reporting system, TEACH Grant-eligible STEM programs would not be evaluated under the title II reporting system. In order to ensure that TEACH Grant-eligible STEM programs provide their students with a pathway to teaching, proposed paragraph (iii) of the definition of Teach Grant-eligible institution in proposed § 686.2(e) would require that the relevant TEACH Grant-eligible STEM program enter into an agreement with an IHE described in paragraphs (i) or (iv) of the definition (an IHE with a teacher preparation program or a post-baccalaureate program) to provide courses necessary for its students to begin a career in teaching. TEACH Grant recipients would, therefore, have access to necessary teacher preparation training to supplement and enhance their substantive knowledge and ensure they are prepared to teach.

*TEACH Grant-eligible program*

*Statute:* The HEA does not define the term "TEACH Grant-eligible program."

*Current Regulations:* Current § 686.2(d) defines "TEACH Grant-eligible program" as an eligible program, as defined in 34 CFR 668.8, that is a program of study designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

*Proposed Regulations:* The Department proposes to amend the definition of "TEACH Grant-eligible program" under current § 686.2(d). (Note that we would redesignate current § 686.2(d) as proposed § 686.2(e), and the definition of "TEACH Grant-eligible program" would now be in § 686.2(e).) A TEACH Grant-eligible program would no longer be defined simply as a program of study. Rather, under our proposed revisions to the definition, to be a TEACH Grant-eligible program, the program would have to be a high-quality teacher preparation program (as that term would be defined in proposed § 686.2(e)) that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. Further, under the proposed definition of "TEACH Grant-eligible program," a

two-year program of study acceptable for full credit toward a baccalaureate degree must be in a high-quality teacher preparation program (as that term would be defined in proposed § 686.2(e)) to be considered a program of study that leads to a baccalaureate degree.

*Reasons:* The Department is proposing these changes in order to implement the statutory requirement that to be a TEACH-Grant eligible program, the program must be a high-quality teacher preparation program. Simply offering a baccalaureate, master's, or post-baccalaureate degree is not sufficient for a program to be deemed "high-quality." The Secretary believes determinations of quality should be based on indicators of effectiveness linked to the academic content and teaching skills of new teachers from teacher preparation programs, specifically the indicators that States use to evaluate programs under part 612. The importance of focusing on high-quality teacher preparation programs is discussed further under the heading "High-quality teacher preparation program and TEACH Grant-eligible STEM program."

*Educational Service Agency and School or Educational Service Agency Serving Low-Income Students (Low-Income School)*

For a discussion related to the proposed additions of the defined terms "educational service agency" and "school or educational service agency serving low-income students (low-income school)," please refer to our preamble discussion under the heading "Service Obligations for the TEACH Grant program: Teaching Service Performed for an Educational Service Agency (34 CFR 686.2, 686.12, 686.32, 686.40, and 686.43)," later in this document.

*§§ 686.3(c), 686.11(a)(1)(iii), and 686.37(a)(1) Duration of Student Eligibility for TEACH Grants*

*Statute:* Section 420M(d)(1) and (d)(2) of the HEA include a number of TEACH Grant eligibility provisions, including a provision stating that the maximum amount an undergraduate or post-baccalaureate student may receive in TEACH Grants is $16,000 and that the maximum amount a graduate student may receive in TEACH Grants is $8,000. However, neither this section nor any other section of the statute addresses the duration of student eligibility for TEACH Grants when a previously eligible TEACH Grant program is no longer considered TEACH Grant-eligible.

*Current Regulations:* Current § 686.3(a) provides that an undergraduate or post-graduate student enrolled in a TEACH Grant-eligible program may receive the equivalent of up to four Scheduled Awards (as defined in § 686.2(d)) during the period the student is completing the first undergraduate program of study and first post-baccalaureate program of study. Current § 686.3(b) provides that a graduate student is eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master's degree program of study. Current § 686.3 does not address duration of student eligibility for a student who is enrolled in a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program that loses eligibility subsequent to the student's receipt of a TEACH Grant.

*Proposed Regulations:* The Department proposes to revise current § 686.3 by adding a new paragraph (c). This new paragraph would clarify that an otherwise eligible student who received a TEACH Grant for enrollment in a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program would remain eligible to receive additional TEACH Grants to complete that program even if the program the student was enrolled in was subsequently no longer considered a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program. Additionally, otherwise eligible students who received a TEACH Grant for enrollment in a program before July 1 of the year these proposed regulations become effective would remain eligible to receive additional TEACH Grants to complete that program even if the program the student enrolled in is not a TEACH Grant-eligible program under proposed § 686.2(e).

Consistent with this change to proposed § 686.3, we would also amend current § 686.11(a)(1)(iii) to add that an otherwise eligible student who received a TEACH Grant and who is completing a program under proposed § 686.3(c) would be eligible to receive a TEACH Grant.

Finally, we would amend current § 686.37(a)(1), as it relates to institutional reporting requirements, to require that an IHE provide to the Secretary information about the eligibility of each TEACH Grant recipient awarded a TEACH Grant under proposed § 686.3(c).

*Reasons:* In the proposed regulations, program eligibility is linked to title II reporting and, to be eligible, STEM programs must maintain a certain percentage of students who fulfill a year of the service obligation within three years of graduating. As a result, program eligibility may change from year to year. The Secretary believes that a student who begins a TEACH Grant-eligible program or TEACH Grant-eligible STEM program and receives a TEACH Grant should not be penalized if the program the student attends is subsequently not considered to be a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program. In such a case, we believe that the student should continue to be eligible to receive a TEACH Grant under proposed §§ 686.3(c) and 686.11(a)(1)(iii). Because a student who receives one TEACH Grant is obligated to fulfill the requirements of the agreement to serve—generally that the student teach full-time as a highly-qualified teacher in a high-need field in a low-income school for four years within eight years after the student completes his or her program—the Secretary believes it would be unfair to deny a student additional TEACH Grants to complete a program that lost TEACH Grant eligibility after the student received a TEACH Grant for that program and incurred a service obligation.

We would also make corresponding changes to student eligibility requirements for the TEACH Grant program as well as to institutional reporting requirements for students receiving TEACH Grants under these circumstances to reflect this provision.

*Service Obligations for the TEACH Grant Program: Teaching Service Performed for an Educational Service Agency (§§ 686.2, 686.12, 686.32, 686.40, and 686.43)*

*Statute:* Section 420N(b) of the HEA requires that a TEACH Grant recipient, as a condition of receiving a TEACH Grant, serve as a full-time highly-qualified teacher in a high-need field at an elementary or secondary school serving low-income children (low-income school) for not less than four academic years within eight years of completing the course of study for which the recipient received a TEACH Grant.

A "low-income school" is described in section 465(a)(2)(A) of the HEA as:

(1) A public or other nonprofit private elementary or secondary school or an educational service agency that has been determined by the Secretary, after consultation with the State educational agency in the State in which the school is located, to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the ESEA exceeds 30 percent of the total number of children enrolled in such

school, and is in a school district of an LEA that is eligible for assistance under part A, title I of the ESEA; or

(2) a public or other nonprofit private elementary school or secondary school or location operated by an educational service agency that has been determined by the Secretary, after consultation with the State educational agency of the State in which the educational service agency operates, to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the ESEA exceeds 30 percent of the total number of children taught at such school or location.

The Higher Education Opportunity Act of 2008 (Public Law 110–315) (HEOA) amended section 465(a)(2)(A) of the HEA to include educational service agencies in the description of a low-income school, and added a new section 481(f) that provides that the term "educational service agency" has the meaning given the term in section 9101 of the ESEA.

*Current Regulations:* The current regulations governing the TEACH Grant program do not reflect the fact that a TEACH Grant recipient may fulfill his or her service obligation to teach in a low-income school by teaching in a school or location operated by an educational service agency.

*Proposed Regulations:* In proposed § 686.2(e) (current § 686.2(d)), the Department proposes to define "educational service agency" to mean a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to LEAs, as defined in section 9101 of the ESEA, as amended.

In proposed § 686.2(e) (current § 686.2(d)), we would also remove the term "school serving low-income students (low-income school)" and its definition and replace them with the term "school or educational service agency serving low-income students (low-income school)" and its definition. We would make conforming changes in other provisions that currently refer to "school serving low-income students (low-income school)." Specifically, we would amend §§ 686.12(b)(1)(i) and (b)(2) (Agreement to serve); 686.32(a)(3)(ii), (c)(4)(iii), and (c)(4)(v) (Counseling requirements); 686.40(b) and (f) (Documenting the service obligation); and 686.43(a)(1) (Obligation to repay the grant), to add references to an "educational service agency" as appropriate, to make it clear that a TEACH Grant recipient can satisfy his or her agreement to serve in a low-income school by teaching in a school or location operated by an educational service agency.

*Reasons:* We are proposing to amend §§ 686.2, 686.12, 686.32, 686.40, and 686.43 of the TEACH Grant program regulations to reflect the statutory change made by the HEOA to section 465(a)(2)(A) of the HEA that allows a TEACH Grant recipient to satisfy his or her service obligation to teach in a low-income school by teaching in an educational service agency, and we are adopting the definition of that term from section 9101 of the ESEA as required by section 481(f) of the HEA. A TEACH Grant recipient can satisfy his or her service obligation by teaching in a Head Start program provided by an educational service agency at an elementary school or secondary school or other location that meets the poverty requirement.

*Service Obligations for the TEACH Grant Program: Teaching in a High-Need Field (§§ 686.12 and 686.32)*

*Statute:* As stated in the previous discussion, section 420N(b) of the HEA requires a TEACH Grant recipient to serve as a full-time highly-qualified teacher in a high-need field at a low-income school as a condition of receiving a TEACH Grant. Section 420N(b)(1)(C) of the HEA describes high-need fields as mathematics, science, foreign languages, bilingual education, special education, reading specialist, or another field documented as high-need by the Federal Government, State government, or LEA, and approved by the Secretary.

The HEOA added section 420N(d)(1) to the HEA to provide that, for fields documented as high-need by the Federal Government, State government, or LEA, and approved by the Secretary, a TEACH Grant recipient may fulfill his or her service obligation by teaching in a field that was designated as high-need when the recipient applied for the grant, even if the field is no longer designated as high-need when the recipient begins teaching. This change became effective on July 1, 2010.

*Current Regulations:* The definition of "high-need field" in current § 686.2 is similar to the statutory definition of the term included in section 420N(b)(1)(C) of the HEA. As in section 420N(b)(1)(C) of the HEA, in the definition of "high-need field" in current § 686.2(d), a high-need field that is not specified in the regulation must be documented as high-need by the Federal Government, State government, or LEA, and approved by the Secretary, in order for it to be determined a high-need field. The definition of "high-need field" in current § 686.2(d) also specifies that the high-need field must be listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) in accordance with 34 CFR 682.210(q), to be included as a high-need field.

Under current § 686.12(d), a TEACH Grant recipient may satisfy his or her service obligation by teaching in a high-need field that is listed in the Nationwide List only if that field is designated by a State as high-need and included in the Nationwide List at the time the recipient begins qualifying teaching in that field in that State.

Under current § 686.40(c)(2), if a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in satisfaction of his or her agreement to serve.

*Proposed Regulations:* We propose to add a new paragraph (d) to current § 686.12 to reflect the statutory change made by the HEOA to section 420N(d)(1) of the HEA.

Specifically, proposed § 686.12(d) would provide that, in order for a grant recipient's teaching service in a high-need field listed in the Nationwide List to count toward satisfying the recipient's service obligation, the high-need field in which he or she prepared to teach must be listed in the Nationwide List for the State in which the grant recipient begins teaching in that field—

(1) At the time the grant recipient begins qualifying teaching service in that field (even if that field subsequently loses its high-need designation for that State); or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient begins qualifying teaching service in that field or when the grant recipient signed the agreement to serve or received the TEACH Grant (even if that field subsequently loses its high-need designation for that State before the grant recipient begins qualifying teaching service).

The proposed regulations would also make technical changes to § 686.32(a)(3)(iii)(B) and (c)(4)(iv)(B), regarding initial and exit counseling provided to a TEACH Grant recipient, to reflect the statutory change to section 420N(d)(1) of the HEA and to be consistent with proposed § 686.12(d).

*Reasons:* Proposed § 686.12(d) would implement the statutory change to section 420N(d)(1) of the HEA by the

HEOA discussed above. To implement this provision of the HEA, we are proposing regulations, in § 686.12(d), that interpret the term "when the recipient applied for the grant" to relate to the date when the recipient signed the agreement to serve or received the TEACH Grant, because the use of two dates provides both the Department and the TEACH Grant recipient with the most flexibility. Currently, the Department already tracks the date the recipient signs the agreement to serve, and the date a grant recipient receives a TEACH Grant.

While we did consider using the date the TEACH Grant recipient filed a Free Application for Federal Student Aid (FAFSA) for this determination, we declined to take this approach because the Department's TEACH Grant servicing system does not currently contain the FAFSA filing date, and adding this information to the TEACH Grant servicing system would require expensive changes. We do not believe these system changes are necessary in light of other alternatives available.

We believe that permitting the use of either date is also beneficial for TEACH Grant recipients. The Nationwide List is published on an award year basis, and it is possible that the date a grant recipient signs the agreement to serve and the date he or she receives the grant could fall in different award years. Using either date provides the grant recipient with a choice of which Nationwide List to use in determining which high-need field to pursue as a course of study. The TEACH Grant recipient can also be assured that, when the grant recipient begins teaching, service done in that high-need field will qualify as eligible service.

*Eligibility for a New TEACH Grant After Receiving a Discharge of the TEACH Grant Agreement to Serve Based on Total and Permanent Disability (§ 686.11)*

*Statute:* Section 420N(d)(2) of the HEA authorizes the Secretary to establish categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or part of the recipient's service obligation may be excused from fulfilling that portion of the recipient's service obligation.

*Current Regulations:* Current § 686.42(b) provides that a TEACH Grant recipient's agreement to serve is discharged if the recipient becomes totally and permanently disabled, as that term is defined in 34 CFR 682.200(b), and applies for, and satisfies the eligibility requirements for, a total and permanent disability discharge of a Direct Loan in accordance with 34 CFR 685.213. The TEACH Grant eligibility requirements in current § 686.11 do not address the eligibility of a TEACH Grant recipient for a new TEACH Grant after receiving a discharge of the agreement to serve based on total and permanent disability.

*Proposed Regulations:* We propose to add a new paragraph to § 686.11 to address the eligibility of a TEACH Grant recipient for a new TEACH Grant after receiving a discharge of the agreement to serve based on total and permanent disability. Proposed § 686.11(d) would provide that, if a student's previous TEACH Grant service obligation or title IV, HEA loan was discharged based on total and permanent disability, the student is eligible to receive a new TEACH Grant only if the student:

- Obtains a certification from a physician that the student is able to engage in substantial gainful activity as defined in 34 CFR 685.102(b);
- Signs a statement acknowledging that neither the service obligation for the TEACH Grant the student receives nor any previously discharged service agreement on which the grant recipient is required to resume repayment in accordance with § 686(d)(1)(iii) can be discharged in the future on the basis of any impairment present when the new grant is awarded, unless that impairment substantially deteriorates and the grant recipient applies for, and meets the eligibility requirements for, a discharge in accordance with 34 CFR 685.213; and
- For a situation in which the student receives a new TEACH Grant within three years of the date that any previous TEACH Grant service obligation or title IV loan was discharged due to a total and permanent disability in accordance with § 686.42(b), 34 CFR 685.213(b)(7)(i)(B), 34 CFR 674.61(b)(6)(i)(B), or 34 CFR 682.402(c)(6)(i)(B), the grant recipient acknowledges that he or she is once again subject to the terms of the previously discharged TEACH Grant agreement to serve in accordance with § 686.42(b)(5) before receiving the new grant and resumes repayment on the previously discharged loan in accordance with § 685.213(b)(47), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6).

*Reasons:* We are proposing to add eligibility requirements that require a TEACH Grant recipient to be subject to the terms of a previously discharged TEACH Grant agreement to serve, and to resume repayment on any previously discharged loan before receiving a new TEACH Grant, because the receipt of a new TEACH Grant, which requires the grant recipient to work as a teacher, amounts to an implicit acknowledgement that the recipient is able to engage in substantial gainful activity and is therefore no longer totally and permanently disabled. We are also proposing to add eligibility requirements to address this situation in order to make the TEACH Grant program regulations consistent with and conform to the rules governing borrower eligibility for a new HEA, title IV loan after receiving a total and permanent disability discharge on a prior loan.

*Discharge of the TEACH Grant Agreement To Serve Based on the Total and Permanent Disability of the TEACH Grant Recipient (§ 686.42(b))*

*Statute:* Section 420N(d)(2) of the HEA provides the Secretary with regulatory authority to establish categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or part of his or her service obligation may be excused from fulfilling that portion of the service obligation.

*Current Regulations:* Current § 686.42(b) provides for a discharge of the service obligation if the TEACH Grant recipient applies for, and satisfies the eligibility requirements for, a total and permanent disability discharge of a Direct Loan in 34 CFR 685.213.

*Proposed Regulations:* We propose to remove current § 686.42(b)(2), which provides that the eight-year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(3) unless the grant recipient is eligible for a suspension based on a condition that is a qualifying reason for leave under the Family Medical Leave Act.

We would also remove current § 686.42(b)(3), which requires that interest continues to accrue on each TEACH Grant disbursement unless and until the grant recipient's agreement to serve is discharged by the Secretary.

In addition, we would remove current § 686.42(b)(4) and modify current § 686.42(b)(2) to provide that, if at any time the Secretary determines that the grant recipient does not meet the requirements of the three-year period following the discharge in 34 CFR 685.213(b)(5), the Secretary will notify the grant recipient that the grant recipient's obligation to satisfy the terms of the agreement to serve is reinstated.

Finally, we would add new § 686.42(b)(3) to clarify that the Secretary's notification under § 686.42(b)(2) would include the reason or reasons for reinstatement, provide

information on how the grant recipient may contact the Secretary if the grant recipient has questions about the reinstatement or believes that the agreement to serve was reinstated based on incorrect information, inform the grant recipient that interest accrual will resume on TEACH Grant disbursements made prior to the date of the discharge, and inform the TEACH Grant recipient that he or she must satisfy the service obligation within the portion of the eight-year period that remained after the date of the discharge.

*Reasons:* The current total and permanent disability discharge provisions in § 686.42(b) of the TEACH Grant regulations are modeled on the Direct Loan Program regulations and provide that, if a TEACH Grant recipient becomes totally and permanently disabled, the grant recipient's service obligation is discharged if the TEACH Grant recipient applies for, and satisfies the same eligibility requirements for, a total and permanent disability discharge of a Direct Loan in 34 CFR 685.213. Much like a Direct Loan borrower who cannot repay his or her loan because of a total and permanent disability, a disabled TEACH Grant recipient cannot comply with the service obligation because he or she cannot work and earn money. The Department processes TEACH Grant applications for total and permanent disability in the same manner it processes applications for the Federal Family Education Loan (FFEL) and Direct Loan programs. On November 1, 2012, we published final regulations that amended the Perkins, FFEL, and Direct Loan program regulations (77 FR 66088) to streamline the total and permanent disability discharge application process and provide more detailed information in the various notifications received by the borrower. We are proposing to amend the provisions authorizing the discharge of a TEACH Grant recipient's agreement to serve based on total and permanent disability to conform to the changes to the discharge process set forth in the November 1, 2012 final regulations.

*Executive Orders 12866 and 13563*

Regulatory Impact Analysis (RIA) for Teacher Preparation Proposed Regulations

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in regulations that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local or tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations pursuant to Executive Order 13563, published on January 21, 2011 (76 FR 3821), which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, the Office of Information and Regulatory Affairs within the Office of Management and Budget emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only upon a reasoned determination that their benefits justify their costs and we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on this analysis and the reasons stated in the preamble, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In this Regulatory Impact Analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Although the majority of the costs related to information collection are discussed within this RIA, elsewhere in this NPRM under Paperwork Reduction Act of 1995, we also identify and further explain burdens specifically associated with information collection requirements.

**I. Need for Regulatory Action**

Recent international assessments of science, reading, and math knowledge have revealed that the United States is significantly behind other countries in preparing students to compete in the global economy.[27] Although many factors influence student achievement, a large body of research has used value-added analysis to demonstrate that teacher quality is the largest in-school factor affecting student achievement.[28]

[27] Kelly, D., Xie, H., Nord, C.W., Jenkins, F., Chan, J.Y., and Kastberg, D. "Performance of U.S. 15-Year-Old Students in Mathematics, Science, and Reading Literacy in an International Context: First Look at PISA 2012 (NCES 2014–024)," U.S. Department of Education, National Center for Education Statistics, Washington, DC (2013). *http://nces.ed.gov/pubs2014/2014024rev.pdf.*

[28] William Sanders and June C. Rivers, "Cumulative and Residual Effects of Teachers on Future Student Academic Achievement," Research report, Knoxville, TN, University of Tennessee, Value-Added Research and Assessment Center, (1996); Steven G. Rivkin, Eric A. Hanushek, and Thomas A. Kane, "Teachers, Schools, and Academic Achievement." *Econometrica* 73, No. 2 (2005): 417–58; Jonah Rockoff, "The Impact of Individual Teachers on Student Achievement: Evidence from Panel Data." *American Economic Review* 94, No. 2 (2004): 247–52.

We use "value-added" analysis and related terms to refer to statistical methods that use changes in the academic achievement of students over time to isolate and estimate the effect of particular factors, such as family, school, or teachers, on changes in student achievement.[29] One study found that the difference between having a teacher who performed at a level one standard deviation below the mean and a teacher who performed at a level one standard deviation above the mean was equivalent to student learning gains of a full year's worth of knowledge.[30]

A number of factors are associated with teacher quality, including academic content knowledge, in-service training, and years of experience, but researchers and policymakers have begun to examine whether some of these student achievement discrepancies can be explained by differences in the preparation their teachers received before entering the classroom.[31] An early influential study on this topic found that the effectiveness of teachers in public schools in New York City who were prepared through different teacher preparation programs varied in statistically significant ways, as measured by the value added by these teachers.[32]

Subsequent studies have examined the value-added scores of teachers prepared through different teacher preparation programs in, Missouri, Louisiana, North Carolina, Tennessee, and Washington.[33] Many of these studies have found statistically significant differences between teachers prepared at different preparation programs. For example, State officials in Tennessee and Louisiana have worked with researchers to examine whether student achievement could be used to inform teacher preparation program accountability. After controlling for observable differences in students, researchers in Tennessee found that the most effective teacher preparation programs in that State produced graduates that were two to three times more likely than other new teachers to be in the top quintile of teachers in a particular subject area, as measured by increases in the achievement of their students, with the least-effective programs producing teachers that were equally likely to be in the bottom quintile.[34] Analyses based on Louisiana data on student growth linked to the programs that prepared students' teachers found few statistically significant differences in teacher effectiveness.[35] Although these findings did not achieve statistical significance, three teacher preparation programs produced new teachers who appeared, on average, to be as effective as teachers with at least two years of experience, based on growth in student achievement in four or more content areas.[36] A study analyzing differences between teacher preparation programs in Washington based on the value-added scores of their graduates also found few statistically significant differences, but the authors argued that the differences were educationally meaningful.[37] In math, the average difference between teachers from the highest performing program and the lowest performing program was approximately 1.5 times the difference in performance between students eligible for free or reduced-price lunches and those who are not, while in reading the average difference was 2.3 times larger.[38]

In contrast to these findings, Koedel et al. found very small differences in effectiveness between teachers prepared at different programs in Missouri.[39] The vast majority of variation in teacher effectiveness was within programs, instead of between programs.[40] However, the authors note that the lack of variation between programs in Missouri could reflect a lack of competitive pressure to spur innovation within traditional teacher preparation programs.[41] A robust evaluation system that included outcomes could spur innovation and increase differentiation between teacher preparation programs.[42]

The Department acknowledges that there is debate in the research community about the specifications that should be used when conducting value-added analyses of the effectiveness of teachers prepared through different preparation programs,[43] but also recognizes that the field is moving in the direction of weighing value-added analyses in assessments of teacher preparation program quality.

Thus, despite the methodological debate in the research community, CAEP,[44] a union of two formerly independent national accrediting agencies, the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC), has developed new standards that require, among other measures, evidence that students completing a teacher preparation program contribute to an expected level of student growth.[45] The new standards are currently voluntary for the more than 900 education preparation providers who participate in the education preparation

[29] For more information on approaches to value-added analysis, see also: Henry I. Braun, "Using Student Progress to Evaluate Teachers: A Primer on Value-Added Models." Princeton, NJ, Educational Testing Service (2005); William J. Sanders, "Comparisons Among Various Educational Assessment Value-Added Models," Presentation at the Power of Two—National Value-Added Conference, Battelle for Kids, Columbus, OH, (October 16, 2006).

[30] Eric A. Hanushek, "The Trade-Off between Child Quantity and Quality," *Journal of Political Economy*, 100, No. 1 (1992): 84–117.

[31] Douglas Harris and Timothy Sass, "Teacher Training, Teacher Quality, and Student Achievement." *Journal of Public Economics* 95, (2011): 798–812; Daniel Aaronson, Lisa Barrow, and William Sanders, "Teachers and Student Achievement in the Chicago Public High Schools." *Journal of Labor Economics* 25, No. 1 (2007): 95–135; Donald J. Boyd, et al., "The Narrowing Gap in New York City Teacher Qualifications and its Implications for Student Achievement in High-Poverty Schools," *Journal of Policy Analysis and Management* 27, No. 4 (2008): 793–818.

[32] Donald J. Boyd, et al., "Teacher Preparation and Student Achievement." *Educational Evaluation and Policy Analysis* 31, No. 4 (2009): 416–440.

[33] Cory Koedel, et al., "Teacher Preparation Programs and Teacher Quality: Are There Real Differences Across Programs?" Working Paper 79, Washington, DC: National Center for Longitudinal Data Education Research (2012); Gary T. Henry, et al., "Teacher Preparation Program Effectiveness Report." Research brief, Chapel Hill, NC: Carolina Institute for Public Policy (2011); Dan Goldhaber, et al., "The Gateway to the Profession: Assessing Teacher Preparation Programs Based on Student Achievement," *Economics of Education Review*, 34(2013), pp. 29–44.

[34] Tennessee Higher Education Commission. "Report Card on the Effectiveness of Teacher Training Programs, 2010" Knoxville, TN: Tennessee Higher Education Commission (2010).

[35] Kristin A. Gansle, et al., "Value Added Assessment of Teacher Preparation in Louisiana: 2005–2006 to 2008–2009," Technical report, Baton Rouge, LA: Louisiana State University (2010).

[36] Ibid.

[37] Dan Goldhaber, et al., "The Gateway to the Profession: Assessing Teacher Preparation Programs Based on Student Achievement." *Economics of Education Review*, 34 (2013), pp. 29–44.

[38] Ibid. 1.5 times the difference between students eligible for free or reduced price lunch is approximately 12 percent of a standard deviation, while 2.3 times the difference is approximately 19 percent of a standard deviation.

[39] Cory Koedel, et al., "Teacher Preparation Programs and Teacher Quality: Are There Real Differences Across Programs?" Working Paper 79, Washington, DC: National Center for Longitudinal Data Education Research (2012).

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] See Kata Mihaly, et al., "Where You Come From or Where You Go? Distinguishing Between School Quality and the Effectiveness of Teacher Preparation Program Graduates." Working Paper 63, Washington, DC: National Center for Analysis of Longitudinal Data in Education Research (2012), for a discussion of issues and considerations related to using school fixed effects models to compare the effectiveness of teachers from different teacher preparation programs who are working in the same school.

[45] CAEP Accreditation Standards as Approved by the CAEP Board of Directors, 2013. Council for the Accreditation of Educator Preparation. *http://coepnet.files.wordpress.com/2013/09/final_board_approved1.pdf.*

accreditation system. Participating institutions account for nearly 60% of the providers of educator preparation in the United States, and their enrollments account for nearly two-thirds of newly prepared teachers. The new standards will be required for accreditation beginning in 2016.[46] The standards are an indication that the effectiveness ratings of teachers trained at teacher preparation programs are increasingly being used as a way to evaluate teacher preparation program performance. The research on teacher preparation program effectiveness is relevant to the elementary and secondary schools that rely on teacher preparation programs to recruit and select talented individuals and prepare them to become future teachers. In 2011–2012 (the most recent year for which data are available), 203,701 individuals completed either a traditional teacher preparation program or an alternative route program. The National Center for Education Statistics (NCES) projects that by 2020, States and districts will need to hire as many as 350,000 teachers each year due to teacher retirement and attrition and increased student enrollment.[47] In order to meet the needs of schools and districts, States may have to expand traditional and alternative route programs to prepare more teachers, find new ways to recruit and train qualified individuals, or reduce the need for new teachers by reducing attrition or developing different staffing models. Better information on the quality of teacher preparation programs could help State and local educational agencies to make sound staffing decisions.

Despite research suggesting that the academic achievement of students taught by graduates of different teacher preparation programs may vary with regard to their teacher's program, analyses linking student achievement to teacher preparation programs have not been conducted and made available publicly for teacher preparation programs in all States. Congress has recognized the value of assessing and reporting on the quality of teacher preparation, and requires States and IHEs to report detailed information about the quality of teacher preparation programs in the State under the HEA. When reauthorizing the title II reporting system, members of Congress noted a goal of having teacher preparation programs explore ways to assess the impact of their programs' graduates on student academic achievement. In fact, the report accompanying the House Bill (H. Rep. 110–500) included the following statement, "[i]t is the intent of the Committee that teacher preparation programs, both traditional and those providing alternative routes to state certification, should strive to increase the quality of individuals graduating from their programs with the goal of exploring ways to assess the impact of such programs on student's academic achievement."

Moreover, in roundtable discussions and negotiated rulemaking sessions held by the Department, stakeholders repeatedly expressed concern that the current title II reporting system provides little meaningful data on the quality of teacher preparation programs or the impact of those programs' graduates on student achievement. Currently, States must annually calculate and report data on more than 400 data elements, and IHEs must report on more than 150 elements. While some information requested in the current reporting system is statutorily required, other elements—such as whether the IHE requires a personality test prior to admission—are neither required by statute nor provide information that is particularly useful to the public. Thus, stakeholders stressed at the negotiated rulemaking sessions that the current system is too focused on inputs and that outcome-based measures would provide more meaningful information.

Similarly, even some of the statutorily required data elements in the current reporting system do not provide meaningful information on program performance and how program graduates are likely to perform in a classroom. For example, the HEA requires IHEs to report both scaled scores on licensure tests and pass rates for students who complete their teacher preparation programs. Yet existing research provides mixed findings on the relationship between licensure test scores and teacher effectiveness.[48] This may be because most licensure tests were designed to measure the knowledge and skills of prospective teachers but not necessarily to predict classroom effectiveness.[49] The predictive value of licensure exams is further eroded by the significant variation in State pass/cut scores on these exams, with many States setting pass scores at a very low level. The National Council on Teacher Quality found that every State except Massachusetts sets its pass/cut scores on content assessments for elementary school teachers below the average score for all test takers, and most States set pass/cut scores at the 16th percentile or lower.[50] Further, even with low pass/cut scores, some States allow teacher candidates to take licensure exams multiple times. Some States also permit IHEs to exclude students who have completed all program coursework but have not passed licensure exams when the IHEs report pass rates on these exams for individuals who have completed teacher preparation programs under the current title II reporting system. This may explain, in part, why States and IHEs reported an average pass rate on licensure or certification exams of 96 percent for individuals who completed traditional teacher preparation programs in the 2009–10 academic year, a less than reliable indicator of program quality.[51]

Thus, while the current title II reporting system produces detailed and voluminous data about teacher preparation programs, the data convey suboptimal indications of program quality as measured by how program graduates will perform in a classroom. This lack of meaningful data prevents school districts, principals, and prospective teacher candidates from making informed choices, creating a market failure due to imperfect information.

On the demand side, school districts lack information about the past performance of teachers from different

[46] Statement by Mary Brabeck Board Chair, Council for the Accreditation of Educator Preparation (CAEP) and Gale and Ira Drukier Dean and Professor of Applied Psychology Steinhardt School of Culture, Education, and Human Development, New York University Before the Senate Committee on Health, Education, Labor and Pensions Teacher Preparation: Ensuring a Quality Teacher in Every Classroom March 25, 2014.

[47] U.S. Department of Education, National Center for Education Statistics, "Projections of Education Statistics to 2020," Washington, DC: U.S. Department of Education (2011): Table 16.

[48] Charles T. Clotfelter, Helen F. Ladd, and Jacob Vigdor, "Teacher Credentials and Student Achievement: Longitudinal Analysis with Student Fixed Effects." *Economics of Education Review* 26, no. 6 (2010): 673–682; Dan Goldhaber, "Everyone's Doing It, But What Does Teacher Testing Tell Us about Teacher Effectiveness?" *The Journal of Human Resources* 42, no. 4 (2007): 765–794; Richard Buddin and Gema Zamarro, "Teacher Qualifications and Student Achievement in Urban Elementary Schools." *Journal of Urban Economics* 66, no. (2009): 103–115.

[49] Goldhaber, 2007.

[50] National Council on Teacher Quality, *State Teacher Policy Yearbook, 2011*. Washington, DC: National Council on Teacher Quality (2011). For more on licensure tests, see U.S. Department of Education, Office of Planning, Evaluation, and Policy Development, Policy and Program Studies Service, *Recent Trends in Mean Scores and Characteristics of Test-Takers on Praxis II Licensure Tests*. Washington, DC: U.S. Department of Education (2010).

[51] U.S. Department of Education, Office of Postsecondary Education, "Preparing and Credentialing the Nation's Teachers: The Secretary's Ninth Report on Teacher Quality," Washington, DC, 2013. *https://title2.ed.gov/Public/TitleIIReport13.pdf.*

teacher preparation programs and may rely on inaccurate assumptions about the quality of teacher preparation programs when recruiting and hiring new teachers. An accountability system that provided information about how teacher preparation program graduates are likely to perform in a classroom and how likely they are to stay in the classroom would be valuable to school districts and principals seeking to efficiently recruit, hire, train, and retain high-quality educators. Such a system could help to reduce teacher attrition, a particularly important problem because many new teachers do not remain in the profession, with more than a quarter of new teachers leaving the teaching profession altogether within three years of becoming classroom teachers.[52] High teacher turnover rates are problematic because research has demonstrated that, on average, student achievement increases considerably with more years of teacher experience in the first three through five years of teaching.[53]

On the supply side, when considering which program to attend, prospective teachers lack comparative information about the placement rates and effectiveness of program graduates. Teacher candidates may enroll in a program without the benefit of information on employment rates post-graduation, employer and graduate feedback on program quality, and, most importantly, without understanding how well the program prepared prospective teachers to be effective in the classroom. NCES data indicate that 66 percent of certified teachers who received their bachelor's degree in 2008 borrowed an average of $22,905 to finance their undergraduate education.[54] The average base salary for full-time teachers with a bachelor's degree in their first year of teaching in public elementary and secondary schools is $34,800.[55] Thus, two-thirds of prospective teacher candidates may incur debt equivalent to 65 percent of their starting salary in order to attend teacher preparation programs without access to reliable indicators of how well these programs will prepare them for classroom teaching or help them find a teaching position in their chosen field. A better accountability system with more meaningful information would enable prospective teachers to make more informed choices while also enabling and encouraging States, IHEs, and alternative route providers to monitor and continuously improve the quality of their teacher preparation programs.

The lack of meaningful data also prevents States from restricting program credentials to programs with the demonstrated ability to prepare more effective teachers, or accurately identifying low-performing and at-risk teacher preparation programs and helping these programs improve. Not surprisingly, States have not identified many programs as low-performing or at-risk based on the data currently collected. In the latest title II reporting requirement submissions, the majority of States did not classify any teacher preparation programs as low-performing or at-risk.[56] Eleven States and the Commonwealth of Puerto Rico reported teacher preparation programs that were low-performing or at-risk. Twenty-nine of these programs were identified as at-risk and nine were designated as low-performing. Of the 38 programs identified by States as low-performing or at-risk, 22 were based in IHEs that participate in the TEACH Grant program. Thirty-nine States did not identify a single low-performing program.[57] Since these reporting requirements were established twelve years ago, thirty-four States have never identified a single IHE with an at-risk or low-performing program.[58] Under the proposed regulations, every State would collect and report more meaningful information about teacher preparation program performance which would enable them to target scarce public funding more efficiently through direct support to more effective teacher preparation programs and State financial aid to prospective students attending those programs.

Similarly, under the current title II reporting system, the Federal government is unable to ensure that financial assistance for prospective teachers is used to help students attend programs with the best record for producing effective classroom teachers. The proposed regulations would help accomplish this by ensuring that program performance information is available for all teacher preparation programs in all States and restricting eligibility for Federal TEACH grants to programs that are rated at least "effective."

Most importantly, elementary and secondary students, especially those students in high-need schools and communities who are disproportionately taught by recent teacher preparation program graduates, would be the ultimate beneficiaries of an improved teacher preparation program accountability system.[59] Such a system would better focus State and Federal resources on promising teacher candidates while informing teacher candidates and potential employers about high-performing teacher preparation programs and enabling States to more effectively identify and improve low-performing teacher preparation programs. Such an accountability system would thereby increase the likelihood of a quality teacher in every classroom.

Recognizing the benefits of improved information on teacher preparation program quality and associated accountability, several States have already developed and implemented systems that map teacher effectiveness data back to teacher preparation programs. The proposed regulations

[52] Richard M Ingersoll, "Is There Really a Teacher Shortage?" University of Washington Center for the Study of Teaching and Policy, (2003). *http://depts.washington.edu/ctpmail/PDFs/Shortage-RI-09-2003.pdf.*

[53] Ronald F. Ferguson and Helen F. Ladd, "How and Why Money Matters: An Analysis of Alabama Schools," In H. F. Ladd (Ed.), *Holding Schools Accountable: Performance-based Reform in Education.* Washington, DC: The Brookings Institution (1996): 265–298; Eric Hanushek, et al., "The Market for Teacher Quality." Working Paper 11154, Cambridge, MA: National Bureau for Economic Research (2005); Robert Gordon, Thomas J. Kane, and Douglas O. Staiger, "Identifying Effective Teachers Using Performance on the Job." Discussion Paper 2006–01, Washington, DC: The Hamilton Project, The Brookings Institution (2006); Charles T. Clotfelter, Helen F. Ladd, and Jacob L. Vigdor, "How and Why Do Teacher Credentials Matter for Student Achievement?" Working Paper 2, Washington, DC: National Center for Analysis of Longitudinal Data in Education Research (2007); Thomas J. Kane, Jonah E. Rockoff, and Douglas O. Staiger, "What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City." *Economics of Education Review* 27, no. 6 (2008): 615–31.

[54] U.S. Department of Education, National Center for Education Statistics, *Baccalaureate and Beyond Longitudinal Study.* Washington, DC: U.S. Department of Education (2009).

[55] U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2011.* Washington, DC: U.S. Department of Education (2012): Table 79.

[56] U.S. Department of Education, Office of Postsecondary Education, "Preparing and Credentialing the Nation's Teachers: The Secretary's Ninth Report on Teacher Quality," Washington, DC, 2013 *https://title2.ed.gov/Public/TitleIIReport13.pdf.*

[57] Ibid.

[58] Ibid.

[59] Several studies have found that inexperienced teachers are far more likely to be assigned to high-poverty schools, including Donald J. Boyd, et al., "The Narrowing Gap in New York City Teacher Qualifications and Its Implications for Student Achievement in High-Poverty Schools." Working Paper 10, Washington, DC: National Center for Analysis of Longitudinal Data in Education Research (2007); Charles T. Clotfelter, et al., "High-Poverty Schools and the Distribution of Teachers and Principals." Working Paper 1, Washington, DC: National Center for Analysis of Longitudinal Data in Education Research (2007); Tim R. Sass, et al., "Value Added of Teachers in High-Poverty Schools and Lower-Poverty Schools." Working Paper 52, Washington, DC: National Center for Analysis of Longitudinal Data in Education Research (2010).

would help ensure that all States generate useful data that are accessible to the public to support efforts to improve teacher preparation programs.

The Department's plan to improve teacher preparation has three core elements: (1) Reduce the reporting burden on IHEs while encouraging States to make use of data on teacher effectiveness to build an effective teacher preparation accountability system driven by meaningful indicators of quality (title II accountability system); (2) reform targeted financial aid for students preparing to become teachers by directing scholarship aid to students attending higher-performing teacher preparation programs (TEACH Grants); and (3) provide more support for IHEs that prepare high-quality teachers from diverse backgrounds.

The proposed regulations address the first two elements of this plan. Improving institutional and State reporting and State accountability builds on the work that States like Louisiana and Tennessee have already started, as well as work that is underway in States receiving grants under Phase One or Two of the Race to the Top Fund.[60] All of these States have, will soon have, or plan to have statewide systems that track the academic growth of a teacher's students by the teacher preparation program from which the teacher graduated and, as a result, will be better able to identify the teacher preparation programs that are producing effective teachers and the policies and programs that need to be strengthened to scale those effects.

Consistent with feedback the Department has received from stakeholders, under the proposed regulations States would assess the quality of teacher preparation programs according to the following indicators: (1) Student learning outcomes of students taught by graduates of teacher preparation programs (as measured by aggregating learning outcomes of students taught by graduates of each teacher preparation program); (2) job placement and retention rates of these graduates (based on the number of program graduates that are hired into teaching positions and whether they stay in those positions); and (3) survey outcomes for surveys of program graduates and their employers (based on questions about whether or not graduates of each teacher preparation program are prepared to be effective classroom teachers).

The proposed regulations would help provide meaningful information on program quality to prospective teacher candidates, school districts, States, and IHEs that administer traditional teacher preparation programs and alternative routes to State certification or licensure programs. The proposed regulations would make data available that also can inform academic program selection, program improvement, and accountability.

During public roundtable discussions and subsequent negotiated rulemaking sessions, the Department consulted with representatives from the teacher preparation community, States, teacher preparation program students, teachers, and other stakeholders about the best way to produce more meaningful data on the quality of teacher preparation programs while also reducing the reporting burden on States and teacher preparation programs where possible. The proposed regulations specify three types of outcomes States would use to assess teacher preparation program quality, but States would retain discretion to select the most appropriate methods to collect and report these data. In order to give States and stakeholders sufficient time to develop these methods, the Department proposes to implement the requirements of these proposed regulations over several years.

## II. Summary of Proposed Regulations

The Department seeks to add a new Part 612—Title II Reporting System to the Code of Federal Regulations (CFR) relating to the teacher preparation program accountability system under title II of the HEA. There are three subparts in proposed Part 612. Subpart A includes a section on the scope and purpose and definitions. Subpart B describes the requirements for institutional and State reporting on teacher preparation program quality. Subpart C addresses termination of title IV eligibility when a teacher preparation program is determined to be low-performing, and how, after loss of the State's approval or State's financial support, a low-performing teacher preparation program may regain eligibility to accept or enroll students receiving title IV, HEA funds.

In a related provision, the Department proposes to amend Part 686—Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, to align applicable definitions with the proposed new Part 612—Title II Reporting System and strengthen institutional and program eligibility requirements for the TEACH Grant program to ensure that students who obtain TEACH grants are in high quality teacher preparation programs or high quality science, technology, engineering, and mathematics (STEM) programs.

The following table summarizes the key definitions and requirements in the proposed regulations and, for the sections applying to TEACH Grants, compares these requirements to the current regulations.

| Key issues | Current law | Proposed regulations |
|---|---|---|
| At-risk teacher preparation program. | No regulations | *Proposed § 612.2(d)*—An "at-risk teacher preparation program" is defined as a teacher preparation program that is identified as at-risk of being identified as low-performing by a State based on the State's assessment of teacher preparation program performance under proposed § 612.4. |
| Consultation with stakeholders. | No regulations | *Proposed § 614.2(c)(1)*—Each State must establish, in consultation with a representative group of stakeholders, the procedures for assessing and reporting the performance of each teacher preparation program in the State. The information reported must include the weighting of indicators to be used, the method of aggregating programs, State-level rewards or consequences for designated performance levels, and opportunities for programs to appeal. |
| Effective teacher preparation program. | No regulations | *Proposed § 612.2(d)*—An "effective teacher preparation program" is defined as a teacher preparation program that is identified as effective by a State based on the State's assessment of teacher preparation program performance under proposed § 612.4. |

[60] The applications and Scopes of Work for States that received a grant under Phase One or Two of the Race to the Top Fund are available online at: *http://www2.ed.gov/programs/racetothetop/awards.html.*

| Key issues | Current law | Proposed regulations |
|---|---|---|
| Employment Outcomes | No regulations | *Proposed § 612.2(d)*—Data, measuring the teacher placement rate, the teacher placement rate calculated for high-need schools, the teacher retention rate, and the teacher retention rate calculated for high-need schools on the effectiveness of a teacher preparation program in preparing, placing, and supporting new teachers consistent with local education agency (LEA) needs. For purposes of assessing employment outcomes, a State may, in its discretion, assess traditional and alternative route teacher preparation programs differently based on whether there are differences in the programs that affect employment outcomes, provided that the varied assessments result in equivalent levels of accountability and reporting. |
| Exceptional teacher preparation program. | No regulations | *Proposed § 612.2(d)*—An "exceptional teacher preparation program" is defined as a teacher preparation program that is identified as exceptional by a State based on the State's assessment of teacher preparation program performance under proposed § 612.4. |
| High-need school | No regulations | *Proposed § 612.2(d)*—A "high-need school" would be defined as a school that, based on the most recent data available, is in the highest quartile of schools in a ranking of all schools served by a local educational agency, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the local educational agency based on a single or a composite of two or more of the following measures of poverty: (a) The percentage of students aged 5 through 17 in poverty counted; (b) the percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; (c) the percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act; (d) the percentage of students eligible to receive medical assistance under the Medicaid program. Alternatively, a school may be considered a "high-need school," if, in the case of an elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or in the case of any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act. |
| Low-performing teacher preparation program. | No regulations | *Proposed § 612.2(d)*—A "low-performing teacher preparation program" is defined as a teacher preparation program that is identified as low-performing by a State based on the State's assessment of teacher preparation program performance under proposed § 612.4. |
| New Teacher | No regulations | *Proposed § 612.2(d)*—A "new teacher" is defined as a recent graduate or alternative route participant who, within the last three title II reporting years, has received a level of certification or licensure that allows him or her to serve in the State as a teacher of record for K–12 students and, at the State's discretion, for preschool students. |
| Recent Graduate | No regulations | *Proposed § 612.2(d)*—A "recent graduate" is defined as an individual documented as having met all the requirements of the teacher preparation program within the last three title II reporting years. |
| Reporting Threshold (for performance of teacher preparation program). | No regulations | *Proposed § 612.4*—States must report annually on programs with 25 or more new teachers (program size threshold). At a State's discretion, it can choose a lower number as the reporting threshold (lower program size threshold). For any teacher preparation program that produces fewer than the program size threshold or the lower program size threshold, the State must annually report on the program by aggregating data by using one of three prescribed methods. If aggregation under these methods would not yield the program size threshold or the lower program size, or if reporting such data would be inconsistent with Federal or State privacy and confidentiality laws and regulations, the State is not required to report data on that program. |
| Reporting Timeframe | No regulations | *Proposed § 612.3*—Institutional reporting begins in October 2017 based on the 2016–2017 academic year.<br>*Proposed § 612.4*—Pilot State reporting begins in April 2018 based on data for new teachers in the 2016–2017 academic year. Full State reporting begins in April 2019 based on data for new teachers in the 2017–2018 academic year. |
| Student growth | No regulations | *Proposed § 612.2(d)*—"Student growth" is defined, for an individual student, as the change in student achievement in tested grades and subjects and the change in student achievement in non-tested grades and subjects between two or more points in time. |
| Student learning outcomes | No regulations | *Proposed § 612.2(d)*—"Student learning outcomes" are defined, for each teacher preparation program in a State, as data on the aggregate learning outcomes of students taught by new teachers and calculated by the State using student growth, a teacher evaluation measure, or both. |

| Key issues | Current law | Proposed regulations |
|---|---|---|
| Survey Outcomes | No regulations | *Proposed § 612.2(d)*—"Survey outcomes" are defined as qualitative and quantitative data collected through survey instruments, including, but not limited to, a teacher survey and an employer survey, designed to capture perceptions of whether new teachers who are employed as teachers in their first year of teaching in the State where the teacher preparation program is located possess the skills needed to succeed in the classroom. |
| Teacher evaluation measure | No regulations | *Proposed 612.2(d)*—"Teacher evaluation measure" is defined as, by grade span and subject area and consistent with statewide guidelines, the percentage of new teachers rated at each performance level under an LEA teacher evaluation system that differentiates teachers on a regular basis using at least three performance levels and multiple valid measures in determining each teacher's performance level. For purposes of this definition, multiple valid measures of performance levels must include, as a significant factor, data on student growth for all students (including English language learners and students with disabilities), and other measures of professional practice (such as observations based on rigorous teacher performance standards or other measures which may be gathered through multiple formats and sources, such as teacher portfolios and student and parent surveys). |
| Teacher placement rate | No regulations | *Proposed § 612.2(d)*—"Teacher placement rate" is defined as the combined, nonduplicated percentage of new teachers and recent graduates who have been hired in a full-time teaching position for the grade level, span, and subject area in which they were prepared. States may choose to exclude (1) new teachers or recent graduates who have taken positions in another State, in private schools, or that do not require State certification or (2) new teachers or recent graduates who have enrolled in graduate school or entered military service. |
| Teacher preparation entity | No regulations | *Proposed § 612.2(d)*—"Teacher preparation entity" is defined as an institution of higher education or other organization that is authorized by the State to prepare teachers. |
| Teacher preparation program. | No regulations | *Proposed § 612.2(d)*—"Teacher preparation program" is defined as a program, whether traditional or alternative route, offered by a teacher preparation entity that leads to a specific State teacher certification or licensure in a specific field. |
| Teacher retention rate | No regulations | *Proposed § 612.2(d)*—"Teacher retention rate" is defined as any of the following rates, as determined by the State: (1) Percentage of new teachers hired in full-time positions who have served for at least three consecutive school years within five years of being granted a level of certification that allows them to serve as teachers of record; (2) percentage of new teachers who have been hired in full-time teaching positions that reached a level of tenure or other equivalent measures of retention within 5 years of being granted a level of certification that allows them to serve as teachers of record; or (3) 100% less the percentage of new teachers who have been hired in full-time teaching positions and whose employment was not continued by their employer for reasons other than budgetary constraints within five years of being granted a level of certification or licensure that allows them to serve as teachers of record. |
| **Institutional Report Card** | | |
| Annual Reporting | *20 U.S.C. 1022d*—Required by statute with no current regulations. Under the statute, every institution of higher education that conducts a traditional teacher preparation program or alternative routes to State certification or licensure program and that enrolls students receiving Federal assistance under the HEA must report to the State and the general public on the quality of its teacher preparation programs. The statute specifies certain information the institution must report. | *Proposed § 612.3*—Restates general statutory requirement for annual reporting. Under a revised reporting calendar, beginning in October 2017 requires each institution to submit the institutional report card in October of each calendar year covering data from the prior academic year. Also requires each institution of higher education that is required to report under the statute to prominently and promptly post the institutional report card information on the institution's Web site and, if applicable, on the teacher preparation program's portion of the institution's Web site. |

| Key issues | Current law | Proposed regulations |
|---|---|---|
| | | **State Report Card** |
| Reporting Requirements ..... | *20 U.S.C. 1022d*—No regulations. Each State that receives funds under this Act shall provide the Secretary, and make widely available to the general public, in a uniform and comprehensible manner that conforms with the definition and methods established by the Secretary, an annual State report card on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative routes to State certification or licensure programs. The statute specifies certain minimum information the State must report to the Secretary. | *Proposed § 612.4*—Restates general statutory requirement for annual reporting. Under a revised reporting calendar, beginning in April 2018 requires each State to submit the State report card in April of each calendar year covering data from the prior academic year. Also requires each State that is required to report under the statute to prominently and promptly post the State report card information on the State's Web site. Also requires States to report: (1) Beginning in April 2019, meaningful differentiations in teacher preparation program performance using at least four performance levels—low-performing teacher preparation program, at-risk teacher preparation program, effective teacher preparation program, and exceptional teacher preparation program; (2) disaggregated data for each teacher preparation program of the indicators identified pursuant to § 612.5; (3) an assurance of accreditation by a specialized organization, or an assurance that the program produces teacher candidates with content and pedagogical knowledge and quality clinical preparation who have met rigorous teacher candidate entry and exit qualifications; (4) the State's weighting of indicators in § 612.5 for assessing program performance; (5) State-level rewards or consequences associated with the designated performance levels; (6) the procedures established by the State in consultation with stakeholders, as described in § 612.4(c)(1) and the State's examination of its data collection and reporting, as described in § 612.4(c)(2) in the report submitted in 2018 and every four years thereafter, and at any other time a State makes substantive changes to the weighting of the indicators and its procedures for assessing and reporting on the performance of each teacher preparation program in the State. |
| Indicators of Program Performance. | *20 U.S.C. 1022d*—Institutional report card includes licensure test pass rates and scaled scores. State report card requires State to report the criteria used to assess the performance of each teacher preparation program, including indicators of academic content knowledge and teaching skills of students enrolled in the program. No implementing regulations. | *Proposed § 612.5*—For purposes of reporting under § 612.4, a State must assess for each teacher preparation program within its jurisdiction, indicators of academic content knowledge and teaching skills of new teachers from that program. The indicators of academic content knowledge and teaching skills must include, at a minimum, (1) student learning outcomes, employment outcomes, and survey outcomes, and (2) whether the program is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs or provides teacher candidates with content and pedagogical knowledge and quality clinical preparation and has rigorous teacher candidate entry and exit qualifications. |
| Low-performing programs .... | *20 U.S.C. 1022d*—States must identify low-performing programs and programs at-risk of being identified as low-performing. | *Proposed § 612.6*—States must make meaningful differentiations of teacher preparation programs among at least four performance levels: (1) Exceptional, (2) effective, (3) at-risk, and (4) low-performing. In identifying low-performing or at-risk teacher preparation programs, the State must use criteria that, at a minimum, include the indicators of academic content knowledge and teaching skills from 612.5, including, in significant part, employment outcomes for high-need schools and student learning outcomes. At a minimum, a State must provide technical assistance to improve the performance of each low-performing teacher preparation program in its State. |

| Key issues | Current law | Proposed regulations |
|---|---|---|
| | **TEACH Grant Program** | |
| Eligibility | *§ 686.11*—Undergraduate, post-baccalaureate and graduate students are eligible to receive a TEACH Grant if the student has submitted a complete application, signed an agreement to serve, is enrolled at a TEACH Grant-eligible institution in a TEACH Grant-eligible program, is completing coursework and other requirements necessary to begin a career in teaching or plans to before graduating, meets the relevant 3.25 GPA requirement or a score above the 75th percentile on a nationally-normed standardized admissions test. | *§ 686.11*—The proposed regulations would add to the current regulations that for a program to be TEACH Grant- eligible, it must be a high-quality teacher preparation program. That means that it must be a teacher preparation program that is classified by the State as effective or higher, or if it is a STEM program, at least sixty percent of its TEACH Grant recipients must complete at least one year of teaching that fulfills the service obligation under § 686.40 within three years of completing the program. Under the proposed definition for high-quality teacher preparation program, the levels of program performance as reported in State report cards in both the April 2019 and the April 2020 State Report Card for the 2020–2021 title IV HEA award year would determine TEACH Grant eligibility for the 2020–2021 academic year. Subsequently, beginning with the 2021–2022 title IV HEA award year, a program's eligibility would be based on the level of program performance reported in the State Report Card for two out of three years. The State Report Card ratings from April 2018 (if the State exercised its option to report the ratings using the new indicators) and April 2019 would not immediately impact TEACH Grant eligibility. Instead, the loss of TEACH Grant eligibility for low-performing or at-risk programs would become effective July 1, 2020. |

## III. Regulatory Alternatives Considered

The proposed regulations were developed with assistance from a negotiated rulemaking process in which different options were considered for several provisions. Among the alternatives the Department considered were various ways to reduce the volume of information States and teacher preparation programs are required to collect and report under the existing title II reporting system. One approach would have been to limit State reporting to items that are statutorily required. While this would reduce the reporting burden, it would not address the goal of enhancing the quality and usefulness of the data that are reported. Alternatively, by focusing the reporting requirements on student learning outcomes, employment outcomes, and teacher and employer survey data, and also providing States with flexibility in the specific methods they use to measure and weigh these outcomes, the proposed regulations would balance the desire to reduce burden with the need for more meaningful information.

Additionally, during the negotiated rulemaking session, some non-Federal negotiators spoke of the difficulty States would have developing the survey instruments, administering the surveys, and compiling and tabulating the results for the employer and teacher surveys. The Department offered to develop and conduct the surveys to alleviate additional burden and costs on States, but the non-Federal negotiators indicated that they preferred that States and teacher preparation programs conduct the surveys.

One alternative considered in carrying out the statutory directive to direct TEACH Grants to "high quality" programs was to limit eligibility only to programs that States classified as "exceptional", positioning the grants more as a reward for truly outstanding programs than as an incentive for low-performing and at-risk programs to improve. In order to prevent a program's eligibility from fluctuating year-to-year based on small changes in evaluation systems that are being developed and to keep TEACH Grants available to a wider pool of students, including those attending teacher preparation programs producing satisfactory student learning outcomes, the Department and most non-Federal negotiators agreed that programs rated effective or higher would be eligible for TEACH Grants.

The Department welcomes comments about the alternatives discussed here and will consider them in drafting the final regulations.

## IV. Discussion of Costs, Benefits and Transfers

The Department has analyzed the costs of complying with the proposed requirements. Due to uncertainty about the current capacity of States in some relevant areas and the considerable discretion the proposed regulations would provide States (*e.g.*, the flexibility States would have to determine the weights to give to the various indicators of teacher preparation program performance), we cannot evaluate the costs of implementing the proposed regulations with absolute precision. However, we estimate that the total annualized cost of these regulations would be between $42.0 million and $42.1 million over ten years (see the Accounting Statement section of this document for further detail). Relative to these costs, the major benefit of these requirements, taken as a whole, would be better publicly available information on the effectiveness of teacher preparation programs that would be able to be used by prospective students in choosing programs to attend; employers in selecting teacher preparation program graduates to recruit, train, and hire; States in making funding decisions; and teacher preparation programs themselves in seeking to improve. The Department particularly invites comments on the cost estimates provided.

The following is a detailed analysis of the estimated costs of implementing the specific proposed requirements, including the costs of complying with paperwork-related requirements, followed by a discussion of the anticipated benefits.[61] The burden hours of implementing specific

[61] Unless otherwise specified, all hourly wage estimates for particular occupation categories were taken from Table 5: Full-time State and local government workers: Mean and median hourly, weekly, and annual earnings and mean weekly and annual hours, which was published by the Bureau of Labor Statistics based on data collected through the National Compensation Survey, 2010. This table provides the most recent published estimates of national average hourly wages for teachers and administrators in public elementary and secondary schools and is available on-line at: *http://www.bls.gov/ncs/ocs/sp/nctb1479.pdf.*

paperwork-related requirements are also shown in the tables in the Paperwork Reduction Act section of this notice.

*Title II Accountability System (HEA Title II Regulations)*

Section 205(a) of the HEA requires that each IHE that provides a teacher preparation program leading to State certification or licensure report on a statutorily enumerated series of data elements for the programs it provides. Section 205(b) of the HEA requires that each State that receives funds under the HEA provide to the Secretary and make widely available to the public information on the quality of traditional and alternative route teacher preparation programs that includes not less than the statutorily enumerated series of data elements it provides. The State must do so in a uniform and comprehensible manner, conforming with definitions and methods established by the Secretary. Section 205(c) of the HEA directs the Secretary to prescribe regulations to ensure the validity, reliability, accuracy, and integrity of the data submitted. Section 206(b) requires that IHEs assure the Secretary that their teacher training programs respond to the needs of LEAs, be closely linked with the instructional decisions new teachers confront in the classroom, and prepare candidates to work with diverse populations and in urban and rural settings, as applicable. Consistent with these statutory provisions, the Department proposes a number of regulations to ensure that the data reported by IHEs and States accurately report on the quality of all approved teacher preparation programs in the State. The following sections provide a detailed examination of the costs associated with each of these proposed regulatory provisions.

*Institutional Report Card Reporting Requirements*

The proposed regulations would require that beginning on October 1, 2017, and annually thereafter, each IHE that conducts a traditional teacher preparation program or alternative route to State certification or licensure program and enrolls students receiving title IV, HEA funds, report to the State on the quality of its program using an IRC prescribed by the Secretary.

Under the current IRC, IHEs typically report at the entity level, rather than the program level, such that an IHE that administers multiple teacher preparation programs typically gathers data on each of those programs, aggregates the data, and reports the required information as a single teacher preparation entity on a single report card. By contrast, the proposed regulations generally would require that States report on program performance at the individual program level. The Department estimates that the initial burden for each IHE to adjust its recordkeeping systems in order to report the required data separately for each of its teacher preparation programs would be 4 hours per IHE. In the most recent year for which data are available, 1,522 IHEs submitted IRCs to the Department, for an initial estimated cost of $153,540.[62] The Department further estimates that each of the 1,522 IHEs would need to spend 78 hours to collect the data elements required for the IRC for its teacher preparation programs, for an annual cumulative cost of $2,944,020. We estimate that entering the required information into the information collection instrument would require 13.65 hours per entity, for a total cost of $523,950 to the 1,522 IHEs.

The proposed regulations would also require that each IHE provide the information reported on the IRC to the general public by prominently and promptly posting the IRC on the IHE's Web site and, if applicable, on the teacher preparation portion of the Web site. We estimate that each IHE would require 30 minutes to post the IRC for an annual cumulative cost of $19,190. The estimated total annual cost to IHEs to meet the proposed requirements concerning IRCs would be $3,670,600.

*State Report Card Reporting Requirements*

Section 205(b) of the HEA requires each State that receives funds under the Act to report annually to the Secretary on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative routes to State certification or licensure programs, and to make this report widely available to the general public. As described in greater detail under the *Paperwork Reduction Act* section of this notice, the Department estimates that the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States, which include the Republic of the Marshall Islands, the Federated States of Micronesia, and Republic of Palau would each need 235 hours to report the data required under the SRC, for an annual cumulative cost of $349,680.

The Department proposes in § 612.4(a)(2) of these regulations to require that States post the SRC on the State's Web site. Because all States already have at least one Web site in operation, we estimate that posting the SRC on an existing Web site would require no more than half an hour at a cost of $25.22 per hour. For the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Freely Associated States, which include the Republic of the Marshall Islands, the Federated States of Micronesia, and Republic of Palau the total annual estimated cost of meeting this requirement would be $740.

*Scope of State Reporting*

The costs associated with the reporting requirements in proposed § 612.4(b) and (c) are discussed in the following paragraphs. The requirements regarding reporting of a teacher preparation program's indicators of academic content knowledge and teaching skills would not apply to the insular areas of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. Due to their size and limited resources and capacity in some of these areas, we believe that the cost to these insular areas of collecting and reporting data on these indicators would not be warranted.

*Reporting of Information on Teacher Preparation Program Performance*

Under proposed § 612.4(b)(1), a State would be required to make meaningful differentiations in teacher preparation program performance using at least four performance levels—low-performing teacher preparation program, at-risk teacher preparation program, effective teacher preparation program, and exceptional teacher preparation program—based on the indicators in § 612.5, including, in significant part, employment outcomes for high-need schools and student learning outcomes. Proposed § 612.4(b)(1) would also require that no teacher preparation program is deemed effective or higher unless it has satisfactory or higher student learning outcomes. Because

[62] Unless otherwise specified, for paperwork reporting requirements, we use a wage rate of $25.22, which is based on a weighted national average hourly wage for full-time Federal, State and local government workers in office and administrative support (75%) and managerial occupations (25%), as reported by the Bureau of Labor Statistics in the National Occupational Employment and Wage Estimates, May 2012.

States would have the discretion to determine the meaning of "significant" and "satisfactory," the Department assumes that States would consult with early adopter States or researchers to determine best practices for making such determinations and whether an underlying qualitative basis should exist for these terms. The Department estimates that State higher education authorities responsible for making State-level classifications of teacher preparation programs would require at least 35 hours to discuss methods for ensuring that meaningful differentiations are made in their classifications and defining "significant" and "satisfactory." To estimate the cost per State, we assume that the State employee or employees would likely be in a managerial position (with national average hourly earnings of $44.42), for a total one-time cost for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico of $80,840.

*Fair and Equitable Methods*

Under § 612.4(c)(1), the proposed regulations would require States to consult with a representative group of stakeholders to determine the procedures for assessing and reporting the performance of each teacher preparation program in the State. The proposed regulations specify that these stakeholders must include, at a minimum, representatives of leaders and faculty of traditional teacher preparation programs and alternative routes to State certification or licensure programs; students of teacher preparation programs; superintendents; school board members; elementary and secondary school leaders and instructional staff; elementary and secondary school students and their parents; IHEs that serve high proportions of low-income or minority students, or English language learners; advocates for English language learners and students with disabilities; and officials of the State's standards board or other appropriate standards body. Since the proposed regulations would not prescribe any particular methods or activities, we expect that States would vary considerably in how they implement these requirements, depending on their population and geography and any applicable State laws concerning public meetings.

In order to estimate the cost of implementing these requirements, we assume that the average State would need to convene at least three meetings with at least the following representatives from required categories of stakeholders: One administrator or faculty member from a traditional teacher preparation program, one administrator or faculty member from an alternative route teacher preparation program, one student from a traditional or alternative route teacher preparation program, one teacher or other instructional staff, one superintendent, one school board member, one student in elementary or secondary school and one of his or her parents, one administrator or faculty member from an IHE that serves high percentages of low-income or minority students, one representative of the interests of students who are English language learners, one representative of the interests of students with disabilities, and one official from the State's standards board or other appropriate standards body. To estimate the cost of participating in these meetings for the required categories of stakeholders, we assume that each meeting would require four hours of each participant's time and use the following national average hourly wages for full-time State and local government workers employed in these professions: Postsecondary education administrators, $45.75 (2 stakeholders); elementary or secondary education administrators, $50.42 (1 stakeholder); postsecondary teachers, $44.76 (1 stakeholder); primary, secondary, and special education school teachers, $40.93 (1 stakeholder). For the official from the State's standards board or other appropriate standards body, we used the national average hourly earnings of $59.20 for chief executives employed by Federal, State, and local governments. For the representatives of the interests of students who are English language learners and students with disabilities, we use the national average hourly earnings of $59.13 for lawyers in educational services (including private, State, and local government schools). For the opportunity cost to the elementary and secondary school student, we use the Federal minimum wage of $7.25 per hour. For the opportunity cost for his parent, we use the average hourly wage for all workers of $22.01. We use the same assumed wage rate for the school board official. For the student from a traditional or alternative route teacher preparation program, we use the 25th percentile of hourly wage for all workers of $10.81. We also assume that at least two State employees in managerial positions (with national average hourly earnings of $44.42) would attend each meeting, with one budget or policy analyst to assist them (with national average hourly earnings of $33.35).[63] Based on these participants, we estimate that meeting the stakeholder consultation requirements through meetings would have a cumulative cost of $334,860 for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

We invite comment on the extent to which States may have already established committees or other mechanisms that could be used to meet these requirements at little or no additional cost, as well as technologies that could reduce the cost of meeting these requirements.

States would also be required to report on the State-level rewards or consequences associated with the designated performance levels and on the opportunities they provide for teacher preparation programs to challenge the accuracy of their performance data and classification of the program. Costs associated with implementing these requirements are estimated in the discussion of annual costs associated with the SRC.

*Procedures for Assessing and Reporting Performance*

Under proposed § 612.4(b)(4), a State would be required to ensure that teacher preparation programs in that State are included on the SRC, but with some flexibility due to the Department's recognition that reporting on teacher preparation programs consisting of a small number of prospective teachers could present privacy and data validity issues. The Department estimates that each State would need up to 14 hours to review and analyze applicable State and Federal privacy laws and regulations and existing research or the practices of other States that set program size thresholds in order to determine the most appropriate aggregation level and procedures for its own teacher preparation program reporting, for an estimated, cumulative one-time cost to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico of $43,050, based on the average national hourly earnings for a lawyer employed full-time by a State or local government.

*Required Elements of the State Report Card*

For purposes of reporting under § 612.4, each State would need to

[63] Unless otherwise noted, all wage rates in this section are based on average hourly earnings as reported by in the May 2012 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics. Where hourly wages were unavailable, we estimated hourly wages using average annual wages from this source and the average annual hours worked from the National Compensation Survey, 2010.

establish indicators that would be used to assess the academic content knowledge and teaching skills of the graduates of teacher preparation programs within its jurisdiction. At a minimum, States must base their assessments on student learning outcomes, employment outcomes, survey outcomes, and whether or not the program is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs, or provides teacher candidates with content and pedagogical knowledge, and quality clinical preparation, and has rigorous teacher candidate entry and exit qualifications.

States would be required to report these outcomes for teacher preparation programs within their jurisdiction, with the only exceptions being for small programs for which aggregation under paragraph § 612.4(b)(4)(ii) would not yield the program size threshold (or for a State that chooses a lower program size threshold, would not yield the lower program size threshold) for that program and for programs where reporting data would lead to conflicts with Federal or State privacy and confidentiality laws and regulations.

*Student Learning Outcomes*

In § 612.5, the proposed regulations would require that States assess the performance of teacher preparation programs based in part on data on the aggregate learning outcomes of students taught by new teachers prepared by those programs. States would have the option of calculating these outcomes using student growth, a teacher evaluation measure that includes student growth, or both. Regardless of whether they use student growth or a teacher evaluation measure to determine student learning outcomes, States would be required to link these data to new teachers and their teacher preparation programs. In the following analysis, we use available sources of information to assess the extent to which States appear to already have the capacity to measure student learning outcomes, using either student growth or teacher evaluation measures, and estimate the additional costs States that do not currently have this capacity might incur in order to meet the proposed requirements.

*Tested Grades and Subjects*

Student growth is defined in the proposed regulations as the change in student achievement in tested grades and subjects and the change in student achievement in non-tested grades and subjects for an individual student between two or more points in time. To calculate student growth for grades and subjects in which assessments are required under section 1111(b)(3) of the ESEA, States must use students' scores on the State's assessments under section 1111(b)(3) of the ESEA and may include other measures of student learning, provided they are rigorous, comparable across schools, and consistent with State guidelines.

In order to receive a portion of the $48.6 billion in grant funds awarded under the State Fiscal Stabilization Fund (SFSF), each State was required to provide several assurances to demonstrate its progress in advancing reforms in critical areas, including an assurance that it provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with student growth data on their current students.[64] Because all States have provided this assurance, we assume that the States would not need to incur any additional costs to measure student growth for these grades and subjects and would only need to link these outcomes to teacher preparation programs by first linking the students' teachers to the teacher preparation program from which they graduated.[65] The costs of linking student outcomes to teacher preparation programs are discussed below.

*Non-tested Grades and Subjects*

As of June 23, 2014, the Secretary has approved requests by 42 States, the District of Columbia, and the Commonwealth of Puerto Rico for flexibility regarding specific requirements of NCLB in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction, and the Department continues to work with another three States pursuing similar flexibility agreements.[66] In its request for flexibility, each State has committed to implementing statewide comprehensive teacher evaluations and been required to demonstrate how the State would evaluate teachers in all grades and subjects, both tested and non-tested. Given this, and because the definition of a teacher evaluation measure in the proposed regulations aligns with the requirements for ESEA flexibility, the States that have been granted ESEA flexibility should not incur additional costs to measure student growth in non-tested grades and subjects because these States would be able to use the percentage of new teachers in these grades and subjects who are rated at each performance level to report student learning outcomes.

To estimate the cost of measuring student growth for teachers in non-tested grades and subjects in the eight States that have not been approved for ESEA flexibility, we need to estimate the number of new teachers in these States. We first determined, using NCES data from the 2011–2012 school year, that there are approximately 36,305 teachers in these States who appear to meet the proposed definition of new teachers because they have fewer than four years of classroom teaching experience.[67]

While we believe it is unlikely that States will incur additional costs for measuring student growth for teachers in tested grades and subjects, for purposes of this cost estimate, we assume that all States will choose to implement the same process for all new teachers, regardless of their placement. This will likely generate an overestimate of actual costs that will be borne by the State.

One method several States and districts are currently using to assess student growth for teachers of non-tested grades and subjects is student learning objectives. The Race to the Top Technical Assistance Network defines student learning objectives as "a participatory method of setting measurable goals, or objectives, based on the specific assignment or class, such as the students taught, the subject matter taught, the baseline performance of the students, and the measurable gain in student performance during the course of instruction." [68]

States would not be required to use student learning objectives to measure student growth, but we use it in this

[64] State Fiscal Stabilization Fund; Final Requirements, Definitions, and Approval Criteria. 74 **Federal Register** 58436 (November 12, 2008). For a description of the relevant indicator for this assurance (indicator (b)(2)), see also the summary of the final requirements issued by the Department, available online at: *www2.ed.gov/programs/statestabilization/summary-requirements.doc.*

[65] Each State's current application for SFSF funds, which includes assurances for all of the required SFSF indicators, is available online at: *http://www2.ed.gov/programs/statestobilizotion/resources.html.*

[66] State applications for ESEA Flexibility, approval letters, and other related materials are available online at: *http://www.ed.gov/esea/flexibility/requests.*

[67] U.S. Department of Education, National Center for Education Statistics, *Schools and Staffing Survey (SASS)*, "Public School Teacher Data File," 2011–2012.

[68] Race to the Top Technical Assistance Network. "Measuring Student Growth for Teachers in Non-Tested Grades and Subjects: A Primer." Technical brief, Washington, DC: ICF International, under contract with the U.S. Department of Education (2011).

analysis to estimate the costs a State would incur if they employed a similar method. To the extent that States employ different methods, the following estimates may overestimate or underestimate the costs involved. To estimate the cost of using student learning objectives to assess teachers in non-tested grades and subjects using student growth, we examined publicly-available State and district rubrics and guidelines. The guidance issued by the Rhode Island Department of Education included a detailed timeline and checklist that we used to develop an estimate of what it might cost the remaining States to develop and implement student learning objectives.[69] The following estimate assumes that these States have no existing State or district-level structures in place to assess student learning outcomes. Based on the specific steps required in the Rhode Island guidance, we estimate that, for the average teacher, developing and measuring progress against student learning objectives would require 6.85 hours of the teacher's time and 5.05 hours of an evaluator's time.

However, we believe that this estimate likely overstates the cost to States that already require annual evaluations of all new teachers because many of these evaluations would already encompass many of the activities in the framework. The National Council on Teacher Quality has reported that two of the eight States that have not received ESEA flexibility required annual evaluations of all new teachers and that those evaluations included at least some objective evidence of student learning.[70] In these States, teachers and evaluators may require additional time to set appropriate targets and assess performance against those targets, but teachers and evaluators would already be meeting to discuss and assess the teacher's effectiveness. In cases where there is an existing teacher evaluation structure or mechanism into which student learning objectives could be incorporated with relatively limited additional time required, we estimate that teachers and evaluators would only need to spend a combined three hours to develop and measure against student learning objectives for the 4,629 new teachers in these States, at an estimated total cost of $596,720.

If the remaining State opted to use a framework similar to the guidance provided by Rhode Island, we estimate that the cost to this State of developing and measuring against student learning objectives for an estimated 31,676 teachers would be $16,079,390.[71] This estimate is based on an estimated 6.85 hours for teachers at the national average hourly wage of $38.96 for public elementary and secondary teachers and a 5.05 hours for evaluators at a derived estimated hourly wage of $45.00, which assumes that the evaluator would be a more experienced teacher serving as an academic coach.

We invite comments on these estimates and on the cost of calibrating existing student growth models to include these different types of student achievement data. Regardless of the method of assessing student growth for non-tested grades and subjects, States would need to link the teacher evaluation ratings or other indicators of student growth to the teacher preparation program from which the teacher graduated. The costs to States of making these linkages are discussed in the following section.

*Linking Student Learning Outcomes to Teacher Preparation Programs*

Whether using student scores on State assessments, teacher evaluation ratings, or other measures of student growth, under the proposed regulations States must link the student learning outcomes data back to the teacher, and then back to that teacher's preparation program. The costs to States to comply with this requirement will depend, in part, on the data and linkages in their statewide longitudinal data system. Through the Statewide Longitudinal Data Systems (SLDS) program, the Department has awarded $575.7 million in grants to support data systems that, among other things, allow States to link student achievement data to individual teachers and to postsecondary education systems. Forty-seven States, the District of Columbia, and the Commonwealth of Puerto Rico have already received at least one grant under this program to support the development of these data systems, so we expect the cost to these States of linking student learning outcomes to teacher preparation programs would be lower than for the remaining States.

According to information from the SLDS program in June 2014, nine States currently link K–12 teacher data including data on both teacher/administrator evaluations and teacher preparation programs to K–12 student data. An additional 11 States and the District of Columbia are currently in the process of establishing this linkage, and ten States and the Commonwealth of Puerto Rico have plans to add this linkage to their systems in the during their SLDS grant. Based on this information, it appears that 30 States, the Commonwealth of Puerto Rico, and the District of Columbia either already have the ability to aggregate data on student achievement of students taught by program graduates and link those data back to teacher preparation programs or have committed to doing so; therefore, we do not estimate any additional costs for these States to comply with this aspect of the proposed regulations.

During the negotiated rulemaking process and subsequent development of the proposed regulations, the Department consulted with experts familiar with the development of student growth models and longitudinal data systems. These experts indicated that the cost of calculating growth for students taught by individual teachers and aggregating these data according to the teacher preparation program that these teachers completed would vary among States. For example, in States in which data on teacher preparation programs are housed within different or even multiple different postsecondary data systems that are not currently linked to data systems for elementary through secondary education students and teachers, experts consulted by the Department suggested that a reasonable estimate of the cost of additional staff or vendor time to link and analyze the data would be $250,000 per State. For States that already have data systems that include data from elementary to postsecondary education levels, we estimate that the cost of additional staff or vendor time to analyze the data would be $100,000. Since we do not know enough about the data systems in the remaining 37 States and the Commonwealth of Puerto Rico to determine whether they are likely to incur the higher or lower estimate of costs, we averaged the higher and lower figure. Accordingly we estimate that the remaining 20 States will need to incur an average cost of $175,000 to develop models to calculate growth for students taught by individual teachers and then

[69] These estimates are based on analysis and interpretation conducted by U.S. Department of Education staff and should not be attributed to the Rhode Island Department of Education. This analysis was based primarily on the timeline and checklist, which begins on page 23, *http://www.maine.gov/education/effectiveness/GuideSLO-Rhode%20Island.pdf.*

[70] National Council on Teacher Quality, *2013 State Teacher Policy Yearbook: National Summary* Washington, DC: National Council on Teacher Quality (January 2014). States that require annual evaluations of all new teachers include California, Montana, Nebraska, North Dakota, and Wyoming.

[71] Ibid. According to this report, Vermont does not require annual evaluations of new teachers.

link these data to teacher preparation programs for a total cost of $3,500,000.

*Employment Outcomes*

The Department proposes to require States to report employment outcomes, including data on both the teacher placement rate and the teacher retention rate and on the effectiveness of a teacher preparation program in preparing, placing, and supporting new teachers consistent with local educational needs. We have limited information on the extent to which States currently collect and maintain data on placement and retention for individual teachers.

Under proposed § 612.4(b), States would be required to report annually, for each teacher preparation program, on the teacher placement rate, the teacher placement rate calculated for high-need schools, the teacher retention rate, and the teacher retention rate calculated for high-need schools. The Department proposes to define the *teacher placement rate* as the combined non-duplicated percentage of new teachers and recent graduates who have been hired in a full-time teaching position for the grade level, span, and subject area in which the new teacher or recent graduate was prepared. High-need schools would be defined in proposed § 612.2(d) by using the definition of "high-need school" in section 200(11) of the HEA. The proposed regulations would give States discretion to exclude those new teachers or recent graduates from this measure if they are teaching in a private school, teaching in another State, enrolled in graduate school, or engaged in military service. States would also have the discretion to treat this rate differently for alternative route and traditional route providers.

Proposed § 612.5(a)(2) and the definition of *teacher retention rate* in proposed § 612.2 would require a State to provide data on each teacher preparation program's teacher retention rate, using one of the following approaches: (a) The percentage of new teachers who have been hired in full-time teaching positions and served for periods of at least three consecutive school years within five years of being granted a level of certification that allows them to serve as teachers of record; (b) the percentage of new teachers who have been hired in full-time teaching positions and reached a level of tenure or other equivalent measures of retention within five years of being granted a level of certification that allows them to serve as teachers of record; or (c) one hundred percent less the percentage of new teachers who have been hired in full-time teaching positions and whose employment was not continued by their employer for reasons other than budgetary constraints within five years of being granted a level of certification or licensure that allows them to serve as teachers of record. High-need schools would be defined in proposed § 612.2 by using the definition of "high-need school" from section 200(11) of the HEA. The proposed regulations would give States discretion to exclude those new teachers or recent graduates from this measure if they are teaching in a private school (or other school not requiring State certification), another State, enrolled in graduate school, or serving in the military. States would also have the discretion to treat this rate differently for alternative route and traditional route providers.

In its comments on the Department's Notice of Intention to Develop Proposed Regulations Regarding Teacher Preparation Reporting Requirements, the Data Quality Campaign reported that 50 States, the District of Columbia, and the Commonwealth of Puerto Rico all collect some certification information on individual teachers and that a subset of States collect the following specific information on teacher preparation or qualifications that is relevant to the requirements: Type of teacher preparation program (42 States), location of teacher preparation program (47 States), and year of certification (51 States).[72]

Data from the SLDS program indicate that 24 States currently can link data on individual teachers with their teacher preparation programs, including information on their current certification status and placement. In addition, seven States are currently in the process of making these links, and ten States plan to add this capacity to their data systems, but have not yet established the link and process for doing so. Because these States would also maintain information on the certification status and year of certification of individual teachers, we assume they would already be able to calculate the teacher placement and retention rates for new teachers but may incur additional costs to identify recent graduates who are not employed in a full-time teaching position within the State. It should be possible to do this at minimal cost by matching rosters of recent graduates from teacher preparation programs against teachers employed in full-time teaching positions who received their initial certification within the last three years. Additionally, because States already maintain the necessary information in State databases to identify schools as "high-need," we do not believe there would be any appreciable additional cost associated with adding "high-need" flags to any accounting of teacher retention or placement rates in the State. We invite comment on what costs States would incur to do this.

The remaining 11 States may need to collect additional information from teacher preparation programs and LEAs because they do not appear to be able to link information on the employment, certification, and teacher preparation program for individual teachers. If it is not possible to establish this link using existing data systems, States may need to obtain some or all of this information from teacher preparation programs or from the teachers themselves. The American Association of Colleges for Teacher Education reported that in 2012, 495 of 717 institutions (or about 70%) had begun tracking their graduates into job placements. Although half of those institutions have successfully obtained placement information, these efforts suggest that States may be able to take advantage of work already underway.[73]

For each of these 11 States, the Department estimates that 150 hours may be required at the State level to collect information about new teachers employed in full-time teaching positions (including designing the data request instruments, disseminating them, providing training or other technical assistance on completing the instruments, collecting the data, and checking their accuracy), and a total estimated cost to the eleven States of $83,190, based on the national average hourly wage for education administrators of $50.42.

*Survey Outcomes*

The Department also proposes to require States to report—again disaggregated for each teacher preparation program—qualitative and quantitative data from surveys of new teachers and their employers in order to capture their perceptions of whether new teachers who were prepared at a teacher preparation program in that State possess the skills needed to succeed in the classroom. The design and implementation of these surveys

[72] Data Quality Campaign. "ED's Notice of Intention to Develop Proposed Regulations Regarding Teacher Preparation Reporting Requirements: DQC Comments to Share Knowledge on States' Data Capacity." Available online at: *www.dataqualitycampaign.org/files/HEA%20Neg%20Regs%20formatted.pdf.*

[73] American Association of Colleges for Teacher Education, "The Changing Teacher Preparation Profession: A report from AACTE's Professional Education Data System (PEDS)," (2013).

would be determined by the State, but we provide the following estimates of costs associated with possible options for meeting this requirement.

Some States and IHEs currently survey graduates or recent graduates of teacher preparation programs. According to experts consulted by the Department, depending on the number of questions and the size of the sample, some of these surveys have been administered quite inexpensively. One State conducted a survey of a stratified random sample of approximately 50 percent of its teacher preparation program graduates and estimated that it cost $5,000 to develop and administer the survey and $5,000 to analyze and report the data.[74] Since these data will be used to assess and publicly report on the quality of each teacher preparation program, we expect that the cost of implementing the proposed regulations is likely to be higher, because States may need to survey a larger sample of teachers and their employers in order to capture information on all teacher preparation programs.

Another potential factor in the cost of the teacher and employer surveys would be the number and type of questions. We have consulted with researchers experienced in the collection of survey data, and they have indicated that it is important to balance the burden on the respondent with the need to collect adequate information. In addition to asking teachers and their employers whether graduates of particular teacher preparation programs are adequately prepared before entering the classroom, States may also wish to ask about course-taking and student teaching experiences, as well as to collect demographic information on the respondent, including information on the school environment in which the teacher is currently employed. Because the researchers we consulted stressed that teachers and their employers are unlikely to respond to a survey that requires more than 30 minutes to complete, we assume that the surveys would not exceed this length.

Based on our consultation with experts and previous experience conducting surveys of teachers through evaluations of Department programs or policies, we estimate that it would cost the average State approximately $25,000 to develop the survey instruments, including instructions for the survey recipients, for a total cost to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico of $1,300,000. However, we recognize that the cost would be lower for States that identify an existing instrument that could be adapted or used for this purpose.[75] If States surveyed all individuals who completed teacher preparation programs in the previous year, we estimate that they would survey 203,701 teachers, based on the reported number of individuals completing teacher preparation programs, both traditional and alternative route programs, during the 2011–2012 academic year.

To estimate the cost of administering these surveys, we consulted researchers with experience conducting a survey of all recent graduates of teacher preparation programs in New York City.[76] In order to meet the target of a 70 percent response rate for that survey, the researchers estimated that their cost per respondent was $100, which included an incentive for respondents worth $25. We believe that it is unlikely that States will provide cash incentives for respondents to the survey, thus providing an estimate of $75 per respondent. However, since the time of data collection in that survey, there have been dramatic advances in the availability and usefulness of online survey software with a corresponding decrease in cost. As such, we believe that the $75 per respondent estimate may actually provide an extreme upper bound and may dramatically over-estimate the costs associated with administering any such survey. For example, several prominent online survey companies offer survey hosting services for as little as $300 per year for unlimited questions and unlimited respondents. Using that total cost, and assuming surveys administered and hosted by the State and using the number of program graduates in 2013, the cost per respondent would range from $0.02 to $21.43, with an average cost per State of $0.97. We recognize that this would represent an extreme lower bound and many States are unlikely to see costs per respondent that low until the survey is fully integrated into existing systems. For example, States may be able to provide teachers with a mechanism, such as an online portal, to both verify their class rosters and complete the survey. Because teachers would be motivated to ensure that they were not evaluated based on the performance of students they did not teach, requiring new teachers to complete the survey in order to access their class rosters would increase the response rate for the survey and allow new teachers to select their teacher preparation program from a pull-down menu, reducing the amount of time required to link the survey results to particular programs. States could also have teacher preparation programs disseminate the new teacher survey with other information for teacher preparation program alumni or have LEAs disseminate the new teacher survey during induction or professional development activities. We believe that, as States incorporate these surveys into other structures, data collection costs will dramatically decline towards the lower bounds noted above.

The California State School Climate Survey (CSCS) is one portion of the larger California School Climate, Health, & Learning Survey, designed to survey teachers and staff to address questions of school climate. While the CSCS is subsidized by the State of California, it is also offered to school districts outside of the State for a fee, ranging from $500 to $1,500 per district, depending on its enrollment size. Applying this cost structure to all school districts nationwide with enrollment (as outlined in the Department's Common Core of Data), costs would range from a low of $0.05 per FTE teacher to $500 per FTE teacher with an average of $21.29 per FTE. However, these costs are inflated by single-school, single-teacher districts, which are largely either charter schools or small, rural school districts unlikely to administer separate surveys. When removing single-school, single-teacher districts, the average cost per respondent decreases to $12.27.

Given the cost savings associated with online administration of surveys and the likelihood that States will fold these surveys into existing structures, we believe that many of these costs are likely over-estimates of the actual costs that States will bear in administering these surveys. However, for purposes of estimating costs in this context, we use a rate of $30.33 per respondent, which represents a cost per respondent at the 85th percentile of the CSCS administration and well above the maximum administration cost for

[74] Email correspondence with officials from the Oregon Teacher Standards and Practices Commission between June 4 and 19, 2012.

[75] The experts with whom we consulted did not provide estimates of the number of hours involved in the development of this type of survey. For the estimated burden hours for the Paperwork Reduction Act section, this figure represents 612 hours at an average hourly wage rate of $40.83, based on the hourly wage for faculty at a public IHE and statisticians employed by State or local governments.

[76] These cost estimates were based primarily on our consultation with a researcher involved in the development, implementation, and analysis of surveys of teacher preparation program graduates and graduates of alternative certification programs in New York City in 2004 as part of the Teacher Pathways Project. These survey instruments are available online at: *www.teacherpolicyresearch.org/TeacherPathwaysProject/Surveys/tabid/115/Default.aspx.*

popular consumer survey software. Using this estimate, we estimate that, if States surveyed a combined sample of 203,701 teachers and an equivalent number of employers, the cumulative cost to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico of administering the survey of $8,649,540.

If States surveyed all teacher preparation program graduates and their employers, assuming that both the teacher and employer surveys would take no more than 30 minutes to complete, that the employers are likely to be principals or district administrators, and a response rate of 70 percent of teachers and employers surveyed, the total estimated burden for 203,701 teachers and their 203,701 employers of completing the surveys would be $2,918,120 and $3,594,720 respectively, based on the national average hourly wage of $40.93 and $50.42 for elementary and secondary public school teachers and elementary and secondary school level administrators. These costs would vary depending on the extent to which a State determines that it can measure these outcomes based on a sample of new teachers and their employers. This may depend on the distribution of new teachers prepared by teacher preparation programs throughout the LEAs and schools within each State and also on whether or not some of this information is available from existing sources such as surveys of recent graduates conducted by teacher preparation programs as part of their accreditation process.

*Assurance of Accreditation*

Under proposed § 612.5(a)(4) States would be required to assure that each teacher preparation program in the State either: (a) Is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs or (b) provides teacher candidates with content and pedagogical knowledge and quality clinical preparation, and has rigorous teacher candidate entry and exit standards. As discussed in greater detail in the Paperwork Reduction Act section of this notice, we estimate that the total cost to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico of providing these assurances for the estimated 13,404 teacher preparation programs nationwide for which States have already determined are accredited based on previous title II reporting submissions would be $676,100, assuming that 2 hours were required per teacher preparation program and using an estimated hourly wage of $25.22.

*Annual Reporting Requirements Related to State Report Card*

As discussed in greater detail in the Paperwork Reduction Act section of this notice, proposed § 612.4 includes several requirements for which States must annually report on the SRC. Using an estimated hourly wage of $25.22, we estimate that the total cost for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico to report the following required information in the SRC would be: Classifications of teacher preparation programs ($315,250, based on 0.5 hours per 25,000 programs); assurances of accreditation ($84,510, based on 0.25 hours per 13,404 programs); State's weighting of the different indicators in § 612.5 ($330 annually, based on 0.25 hours per State); State-level rewards and consequences associated with the designated performance levels ($660 in the first year and $130 thereafter, based on 0.5 hours per State in the first year and 0.1 hours per State in subsequent years); method of program aggregation ($130 annually, based on 0.1 hours per State); process for challenging data and program classification ($3,930 in the first year and $1,510 thereafter, based on 3 hours per State in the first year and 6 hours for 10 States in subsequent years); examination of data collection quality ($6,950, based on 5.3 hours per State annually), recordkeeping and publishing related to appeal decisions ($6,950 annually, based on 5.3 hours per State). The sum of these annual reporting costs would be $420,220 for the first year and $419,690 in subsequent years, based on a cumulative burden hours of 16,662 hours in the first year and 16,642 hours in subsequent years.

Under proposed § 612.5, States would also incur burden to enter the required aggregated information on student learning, employment, and survey outcomes into the information collection instrument for each teacher preparation program. Using the estimated hourly wage rate of $25.22, we estimate the following cumulative costs to the 50 States, the District of Columbia, and Puerto Rico to report on 25,000 teacher preparation programs: Annual reporting on student learning outcomes ($1,576,250 annually, based on 2.5 hours per program); and annual reporting of employment outcomes ($2,206,750 annually, based on 3.5 hours per program); and annual reporting of survey outcomes ($630,500 annually, based on 1 hour per program). Our estimate of the total annual cost of reporting these outcome measures on the SRC related to proposed § 612.5 is $4,413,500, based on 175,000 hours.

*Potential Benefits*

The principal benefits related to the evaluation and classification of teacher preparation programs under the proposed regulations are those resulting from the reporting and public availability of information on the effectiveness of teachers prepared by teacher preparation programs within each State. The Department believes that the information collected and reported as a result of these requirements will improve the accountability of teacher preparation programs, both traditional and alternative route to certification programs, for preparing teachers who are equipped to succeed in classroom settings and help their students reach their full potential.

Research studies have found significant and substantial variation in teaching effectiveness among individual teachers and some variation has also been found among graduates of different teacher preparation programs.[77] In Tennessee, some programs produced graduates who were two to three times more likely to be in the top quintile based on increases in student growth, while other programs produced graduates who were two to three times more likely to be in the bottom quintile.[78] Because this variation in the effectiveness of graduates is not associated with any particular type of preparation program, the only way to determine which programs are producing more effective teachers is to link information on the performance of teachers in the classroom back to their teacher preparation programs.[79] The proposed regulations do this by requiring States to link data on student learning outcomes, employment outcomes, and teacher and employer survey outcomes back to the teacher preparation programs, rating each program based on these data, and then making that information available to the public.

The Department recognizes that simply requiring States to assess the performance of teacher preparation programs and report this information to

[77] Donald J. Boyd, et al., "Teacher Preparation and Student Achievement." *Educational Evaluation and Policy Analysis* 31, No. 4 (2009): 416–440.

[78] Tennessee Higher Education Commission, "Report Card on the Effectiveness of Teacher Training Programs," Nashville, TN (2010).

[79] Thomas J. Kane, Jonah E. Rockoff, and Douglas O. Staiger, "What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City." *Economics of Education Review* 27, no. 6 (2008): 615–31.; Boyd, et al., 2009.

the public will not produce increases in student achievement, but it is an important part of a larger set of policies and investments designed to attract talented individuals to the teaching profession; prepare them for success in the classroom; and support, reward, and retain effective teachers. In addition, the Department believes that, once information on the performance of teacher preparation programs is more readily available, a variety of stakeholders will become better consumers of these data, which will ultimately lead to improved student achievement by influencing the behavior of States seeking to provide technical assistance to low-performing programs, IHEs engaging in considered self-improvement efforts, prospective teachers seeking to train at the highest quality teacher preparation programs, and employers seeking to hire the most highly qualified new teachers.

Louisiana has already adopted some of the proposed requirements and has begun to see improvements in teacher preparation programs. Based on data suggesting that the English Language Arts teachers prepared by the University of Louisiana at Lafayette were producing teachers who were less effective than other new teachers prepared by other programs, Louisiana identified the program in 2008 as being in need of improvement and provided additional analyses of the qualifications of the program's graduates and of the specific areas where the students taught by program graduates appeared to be struggling.[80] When data suggested that students struggled with essay questions, faculty from the elementary education program and the liberal arts department in the university collaborated to restructure the teacher education curriculum to include more writing instruction. Based on 2010–11 data, student learning outcomes for teachers prepared by this program are now comparable to other novice teachers in the State, and the program is no longer identified for improvement.[81]

This is one example, but it suggests that States can use data on student learning outcomes for graduates of teacher preparation programs to help these programs identify weaknesses and implement needed reforms in a reasonable amount of time. As more information becomes available and if the data indicate that some programs produce more effective teachers, LEAs seeking to hire new teachers will prefer to hire teachers from those programs. All things being equal, aspiring teachers will elect to pursue their degrees or certificates at teacher preparation programs with strong student learning outcomes and placement rates.

*TEACH Grants*

The proposed regulations link program eligibility for participation in the TEACH Grant program to the State assessment of program quality under part 612. Under proposed §§ 686.11(a)(iii) and 686.2(d), to be eligible to receive a TEACH Grant for a program, an individual must be enrolled in a high-quality teacher preparation program; that is a program that is classified by the State as effective or higher in either or both the April 2019 and/or April 2020 State Report Card for the 2020–2021 title IV HEA award year or, classified by the State as effective or higher in two out of the previous three years, beginning with the April 2019 State Report Card, for the 2021–2022 title IV HEA award year, under 34 CFR 612.4(b) or meets the "high-quality" standards for a STEM program. For a STEM program to meet the definition of "high-quality teacher preparation program," it must be at a TEACH Grant-eligible STEM program at a TEACH Grant-eligible institution. To be a TEACH Grant-eligible STEM program, the Secretary must not have identified that, over the most recent three years for which data are available, fewer than sixty percent of the program's TEACH Grant recipients have taught full-time as a highly-qualified teacher in a high-need field in a low-income school in accordance with § 686.40 for at least one year within three years of completing the STEM program.

In addition to the referenced benefits of improved accountability under the title II reporting system, the Department believes that the proposed regulations relating to TEACH Grants will also contribute to the improvement of teacher preparation programs. Linking program eligibility for TEACH Grants to the performance assessment by the States under the title II reporting system provides an additional factor for prospective students to consider when choosing a program and an incentive for programs to achieve a rating of effective or higher.

In order to analyze the possible effects of the proposed regulations on the number of programs eligible to participate in the TEACH Grant program and the amount of TEACH Grants disbursed, the Department analyzed data from a variety of sources. This analysis focused on teacher preparation programs at IHEs. This is because, under the HEA, alternative route programs offered independently of an IHE are not eligible to participate in the TEACH Grant program. For the purpose of analyzing the effect of the proposed regulations on TEACH Grants, the Department estimated the number of teacher preparation programs based on data from the Integrated Postsecondary Education Data System (IPEDS) about program graduates in education-related majors as defined by the Category of Instructional Program (CIP) codes and award levels. For the purposes of this analysis, "teacher preparation programs" refers to programs in the relevant CIP codes that also have the IPEDS indicator flag for being a State-approved teacher education program.

In order to estimate how many programs might be affected by a loss of TEACH Grant eligibility, the Department had to estimate how many programs will be individually evaluated under the proposed regulations, which encourage States to report on the performance of individual programs offered by IHEs rather than on the aggregated performance of programs at the institutional level as currently required. The estimated range of individual programs reflects the variety of thresholds that States may use in defining programs for evaluation. Under the proposed regulations, the States would be able to determine the level of aggregation at which to analyze programs at each IHE. One factor that States may consider in determining the level of aggregation for reporting on programs is the number of new teachers. All programs with 25 or more new teachers in a given reporting year (program size threshold) would be required to be reported on a stand-alone basis, with States having the discretion to set a lower threshold (lower program size threshold). For programs below the program size threshold of 25 (or lower, at a State's discretion) in a given reporting year, the proposed regulations require aggregation across years or subject areas, so that all programs that meet the chosen program size threshold as reported by a State can be evaluated.

States may refrain from including a program in the SRC if aggregation across years, across programs at the same IHE, or a combination of the two does not result in enough new teachers to meet the program size threshold in a given year, or if doing so would be inconsistent with State and Federal privacy and confidentiality laws and

[80] Stephen Sawchuk, "'Value Added' Concept Proves Beneficial to Teacher Colleges," *Education Week* 31, no. 21, Published online on February 17, 2012. *http://www.edweek.org/ew/articles/2012/02/17/21louisiana_ep.h31.html?qs=lafayette.*

[81] Kristin A. Gansle, Jeanne M. Burns, and George Noell, "Value Added Assessment of Teacher Preparation Programs in Louisiana: 2007–2008 to 2009–10: Overview of 2010–11 Results." Research summary, Baton Rouge, LA: Louisiana Board of Regents (2011).

regulations. While encouraged to define programs below the institutional level to improve the utility of the information, especially if the number of new teachers in each specialization supports it, the States could aggregate all programs, as appropriate and consistent with § 612.4(b)(4), except those that meet the program size threshold and report them together. If all States took the approach of reporting at the institutional level when allowed by the program size threshold (Approach 1), the Department estimates that there would be approximately 7,123 programs. This is based on applying the proposed 25 new teachers-in-one-year threshold to programs at the six-digit CIP code and award level to IPEDS data, which results in 5,823 programs that meet the threshold and another 1,300 cases that would be reported at the institutional level (236 IHEs with no programs over 25 new teachers and 1,064 IHEs with some programs above the threshold and others below it). Of these 7,123 programs, approximately 4,723 programs or 66 percent are at IHEs that have disbursed TEACH Grants between academic year (AY) 2008–09 to AY 2010–11.

Alternatively, the States could elect to report programs under a disaggregated approach that defines programs by the six-digit CIP code, award level, and no minimum number of graduates that results in an estimated 24,497 programs (Approach 2). This estimate may be reduced in any given year because States are not required to report on programs if doing so would be inconsistent with Federal or State privacy and confidentiality laws and regulations, and the number of programs affected by this provision will vary year to year. Of the 24,497 total estimated programs, approximately 16,721 are at IHEs that have participated in the TEACH Grant program and might be subject to a loss of funds if designated as low-performing or at-risk by the State in which they are located.

Table 1 summarizes these two possible approaches to program definition that represent the opposite ends of the range of options available to the States. Based on IPEDS data, approximately 30 percent of programs defined at the six digit CIP code level have at least 25 new teachers when aggregated across three years, so States may add one additional year to the analysis or aggregate programs with similar features to push more programs over the threshold, pursuant to the regulations. The actual number of programs at IHEs reported on will likely fall between these two points represented by Approach 1 and Approach 2. In addition, as discussed earlier in this preamble, States will have to report on alternative certification teacher preparation programs that are not housed at IHEs, but they are not relevant for analysis of the effects on TEACH Grants because they are ineligible under the HEA and are not included in Table 1. The Department welcomes comments related to the estimate of the number of programs and will consider them in drafting the final regulations.

TABLE 1—TEACHER PREPARATION PROGRAMS AT IHES AND TEACH GRANT PROGRAM

| | Approach 1 | | Approach 2 | |
|---|---|---|---|---|
| | Total | TEACH grant participating | Total | TEACH grant participating |
| Public Total | 2,522 | 1,795 | 11,931 | 8,414 |
| 4-year | 2,365 | 1,786 | 11,353 | 8,380 |
| 2-year or less | 157 | 9 | 578 | 34 |
| Private Not-for-Profit Total | 1,879 | 1,212 | 12,316 | 8,175 |
| 4-year | 1,878 | 1,212 | 12,313 | 8,175 |
| 2-year or less | 1 | ..... | 3 | ..... |
| Private For-Profit Total | 67 | 39 | 250 | 132 |
| 4-year | 59 | 39 | 238 | 132 |
| 2-year or less | 8 | ..... | 12 | ..... |
| Total | 4,468 | 3,046 | 24,497 | 16,721 |

Given the number of programs and their TEACH Grant participation status as described in Table 1, the Department examined IPEDS data and the Department's budget estimates for 2015 related to TEACH Grants to estimate the effect of the proposed regulations on TEACH Grants beginning with the FY2018 cohort when the regulations would be in effect. Based on prior reporting, only 37 IHEs (representing an estimated 129 programs) were identified as having a low-performing or at-risk program in 2010 and twenty-seven States have not identified any low-performing programs in twelve years. Given prior identification of such programs and the fact that the States would continue to control the classification of teacher preparation programs subject to analysis, the Department does not expect a large percentage of programs to be subject to a loss of eligibility for TEACH Grants. Therefore, the Department evaluated the effects on the amount of TEACH Grants disbursed and recipients on the basis of the States classifying a range of three percent, five percent, or eight percent of programs to be low-performing or at-risk. These results are summarized in Table 2. Ultimately, the number of programs affected is subject to the program definition, rating criteria, and program classifications adopted by the individual States, so the distribution of those effects is not known with certainty. However, the maximum effect, whatever the distribution, is limited by the amount of TEACH Grants made and the percentage of programs classified as low-performing and at-risk that participate in the TEACH Grant program. The Department invites comments about the expected percentage of programs that will be found to be low-performing and at-risk and will take any comments or data received into consideration when analyzing the effects of the final regulations.

TABLE 2—ESTIMATED EFFECT IN 2018 ON PROGRAMS AND TEACH GRANT AMOUNTS OF DIFFERENT RATES OF INELIGIBILITY

[Percentage of low-performing or at-risk programs]

| | 3% | 5% | 8% |
|---|---|---|---|
| Programs: | | | |
| Approach 1 | 134 | 223 | 357 |
| Approach 2 | 735 | 1,225 | 1,960 |
| TEACH Grant Recipients | 1,051 | 1,751 | 2,802 |
| TEACH Grant Amount at Low-Performing or At-Risk programs | $3,032,769 | $5,054,614 | $8,087,383 |

The estimated effects presented in Table 2 reflect assumptions about the likelihood of a program being ineligible and do not take into account the size of the program or participation in the TEACH Grant program. The Department had no program level performance information and treats the programs as equally likely to become ineligible for TEACH Grants. If in fact factors such as size or TEACH Grant participation were associated with high or low performance, the number of TEACH Grant recipients and TEACH Grant volume could deviate from these estimates.

Finally, approximately 10 percent of TEACH Grant recipients are not enrolled in teacher preparation programs, but are majoring in such subjects as STEM, foreign languages, and history. The proposed regulations allow STEM programs at TEACH Grant-eligible institutions to participate in the TEACH Grant program provided that, over the most recent three years for which data are available, the Secretary has not identified that fewer than 60 percent of the STEM program's TEACH Grant recipients complete at least one year of teaching that fulfills the service obligation under § 686.40 within three years of completing their STEM program. Continuing eligibility for STEM programs supports the Department's efforts to expand the pool of teachers in these crucial subjects and reflects research on the value of STEM subject matter expertise for STEM teachers.[82] The requirement that programs have 60 percent of their TEACH Grant recipients complete at least one year of teaching that fulfills the service obligation under § 686.40 should direct TEACH Grant funds to programs at IHEs that identify teacher candidates that follow up on their intention to teach. The Secretary believes that sixty percent is the appropriate percentage because it seems that TEACH grant recipients in the STEM fields should enter the teaching profession at the same rates as education majors and sixty percent of education majors teach within ten years of receiving their bachelor's degree. We acknowledge that the overall rate of teaching is not the same as teaching in a high-need field in a low-income school, as is required under TEACH, but we think the rate is nonetheless reasonable because TEACH is designed to support future teachers, students who receive TEACH Grants commit to fulfilling their service obligations, and because TEACH recipients are high-achieving students who attend high-quality programs.[83] We have chosen a three-year window in order to allow students time to complete their content training and to enter into and complete a teacher preparation program. For example, we expect that some of these students would need to enroll in and complete a Master's degree to earn a teaching license. A three-year window would allow these students time to complete a Master's degree and then begin fulfilling their TEACH Grant service obligations. The Secretary requests comments about this framework and particularly on whether such a framework is necessary to encourage STEM teachers who are receiving TEACH Grants to enter the teaching profession and teach in high-need schools. The Secretary also requests comments on the three-year window and on whether the sixty percent placement rate is a reasonable and realistic placement rate, or whether another rate, or no placement rate, would be more reasonable or could be supported with research, data, or other analysis.

Whatever the amount of TEACH Grant volume at programs found to be ineligible, the effect on IHEs will be reduced from the full amounts represented by the estimated effects presented here as students could elect to enroll in other programs at the same IHE that retain eligibility because they are classified by the State as effective or higher. Another factor that would reduce the effect of the regulations on programs and students is that an otherwise eligible student who received a TEACH Grant for enrollment in a TEACH Grant-eligible program or TEACH Grant-eligible STEM program is eligible to receive additional TEACH Grants to complete the program, even if that program becomes no longer considered a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program.

For the broader set of IHEs, we would expect that over time a large portion of the TEACH Grant volume now disbursed to students at programs that will be categorized as low-performing or at-risk will be shifted to programs that remain eligible. The extent to which this happens will depend on other factors affecting the students' enrollment decisions such as in-State status, proximity to home or future employment locations, and the availability of programs of interest, but the Department believes that students will take into account a program's rating and the availability of TEACH Grants when looking for a teacher preparation program. As discussed in the Net Budget Impacts section of this notice, the Department expects that the reduction in TEACH Grant volume will taper off as States identify low-performing and at-risk programs and those programs are improved or are no longer eligible for TEACH Grants. Because existing recipients as of the effective date will continue to have access to TEACH Grants, and incoming students will have notice and be able to consider the program's eligibility for TEACH Grants in making an enrollment decision, the reduction in TEACH Grant volume that is classified as a transfer from students at ineligible programs to the Federal Government will be significantly reduced from the estimated range of $3.0 million to $8.3 million in

[82] Robert Floden and Marco Meniketti, "Research on the Effects of Coursework in the Arts and Sciences and in the Foundations of Education," Studying Teacher Education: The Report of the AERA Panel on Research and Teacher Education, Mahwah, NJ (2006): 261–308.

[83] See, U.S. Department of Education, National Center for Education *Statistics, Teacher Career Choices: Timing of Teacher Careers Among 1992–93 Bachelor's Degree Recipients, Postsecondary Education Descriptive Analysis Report.* Washington, DC: U.S. Department of Education (2008).

Table 2 for the initial years the regulations are in effect. While we have no past experience with students' reaction to a designation of a program as low-performing and loss of TEACH Grant eligibility, we assume that, to the extent it is possible, students would choose to attend a program rated effective or higher. For IHEs, the effect of the loss of TEACH Grant funds will depend on the student reaction and how many chose to enroll in an eligible program at the same IHE, choose to attend a different IHE, or make up for the loss of TEACH Grants by funding their program from other sources.

In addition to the potential reduction in funds from the loss of TEACH Grant eligibility or the loss of title IV eligibility for programs that lose State approval or financial support, IHEs with teacher preparation programs may incur some reporting costs related to the TEACH Grant and title IV provisions in the proposed regulations. An IHE would have to confirm that its TEACH Grant-eligible STEM programs fall within the CIP codes on a list provided by the Department. We estimate that 1,000 IHEs with TEACH Grant-eligible STEM programs would take 3 hours at a wage rate of $25.22 to complete this task for a total cost of $75,660. Additionally, while the Department does not anticipate that many programs will lose State approval or financial support, if this does occur, IHEs with such programs would have to notify enrolled and accepted students immediately, notify the Department within 30 days, and disclose such information on its Web site or promotional materials. The Department estimates that 50 IHEs would offer programs that lose State approval or financial support and would take 5.75 hours to make the necessary notifications and disclosures at a wage rate of $25.22 for a total cost of $7,250. Finally, some of the programs that lose State approval or financial support may apply to regain eligibility for title IV, HEA funds upon improved performance and restoration of State approval or financial support. The Department estimates that 10 IHEs with such programs would apply for restored eligibility and the process would require 20 hours at a wage rate of $25.22 for a total cost of $5,040.

The Secretary welcomes comments about the data and estimates presented here and will consider them in evaluating the final regulations.

## V. Net Budget Impacts

The proposed regulations related to the implementation of the TEACH Grant program are estimated to have a net budget impact of $0.67 million in cost reduction over the 2014 to 2024 loan cohorts. These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these proposed regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys. Program cost estimates were generated by running projected cash flows related to the provision through the Department's student loan cost estimation model. TEACH Grant cost estimates are developed across risk categories: Freshmen/sophomores at 4-year IHEs, juniors/seniors at 4-year IHEs, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

As discussed in the Analysis of the Effect of the Proposed Regulations on TEACH Grants section of this notice, the proposed regulations could result in a reduction in TEACH Grant volume. Under the effective dates and data collection schedule in the proposed regulations, that reduction in volume would start with the 2020 TEACH Grant cohort. The Department assumes that the effect of the proposed regulations would be greatest in the first years they were in effect as the low-performing and at-risk programs are identified, removed from TEACH Grant eligibility, and helped to improve or replaced by better performing programs. Therefore, the percent of volume estimated to be at programs in the low-performing or at-risk categories is assumed to drop for future cohorts. As shown in Table 3, the net budget impact over the 2014–2024 TEACH Grant cohorts is approximately $0.67 million in reduced costs.

TABLE 3—ESTIMATED BUDGET IMPACT OF PROPOSED REGULATIONS

[PB 2015 TEACH grant volume and recipient estimates]

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|
| PB 2015 TEACH Grant: | | | | | |
| Recipients | 36,429 | 36,910 | 37,396 | 37,890 | 38,391 |
| Amount | 105,149,650 | 106,537,976 | 107,944,631 | 109,369,859 | 110,813,906 |
| Low Performing and At Risk: | | | | | |
| % | 5.00% | 3.00% | 1.50% | 1.00% | 0.75% |
| Recipients | 1,821 | 1,107 | 561 | 379 | 288 |
| Amount | 5,257,483 | 3,196,139 | 1,619,169 | 1,093,699 | 831,104 |
| Redistributed TEACH Grants: | | | | | |
| % | 75% | 75% | 75% | 75% | 75% |
| Amount | 3,943,112 | 2,397,104 | 1,214,377 | 820,274 | 623,328 |
| Reduced TEACH Grant Volume: | | | | | |
| % | 25% | 25% | 25% | 25% | 25% |
| | 262,874 | 199,759 | 134,931 | 136,712 | 69,259 |
| Estimated Budget Impact of Policy: | | | | | |
| Subsidy Rate | 21.99% | 22.44% | 23.08% | 23.08% | 23.11% |

TABLE 3—ESTIMATED BUDGET IMPACT OF PROPOSED REGULATIONS—Continued
[PB 2015 TEACH grant volume and recipient estimates]

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|
| Baseline Volume | 105,149,650 | 106,537,976 | 107,944,631 | 109,369,859 | 110,813,906 |
| Revised Volume | 103,835,279 | 105,738,941 | 107,539,839 | 109,096,434 | 110,606,130 |
| Baseline Cost | 23,122,408 | 23,907,122 | 24,913,621 | 25,242,563 | 25,609,094 |
| Revised Cost | 22,833,378 | 23,727,818 | 24,820,195 | 25,179,457 | 25,561,077 |
| Estimated Cost Reduction | 289,030 | 179,303 | 93,426 | 63,106 | 48,017 |

The estimated budget impact presented in Table 3 is defined against the PB 2015 baseline costs for the TEACH Grant program, and the actual volume of TEACH Grants in 2020 and beyond will vary. The budget impact estimate depends on the assumptions about the percent of TEACH Grant volume at programs that become ineligible and the share of that volume that is redistributed or reduced as shown in Table 3. Finally, absent evidence of different rates of loan conversion at programs that will be eligible or ineligible for TEACH Grants when the proposed regulations are in place, the Department did not assume a different loan conversion rate as TEACH Grants shifted to programs rated effective or higher. However, given that placement and retention rates are one element of the program evaluation system, the Department does hope that, as students shift to programs rated effective or better, more TEACH Grant recipients will fulfill their service obligation. If this is the case and their TEACH Grants do not convert to loans, the students who do not have to repay the converted loans will benefit and the expected cost reductions for the Federal government may be reduced or reversed because more of the TEACH Grants will remain grants and no payment will be made to the Federal government for these grants.

In addition to the TEACH Grant provision, the proposed regulations include a provision that would make a program ineligible for title IV, HEA funds if the program was found to be low-performing and subject to the withdrawal of the State's approval or termination of the State's financial support. The Department assumes this will happen rarely and that the title IV funds involved would be shifted to other programs. Therefore, there is no budget impact associated with this provision.

The Department welcomes comments on the assumptions and estimates presented in this section and will consider any received in developing the final regulations.

## VI. Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in annual monetized costs, benefits, and transfers as a result of the proposed regulations.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

| Category | Benefits | |
|---|---|---|
| Better and more publicly available information on the effectiveness of teacher preparation programs | Not Quantified | |
| Distribution of TEACH Grants to better performing programs | Not Quantified | |
| **Category** | **Costs** | |
| | 7% | 3% |
| Institutional Report Card (set-up, annual reporting, posting on Web site) | $3,557,591 | $3,554,635 |
| State Report Card (Statutory requirements: Annual reporting, posting on Web site; Regulatory requirements: Meaningful differentiation, consulting with stakeholders, aggregation of small programs, assurance of accreditation, other annual reporting costs) | $1,582,038 | $1,569,326 |
| Reporting Student Learning Outcomes (develop model to link aggregate data on student achievement to teacher preparation programs, modifications to student growth models for non-tested grades and subjects, and measuring student growth) | $18,718,081 | $18,650,716 |
| Reporting Employment Outcomes (placement and retention data collection directly from IHEs or LEAs) | $2,289,940 | $2,289,940 |
| Reporting Survey Results (developing survey instruments, annual administration, and response costs) | $15,965,862 | $15,940,841 |
| Identifying TEACH Grant-eligible STEM Programs | $77,882 | $79,339 |
| **Category** | **Transfers** | |
| Reduced costs to the Federal government from TEACH Grants to prospective students at teacher preparation programs found ineligible | −$83,344 | −$74,161 |

## VII. Initial Regulatory Flexibility Analysis

These proposed regulations will affect IHEs that participate in the title IV, HEA programs, including TEACH Grants, alternative certification programs not housed at IHEs, States, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit IHEs as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit IHEs as small organizations if they are independently owned and operated and

not dominant in their field of operation, or as small entities if they are IHEs controlled by governmental entities with populations below 50,000. The revenues involved in the sector affected by these proposed regulations, and the concentration of ownership of IHEs by private owners or public systems means that the number of title IV, HEA eligible IHEs that are small entities would be limited but for the fact that the nonprofit entities fit within the definition of a small organization regardless of revenue. The potential for some of the programs offered by entities subject to the proposed regulations to lose eligibility to participate in the title IV, HEA programs led to the preparation of this Initial Regulatory Flexibility Analysis.

*Description of the Reasons That Action by the Agency Is Being Considered*

The Department has a strong interest in encouraging the development of highly trained teachers and ensuring that today's children have a high quality and effective teachers in the classroom, and it seeks to help achieve this goal by promulgating these proposed regulations. Teacher preparation programs have operated without access to meaningful data that could inform them of the effectiveness of their teachers that graduate and go on to work in the classroom setting.

The Department wants to establish a teacher preparation feedback mechanism premised upon teacher effectiveness. Under the proposed regulations, an accountability system would be established that would identify programs by quality so that high-performing teacher preparation programs could be recognized and rewarded and low-performing programs could be supported and improved. Data collected under the new system would help all teacher preparation programs make necessary corrections and continuously improve, while facilitating States' efforts to reshape and reform low-performing and at-risk programs.

*Succinct Statement of the Objectives of, and Legal Basis for, the Regulations*

We are proposing these regulations to better implement the teacher preparation program accountability and reporting system under title II of the HEA and to revise regulations to implement the TEACH grant program. Our key objective is to revise Federal reporting requirements to reduce institutional burden, as appropriate, and have State reporting focus on the most important measures of teacher preparation program quality while tying TEACH Grant eligibility to assessments of program performance under the title II accountability system. The legal basis for these proposed regulations is 20 U.S.C. 1022d, 1022f, and 1070g, *et seq.*

**Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply**

The proposed regulations related to title II reporting affect a larger number of entities, including small entities, than the smaller number subject to the possible loss of TEACH Grant eligibility or title IV, HEA program eligibility. The Department has more data on teacher preparation programs housed at IHEs than on those independent of IHEs. Whether evaluated at the aggregated institutional level or the disaggregated program level, State approved teacher preparation programs are concentrated in the public and private not-for-profit sectors. For the provisions related to the TEACH Grant program and using the institutional approach with a threshold of 25 new teachers (or a lower threshold at the discretion of the State), since the IHEs will be reporting for all their programs, we estimate that approximately 56.4 percent of teacher preparation programs are at public IHEs—the vast majority of which would not be small entities, and 42.1 percent are at private not-for-profit IHEs. The remaining 1.5 percent are at private for-profit IHEs and of those with teacher preparation programs, approximately 11 percent had reported FY 2012 total revenues under $7 million in IPEDS data. Based on IPEDS data, approximately 65 IHEs offering teacher preparation programs, seven of which participated in the TEACH Grant program in the past three years, are small entities as shown in Table 4.

TABLE 4—TEACHER PREPARATION PROGRAMS AT SMALL ENTITIES

| | Total programs | Programs at small entities | % of Total | Programs at TEACH grant participating small entities |
|---|---|---|---|---|
| Public | | | | |
| Approach 1 | 2,522 | 17 | 1 | 14 |
| Approach 2 | 11,931 | 36 | 0 | 34 |
| Private Not-for-Profit | | | | |
| Approach 1 | 1,879 | 1,879 | 100 | 1,212 |
| Approach 2 | 12,316 | 12,316 | 100 | 8,175 |
| Private For-Profit | | | | |
| Approach 1 | 67 | 12 | 18 | 1 |
| Approach 2 | 250 | 38 | 15 | 21 |

Source: IPEDS

Note: Table includes programs at IHEs only.

The Department has no indication that programs at small entities are more likely to be ineligible for TEACH Grants or title IV, HEA funds. Since all private not-for-profit IHEs are considered to be small because none are dominant in the field, we would expect about 5 percent of TEACH Grant volume at teacher preparation programs at private not-for-profit IHEs to be at ineligible programs. In 2012–13, approximately 48 percent of TEACH Grant disbursements went to private not-for-profit IHEs, and by applying that to the estimated TEACH Grant volume in 2017 of $101,092,285, the Department estimates that TEACH Grant volume at private not-for-profit IHEs in 2017 would be approximately $48.5 million. At the five percent low-performing or at-risk rate assumed in the TEACH Grants portion of the Cost, Benefits, and Transfers section of the Regulatory Impact Analysis, TEACH Grant revenues would be reduced by approximately $2.4 million at programs at private not-for-profit entities in the initial year the proposed regulations are in effect and a lesser amount after that.

Much of this revenue could be shifted to eligible programs within the IHE or the sector, and the cost to programs would be greatly reduced by students substituting other sources of funds for the TEACH Grants.

*Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record*

In addition to the teacher preparation programs at IHEs included in Table 4, approximately 1,281 alternative certification programs offered outside of IHEs are subject to the reporting requirements in the proposed regulations. The Department assumes that a significant majority of these programs are offered by non-profit entities and are not dominant in the field, so all of the alternative certification teacher preparation programs are considered to be small entities. However, the reporting burden for these programs falls on the States. As discussed in the Paperwork Reduction Act section of this notice, the estimated total paperwork burden on IHEs would decrease by 103,051 hours. Small entities would benefit from this relief from the current institutional reporting requirements.

*Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulation*

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

*Alternatives Considered*

As described above, the Department participated in Negotiated Rulemaking in developing the proposed regulations and considered a number of options for some of the provisions including the definition of a teacher preparation program and the definition of a high-quality teacher preparation program for purposes of TEACH Grant eligibility. No alternatives focused specifically on small entities.

*Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§ " and a numbered heading; for example, § 686.3 Duration of student eligibility.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

*Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 612.3, 612.4, 612.5, 612.6, 612.7, 612.8, and 686.2 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

*Start-Up and Annual Reporting Burden*

These proposed regulations execute a statutory requirement that IHEs and States establish an information and accountability system through which IHEs and States report on the performance of their teacher preparation programs. Because parts of the proposed regulation would require IHEs and States to establish or scale up certain systems and processes in order to collect information necessary for annual reporting, IHEs and States may incur one-time start-up costs for developing those systems and processes. The burden associated with start-up and annual reporting is reported separately in this statement.

*Section 612.3—Reporting Requirements for the Institutional Report Cards*

Section 205(a) of the HEA requires that each IHE that provides a teacher preparation program leading to State certification or licensure report on a statutorily enumerated series of data elements for the programs it provides. The Higher Education Opportunity Act of 2008 (HEOA) revised a number of the reporting requirements for IHEs.

The proposed regulations under § 612.3(a) would require that beginning on April 1, 2017, and annually thereafter, each IHE that conducts traditional or alternative route teacher preparation programs leading to State initial teacher certification or licensure and enrolls students receiving title IV, HEA funds report to the State on the quality of its programs using an IRC prescribed by the Secretary.

*Start-Up Burden*

Entity-Level and Program-Level Reporting

Under the current IRC, IHEs typically report at the entity level rather than the program level. For example, if an IHE offers multiple teacher preparation programs in a range of subject areas (for example, music education and special education), that IHE gathers data on each of those programs, aggregates the data, and reports the required information as a single teacher preparation entity on a single report card. Under the proposed regulations and for the reasons discussed in the preamble to this notice of proposed rulemaking, reporting would now be required at the teacher preparation program level rather than at the entity

level. No additional data must be gathered as a consequence of this regulatory requirement; instead, IHEs would simply report the required data before, rather than after, aggregation.

As a consequence, IHEs would not be required to alter appreciably their systems for data collection. However, the Department acknowledges that in order to communicate disaggregated data, minimal recordkeeping adjustments may be necessary. The Department estimates that initial burden for each IHE to adjust its recordkeeping systems would be 4 hours per entity. In the most recent year for which data are available, 1,522 IHEs reported required data to the Department through the IRC. Therefore, the Department estimates that the one-time total burden for IHEs to adjust recordkeeping systems would be 6,088 hours (1,522 IHEs multiplied by 4 burden hours per IHE).

*Subtotal of Start-Up Burden Under § 612.3*

The Department believes that IHEs' experience during prior title II reporting cycles has provided sufficient knowledge to ensure that IHEs will not incur any significant start-up burden, except for the change from entity-level to program-level reporting described above. Therefore, the subtotal of start-up burden for § 612.3 is 6,088 hours.

*Annual Reporting Burden*

Changes to the Institutional Report Card

For a number of years IHEs have gathered successfully, aggregated, and reported data on teacher preparation program characteristics, including those required under the HEOA, to the Department using the IRC approved under OMB control number 1840–0744. The required reporting elements of the IRC principally concern admissions criteria, student characteristics, clinical preparation, numbers of teachers prepared, accreditation of the program, and the pass rates and scaled scores of teacher candidates on State teacher certification and licensure examinations.

The Department received numerous comments from non-Federal negotiators about the current IRC during the negotiated rulemaking process. The non-Federal negotiators provided advice based on first-hand experience with the IRC and from their knowledge of research on the relative predictive value of certain elements in the IRC. Based on these comments, the Department eliminated or changed many of the IRC elements to maximize the collection of useful, meaningful data while limiting the reporting burden on IHEs.

Under the proposed regulations, IHEs would no longer be required to respond to certain elements in the IRC. We would eliminate a number of elements relating to admissions criteria (*e.g.*, whether the IHE required a personality test or a recommendation for admission). In their place, we would add quantitative elements on the admission of students, including median incoming GPA and standardized test scores, if applicable. The Department was informed by non-Federal negotiators that IHEs already collect these data. Reporting them would both provide more useful data to the public and prospective students and still result in a net burden reduction in the number of elements reported by IHEs.

Responding to the recommendations of non-Federal negotiators, the Department would further eliminate elements not required by statute that are burdensome to calculate, such as the average clock-hour requirements prior to clinical training, information on numbers of equivalent faculty, and prior-year pass rate and completer data that the Department is able to pre-populate. The Department would also change a number of elements requiring IHEs to provide lengthy narrative responses. Instead, IHEs could respond using drop-down menu choices. Most significantly, due to more effective technological integration with testing companies, the Department contractor responsible for the IRC will perform the entry for all testing data, representing a significant reduction in burden for IHEs.

The Department also responded to guidance from the higher education and teaching communities that the current IRC did not provide sufficiently meaningful quantitative and comparable data on the performance of teacher preparation programs. The Department attempted to limit the reporting burden on IHEs while ensuring that statutorily required and meaningful elements would provide useful data on a quantitative and easily-comparable basis. The IRC required under the proposed regulations would not depart significantly from the existing IRC, except to the extent that elements would be eliminated or IHEs would report data already readily accessible.

Given all of these reporting changes, the Department estimates that each IHE would require 68 fewer burden hours to prepare the revised IRC annually. The Department estimated that each IHE would require 146 hours to complete the current IRC approved by OMB. There would thus be an annual burden of 78 hours to complete the revised IRC (146 hours minus 68 hours in reduced data collection). The Department estimates that 1,522 IHEs would respond to the IRC required under the proposed regulations, based on reporting figures from the most recent year data are available. Therefore, reporting data using the IRC would represent a total annual reporting burden of 118,716 hours (78 hours multiplied by 1,522 IHEs).

Entity-Level and Program-Level Reporting

As noted in the start-up burden section of § 612.3, under the current IRC, IHEs report teacher preparation program data at the entity level. The proposed regulations would require that each IHE report disaggregated data at the teacher preparation program level. The Department believes this proposed regulatory requirement would not require any additional data collection or appreciably alter the time needed to calculate data reported to the Department. However, the Department believes that some additional reporting burden would exist for IHEs' electronic input and submission of disaggregated data because each IHE typically houses multiple teacher preparation programs.

Based on the most recent year of data available, the Department estimates that there are 22,312 teacher preparation programs at 1,522 IHEs nationwide. Based on these figures, the Department estimates that on average, each of these IHEs offers 14.65 teacher preparation programs. Because each IHE already collects disaggregated IRC data, the Department estimates it will take each IHE one additional hour to fill in existing disaggregated data into the electronic IRC for each teacher preparation program it offers. Because IHEs already have to submit an IRC for the IHE, the added burden for reporting on a program level would be 13.65 hours (an average of 14.65 programs at one hour per program, minus the existing submission of one IRC for the IHE, or 13.65 hours). Therefore, each IHE will incur an average burden increase of 13.65 hours (1 hour multiplied by an average of 13.65 teacher preparation programs at each IHE), and there will be an overall burden increase of 20,775 hours each year associated with this proposed regulatory reporting requirement (13.65 multiplied by 1,522 IHEs).

Posting on the Institution's Web Site

The proposed regulations would also require that the IHE provide the information reported on the IRC to the general public by prominently and promptly posting the IRC information on the IHE's Web site. Because the

Department believes it is reasonable to assume that an IHE offering a teacher preparation program and communicating data related to that program by electronic means maintains a Web site, the Department presumes that posting such information to an already-existing Web site would represent a minimal burden increase. The Department therefore estimates that IHEs would require 0.5 hours (30 minutes) to meet this requirement. This would represent a total burden increase of 761 hours each year for all IHEs (0.5 hours multiplied by 1,522 IHEs).

Subtotal of Annual Reporting Burden Under § 612.3

Aggregating the annual burdens calculated under the preceding sections results in the following burdens: Together, all IHEs would incur a total burden of 118,716 hours to develop the systems needed to meet the requirements of the revised IRC, 20,775 hours to report program-level data, and 761 hours to post IRC data to their Web sites. This would constitute a total burden of 140,252 hours of annual burden nationwide.

Total Institutional Report Card Reporting Burden

Aggregating the start-up and annual burdens calculated under the preceding sections results in the following burdens: Together, all IHEs would incur a total start-up burden under § 612.3 of 6,088 hours and a total annual reporting burden under § 612.3 of 140,252 hours. This would constitute a total burden of 146,340 total burden hours under § 612.3 nationwide.

The burden estimate for the existing IRC approved under OMB control number 1840–0744 was 146 hours for each IHE with a teacher preparation program. When the current IRC was established, the Department estimated that 1,250 IHEs would provide information using the electronic submission of the form for a total burden of 182,500 hours for all IHEs (1,250 IHEs multiplied by 146 hours). Applying these estimates to the current number of IHEs that are required to report (1,522) would constitute a burden of 222,212 hours (1,522 IHEs multiplied by 146 hours). Based on these estimates, the revised IRC would constitute a net burden reduction of 75,872 hours nationwide (222,212 hours minus 146,340 hours).

*Section 612.4—Reporting Requirements for the State Report Card*

Section 205(b) of the HEA requires that each State that receives funds under the HEA provide to the Secretary and make widely available to the public not less than the statutorily required specific information on the quality of traditional and alternative route teacher preparation programs. The State must do so in a uniform and comprehensible manner, conforming with definitions and methods established by the Secretary. Section 205(c) of the HEA directs the Secretary to prescribe regulations to ensure the validity, reliability, accuracy, and integrity of the data submitted. Section 206(b) requires that IHEs assure the Secretary that their teacher training programs respond to the needs of local educational agencies, be closely linked with the instructional decisions new teachers confront in the classroom, and prepare candidates to work with diverse populations and in urban and rural settings, as applicable.

Executing the relevant statutory directives, the proposed regulations under § 612.4(a) would require that starting April 1, 2018, and annually thereafter, each State report on the SRC the quality of all approved teacher preparation programs in the State, whether or not they enroll students receiving Federal assistance under the HEA, including distance education programs. This new SRC, to be implemented in 2018, is an update of the current SRC. The State must also make the SRC information widely available to the general public by posting the information on the State's Web site.

Section 103(20) of the HEA and § 612.2(d) of the proposed regulations define "State" to include nine locations in addition to the 50 States: The Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Freely Associated States, which include the Republic of the Marshall Islands, the Federated States of Micronesia, and Republic of Palau. For this reason, all reporting required of States explicitly enumerated under § 205(b) of the HEA (and the related portions of the regulations, specifically §§ 612.4(a) and 612.6(b)), apply to these 59 States. However, certain additional regulatory requirements (specifically §§ 612.4(b), 612.4(c), 612.5, and 612.6(a)) only apply to the 50 States of the Union, the Commonwealth of Puerto Rico, and the District of Columbia. The burden estimates under those portions of this report apply to those 52 States. For a fuller discussion of the reasons for the application of certain regulatory provisions to different States, see the preamble to this notice of proposed rulemaking.

Entity-Level and Program-Level Reporting

As noted in the start-up and annual burden sections of § 612.3, under the current information collection process, data are collected at the entity level, and the proposed regulations would require data reporting at the program level. In 2013, States reported to the Department for the first time on the number of programs offered in their States. In that collection, which covers the 2011–2012 academic year, States reported that there were 25,000 teacher preparation programs offered, including 22,312 at IHEs and 2,688 through alternative route teacher preparation programs not associated with IHEs. Given that 2013 was the first reporting year for this metric, it is possible that there is some error in the reporting. However, as noted in subsequent sections of this burden statement, these reported data are within the bounds of other estimates we have calculated. Because the remainder of the data reporting discussed in this burden statement is transmitted using the SRC, for those burden estimates concerning reporting on the basis of teacher preparation programs, the Department uses the estimate of 25,000 teacher preparation programs.

Start Up and Annual Burden Under § 612.4(a)

Section 612.4(a) would codify State reporting requirements expressly referenced in section 205(b) of the HEA; the remainder of § 612.4 would provide for reporting consistent with the directives to the Secretary under Sections 205(b) and (c) and the required assurance described in Section 206(c).

The HEOA revised a number of the reporting requirements for States. The requirements of the SRC are more numerous than those contained in the IRC, but the reporting elements required in both are similar in many respects. In addition, the Department has successfully integrated reporting to the extent that data reported by IHEs in the IRC is pre-populated in the relevant fields on which the States are required to report in the SRC. In addition to the elements discussed in § 612.3 of this burden statement regarding the IRC, under the statute a State must also report on its certification and licensure requirements and standards, state-wide pass rates and scaled scores, shortages of highly qualified teachers, and information related to low-performing or at-risk teacher preparation programs in the State.

The SRC currently in use, approved under OMB control number 1840–0744,

collects information on these elements. States have been successfully reporting information under this collection for many years. The burden estimate for the existing SRC was 911 burden hours per State. In the burden estimate for that SRC, the Department reported that 59 States were required to report data, equivalent to the current requirements. This represented a total burden of 53,749 hours for all States (59 States multiplied by 911 hours). This burden calculation was made on entity-level, rather than program-level, reporting (for a more detailed discussion of the consequences of this issue, see the sections on entity-level and program-level reporting in §§ 612.3 and 612.4). However, because relevant program-level data reported by the IHEs on the IRC will be pre-populated for States on the SRC, the burden associated with program-level reporting under § 612.4(a) will be minimal. Those elements that will require additional burden are discussed in the subsequent paragraphs of this section.

Elements Changed in the State Report Card

The Department received numerous comments from non-Federal negotiators regarding the SRC during the negotiated rulemaking process; many of the non-Federal negotiators have direct experience with the relative efficacy and burden of the various SRC reporting requirements. Based on these comments, the Department eliminated or changed a number of SRC elements to maximize the collection of meaningful data while minimizing burden. Under the proposed regulations, States would no longer be required to respond to certain elements in the SRC. We eliminated a number of elements relating to admissions criteria for programs (similar to those eliminated from the IRC). We would put in their place quantitative elements on the admission of students, including median incoming GPA and standardized test scores, if applicable. The Department was informed by non-Federal negotiators that schools already collect these data and reporting them would both provide more useful data and still result in a net burden reduction in the number of elements reported.

Because the Department must continue to collect IRC and SRC data until the proposed reporting requirements are effective, the Department, prior to the development of this notice of proposed rulemaking, submitted a proposed information collection to OMB[84] that reflected the basis for some of the proposed changes to the SRC. We calculated there that the estimated burden would be reduced from 911 hours per State to 250 hours per State. While the Department has not yet completed analyzing comments on this Information Collection Request (ICR), the burden decrease expected under that ICR is due in part to the elimination of a number of data fields. That revised burden estimate also reflects States' experience with filling out the SRC (including, for example, databases of demographic data compiled by States) and pre-populating of previous years' data. Most significantly, the burden reduction represents the successful technical integration between test companies and the Department's title II contractor, such that all test-related data are managed, calculated, and uploaded by the test companies and contractor, with no additional burden incurred by States.

In addition to those changes reflected in the ICR sent to OMB, the Department, responding to the recommendations of non-Federal negotiators, also proposed to eliminate numerous other elements that are not required by statute, burdensome to calculate, and can be pre-populated (such as total program completers in prior years, certain specific requirements related to licensure requirements not indicative of program or teacher quality, and duplicative questions already asked in other portions of the SRC). The Department also proposes to change reporting some elements as lengthy narrative responses to drop-down menus. Elimination of these elements represents a significant burden reduction in reporting data using the SRC. The Department estimates that the elimination of these elements constitutes a burden reduction of 65 hours for each State above the efficiencies identified in the information collection in the preceding paragraph. For filing the SRC, the total burden reduction is 80 percent for each State, equal to 726 hours of staff time annually (911 hours minus the 661 hours representing efficiencies identified in the proposed information collection, minus the 65 hours representing the additional burden reduction pursuant to the proposed regulations). New SRC filing burden time would be 185 hours per year for each State.

At the request of non-Federal negotiators, the Department added some data fields to the SRC to reflect specific statutory provisions in § 205(b). These include additional demographic information, qualitative clinical data, and data on shortages of highly qualified teachers in specific subject areas. The Department estimates that providing this additional information would require an additional 50 hours for each State to gather and report.

Using the above calculations, the Department estimates that the total reporting burden for each State would be 235 hours (185 hours for the revised SRC plus the additional statutory reporting requirements totaling 50 hours). This would represent a reduction of 676 burden hours for each State to complete the requirements of the SRC, as compared to approved OMB collection 1840–0744 (911 burden hours under the current SRC compared to 235 burden hours under the revised SRC). The total burden for States to report this information would be 13,865 hours (235 hours multiplied by 59 States).

Posting on the State's Web Site

The proposed regulations would also require that the State provide the information reported on the SRC to the general public by prominently and promptly posting the SRC information on the State's Web site. Because the Department believes it is reasonable to assume that each State that communicates data related to its teacher preparation programs by electronic means maintains a Web site, the Department presumes that posting such information to an already-existing Web site would represent a minimal burden increase. The Department therefore estimates that States would require 0.5 hours (30 minutes) to meet this requirement. This would represent a total burden increase of 29.5 hours each year for all IHEs (0.5 hours multiplied by 59 States).

*Subtotal § 612.4(a) Start-Up and Annual Reporting Burden*

As noted in the preceding discussion, there is no start-up burden associated solely with § 612.4(a). Therefore, the aggregate start-up and annual reporting burden associated with reporting elements under § 612.4(a) would be 13,894.5 hours (235 hours multiplied by 59 States plus 0.5 hours for each of the 59 States).

Reporting Required Under § 612.4(b) and § 612.4(c)

The preceding burden discussion of § 612.4 focused on burdens related to the reporting requirements required under section 205(b) of the HEA and codified in regulation at § 612.4(a). The

[84] For an analysis of the basis for this reduction estimate, see the Department of Education Information Collection System at *http://edicsweb.ed.gov/* and select collection number 04871 under "browse pending collections."

remaining burden discussion of § 612.4 concerns regulatory reporting requirements required under §§ 612.4(b)–612.4(c).

*Start-Up Burden*

Meaningful Differentiations

Under proposed § 612.4(b)(1), a State would be required to make meaningful differentiations in teacher preparation program performance using at least four performance levels—low-performing teacher preparation program, at-risk teacher preparation program, effective teacher preparation program, and exceptional teacher preparation program—based on the indicators in § 612.5 and including, in significant part, employment outcome for high-need schools and student learning outcomes.

The Department believes that State higher education authorities responsible for making State-level classifications of teacher preparation programs would require time to make meaningful differentiations in their classifications and determine whether alternative performance levels are warranted. States are required to consult with external stakeholders, review best practices by early adopter States that have more experience in program classification, and seek technical assistance.

States would also have to determine how it would make such classifications. For example, a State may choose to classify all teacher preparation programs on an absolute basis using a cut-off score that weighs the various indicators, or a State may choose to classify teacher preparation programs on a relative basis, electing to classify a certain top percentile as exceptional, the next percentile as effective, and so on. In exercising this discretion, States may choose to consult with various external and internal parties and discuss lessons learned with those States already making such classifications of their teacher preparation programs.

The Department estimates that each State would require 21 hours to make these determinations, and this would constitute a one-time total burden of 1,092 hours (21 hours multiplied by 52 States).

As a part of the proposed regulation, a State would be required to classify each teacher preparation program on the basis of these differentiated performance levels using the indicators of academic content knowledge and teaching skills in § 612.5 (see the discussion of § 612.5 for a detailed discussion of the burden associated with each of these indicators).

The proposed regulatory requirement under § 612.4(b)(1) and § 612.4(b)(2) that States rely in significant part on employment outcomes in high-need schools and student learning outcomes and ensure that no program is deemed effective or higher unless it has satisfactory or higher student learning outcomes would not, in itself, create additional reporting requirements. (See discussion related to burden associated with reporting student learning outcomes in the start-up burden section of § 612.5.) However, States would have the discretion under this proposed regulation to determine the meaning of "significant" and "satisfactory." Similar to the consultative process described in the previous paragraphs of this section, a State may consult with early adopter States to determine best practices for making such determinations and whether an underlying qualitative basis should exist for these terms. The Department estimates that this decision-making process would take 14 hours for each State, and the one-time total burden associated with these determinations would be 728 hours (14 hours multiplied by 52 States).

Assurance of Specialized Accreditation

Under proposed § 612.4(b)(3)(i)(A), a State would be required to provide for each teacher preparation program disaggregated data for each of the indicators identified pursuant to § 612.5. See the start-up burden section of § 612.5 for a more detailed discussion of the burden associated with gathering the indicator data required to be reported under this regulatory section. See the annual reporting burden section of 612.4 for a discussion of the ongoing reporting burden associated with reporting disaggregated indicator data under this regulatory provision. No further burden exists beyond the burden described in these two sections.

Under proposed § 612.4(b)(3)(i)(B), a State would be required to provide, for each teacher preparation program in the State, the State's assurance that the teacher preparation program either: (a) Is accredited by a specialized agency or (b) provides teacher candidates with content and pedagogical knowledge, quality clinical preparation, and rigorous teacher entry and exit qualifications. See the start-up burden section of § 612.5 for a detailed discussion of the burden associated with gathering the indicator data required to be reported under this regulatory section. See the annual reporting burden section of § 612.4 for a discussion of the ongoing reporting burden associated with reporting these assurances. No further burden exists beyond the burden described in these two sections.

Indicator Weighting

Under proposed § 612.4(b)(3)(ii), a State would be required to provide its weighting of the different indicators in § 612.5 for purposes of describing the State's assessment of program performance. See the start-up burden section of § 612.4 on stakeholder consultation for a detailed discussion of the burden associated with establishing the weighting of the various indicators under § 612.5. See the annual reporting burden section of § 612.4 for a discussion of the ongoing reporting burden associated with reporting these relative weightings. No further burden exists beyond the burden described in these two sections.

State-Level Rewards or Consequences

Under proposed § 612.4(b)(3)(iii), a State would be required to provide the State-level rewards or consequences associated with the designated performance levels. See the start-up burden section of § 612.4 on stakeholder consultation for a more detailed discussion of the burden associated with establishing these rewards or consequences. See the annual reporting burden section of § 612.4 for a discussion of the ongoing reporting burden associated with reporting these relative weightings. No further burden exists beyond the burden described in these two sections.

Aggregation of Small Programs

Under proposed § 612.4(b)(4), a State would be required to ensure that all of its teacher preparation programs in that State are represented on the SRC. The Department recognized that many teacher preparation programs consist of a small number of prospective teachers and that reporting on these programs could present privacy and data validity issues. After discussion and input from various non-Federal negotiators during the negotiated rulemaking process, the Department elected to set a required reporting program size threshold of 25 (for a more detailed discussion of this determination, see the general preamble discussion regarding § 612.4). However, the Department realized that, on the basis of research examining accuracy and validity relating to reporting small program sizes, some States may prefer to report on programs smaller than 25. Proposed § 612.4(b)(4)(i) permits States to report using a lower program size threshold. In order to determine the preferred program size threshold for its programs, a State may review existing research or the practices of other States

that set program size thresholds to determine feasibility for its own teacher preparation program reporting. The Department estimates that such review would require 14 hours for each State, and this would constitute a one-time total burden of 728 hours (14 hours multiplied by 52 States).

Under proposed § 612.4(b)(4), all teacher preparation entities would be required to report on the remaining small programs that do not meet the program size threshold the State chooses. States will be able to do so through a combination of two possible aggregation methods described in § 612.4(b)(4)(ii). The preferred aggregation methodology is to be determined by the States after consultation with a group of stakeholders. For a detailed discussion of the burden related to this consultation process, see the start-up burden section of § 612.4, which discusses the stakeholder consultation process. Apart from the burden discussed in that section, no other burden is associated with this requirement.

Stakeholder Consultation

Under proposed § 612.4(c), a State would be required to consult with a representative group of stakeholders to determine the procedures for assessing and reporting the performance of each teacher preparation program in the State. This stakeholder group, composed of a variety of members representing viewpoints and interests affected by these proposed regulations, would provide input on a number of issues concerning the State's discretion granted under these proposed regulations. There are four issues in particular on which the stakeholder group would advise the State—

a. the relative weighting of the indicators identified in § 612.5;

b. the preferred method for aggregation of data such that performance data for a maximum number of small programs are reported;

c. the State-level rewards or consequences associated with the designated performance levels; and

d. the appropriate process and opportunity for programs to challenge the accuracy of their performance data and program classification.

The Department believes that this consultative process would require that the group convene at least three times to afford each of the stakeholder representatives multiple opportunities to meet and consult with the constituencies they represent. Further, the Department believes that members of the stakeholder group would require time to review relevant materials and academic literature and advise on the relative strength of each of the performance indicators under § 612.5, as well as any other matters requested by the State.

These stakeholders would also require time to advise whether any of the particular indictors would have more or less predictive value for the teacher preparation programs in their State, given its unique traits. Finally, because some States have already implemented one or more components of the proposed regulatory indicators of program quality, these stakeholders would require time to review these States' experiences in implementing similar systems. The Department estimates that the combination of gathering the stakeholder group multiple times, review of the relevant literature and other States' experiences, and making determinations unique to their particular State would take 156 hours for each State. This would constitute a one-time total of 8,736 hours for all States (168 hours multiplied by 52 States).

*Subtotal of Start-Up Burden Under § 612.4(b) and § 612.4(c)*

Aggregating the start-up burdens calculated under the preceding sections results in the following burdens: All States would incur a total burden of 1,092 hours to make meaningful differentiations in program classifications, 728 hours to define the terms "significant" and "satisfactory" under these sections, 728 hours to determine the State's aggregation of small programs, and 8,736 hours to complete the stakeholder consultation process. This would constitute a total burden of 11,284 hours of start-up burden nationwide.

*Annual Reporting Burden*

Classification of Teacher Preparation Programs

The bulk of the State burden associated with assigning programs among classification levels would be in gathering and compiling data on the indicators of program quality that compose the basis for the classification. Once a State has made a determination of how a teacher preparation program would be classified at a particular performance level, applying the data gathered under § 612.5 to this classification basis would be straightforward. The Department estimates that States would require 0.5 hours (30 minutes) to apply already-gathered indicator data to existing program classification methodology. The total burden associated with classification of all teacher preparation programs using meaningful differentiations would be 12,500 hours each year (0.5 hours multiplied by 25,000 teacher preparation programs).

Disaggregated Data on Each Indicator in § 612.5

Under proposed § 612.4(b)(3)(i)(A), States would be required to report on the indicators of program performance in proposed § 612.5. For a fuller discussion of the burden related to the reporting of this requirement, see the annual reporting burden section of § 612.5. Apart from the burden discussed in this section, no other burden is associated with this requirement.

Indicator Weighting

Under proposed § 612.4(b)(3)(ii), States would be required to report the relative weight it places on each of the different indicators enumerated in § 612.5. The burden associated with this reporting is minimal: After the State, in consultation with a group of stakeholders, has made the determination about the percentage weight it will place on each of these indicators, reporting this information on the SRC is a simple matter of inputting a number for each of the indicators. Under the proposed regulations at § 612.5, this would minimally require the State input eight general indicators of quality. *Note:* the eight indicators are—

a. associated student learning outcome results;

b. teacher placement results;

c. teacher retention results;

d. teacher placement rate calculated for high-need school results;

e. teacher retention rate calculated for high-need school results;

f. teacher satisfaction survey results;

g. employer satisfaction survey results; and

h. assurance of specialized accreditation or assurance of content and pedagogical knowledge, quality clinical preparation, and rigorous entry and exit standards.

This reporting burden would not be affected by the number of teacher preparation programs in a State, because such weighting would apply equally to each program. Although the State would have the discretion to add indicators, the Department does not believe that transmission of an additional figure representing the percentage weighting assigned to that indicator would constitute an appreciable burden increase. The Department therefore estimates that each State would incur a

burden of 0.25 hours (15 minutes) to report the relative weighting of the regulatory indicators of program performance. This would constitute a total burden on States of 13 hours each year (0.25 hours multiplied by 52 States).

State-Level Rewards or Consequences

Similar to the reporting required under § 612.4(b)(3)(ii), after a State has made the requisite determination about rewards and consequences, reporting those rewards and consequences would represent a relatively low burden. States would be required to report this on the SRC during the first year of implementation, the SRC could provide States with a drop-down list representing common rewards or consequences in use by early adopter States, and States would be able to briefly describe those rewards or consequences not represented in the drop-down options. For subsequent years, the SRC could be pre-populated with the prior-year's selected rewards and consequences, such that there would be no further burden associated with subsequent year reporting unless the State altered its rewards and consequences. For these reasons, the Department estimates that States will incur, on average, 0.5 hours (30 minutes) of burden in the first year of implementation to report the State-level rewards and consequences, and 0.1 hours (6 minutes) of burden in each subsequent year. The Department therefore estimates that the total burden for the first year of implementation of this proposed regulatory requirement would be 26 hours (0.5 hours multiplied by 52 States) and 5.2 hours each year thereafter (0.1 hours multiplied by 52 States).

Stakeholder Consultation

Under proposed § 612.4(b)(5), during the first year of reporting and every five years thereafter, States would be required to report on the procedures they established in consultation with the group of stakeholders described under § 612.4(c)(1). The burden associated with the first and third of these four procedures, the weighting of the indicators and State-level rewards and consequences associated with each performance level, respectively, are discussed in the preceding paragraphs of this section.

The second procedure, the method by which small programs are aggregated, would be a relatively straightforward reporting procedure on the SRC. Pursuant to § 612.4(b)(4)(ii), States are permitted to use one of two methods, or a combination of both in aggregating small programs. A State would be allowed to aggregate programs that are similar in teacher preparation subject matter. A State would also be allowed aggregate using prior year data, including that of multiple prior years. Or a State would be allowed to use a combination of both methods. On the SRC, the State would simply indicate the method it uses. The Department estimates that States would require 0.5 hours (30 minutes) to enter these data every fifth year. On an annualized basis, this would therefore constitute a total burden of 5.2 hours (0.5 hours multiplied by 52 States divided by five to annualize burden for reporting every fifth year).

The fourth procedure that States would be required to report under proposed § 612.4(b)(5) is the method by which teacher preparation programs in the State are able to challenge the accuracy of their data and the classification of their program. First, the Department believes that States would incur a paperwork burden each year from recordkeeping and publishing decisions of these challenges. Because the Department believes the instances of these appeals would be relatively rare, we estimate that each State would incur 6 hours of burden each year related to recordkeeping and publishing decisions. This would constitute an annual reporting burden of 312 hours (6 hours multiplied by 52 States).

After States and their stakeholder groups determine the preferred method for programs to challenge data, reporting that information would likely take the form of narrative responses. This is because the method for challenging data may differ greatly from State to State, and it is difficult for the Department to predict what methods States will choose. The Department therefore estimates that reporting this information in narrative form during the first year would constitute a burden of 3 hours for each State. This would represent a total reporting burden of 156 hours (3 hours multiplied by 52 States).

In subsequent reporting cycles, the Department would be able to examine State responses and (1) pre-populate this response for States that have not altered their method for challenging data or (2) provide a drop-down list of representative alternatives. This would minimize subsequent burden for most States. The Department therefore estimates that in subsequent reporting cycles (every five years under the proposed regulations), only 10 States would require more time to provide additional narrative responses totaling 3 burden hours each, with the remaining 42 States incurring a negligible burden. This represents an annualized reporting burden of 6 hours for those 10 States (3 hours multiplied by 10 States, divided by 5 years), for a total annualized reporting burden of 60 hours for subsequent years (6 hours multiplied by 10 States).

Under proposed § 612.4(c)(2), each State would be required to periodically examine the quality of its data collection and reporting activities and modify those activities as appropriate. The Department believes that this review would be carried out in a manner similar to the one described for the initial stakeholder determinations in the preceding paragraphs: States would consult with representative groups to determine their experience with providing and using the collected data, and they would consult with data experts to ensure the validity and reliability of the data collected. The Department believes such a review would recur every three years, on average. Because this review would take place years after the State's initial implementation of the proposed regulations, the Department further believes that the State's review would be of relatively little burden. This is because the State's review would be based on the State's own experience with collecting and reporting data pursuant to the proposed regulations, and because States would be able to consult with many other States to determine best practices. For these reasons, the Department estimates that the periodic review and modification of data collection and reporting would require 16 hours every three years or an annualized burden of 5.3 hours for each State. This would constitute a total annualized burden of 275.6 hours for all States (5.3 hours per year multiplied by 52 States).

*Subtotal Annual Reporting Burden Under § 612.4(b) and § 612.4(c)*

Aggregating the annual burdens calculated under the preceding sections results in the following: All States would incur a burden of 12,500 hours to report classifications of teacher preparation programs, 13 hours to report State indicator weightings, 26 hours in the first year and 5.2 hours in subsequent years to report State-level rewards and consequences associated with each performance classification, 5.2 hours to report the method of program aggregation, 312 hours for recordkeeping and publishing appeal decisions, 156 hours the first year and 60 hours in subsequent years to report the process for challenging data and program classification, and 275.6 hours to report on the examination of data

collection quality. This totals 13,287.5 hours of annual burden in the first year and 13,171.5 hours of annual burden in subsequent years nationwide.

*Total Reporting Burden Under § 612.4*

Aggregating the start-up and annual burdens calculated under the preceding sections results in the following burdens: All States would incur a total burden under § 612.4(a) of 13,894.5 hours, a start-up burden under § 612.4(b) and § 612.4(c) of 11,284 hours, and an annual burden under § 612.4(b) and § 612.4(c) of 13,287.5 hours in the first year and 13,171.5 hours in subsequent years. This totals between 38,350 and 38,466 total burden hours under § 612.4 nationwide. Based on the prior estimate of 53,749 hours of reporting burden on OMB collection 1840–0744, the total burden reduction under § 612.4 is between 15,283 hours and 15,399 hours (53,749 hours minus a range of 38,350 and 38,466 total burden hours).

*Section 612.5—Indicators a State Must Use To Report on Teacher Preparation Program Performance*

The proposed regulations at § 612.5(a)(1) through (a)(4) would identify those indicators that a State is required to use to assess the academic content knowledge and teaching skills of new teachers from each of its teacher preparation programs. Under the proposed regulations, a State would be required to use the following indicators of teacher preparation program performance: (a) Student learning outcomes, (b) employment outcomes, (c) survey outcomes, and (d) whether the program (1) is accredited by a specialized accrediting agency or (2) produces teacher candidates with content and pedagogical knowledge and quality clinical preparation, who have met rigorous entry and exit standards. Proposed § 612.5(b) would permit a State, at its discretion, to establish additional indicators of academic content knowledge and teaching skills.

*Start-Up Burden*

Student Learning Outcomes

Consistent with teacher-student data link requirements related to the American Recovery and Reinvestment Act (ARRA), State Longitudinal Data System program (SLDS), and the ESEA Flexibility initiative, proposed § 612.5(a)(1) would require States to provide data on student learning outcomes, defined as the aggregate learning outcomes of students taught by new teachers trained by each teacher preparation program in the State. States would have the discretion to report student learning outcomes on the basis of student growth (that could factor in variance in expected growth for students with different growth trajectories), teacher evaluation measures, or both. States also would have discretion on whether to use a value-added method of adjusting for student characteristics. Regardless of which method States use to report student learning outcomes, States would be required to link the results of those indicators of teaching skill to the teacher preparation programs with which the teachers are associated. States would have discretion on a variety of related technical matters, such as whether to track out-of-State teachers who were prepared within the State. While comprehensive data regarding the readiness of all States to comply with providing information on student learning outcomes do not exist, the Department has estimated the start-up costs for States based on a number of sources.

First, each State has provided an assurance that it would provide student-growth assessment data for teachers who teach reading/language arts and mathematics in tested grades. This assurance was provided as a consequence of receiving a share of $48.6 billion in funds from the State Fiscal Stabilization Fund (SFSF), authorized by ARRA. The Department estimates that no additional burden would be incurred to measure student growth for these grades and subjects. There would be some cost, however, for mapping student growth data results back to relevant teacher preparation programs.

As of June 15, 2014, the Secretary has approved requests by 42 States, the District of Columbia, and the Commonwealth of Puerto Rico for flexibility regarding specific requirements of ESEA, as amended, in exchange for rigorous and comprehensive State plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. As of the same date, the Department is working with 3 more States pursuing similar flexibility agreements. In their request for flexibility, each State has committed to implementing a statewide comprehensive teacher evaluation system covering those teaching in grades and subjects where there is statewide testing and those grades and subjects in which there is not statewide testing. The proposed regulation's definition of a teacher evaluation measure with respect to non-tested grades and subjects and its implementation timeline are aligned with requirements included in the Department's ESEA Flexibility initiative. Accordingly, for grades and subjects for which assessments are not required under ESEA, States, under the proposed regulations, would have the discretion to make use of various alternative forms of measurement, including use of "student learning objectives" as per a statewide rubric.

To estimate the cost of using student learning objectives to measure student growth, we examined publicly available State and LEA rubrics and guidelines. Guidance issued by the Rhode Island Department of Education includes a detailed timeline and checklist that we used to develop an estimate of what it might cost the remaining States to develop and implement student learning objectives.[85] The estimate assumes that these States have no existing State or LEA-level structures in place to assess student learning outcomes.

Based on the specific steps required in this guidance, we estimate that for the average teacher, developing and implementing student learning objectives would require 6.85 hours of the teacher's time and 5.05 hours of an evaluator's time. However, for the reasons explained in detail in the Regulatory Impact Assessment section of this notice, the Department estimates that these burden estimates would apply to 31,676 of these teachers in six States. For these teachers, the total burden would equal 376,944 hours (31,676 teachers multiplied by 11.9 hours). For the remaining two States that have not already committed to doing so under the Race to the Top program or as part of their request for ESEA flexibility, the Department estimates that teachers and evaluators would only need to spend a combined three hours to develop and measure against student learning objectives for the 4,629 new teachers of students in non-tested grades and subjects in these areas. This would constitute a total burden of 13,887 hours (3 hours of teacher and evaluator time multiplied by 4,629 teachers). The total burden would therefore equal 390,831 hours (13,887 hours plus 376,944 hours).

In addition to creating the systems for evaluating student learning outcomes,

[85] These estimates are entirely based on analysis and interpretation conducted by U.S. Department of Education staff and should not be attributed to the Rhode Island Department of Education. This analysis was based primarily on the timeline and checklist, which begins on page 23 of the following document: *http://www.maine.gov/education/effectiveness/GuideSLO-Rhode%20Island.pdf.*

the proposed regulations would also require that States link student growth or teacher evaluation data back to each teacher's preparation programs consistent with State discretionary guidelines included in § 612.4. Currently, few States have such capacity. However, based on data from the SLDS program, it appears that 30 States, the District of Columbia, and the Commonwealth of Puerto Rico either already have the ability to aggregate data on student achievement and map back to teacher preparation programs or have committed to do so. For these 30 States, the District of Columbia, and the Commonwealth of Puerto Rico we estimate that no additional costs will be needed to link student learning outcomes back to teacher preparation programs.

For the remaining States, the cost estimates of establishing this mapping depend on their current statewide longitudinal data capacity. While the Department has awarded $575.7 million in SLDS grants to support data system development in 47 States, the District of Columbia, and the Commonwealth of Puerto Rico, there remains a substantial variance in capacity among States to implement these data linkages. For example, some States would need to link currently disparate postsecondary education data systems to elementary and secondary school data systems that do not yet exist, while other States may already have linkages among the former or latter, though not between the two. The Department estimates, therefore, that the remaining 20 States that currently lack the capacity to link data systems would require 2,940 hours for each State, for a total burden of 58,800 hours nationwide (2,940 hours multiplied by 20 States).

Employment Outcomes

Proposed § 612.5(a)(2) would require a State to provide data on each teacher preparation program's teacher placement rate, defined as the combined non-duplicated percentage of new teachers and recent graduates hired in a full-time teaching position for the grade level, span, and subject area in which a candidate was prepared, as well as the teacher placement rate calculated for high-need schools. High-need schools would be defined in proposed § 612.2(d) by using the definition of "high-need school" in section 200(11) of the HEA. The proposed regulations would give States discretion to exclude those new teachers or recent graduates from this measure if they are teaching in a private school, teaching in another State, enrolled in graduate school, or engaged in military service. States would also have the discretion to treat this rate differently for alternative route and traditional route providers.

Proposed § 612.5(a)(2) would require a State to provide data on each teacher preparation program's teacher retention rate, defined as any of the following: (a) The percentage of new teachers who have been hired in full-time teaching positions and served for periods of at least three consecutive school years within five years of being granted a level of certification that allows them to serve as teachers of record; (b) the percentage of new teachers who have been hired in full-time teaching positions and reached a level of tenure or other equivalent measures of retention within five years of being granted a level of certification that allows them to serve as teachers of record; or (c) one hundred percent less the percentage of new teachers who have been hired in full-time teaching positions and whose employment was not continued by their employer for reasons other than budgetary constraints within five years of being granted a level of certification or licensure that allows them to serve as teachers of record. In addition, proposed § 612.5(a)(2) would require a State to provide data on each teacher preparation program's teacher retention rate calculated for high-need schools. The proposed regulations would give States discretion to exclude those new teachers or recent graduates from this measure if they are teaching in a private school (or other school not requiring State certification), another State, enrolled in graduate school, or serving in the military. States would also have the discretion to treat this rate differently for alternative route and traditional route providers.

Currently, 50 States, the District of Columbia, and the Commonwealth of Puerto Rico currently collect some certification information on individual teachers. Some States further collect such data related to teacher preparation programs (42 States), location of the teacher preparation program (47 States), and certification year (51 States). (For a more detailed discussion of these and other estimates in this section, see the Regulatory Impact Assessment discussion of costs, benefits and transfers regarding employment outcomes.) Furthermore, 39 States, the District of Columbia, and the Commonwealth of Puerto Rico currently collect data on certification placement and have the capability to link that data back to the program that prepared each individual teacher. The Department believes that these States would not incur additional burden for employment outcome reporting except to the extent that they would have to identify recent graduates not employed in a full-time teaching position within the State. A State would incur a minimal burden by matching its certification data against a roster of recent graduates from each teacher preparation program in the State to determine teacher placement and retention rates for those teachers who received their initial certification within the last three years. Additionally, adding a "high-need school" marker to such a list would also incur minimal additional burden.

The remaining 11 States would likely incur additional burden in collecting information about the employment and retention of recent graduates of teacher preparation programs in its jurisdiction. To the extent that it is not possible to establish these measures using existing data systems, States may need to obtain some or all of this information from teacher preparation programs or from the teachers themselves upon requests for certification and licensure. The Department estimates that 150 hours may be required at the State level to collect information about new teachers employed in full-time teaching positions (including designing the data request instruments, disseminating them, providing training or other technical assistance on completing the instruments, collecting the data, and checking their accuracy), which would amount to a total of 1,650 hours (150 hours multiplied by 11 States).

Survey Outcomes

Proposed § 612.5(a)(3) would require a State to provide data on each teacher preparation program's teacher survey results. This would require States to report data from a survey of new teachers in their first year of teaching designed to capture their perceptions of whether the training that they received was sufficient to meet classroom and profession realities.

Proposed § 612.5(a)(3) would also require a State to provide data on each teacher preparation program's employer survey results. This would require States to report data from a survey of employers or supervisors designed to capture their perceptions of whether the new teachers they employ or supervise were prepared sufficiently to meet classroom and profession realities.

Some States and IHEs already survey graduates of their teacher preparation programs. The sampling size and length of survey instrument can strongly affect the potential burden associated with administering the survey. The Department has learned that some States already have experience carrying out such surveys (for a more detailed discussion of these and other estimates

in this section, see the Regulatory Impact Assessment discussion of costs, benefits and transfers regarding student learning outcomes). In order to account for variance in States' abilities to conduct such surveys, the variance in the survey instruments themselves, and the need to ensure statistical validity and reliability, the Department assumes a somewhat higher burden estimate than States' initial experiences.

Based on Departmental consultation with researchers experienced in carrying out survey research, the Department assumes that survey instruments would not require more than 30 minutes to complete. The Department further assumes that a State would be able to develop a survey in 1,620 hours. Assuming that States with experience in administering surveys would incur a lower cost, the Department assumes that the total burden incurred nationwide would maximally be 31,824 hours (612 hours multiplied by 52 States).

Assurance of Accreditation

Under proposed § 612.5(a)(4), States would be required to assure that each teacher preparation program in the State either: (a) Is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs or (b) provides teacher candidates with content and pedagogical knowledge and quality clinical preparation, and has rigorous teacher candidate entry and exit standards consistent with section 206(c) of the HEA.

The Council for the Accreditation of Educator Preparation (CAEP), a union of two formerly independent national accrediting agencies, the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC), reports that currently it has fully accredited approximately 800 IHEs. The existing IRC currently requires reporting of whether each teacher preparation program is accredited by a specialized accrediting agency, and if so, which one. For this reason, the Department believes that no significant start-up burden will be associated with State determinations of specialized accreditation of teacher preparation programs for those programs that are already accredited.

Based on the 1,522 IHEs that reported using the most recent IRC, the Department estimates that States would have to provide the assurances described in proposed § 612.5(a)(4)(ii) for the remaining 731 IHEs.[86] Based on an estimated average of 14.65 teacher preparation programs at each IHE (see § 612.3 of this burden report for a more detailed explanation of this figure), the Department estimates that States will have to provide such assurances for approximately 10,716 programs at IHEs nationwide (731 IHEs multiplied by 14.65). In addition, the Department believes that States will have to provide such assurances for all 2,688 programs at alternative routes not associated with IHEs (see the entity-level and program-level reporting section in § 612.4 for a fuller discussion of this figure). Therefore, the Department estimates that States will have to provide such assurances for 13,404 teacher preparation programs nationwide (10,716 unaccredited programs at IHEs plus 2,688 programs at alternative routes not affiliated with an IHE).

The Department believes that States will be able to make use of accreditation guidelines from specialized accrediting agencies to determine the measures that will adequately inform a State whether its teacher preparation programs provide teacher candidates with content and pedagogical knowledge, quality clinical preparation, and have rigorous teacher candidate entry and exit qualifications. The Department estimates that States will require 2 hours for each teacher preparation program to determine whether or not it can provide such assurance. Therefore, the Department estimates that the total reporting burden to provide these assurances would be 26,808 hours (13,404 teacher preparation programs multiplied by 2 hours).

*Subtotal of Start-Up Reporting Burden Under § 612.5*

Aggregating the start-up burdens calculated under the preceding sections results in the following burdens: All States would incur a burden of 390,831 hours to establish student learning outcome measures for all subjects and grades, 58,800 hours to link those student learning outcome measures back to each teacher's preparation program, 1,650 hours to measure employment outcomes, 26,808 hours to develop surveys, and 31,824 hours to establish the process for assurance of certain indicators for teacher preparation programs without specialized accreditation. This totals 509,913 hours of start-up burden nationwide.

**Annual Reporting Burden**

Under proposed § 612.5(a), States would be required to transmit, through specific elements on the SRC, information related to indicators of academic content knowledge and teaching skills of new teachers for each teacher preparation program in the State. We discuss the burden associated with establishing systems related to gathering these data in the section discussing start-up burden associated with § 612.5. The following section describes the burden associated with gathering these data and reporting them to the Department annually.

*Student Learning Outcomes*

Under proposed § 612.5(a)(1), States would be required to transmit information related to student learning outcomes for each teacher preparation program in the State. The Department believes that in order to ensure the validity of the data, each State would require 2 hours to gather and compile data related to the student learning outcomes of each teacher preparation program. Much of the burden related to data collection would be built into State-established reporting systems, limiting the burden related to data collection to technical support to ensure proper reporting and to correct data that had been inputted incorrectly. States would have the discretion to use student growth measures or teacher evaluation measures in determining student learning outcomes. Regardless of the measure(s) used, the Department estimates that States would require 0.5 hours (30 minutes) for each teacher preparation program to convey this information to the Department through the SRC. This is because these measures would be calculated on a quantitative basis. The combination of gathering and reporting data related to student learning outcomes would therefore constitute a burden of 2.5 hours for each teacher preparation program, and would represent a total burden of 62,500 hours annually (2.5 hours multiplied by 25,000 teacher preparation programs).

*Employment Outcomes*

Under proposed § 612.5(a)(2), States would be required to transmit information related to employment outcomes for each teacher preparation

[86] Data from CAEP's "Annual Report to the public, the states, policymakers, and the education profession" (2013) indicated that 791 institutions were currently accredited by either TEAC or NCATE. As noted above, Mary Brabeck, chair of CAEP, has indicated in Congressional testimony that "more than 900 educator preparation providers participate in the educator preparation accreditation system." We have used the estimate of 791 programs for purposes of these calculations to estimate the number of programs that are currently not accredited by CAEP or its predecessor organizations. As a result, any estimates of cost or burden arising from this estimate will likely overestimate the costs associated with assurance of accreditation.

program in the State. In order to report employment outcomes to the Department, States would be required to compile and transmit teacher placement rate data, teacher placement rate data calculated for high-need schools, teacher retention rate data, and teacher retention rate data for high-need schools. Similar to the process for reporting student learning outcome data, much of the burden related to gathering data on employment outcomes would be subsumed into the State-established data systems, which would provide information on whether and where teachers were employed. The Department estimates that States would require 3 hours to gather data both on teacher placement and teacher retention for each teacher preparation program in the State. Reporting these data using the SRC would be relatively straightforward. The measures would be the percentage of teachers placed and the percentage of teachers who continued to teach, both generally and at high-need schools. The Department therefore estimates that States would require 0.5 hours (30 minutes) for each teacher preparation program to convey this information to the Department through the SRC. The combination of gathering and reporting data related to employment outcomes would therefore constitute a burden of 3.5 hours for each teacher preparation program and would represent a total burden of 87,500 hours annually (3.5 hours multiplied by 25,000 teacher preparation programs).

*Survey Outcomes*

In addition to the start-up burden needed to produce a survey, States would incur annual burdens to administer the survey. Surveys would include, but would not be limited to, a teacher survey and an employer survey, designed to capture perceptions of whether new teachers who are employed as teachers in their first year of teaching in the State where the teacher preparation program is located possess the skills needed to succeed in the classroom. The burdens for administering an annual survey would be borne by the State administering the survey and the respondents completing it. For the reasons discussed in the Regulatory Impact Assessment section of this notice, the Department estimates that States would require approximately 0.5 hours (30 minutes) per respondent to collect a sufficient number of survey instruments to ensure an adequate response rate. The Department employs an estimate of 285,181 respondents (70 percent of 407,402—the 203,701 completers plus their 203,701 employers) that would be required to complete the survey. Therefore, the Department estimates that the annual burden to respondents nationwide would be 142,591 hours (285,181 respondents multiplied by 0.5 hours per respondent).

With respect to burden incurred by States to administer the surveys annually, the Department estimates that one hour of burden would be incurred for every respondent to the surveys. This would constitute an annual burden nationwide of 285,181 hours (285,181 respondents multiplied by one hour per respondent).

Under proposed § 612.5(a)(3), after these surveys are administered, States would be required to report the information using the SRC. In order to report survey outcomes to the Department, the Department estimates that States would need 0.5 hours to report the quantitative data related to the survey responses for each instrument on the SRC, constituting a total burden of one hour to report data on both instruments. This would represent a total burden of 25,000 hours annually (1 hour multiplied by 25,000 teacher preparation programs). The total burden associated with administering, completing, and reporting data on the surveys would therefore constitute 452,772 hours annually (142,591 hours plus 285,181 hours plus 25,000 hours).

*Assurance of Specialized Accreditation*

Under proposed § 612.5(a)(4)(i), States would be required to report whether each program in the State is accredited by a specialized accrediting agency. The Department estimates that 726 IHEs offering teacher preparation programs are or will be accredited by a specialized accrediting agency (see the start-up burden discussion for § 612.5 for an explanation of this figure). Using the IRC, IHEs already report to States whether teacher preparation programs have specialized accreditation. This reporting element would be pre-populated for States on the SRC, and is reflected in the burden calculation relating to SRC reporting in § 612.4 of this burden statement. The Department estimates no additional burden for this reporting element.

Under proposed § 612.5(a)(4)(ii), for those programs that are not accredited by a specialized accrediting agency, States would be required to report on certain indicators in lieu of that accreditation: Whether the program provides teacher candidates with content and pedagogical knowledge and quality clinical preparation, and has rigorous teacher candidate entry and exit qualifications. Such requirements should be built into State approval of relevant programs. The Department estimates that States would require 0.25 hours (15 minutes) to provide to the Secretary an assurance, in a yes/no format, whether each teacher preparation program in its jurisdiction not holding a specialized accreditation from CAEP, NCATE, or TEAC meets these indicators.

As discussed in the start-up burden section of § 612.5 that discusses assurance of specialized accreditation, the Department estimates States would have to provide such assurances for 13,404 teacher preparation programs that do not have specialized accreditation. Therefore, the Department estimates that the total burden associated with providing an assurance that these teacher preparation programs meet these indicators is 3,351 hours (0.25 hours multiplied by the 13,404 teacher preparation programs that do not have specialized accreditation).

**Subtotal of Annual Reporting Burden Under § 612.5**

Aggregating the annual burdens calculated under the preceding sections results in the following burdens: All States would incur a burden of 62,500 hours to report on student learning outcome measures for all subjects and grades, 87,500 hours to report on employment outcomes, 452,772 hours to report on survey outcomes, and 3,351 hours to provide assurances that teacher preparation programs without specialized accreditation meet certain indicators. This totals 606,123 hours of annual burden nationwide.

**Total Reporting Burden Under § 612.5**

Aggregating the start-up and annual burdens calculated under the preceding sections results in the following burdens: All States would incur a start-up burden under § 612.5 of 509,913 hours and an annual burden under § 612.5 of 606,123 hours. This totals 1,116,036 burden hours under § 612.5 nationwide.

**Section 612.6—What Must a State Consider in Identifying Low-Performing Teacher Preparation Programs or At-Risk Programs**

The proposed regulations in § 612.6 would require States to use criteria, including, at a minimum, indicators of academic content knowledge and teaching skills from § 612.5, to identify low-performing or at-risk teacher preparation programs.

For a fuller discussion of the burden related to the consideration and selection of the criteria reflected in the indicators described in § 612.5, see the start-up burden section of § 612.4(b) and

§ 612.4(c) discussing meaningful differentiations. Apart from that burden discussion, the Department believes States would incur no other burden related to this proposed regulatory provision.

**Section 612.7—Consequences for a Low-Performing Teacher Preparation Program That Loses the State's Approval or the State's Financial Support**

For any IHE administering a teacher preparation program that has lost State approval or financial support based on being identified as a low-performing teacher preparation program, the proposed regulations under § 612.7 require the IHE to—(a) notify the Secretary of its loss of State approval or financial support within thirty days of such designation; (b) immediately notify each student who is enrolled in or accepted into the low-performing teacher preparation program and who receives funding under title IV, HEA that the IHE is no longer eligible to provide such funding to them; and (c) disclose information on its Web site and promotional materials regarding its loss of State approval or financial support and loss of eligibility for title IV funding.

The Department does not expect that a large percentage of programs will be subject to a loss of title IV eligibility. The Department estimates that approximately 50 programs will lose their State approval or financial support.

For those 50 programs, the Department estimates that it will take each program 15 minutes to notify the Secretary of its loss of eligibility; 5 hours to notify all students who are enrolled in or accepted into the program and who receives funding under title IV of the HEA; and 30 minutes to disclose this information on its Web sites and promotional materials, for a total of 5.75 hours per program. The Department estimates the total burden at 287.5 hours (50 programs multiplied by 5.75 hours).

**Section 612.8—Regaining Eligibility To Accept or Enroll Students Receiving Title IV, HEA Funds After Loss of State Approval or Financial Support**

The proposed regulations in § 612.8 provide a process for a low-performing teacher preparation program that has lost State approval or financial support to regain its ability to accept and enroll students who receive title IV, HEA funds. Under this process, IHEs would submit an application and supporting documentation demonstrating to the Secretary: (1) Improved performance on the teacher preparation program performance criteria reflected in indicators described in § 612.5 as determined by the State; and (2) reinstatement of the State's approval or the State's financial support.

The process by which programs and institutions apply for title IV eligibility already accounts for the burden associated with this provision.

**Total Reporting Burden Under Part 612**

Aggregating the total burdens calculated under the preceding sections of Part 612 results in the following burdens: Total burden hours incurred under § 612.3 is 146,340 hours, under § 612.4 is between 38,350 hours and 38,466 hours, under § 612.5 is 1,116,036 hours, under § 612.7 is 288 hours, and under § 612.8 is 200 hours. This totals between 1,301,213 hours and 1,301,330 hours nationwide.

**Reporting Burden Under Part 686**

The proposed changes to Part 686 in these regulations have no measurable effect on the burden currently identified in the OMB Control Numbers 1845–0083 and 1845–0084.

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections the Department will submit to the OMB for approval and public comment under the Paperwork Reduction Act. In the chart, the Department labels those estimated burdens not already associated an OMB approval number under a single prospective designation "OMB 1840–0744." This label represents a single information collection; the different sections of the proposed regulations are separated in the table below for clarity and to appropriately divide the burden hours associated with each proposed regulatory section.

Please note that the changes in burden estimated in the chart are based on the change in burden under the current IRC OMB control numbers 1840–0744 and "OMB 1840–0744." The burden estimate for 612.3 bases the burden estimate on the most recent data available for the number of IHEs that are required to report (*i.e.* 1,522 IHEs using most recent data available rather than 1,250 IHEs using prior estimates). For a complete discussion of the costs associated with the burden incurred under these proposed regulations, please see the Regulatory Impact Assessment, specifically the accounting statement.

| Regulatory section | Information collection | OMB Control Number and estimated change in the burden |
|---|---|---|
| 612.3 | This proposed regulatory section would require IHEs that provide a teacher preparation program leading to State certification or licensure to provide data on teacher preparation program performance to the States. | OMB 1840–0744—The burden would decrease by 83,482 hours. |
| 612.4 | This proposed regulatory section would require States that receive funds under the Higher Education Act of 1965, as amended, to report to the Secretary on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative route to State certification and licensure programs. | OMB 1840–0744—The burden would decrease by between 15,283 hours and 15,400 hours. |
| 612.5 | This proposed regulatory section would require States to use certain indicators of teacher preparation performance for purposes of the State report card. | OMB 1840–0744—The burden would increase by 606,123. |
| 612.6 | This proposed regulatory section would require States to use criteria, including indicators of academic content knowledge and teaching skills, to identify low-performing or at-risk teacher preparation programs. | OMB 1840–0744—The burden associated with this regulatory provision is accounted for in other portions of this burden statement. |

| Regulatory section | Information collection | OMB Control Number and estimated change in the burden |
|---|---|---|
| 612.7 | The proposed regulations under this section would require any IHE administering a teacher preparation program that has lost State approval or financial support based on being identified as a low-performing teacher preparation program to notify the Secretary and students receiving title IV, HEA funds, and to disclose this information on its Web site. | OMB 1840–0744—The burden would increase by 288 hours. |
| 612.8 | The proposed regulations in this section would provide a process for a low-performing teacher preparation program that lost State approval or financial support to regain its ability to accept and enroll students who receive title IV funds. | There is no burden associated with this regulatory provision. |
| Total Change in Burden. | | Total increase in burden under parts 612 would be between 507,530 hours and 507,646 hours. |

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for OMB collection 1840–0744. In preparing your comments you may want to review the ICR, which is available at *www.reginfo.gov* and for which the comment period will run concurrently with the comment period of the NPRM. To review the ICR on *www.reginfo.gov*, click on Information Collection Review.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by January 2, 2015. This does not affect the deadline for your comments to us on the proposed regulations.

### Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

### Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 612.4 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials and others to review and provide comments on these proposed regulations.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number does not apply.)

### List of Subjects

*34 CFR Part 612*

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 686*

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: November 25, 2014.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to

amend chapter VI of title 34 of the Code of Federal Regulations as follows:

■ 1. Part 612 is added to read as follows:

## PART 612—TITLE II REPORTING SYSTEM

### Subpart A—Scope, Purpose and Definitions



### Subpart B—Reporting Requirements



### Subpart C—Consequences of Withdrawal of State Approval or Financial Support



**Authority:** 20 U.S.C. 1022d, unless otherwise noted.

## Subpart A—Scope, Purpose and Definitions

### § 612.1 Scope and purpose.

This part establishes regulations related to the teacher preparation program accountability system under title II of the HEA. This part includes:

(a) Institutional Report Card reporting requirements.

(b) State Report Card reporting requirements.

(c) Requirements related to the indicators States must use to report on teacher preparation program performance.

(d) Requirements related to the areas States must consider to identify low-performing teacher preparation programs and at-risk teacher preparation programs and actions States must take with respect to those programs.

(e) The consequences for a low-performing teacher preparation program that loses the State's approval or the State's financial support.

(f) The conditions under which a low-performing teacher preparation program that has lost the State's approval or the State's financial support may regain eligibility to resume accepting and enrolling students who receive title IV, HEA funds.

(Authority: 20 U.S.C. 1022d)

### § 612.2 Definitions.

(a) The following terms used in this part are defined in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Distance education
Secretary
State
Title IV, HEA program

(b) The following terms used in this part are defined in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Payment period
TEACH Grant

(c) The following term used in this part is defined in 34 CFR 77.1:

Local educational agency (LEA)

(d) Other definitions used in this part are defined as follows:

*At-risk teacher preparation program:* A teacher preparation program that is identified as at-risk of being low-performing by a State based on the State's assessment of teacher preparation program performance under § 612.4.

*Candidate accepted into a teacher preparation program:* An individual who has been admitted into a teacher preparation program but who has not yet enrolled in any coursework that the institution has determined to be part of that teacher preparation program.

*Candidate enrolled in a teacher preparation program:* An individual student who has been accepted into a teacher preparation program and is in the process of completing coursework but has not yet completed the teacher preparation program.

*Content and pedagogical knowledge:* An understanding of the central concepts and structures of the discipline in which a teacher candidate has been trained, and how to create effective learning experiences that make the discipline accessible and meaningful for all students, including a distinct set of instructional skills to address the needs of English language learners and students with disabilities, in order to assure mastery of the content by the students, as described in applicable professional, State, or institutional standards.

*Effective teacher preparation program:* A teacher preparation program that is identified as effective by a State based on the State's assessment of teacher preparation program performance under § 612.4.

*Employer survey:* A survey of employers or supervisors designed to capture their perceptions of whether the new teachers they employ or supervise, who attended teacher preparation programs in the State where the new teachers are employed or supervised, were effectively prepared.

*Employment outcomes:* Data, measured by the teacher placement rate, the teacher placement rate calculated for high-need schools, the teacher retention rate, and the teacher retention rate calculated for high-need schools, on the effectiveness of a teacher preparation program in preparing, placing, and supporting new teachers consistent with local education agency (LEA) needs.

*Exceptional teacher preparation program:* A teacher preparation program that is identified as exceptional by a State based on the State's assessment of teacher preparation program performance under § 612.4.

*High-need school:* A school that, based on the most recent data available, meets one or both of the following:

(i) The school is in the highest quartile of schools in a ranking of all schools served by a local educational agency (LEA), ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(A) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(B) The percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act [*42* U.S.C. *1751 et seq.*].

(C) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act [*42* U.S.C. *601 et seq.*].

(D) The percentage of students eligible to receive medical assistance under the Medicaid program.

(E) A composite of two or more of the measures described in paragraphs (i)(A) through (D) of this definition.

(ii) In the case of—

(A) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or

(B) Any other school that is not an elementary school, the other school serves students not less than 45 percent

of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

*Low-performing teacher preparation program:* A teacher preparation program that is identified as low-performing by a State based on the State's assessment of teacher preparation program performance under § 612.4.

*New teacher:* A recent graduate or alternative route participant who, within the last three title II reporting years, as defined in the report cards pursuant to §§ 612.3 and 612.4, has received a level of certification or licensure that allows him or her to serve in the State as a teacher of record for K–12 students and, at a State's discretion, preschool students.

*Quality clinical preparation:* Training that integrates content, pedagogy, and professional coursework around a core of pre-service clinical experiences. Such training must, at a minimum—

(i) Be provided, at least in part, by qualified clinical instructors, including school and LEA-based personnel, who meet established qualification requirements and who use a training standard that is made publicly available;

(ii) Include multiple clinical or field experiences, or both, that serve diverse, rural, or underrepresented student populations in elementary through secondary school, including English language learners and students with disabilities, and that are assessed using a performance-based protocol to demonstrate teacher candidate mastery of content and pedagogy; and

(iii) Require that teacher candidates use research-based practices, including observation and analysis of instruction, collaboration with peers, and effective use of technology for instructional purposes.

*Recent graduate:* An individual whom a teacher preparation program has documented as having met all the requirements of the program within the last three title II reporting years, as defined in the report cards prepared under §§ 612.3 and 612.4. Documentation may take the form of a degree, institutional certificate, program credential, transcript, or other written proof of having met the program's requirements. In applying this definition, whether an individual has or has not been hired as a full-time teacher or been recommended to the State for initial certification or licensure may not be used as a criterion for determining if the individual is a recent graduate.

*Rigorous teacher candidate entry and exit qualifications:* Qualifications of a teacher candidate established by a teacher preparation program prior to the candidate's completion of the program using, at a minimum, rigorous entrance requirements based on multiple measures, and rigorous exit criteria based on an assessment of candidate performance that relies on validated professional teaching standards and measures of the candidate's effectiveness that include, at a minimum, measures of curriculum planning, instruction of students, appropriate plans and modifications for all students, and assessment of student learning.

*Student achievement in non-tested grades and subjects:*

For purposes of determining student growth in grades and subjects in which assessments are not required under section 1111(b)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), measures of student learning and performance, such as student results on pre-tests and end-of-course tests; objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous, comparable across schools, and consistent with State guidelines.

*Student achievement in tested grades and subjects:* For purposes of determining student growth for grades and subjects in which assessments are required under section 1111(b)(3) of the ESEA—

(i) A student's score on the State's assessments under section 1111(b)(3) of the ESEA and, as appropriate;

(ii) Other measures of student learning, such as those described in the definition of *Student achievement in non-tested grades and subjects,* provided that the measures are rigorous, comparable across schools, and consistent with State guidelines.

*Student growth:* For an individual student, the change in student achievement in tested grades and subjects and the change in student achievement in non-tested grades and subjects between two or more points in time.

*Student learning outcomes:* For each teacher preparation program in a State, data on the aggregate learning outcomes of students taught by new teachers. These data are calculated by the State using a student growth measure, a teacher evaluation measure, or both.

*Survey outcomes:* Qualitative and quantitative data collected through survey instruments, including, but not limited to, a teacher survey and an employer survey, designed to capture perceptions of whether new teachers who are employed as teachers in their first year teaching in the State where the teacher preparation program is located possess the skills needed to succeed in the classroom.

*Teacher evaluation measure:* By grade span and subject area and consistent with statewide guidelines, the percentage of new teachers rated at each performance level under an LEA teacher evaluation system that differentiates teachers on a regular basis using at least three performance levels and multiple valid measures in determining each teacher's performance level. For purposes of this definition, multiple valid measures of performance levels must include, as a significant factor, data on student growth for all students (including English language learners and students with disabilities), and other measures of professional practice (such as observations based on rigorous teacher performance standards or other measures which may be gathered through multiple formats and sources such as teacher portfolios and student and parent surveys).

*Teacher placement rate:* (i) Calculated annually and pursuant to § 612.5(a), the combined non-duplicated percentage of new teachers and recent graduates who have been hired in a full-time teaching position for the grade level, span, and subject area in which the teachers and recent graduates were prepared.

(ii) At the State's discretion, the rate calculated under paragraph (i) of this definition may exclude one or more of the following, provided that the State uses a consistent approach to assess and report on all of the teacher preparation programs in the State:

(A) New teachers or recent graduates who have taken teaching positions in another State.

(B) New teachers or recent graduates who have taken teaching positions in private schools.

(C) New teachers or recent graduates who have taken teaching positions that do not require State certification.

(D) New teachers or recent graduates who have enrolled in graduate school or entered military service.

*Teacher preparation entity:* An institution of higher education or other organization that is authorized by the State to prepare teachers.

*Teacher preparation program:* A program, whether traditional or alternative route, offered by a teacher preparation entity that leads to a specific State teacher certification or licensure in a specific field.

*Teacher retention rate:* (i) Calculated annually and pursuant to § 612.5(a), any of the following rates, as determined by the State provided that the State uses a consistent approach to assess and report

on all of the teacher preparation programs in the State:

(A) The percentage of new teachers who have been hired in full-time teaching positions and served for periods of at least three consecutive school years within five years of being granted a level of certification that allows them to serve as teachers of record.

(B) The percentage of new teachers who have been hired in full-time teaching positions and reached a level of tenure or other equivalent measure of retention within five years of being granted a level of certification that allows them to serve as teachers of record.

(C) One hundred percent less the percentage of new teachers who have been hired in full-time teaching positions and whose employment was not continued by their employer for reasons other than budgetary constraints within five years of being granted a level of certification or licensure that allows them to serve as teachers of record.

(ii) At the State's discretion, the rates calculated under this definition may exclude one or more of the following, provided that the State uses a consistent approach to assess and report on all teacher preparation programs in the State:

(A) New teachers who have taken teaching positions in other States.

(B) New teachers who have taken teaching positions in private schools.

(C) New teachers who are not retained due to particular market conditions or circumstances particular to the LEA beyond the control of teachers or schools.

(D) New teachers who have enrolled in graduate school or entered military service.

*Teacher survey:* A survey of new teachers serving in full-time teaching positions for the grade level, span, and subject area in which the teachers were prepared that is designed to capture their perceptions of whether the preparation that they received from their teacher preparation programs was effective.

(Authority: 20 U.S.C. 1022d)

## Subpart B—Reporting Requirements

### § 612.3 What are the regulatory reporting requirements for the Institutional Report Card?

Beginning on October 1, 2017, and annually thereafter, each institution of higher education that conducts traditional teacher preparation programs or alternative routes to State certification or licensure programs, and that enrolls students receiving title IV HEA program funds—

(a) Must report to the State on the quality of teacher preparation and other information consistent with section 205(a) of the HEA, using an institutional report card that is prescribed by the Secretary;

(b) Must prominently and promptly post the institutional report card information on the institution's Web site and, if applicable, on the teacher preparation program portion of the institution's Web site; and

(c) May also provide the institutional report card information to the general public in promotional or other materials it makes available to prospective students or other individuals.

(Authority: 20 U.S.C. 1022d)

### § 612.4 What are the regulatory reporting requirements for the State Report Card?

(a) *General.* Beginning on April 1, 2018, and annually thereafter, each State must—

(1) Report to the Secretary, using a State report card that is prescribed by the Secretary, on—

(i) The quality of all approved teacher preparation programs in the State (both traditional teacher preparation programs and alternative routes to State certification or licensure programs), including distance education programs, whether or not they enroll students receiving Federal assistance under the HEA; and

(ii) All other information consistent with section 205(b) of the HEA; and

(2) Make the State report card information widely available to the general public by posting the State report card information on the State's Web site.

(b) *Reporting of information on teacher preparation program performance.* In the State report card, beginning in April 2019 and annually thereafter, the State—

(1) Must make meaningful differentiations in teacher preparation program performance using at least four performance levels—low-performing teacher preparation program, at-risk teacher preparation program, effective teacher preparation program, and exceptional teacher preparation program—based on the indicators in § 612.5 including, in significant part, employment outcomes for high-need schools and student learning outcomes;

(2) May identify the performance level for a teacher preparation program as effective or higher quality only if it has satisfactory or higher student learning outcomes;

(3) Must provide—

(i) For each teacher preparation program—

(A) Disaggregated data for each of the indicators identified pursuant to § 612.5; and

(B) The State's assurance that the teacher preparation program either is accredited by a specialized agency pursuant to § 612.5(a)(4)(i), or produces teacher candidates with content and pedagogical knowledge and quality clinical preparation who have met rigorous teacher candidate entry and exit qualifications pursuant to § 612.5(a)(4)(ii);

(ii) The State's weighting of the different indicators in § 612.5 for purposes of describing the State's assessment of program performance; and

(iii) The State-level rewards or consequences associated with the designated performance levels;

(4) In implementing paragraph (b)(1) through (3) of this section, except as provided in paragraphs (b)(4)(ii)(D) and (E) of this section, must ensure the performance of all of the State's teacher preparation programs are represented in the State report card by—

(i) Annually reporting on the performance of each teacher preparation program that produces a total of 25 or more new teachers in a given reporting year (program size threshold), or, at a State's discretion, annually reporting on the performance of each teacher preparation program that produces fewer than 25 or more new teachers (lower program size threshold—*e.g.*, 15 or 20)—in a given reporting year; and

(ii) For any teacher preparation program that produces fewer than a program size threshold of 25 new teachers in a given reporting year (or for a State that chooses to use a lower program size threshold, for any teacher preparation program that produces fewer new teachers than the lower program size threshold), annually reporting on the program's performance by aggregating data under paragraph (b)(4)(ii)(A), (B), or (C) of this section in order to meet the program size threshold (or for a State that chooses a lower program size threshold, in order to meet the lower program size threshold) except as provided in paragraph (b)(4)(ii)(D) or (E) of this section.

(A) The State may report on the program's performance by aggregating data that determine the program's performance with data for other teacher preparation programs that are operated by the same teacher preparation entity and are similar to or broader than the program in content.

(B) The State may report on the program's performance by aggregating

data that determine the program's performance over multiple years for up to four years until the size threshold is met.

(C) If a State cannot meet the program size threshold (or for a State that chooses a lower program size threshold, if the State cannot meet the lower program size threshold) by aggregating data under paragraph (b)(4)(ii)(A) or (B) of this section, it may aggregate data using a combination of the methods under both of these paragraphs.

(D) The State is not required under this paragraph (b)(4)(ii) to report data on a particular teacher preparation program for a given reporting year if aggregation under this paragraph (b)(4)(ii) would not yield the program size threshold (or for a State that chooses a lower program size threshold, would not yield to the lower program size threshold) for that program.

(E) The State also is not required under this paragraph (b)(4)(ii) to report data on a particular teacher preparation program if reporting these data would be inconsistent with Federal or State privacy and confidentiality laws and regulations; and

(5) Must report on the procedures established by the State in consultation with a group of stakeholders, as described in paragraph (c)(1) of this section, and the State's examination of its data collection and reporting, as described in paragraph (c)(2) of this section, in the State report card submitted—

(i) On April 1, 2018, and every four years thereafter; and

(ii) At any other time that the State makes substantive changes to the weighting of the indicators or the procedures for assessing and reporting the performance of each teacher preparation program in the State described in paragraph (c) of this section.

(c) *Fair and equitable methods*—(1) *Consultation.* Each State must establish in consultation with a representative group of stakeholders the procedures for assessing and reporting the performance of each teacher preparation program in the State under this section.

(i) The representative group of stakeholders must include, at a minimum, representatives of leaders and faculty of traditional teacher preparation programs and alternative routes to State certification or licensure programs; students of teacher preparation programs; superintendents; school board members; elementary through secondary school leaders and instructional staff; elementary through secondary school students and their parents; IHEs that serve high proportions of low-income or minority students, or English language learners; advocates for English language learners and students with disabilities; and officials of the State's standards board or other appropriate standards body.

(ii) The procedures for assessing and reporting the performance of each teacher preparation program in the State under this section must, at minimum, include—

(A) The weighting of the indicators identified in § 612.5 for establishing performance levels of teacher preparation programs as required by this section;

(B) The aggregation of data pursuant to paragraph (b)(4)(ii) of this section;

(C) State-level rewards or consequences associated with the designated performance levels; and

(D) Appropriate opportunities for programs to challenge the accuracy of their performance data and classification of the program.

(2) *State examination of data collection and reporting.* Each State must periodically examine the quality of the data collection and reporting activities it conducts pursuant to paragraph (b) of this section and § 612.5, and, as appropriate, modify its data collection and reporting activities using the procedures described in this paragraph.

(d) *Inapplicability to certain insular areas.* Paragraphs (b) and (c) of this section do not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands.

(Authority: 20 U.S.C. 1022d)

**§ 612.5 What indicators must a State use to report on teacher preparation program performance for purposes of the State report card?**

(a) For purposes of reporting under § 612.4, a State must assess, for each teacher preparation program within its jurisdiction, indicators of academic content knowledge and teaching skills of new teachers from that program. These indicators of academic content knowledge and teaching skills must include, at a minimum—

(1) Student learning outcomes.

(2) Employment outcomes. For purposes of assessing employment outcomes, a State may, in its discretion, assess traditional and alternative route teacher preparation programs differently based on whether there are differences in the programs that affect employment outcomes, provided that the varied assessments result in equivalent levels of accountability and reporting;

(3) Survey outcomes; and

(4) Whether the program—

(i) Is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs; or

(ii) Consistent with § 612.4(b)(3)(i)(B)—

(A) Produces teacher candidates with content and pedagogical knowledge;

(B) Produces teacher candidates with quality clinical preparation; and

(C) Produces teacher candidates who have met rigorous teacher candidate entry and exit qualifications.

(b) At a State's discretion, the indicators of academic content knowledge and teaching skills may include other indicators predictive of a teacher's effect on student performance, such as student survey results, provided that the State uses the same indicators for all teacher preparation programs in the State.

(c) This section does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands.

(Authority: 20 U.S.C. 1022d)

**§ 612.6 What must a State consider in identifying low-performing teacher preparation programs or at-risk teacher preparation programs, and what regulatory actions must a State take with respect to those programs identified as low-performing?**

(a)(1) In identifying low-performing or at-risk teacher preparation programs the State must use criteria that, at a minimum, include the indicators of academic content knowledge and teaching skills from § 612.5, including in significant part, student learning outcomes; and

(2) Paragraph (a)(1) of this section does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, Guam, and the United States Virgin Islands.

(b) At a minimum, a State must provide technical assistance to low-performing teacher preparation programs in the State to help them improve their performance in accordance with section 207(a) of the HEA. Technical assistance may include, but is not limited to: providing programs with information on the

specific indicators used to determine the program's rating (*e.g.*, specific areas of weakness in student learning, job placement and retention, and new teacher and employer satisfaction); assisting programs to address the rigor of their entry and exit criteria; helping programs identify specific areas of curriculum or clinical experiences that correlate with gaps in graduates' preparation; helping identify potential research and other resources to assist program improvement (*e.g.*, evidence of other successful interventions, other university faculty, other teacher preparation programs, nonprofits with expertise in educator preparation and teacher effectiveness improvement, accrediting organizations, or higher education associations); and sharing best practices from exemplary programs.

(Authority: 20 U.S.C. 1022d and 1022f)

### Subpart C—Consequences of Withdrawal of State Approval or Financial Support

#### § 612.7 What are the consequences for a low-performing teacher preparation program that loses the State's approval or the State's financial support?

(a) Any teacher preparation program for which the State has withdrawn the State's approval or the State has terminated the State's financial support due to the State's identification of the program as a low-performing teacher preparation program—

(1) Is ineligible for any funding for professional development activities awarded by the Department as of the date that the State withdrew its approval or terminated its financial support;

(2) May not include any candidate accepted into the teacher preparation program or any candidate enrolled in the teacher preparation program who receives aid under title IV, HEA programs in the institution's teacher preparation program as of the date that the State withdrew its approval or terminated its financial support; and

(3) Must provide transitional support, including remedial services, if necessary, to students enrolled at the institution at the time of termination of financial support or withdrawal of approval for a period of time that is not less than the period of time a student continues in the program but no more than 150 percent of the published program length.

(b) Any institution administering a teacher preparation program that has lost State approval or financial support based on being identified as a low-performing teacher preparation program must—

(1) Notify the Secretary of its loss of the State's approval or the State's financial support due to identification as low-performing by the State within 30 days of such designation;

(2) Immediately notify each student who is enrolled in or accepted into the low-performing teacher preparation program and who receives title IV, HEA program funds that, commencing with the next payment period, the institution is no longer eligible to provide such funding to students enrolled in or accepted into the low-performing teacher preparation program; and

(3) Disclose on its Web site and in promotional materials that it makes available to prospective students that the teacher preparation program has been identified as a low-performing teacher preparation program by the State and has lost the State's approval or the State's financial support, and that students accepted or enrolled in the low-performing teacher preparation program may not receive title IV, HEA program funds.

(Authority: 20 U.S.C. 1022f)

#### § 612.8 How does a low-performing teacher preparation program regain eligibility to accept or enroll students receiving Title IV, HEA program funds after loss of the State's approval or the State's financial support?

(a) A low-performing teacher preparation program that has lost the State's approval or the State's financial support may regain its ability to accept and enroll students who receive title IV, HEA program funds upon demonstration to the Secretary under paragraph (b) of this section of—

(1) Improved performance on the teacher preparation program performance criteria in § 612.5 as determined by the State; and

(2) Reinstatement of the State's approval or the State's financial support, or, if both were lost, the State's approval and the State's financial support.

(b)(1) To regain eligibility to accept or enroll students receiving title IV, HEA funds in a teacher preparation program that was previously identified by the State as low-performing and that lost the State's approval or the State's financial support, the institution that offers the teacher preparation program must submit an application to the Secretary along with supporting documentation that will enable the Secretary to determine that the teacher preparation program previously identified by the State as low-performing has met the requirements under paragraph (a) of this section.

(2) The Secretary evaluates an institution's application to participate in the title IV, HEA programs consistent with 34 CFR 600.20 and determines if the institution is eligible to participate in these programs. In the event that an institution is not granted eligibility to participate in the title IV, HEA programs, that institution may submit additional evidence to demonstrate to the satisfaction of the Secretary that it is eligible to participate in these programs.

(Authority: 20 U.S.C. 1022f)

## PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 2. The authority citation for part 686 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

■ 3. Section 686.2 is amended by:

■ A. Redesignating paragraph (d) as paragraph (e).

■ B. Adding a new paragraph (d).

■ C. In newly redesignated paragraph (e):

■ i. Redesignating paragraphs (1) and (2) in the definition of "Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year)" as paragraphs (i) and (ii);

■ ii. Adding in alphabetical order definitions of "Classification of Instructional Programs" and "Educational Service Agency";

■ iii. Redesignating paragraphs (1) through (7) in the definition of "High-need field" as paragraphs (i) through (vii), respectively;

■ iv. Adding in alphabetical order a definition of "High-quality teacher preparation program";

■ v. Redesignating paragraphs (1) through (3) in the definition of "Institutional Student Information Record (ISIR)" as paragraphs (i) through (iii), respectively;

■ vi. Redesignating paragraphs (1) and (2) as paragraphs (i) and (ii) and paragraphs (2)(i) and (ii) as paragraphs (ii)(A) and (B), respectively, in the definition of "Numeric equivalent";

■ vii. Redesignating paragraphs (1) through (3) in the definition of "Post-baccalaureate program" as paragraphs (i) through (iii), respectively;

■ viii. Adding in alphabetical order a definition for "School or educational service agency serving low-income students (low-income school)";

■ ix. Removing the definition of "School serving low-income students (low-income school)";

■ x. Revising the definitions of "TEACH Grant-eligible institution" and "TEACH Grant-eligible program";
■ xi. Adding in alphabetical order a definition of "TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program"; and
■ xii. Revising the definition of "Teacher preparation program".

The additions and revisions read as follows:

**§ 686.2 Definitions.**

* * * * *

(d) Definitions for the following terms used in this part are in Title II Reporting System, 34 CFR part 612:

Effective Teacher Preparation Program

(e) Other terms used in this part are defined as follows:

* * * * *

*Classification of instructional programs (CIP):* A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics.

*Educational service agency:* A regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to LEAs, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

*High-quality teacher preparation program:* A teacher preparation program that—

(i) For TEACH Grant program purposes in the 2020–2021 Title IV HEA award year, is classified by the State as effective or of higher quality under 34 CFR 612.4(b)in either or both the April 2019 and/or April 2020 State Report Cards and for TEACH Grant program purposes in the 2021–2022 Title IV HEA award year and subsequent award years, classified by the State as effective or of higher quality under 34 CFR 612.4(b), beginning with the April 2019 State Report Card, for two out of the previous three years;

(ii) Meets the exception from State reporting of teacher preparation program performance under 34 CFR 612.4(b)(4)(ii)(D) or (E); or

(iii) Is a TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program at a TEACH Grant-eligible institution.

* * * * *

*School or educational service agency serving low-income students (low-income school):* An elementary or secondary school or educational service agency that—

(i) Is located within the area served by the LEA that is eligible for assistance pursuant to title I of the ESEA;

(ii) Has been determined by the Secretary to be a school or educational service agency in which more than 30 percent of the school's or educational service agency's total enrollment is made up of children who qualify for services provided under title I of the ESEA; and

(iii) Is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary considers all elementary and secondary schools and educational service agencies operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools or educational service agencies serving low-income students.

* * * * *

*TEACH Grant-eligible institution:* An eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and—

(i) Provides at least one high-quality teacher preparation program at the baccalaureate or master's degree level that also provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(ii) Provides a two-year program that is acceptable for full credit in a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program offered by an institution described in paragraph (i) of this definition or a TEACH Grant-eligible STEM program offered by an institution described in paragraph (iii) of this definition, as demonstrated by the institution that provides the two year program;

(iii) Provides a TEACH Grant-eligible STEM program and has entered into an agreement with an institution described in paragraph (i) or (iv) of this definition to provide courses necessary for its students to begin a career in teaching; or

(iv) Provides a high-quality teacher preparation program that is a post-baccalaureate program of study.

*TEACH Grant-eligible program:* An eligible program, as defined in 34 CFR 668.8, that meets paragraph (i) of the definition of "high-quality teacher preparation program" and that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree in a high-quality teacher preparation program is considered to be a program of study that leads to a baccalaureate degree.

*TEACH Grant-eligible science, technology, engineering, or mathematics (STEM) program:* An eligible program, as defined in 34 CFR 668.8, in one of the physical, life, or computer sciences; technology; engineering; or mathematics as identified by the Secretary, that, over the most recent three years for which data are available, has not been identified by the Secretary as having fewer than 60 percent of its TEACH Grant recipients completing at least one year of teaching that fulfills the service obligation pursuant to § 686.40 within three years of completing the program. Each year, the Secretary will publish a list of STEM programs eligible to participate in the TEACH Grant program and will identify each eligible STEM program by its classification of instructional program (CIP) code.

* * * * *

*Teacher preparation program:* A State-approved course of study, the completion of which signifies that an enrollee has met all of the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. A teacher preparation program may be a traditional program or an alternative route to certification or licensure, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

* * * * *

■ 4. Section 686.3 is amended by:
■ A. In paragraph (a), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program"; and
■ B. Adding paragraph (c).

The addition reads as follows:

**§ 686.3 Duration of student eligibility.**

* * * * *

(c) An otherwise eligible student who received a TEACH Grant for enrollment in a TEACH Grant-eligible program or TEACH Grant-eligible STEM program is eligible to receive additional TEACH

Grants to complete that program, even if that program is no longer considered a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program, not to exceed four Scheduled Awards for an undergraduate or post-baccalaureate student and up to two Scheduled Awards for a graduate student. An otherwise eligible student who received a TEACH Grant for enrollment in a program before July 1 of the year these proposed regulations become effective would remain eligible to receive additional TEACH Grants to complete that program even if the program the student enrolled in is not a TEACH Grant-eligible program under proposed § 686.2(e).

* * * * *

**§ 686.4 [Amended]**

■ 5. Section 686.4(a) is amended by adding the words "or TEACH Grant-eligible STEM programs" after the words "TEACH Grant-eligible programs".

**§ 686.5 [Amended]**

■ 6. Section 686.5(b)(1) is amended by adding the words "or TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

■ 7. Section 686.11 is amended by:

■ A. Revising paragraph (a)(1)(iii).

■ B. In paragraph (b)(3), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

■ C. Adding paragraph (d).

The revision and addition read as follows:

**§ 686.11 Eligibility to receive a grant.**

(a) * * *

(1) * * *

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program; or is an otherwise eligible student who received a TEACH Grant and who is completing a program under § 686.3(c);

* * * * *

(d) *Students who received a total and permanent disability discharge on a TEACH Grant agreement to serve or a title IV, HEA loan.* If a student's previous TEACH Grant service obligation or title IV, HEA loan was discharged based on total and permanent disability, the student is eligible to receive a TEACH Grant if the student—

(1) Obtains a certification from a physician that the student is able to engage in substantial gainful activity as defined in 34 CFR 685.102(b);

(2) Signs a statement acknowledging that neither the new service obligation for the TEACH Grant the student receives nor any previously discharged service agreement on which the grant recipient is required to resume repayment in accordance with paragraph (d)(3) of this section can be discharged in the future on the basis of any impairment present when the new grant is awarded, unless that impairment substantially deteriorates and the grant recipient applies for and meets the eligibility requirements for a discharge in accordance with 34 CFR 685.213; and

(3) For a situation in which the student receives a new TEACH Grant within three years of the date that any previous TEACH Grant service obligation or title IV loan was discharged due to a total and permanent disability in accordance with § 686.42(b), 34 CFR 685.213(b)(7)(i)(B), 34 CFR 674.61(b)(6)(i)(B), or 34 CFR 682.402(c)(6)(i)(B), acknowledges that he or she is once again subject to the terms of the previously discharged TEACH Grant agreement to serve in accordance with § 686.42(b)(5) before receiving the new grant or resumes repayment on the previously discharged loan in accordance with 34 CFR 685.213(b)(7), 674.61(b)(6), or 682.402(c)(6).

* * * * *

■ 8. Section 686.12 is amended by:

■ A. In paragraph (b) introductory text, adding the words "or TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program";

■ B. In paragraph (b)(1)(i), adding the words "or a low-income educational service agency" after the word "school";

■ C. In paragraph (b)(2), adding the words "or educational service agency" after the word "school";

■ D. In paragraph (c)(1), adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program"; and

■ E. Revising paragraph (d).

The revision reads as follows:

**§ 686.12 Agreement to serve.**

* * * * *

(d) *Majoring and serving in a high-need field.* In order for a grant recipient's teaching service in a high-need field listed in the Nationwide List to count toward satisfying the recipient's service obligation, the high-need field in which he or she prepared to teach must be listed in the Nationwide List for the State in which the grant recipient begins teaching in that field—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient begins teaching in that field or when the grant recipient signed the agreement to serve or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient.

* * * * *

**§ 686.31 [Amended]**

■ 9. Section 686.31 is amended by:

■ A. In paragraph (a)(4), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program"; and

■ B. In paragraph (b)(2), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

**§ 686.32 [Amended]**

■ 10. Section 686.32 is amended by:

■ A. In paragraph (a)(3)(ii), adding the words "and low-income educational service agencies" after the word "schools";

■ B. In paragraph (a)(3)(iii)(B), adding the words "or received the TEACH Grant" after the words "that field";

■ C. In paragraph (c)(2), adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program";

■ D. In paragraph (c)(3), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program";

■ E. In paragraph (c)(4)(i), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program";

■ F. In paragraph (c)(4)(iii), adding the words "and low-income educational service agencies" after the word "schools";

■ G. In paragraph (c)(4)(iv)(B), adding the words "or when the grant recipient signed the agreement to serve or received the TEACH Grant" after the words "that field"; and

■ H. In paragraph (c)(4)(v), adding the words "or for a low-income educational service agency" after the words "low-income school".

**§ 686.35 [Amended]**

■ 11. Section 686.35 is amended by:

■ A. In paragraph (a)(2)(i), adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program"; and

■ B. In paragraph (b), adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

**§ 686.37 [Amended]**

■ 12. Section 686.37(a)(1) is amended by removing the citation "§§ 686.11" and adding in its place the citation "§§ 686.3(c), 686.11,".

■ 13. Section 686.40 is amended by revising paragraphs (b) and (f) to read as follows:

**§ 686.40 Documenting the service obligation.**

* * * * *

(b) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve, or agreements to serve if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient is teaching. The documentation must show that the grant recipient is teaching in a low-income school or low-income educational service agency. If the school or educational service agency at which the grant recipient is employed meets the requirements of a low-income school or low-income educational service agency in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school or educational service agency fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.

* * * * *

(f) A grant recipient who taught in more than one qualifying school or more than one qualifying educational service agency during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

* * * * *

**§ 686.41 [Amended]**

■ 14. In § 686.41, paragraph (a)(1) introductory text is amended by adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

■ 15. Section 686.42 is amended by:

■ A. Revising paragraph (b); and

■ B. In paragraph (c)(1), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

The revision reads as follows:

**§ 686.42 Discharge of agreement to serve.**

* * * * *

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

(2) If at any time the Secretary determines that the grant recipient does not meet the requirements of the three-year period following the discharge in 34 CFR 685.213(b)(7), the Secretary will notify the grant recipient that the grant recipient's obligation to satisfy the terms of the agreement to serve is reinstated.

(3) The Secretary's notification under paragraph (b)(2) of this section will—

(i) Include the reason or reasons for reinstatement;

(ii) Provide information on how the grant recipient may contact the Secretary if the grant recipient has questions about the reinstatement or believes that the agreement to serve was reinstated based on incorrect information;

(iii) Inform the grant recipient that interest accrual will resume on TEACH Grant disbursements made prior to the date of the discharge; and

(iv) Inform the TEACH Grant recipient that he or she must satisfy the service obligation within the portion of the eight-year period that remained after the date of the discharge.

* * * * *

■ 16. Section 686.43 is amended by:

■ A. Revising paragraph (a)(1);

■ B. In paragraphs (a)(2) and (a)(3) introductory text, adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program";

■ C. In paragraph (a)(3)(ii), adding the words "or a TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program"; and

■ D. In paragraph (a)(5), adding the words "or the TEACH Grant-eligible STEM program" after the words "TEACH Grant-eligible program".

The revision reads as follows:

**§ 686.43 Obligation to repay the grant.**

(a) * * *

(1) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Federal Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or educational service agency, or not to teach in a high-need field, or for any other reason;

* * * * *

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Part III

## Department of Energy

10 CFR Part 430
Energy Conservation Program: Test Procedures for Conventional Cooking Products; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[Docket No. EERE–2012–BT–TP–0013]**

**RIN 1904–AC71**

## Energy Conservation Program: Test Procedures for Conventional Cooking Products

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

**ACTION:** Supplemental notice of proposed rulemaking and corrections.

**SUMMARY:** On January 18, 2013, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to revise its test procedures for cooking products established under the Energy Policy and Conservation Act. The NOPR proposed a change to the test equipment that would allow for measuring the energy efficiency of induction cooking tops and ranges. To address issues raised in comments regarding the NOPR, DOE conducted additional research and analysis. In this supplemental notice of proposed rulemaking (SNOPR), DOE modifies its proposal to change the test equipment to allow for measuring the energy efficiency of induction cooking tops and proposes to add an additional test block size for electric surface units with large diameters (both induction and electric resistance). In addition, DOE proposes methods to test non-circular electric surface units, electric surface units with flexible concentric cooking zones, and full-surface induction cooking tops. In this SNOPR, DOE also proposes amendments to add a larger test block size to test gas surface units with higher input rates. DOE also proposes to incorporate methods for measuring conventional oven volume, to clarify that the existing oven test block must be used to test all ovens regardless of input rate, and to measure the energy consumption and efficiency of conventional ovens equipped with an oven separator. Additionally, DOE is proposing technical corrections to the units of measurement in certain calculations and the annual useful cooking energy output for gas cooktops.

**DATES:** DOE will accept comments, data, and information regarding this NOPR no later than February 2, 2015. See section V, "Public Participation," for details.

**ADDRESSES:** Any comments submitted must identify the SNOPR for Test Procedures for conventional cooking products, and provide docket number EERE–2012–BT–TP–0013 and/or regulatory information number (RIN) 1904–AC71. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: Induction-Cooking-Prod-2012-TP-0013@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR+PS;rpp=50;so=DESC;sb=postedDate;po=0;D=EERE-2012-BT-TP-0013.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *ashley.armstrong@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 202–287–6122. Email: *Celia.Sher@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

## I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).) Part B of title III, which for editorial reasons was re-designated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." These include residential kitchen ranges and ovens, the subject of this SNOPR. (42 U.S.C. 6292(a)(10))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

### *A. General Test Procedure Rulemaking Process*

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

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

### *B. Test Procedures for Cooking Products*

DOE's test procedures for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens are codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR) part 430 (Appendix I).

DOE established the test procedures in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–28. These test procedures did not cover induction cooking products because they were, at the time, relatively new products, and represented a small share of the market. 43 FR 20117. DOE revised its test procedures for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments did not address induction cooking, but included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of International Electrotechnical Commission (IEC) Standard 705–1988, "Methods for measuring the performance of microwave ovens for household and similar purposes," and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedures for conventional cooking products establish provisions for determining estimated annual operating cost, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and energy factor (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); Appendix I. These provisions for conventional cooking products are not currently used for compliance with any energy conservation standards because the present standards only regulate design requirements, nor is there an EnergyGuide [1] labeling program for cooking products.

DOE subsequently conducted a rulemaking to address standby and off mode energy consumption, as well as certain active mode testing provisions, for residential dishwashers, dehumidifiers, and conventional cooking products. DOE published a final rule on October 31, 2012 (77 FR 65942, hereinafter referred to as the October 2012 Final Rule), adopting standby and off mode provisions that satisfy the EPCA requirement that DOE include measures of standby mode and off mode energy consumption in its test procedures for residential products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

### *C. The January 2013 NOPR*

On January 30, 2013, DOE published a NOPR (78 FR 6232, hereinafter referred to as the January 2013 NOPR) proposing amendments to Appendix I that would allow for testing the active mode energy consumption of induction cooking products; *i.e.*, conventional cooking tops and ranges equipped with induction heating technology for one or more surface units [2] on the cooking top. DOE proposed to incorporate induction cooking tops by amending the definition of "conventional cooking top" to include induction heating technology. Furthermore, DOE proposed to require for all cooking tops the use of test equipment compatible with induction technology. Specifically, DOE proposed to replace the solid aluminum test blocks currently specified in the test procedure for cooking tops with hybrid test blocks comprising two separate pieces: An aluminum body and a stainless steel base. Appendix I currently specifies the test block size for electric cooking tops based on the surface unit diameter; however, there are no provisions for determining which test block size to use for non-circular electric surface units. In the January 2013 NOPR, DOE also proposed amendments to include a clarification that the test block size be determined using the smallest dimension of the electric surface unit. 78 FR 6232, 6234 (Jan. 30, 2013).

[1] For more information on the EnergyGuide labeling program, see: *www.access.gpa.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

[2] The term surface unit refers to burners for gas cooking tops, electric resistance heating elements for electric cooking tops, and inductive heating elements for induction cooking tops.

*D. The February 2014 RFI*

On February 12, 2014, DOE published a request for information (RFI) (79 FR 8337, hereinafter referred to as the February 2014 RFI) to initiate an effort to determine whether to amend the current energy conservation standards for conventional cooking products. As part of the February 2014 RFI, DOE stated that it tentatively plans to consider energy conservation standards for all consumer conventional cooking products, including commercial-style gas cooking products [3] and standard gas cooking products that have burners with higher input rates. These products were not included in the analysis underlying the previous standards rulemaking due to a lack of data upon which to determine the measurement of energy efficiency for these products. 79 FR 8337, 8341 (Feb. 12, 2014); 74 FR 16040, 16054 (Apr. 8, 2009). Because DOE is tentatively planning to consider energy conservation standards for all gas cooking products, including those with high input rate cooking tops and ovens, DOE is also considering amending the cooking products test procedure in Appendix I to include methods for measuring the energy consumption of these products as part of the SNOPR.

## II. Summary of the Supplemental Notice of Proposed Rulemaking and Corrections

Based on review of the public comments received in response to the January 2013 NOPR and the potential for considering additional product types in future energy conservation standards rulemakings for conventional cooking products as discussed in the February 2014 RFI, DOE conducted further analysis in support of the proposals discussed in this SNOPR.

DOE continues to propose a hybrid test block comprising a stainless steel base and aluminum body for conventional cooking top testing, including conventional cooking tops with induction heating technology. Further testing conducted by DOE at multiple test laboratories indicated that this test block type produces repeatable and reproducible results. For comparison, DOE also conducted additional water-heating tests at multiple test laboratories, but found the results to be less repeatable and reproducible than the hybrid block-heating tests, consistent with the results discussed in the January 2013 NOPR. 78 FR 6232, 6240–41 (Jan. 30, 2013). DOE's testing, however, showed that adding a layer of thermal grease improves the thermal contact between the base and body of the test block and results in thermal behavior of the test block that is more representative of real-world cooking vessels. Therefore, in this SNOPR, DOE proposes to require the application of thermal grease between the stainless steel base and aluminum body to improve thermal contact between the two parts. The proposed thermal grease would be required to have a thermal conductivity of at least 1.73 British thermal units per hour per foot per degree Fahrenheit (Btu/hr-ft-°F) (1.0 watts per meter per degree Kelvin (W/m-K)).[4]

In its additional investigative testing, DOE determined that the existing test block diameters, 6.25 inches and 9 inches, may not be appropriate for testing conventional electric cooking top surface units with large diameters. For large-diameter electric surface units, the 9-inch test block typically results in lower measured efficiencies when compared to a larger test block with a diameter that may more accurately reflect consumer use. To address this issue, DOE proposes a 10.5-inch diameter hybrid test block for testing electric cooking top surface units with diameters of at least 10 inches.

In the January 2013 NOPR, DOE proposed that test block selection for non-circular electric cooking top surface units be based on the surface unit's shortest dimension. 78 FR 6232, 6241 (Jan. 30, 2013). Based on stakeholder feedback and a review of the market, DOE has revised its proposal to address the different types of units available on the market. In the SNOPR, DOE proposes that for electric cooking tops: (1) Test blocks for non-circular surface units be selected based on the surface unit's shortest dimension; (2) surface units with flexible concentric sizes (*i.e.*, units with multiple zones of the same shape but varying shortest dimensions) shall be tested at each unique size setting; and (3) full-surface induction cooking tops with "cook anywhere" functionality be tested with all three test block sizes in the center of the usable cooking surface. DOE also clarifies in the SNOPR that for all cooking tops, specialty surface units such as bridge zones, warming plates, grills, and griddles, are not covered by Appendix I.

DOE also proposes a clarification to the cooking top test procedure in Appendix I to specify that the maximum energy input rate, as referenced in section 3.1.2 of Appendix I, shall be the average energy input rate determined over the duration of the test period at the maximum setting. The average energy input rate determined over the duration of the test period at the reduced setting shall be 25 ± 5 percent of the maximum energy input rate.

Additionally, DOE is proposing amendments that would allow for testing the active mode energy consumption of gas cooking tops with higher surface unit input rates. Based on investigative testing of these cooking tops using a range of test block sizes to represent larger food loads and cookware diameters, DOE proposes that all gas surface units rated above 14,000 Btu/h be tested using a 10.5-inch hybrid test block. For gas ovens, investigative testing of larger oven test blocks for use in ovens with higher input rates did not suggest that the oven test block size should be modified. Thus, DOE proposes that the existing oven test block be used to test all ovens, including ovens having input rates greater than 22,500 Btu/h.

As discussed in the February 2014 RFI, DOE is considering amending the standards for conventional cooking products. As part of any amended standards for conventional ovens, DOE may propose standards as a function of oven cavity volume. Because Appendix I does not currently contain a measure of conventional oven volume, DOE considered methodology for determining this value. Based on DOE's review of the Association of Home Appliance Manufacturers (AHAM) Standard OV–1–2011 "Procedures for the Determination and Expression of the Volume of Household Microwave and Conventional Ovens" (AHAM–OV–1–2011), DOE tentatively concludes that this test method provides a repeatable and reproducible method for measuring conventional oven cavity volume. As a result, DOE is proposing in the SNOPR to incorporate by reference the relevant sections of AHAM–OV–1–2011 for determining conventional oven cavity volume in the DOE test procedure.

Based on DOE's review of products available on the market, DOE is additionally proposing test methods for

[3] DOE considered commercial-style gas cooking tops to be those products that incorporate cooking tops with higher input rate burners (*i.e.*, one or more burners greater than 14,000 Btu/h) and heavy-duty grates that provide faster cooking and the ability to cook larger quantities of food in larger cooking vessels. DOE also stated that the burners are optimized for the larger-scale cookware to maintain high cooking performance. Similarly, DOE considered commercial-style gas ovens to have higher input rates (*i.e.*, greater than 22,500 Btu/h).

[4] In support of the investigative testing performed for the discussion in section III.C.5, DOE tested two types of thermal grease, each having different thermal conductivities according to manufacturer published data at or above 1.73 Btu/hr-ft-°F. Efficiencies obtained with either type of thermal grease for an induction cooktop fell within the expected and observed test-to-test variation as discussed in sections III.C.1 and III.C.2.

conventional ovens equipped with an oven separator that allows for cooking using the entire oven cavity in the absence of the separator or, if the separator is installed, splitting the oven into two smaller cavities that may be operated individually with independent temperature controls. DOE is proposing in the SNOPR that conventional ovens equipped with an oven separator shall be tested in each possible oven configuration (*i.e.*, full oven cavity, upper cavity, and lower cavity) with the results averaged.

DOE received comments from interested parties agreeing with its preliminary determination in the January 2013 NOPR that the existing definitions of standby mode and off mode do not require revision. 78 FR 6232, 6241 (Jan. 30, 2013). Therefore DOE is not proposing changes to these definitions in the supplemental proposal. Additionally, DOE did not observe any standby mode or off mode operation or features unique to induction cooking tops and cooking tops and ovens with high input rate burners tested in support of the SNOPR that would warrant changes to the standby mode and off mode test methods for conventional cooking tops. Id.

DOE is also proposing technical corrections to the calculation of derived results from test measurements in section 4 of Appendix I. Section 4 contains a number of references to incorrect units of measurement and an incorrect value for the annual useful cooking energy output for gas cooktops.

Finally, DOE noted that the headings for sections 4.2 and 4.2.1 in Appendix I regarding the calculations for conventional cooking tops were inadvertently removed. As a result, DOE is proposing to add the headings for section 4.2 "Conventional cooking top," and section 4.2.1, "Surface unit cooking efficiency" to appropriately describe these sections.

## III. Discussion

### *A. Products Covered by This Test Procedure Rulemaking*

#### 1. Induction Cooking Products

As discussed in section I of this notice, the test procedures currently in Appendix I do not apply to induction cooking products. In the January 2013 NOPR, DOE proposed to amend the definition of "conventional cooking top" to include products that feature electric inductive heating surface units. DOE noted that the definition of "conventional range" would remain unchanged but would include the cooking top component of a range that heats by means of induction technology. 78 FR 6232, 6234–35 (Jan. 30, 2013). DOE similarly proposed in the January 2013 NOPR to revise the definition of "active mode" included in Appendix I to account for electric inductive heating, consistent with the proposed definition of "conventional cooking top." *Id.*

The Association of Home Appliance Manufacturers (AHAM) and BSH Home Appliances Corporation (BSH) commented that they do not oppose the proposed amended definitions of "conventional cooking top" or "active mode," but do oppose the overall amendments to include inductive heating in the test procedure at this time. (AHAM, TP No. 7 at p. 2 [5] BSH, TP No. 8 at p. 2) AHAM and BSH stated that they do not believe DOE's proposed amendments to the test procedure allow for direct comparisons across cooking technologies, and claimed that because induction cooking tops and ranges do not heat the test block directly, the induction technology will be penalized. (AHAM, TP No. 7 at p. 2; BSH, TP No. 8 at p. 2) Natural Resources Defense Council (NRDC) supported the expansion of the cooking products test procedure to include induction cooking products, based on increased market availability of these products. (NRDC, TP No. 4, at p. 1) NRDC also urged DOE to ensure that its test procedures allow for comparisons of efficiency across product types (gas, electric resistance, and induction units) so that consumers are able to make informed decisions. (NRDC, TP No. 4 at p. 1)

From its testing in support of this rulemaking, DOE determined that the proposed amendments accurately compare the energy consumption of induction cooking tops with the energy consumption of other conventional cooking tops. Although induction cooking tops heat the hybrid test block differently compared to other conventional cooking tops, this manner of heating is representative of how food loads in pots or pans are heated during typical consumer use (*i.e.*, the thermal energy is generated in the stainless steel base which represents the cookware, and then is transferred by conduction to the aluminum body which simulates the food load.) Additionally, DOE maintains the proposal that the hybrid test block be used to test all cooking top types (gas, electric resistance, and induction), which would allow for comparable efficiency measurements across all of the covered technologies.

#### 2. Gas Cooking Products With High Input Rates

In the previous energy conservation standards rulemaking for conventional cooking products, DOE excluded "commercial-style" residential gas cooking products from its analysis in considering whether to adopt amended energy conservation standards, due to a lack of available data for determining efficiency characteristics of those products. DOE also noted that its cooking products test procedures may not adequately measure the performance of higher input rate burners. 74 FR 16040, 16054 (Apr. 8, 2009); 72 FR 64432, 64444–45 (Nov. 15, 2007). DOE considers a cooking top burner with a high input rate to be a burner rated greater than 14,000 Btu/h. Similarly, DOE considers gas ovens with high burner input rates to be those with burners rated greater than 22,500 Btu/h.

Based on investigative testing in support of this notice, DOE is proposing to amend the conventional cooking top test procedure in Appendix I to measure the energy use of gas surface units with high input rates and to clarify that the existing conventional oven test procedure is appropriate for ovens with high input rates. DOE notes that the current definitions for "conventional cooking top," "conventional oven," and "conventional range" in 10 CFR 430.2 already cover conventional gas cooking products with higher input rates (including commercial-style gas cooking products), as these products are household cooking appliances with surface units or compartments intended for the cooking or heating of food by means of a gas flame.

### *B. Effective Date*

The amended test procedure would become effective 30 days after any test procedure final rule is published in the **Federal Register.** Pursuant to EPCA, manufacturers of covered products must use the applicable test procedure as the basis for determining that their products comply with the applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Beginning 180 days after publication of any test procedure final rule, representations related to the energy consumption of conventional cooking products must be based upon results generated under the applicable provisions of the amended test

[5] A notation in the form "AHAM, TP No. 7 at p. 2" identifies a written comment (1) made by AHAM; (2) recorded in document number 7 that is filed in the docket of this test procedures rulemaking (Docket No. EERE–2012–BT–TP–0013) and maintained in the Resource Room of the Building Technologies Program; and (3) which appears on page 2 of document number 7.

procedures in Appendix I. (42 U.S.C. 6293(c)(2))

*C. Conventional Cooking Top Active Mode Test Procedure*

The current active mode test procedure for conventional cooking tops involves heating an aluminum test block on each surface unit of the cooking top. Two aluminum test blocks, of different diameters, are specified for testing different size surface units. The small test block (6.25 inches diameter) is used for electric surface units with diameters of 7 inches or less, and the large test block (9 inches diameter) is used for electric surface units with diameters greater than 7 inches and all gas surface units. Once the initial test and ambient conditions are met, the surface unit is turned to its maximum energy input setting. After the test block temperature increases by 144 degrees Fahrenheit (°F), the surface unit input rate is immediately reduced to 25 percent ± 5 percent of the maximum energy input rate for 15 ± 0.1 minutes. The efficiency of the surface unit is calculated as the ratio of the energy transferred to the test block (based on its temperature rise) to the energy consumed by the cooking top during the test. The cooking top cooking efficiency is calculated as the average efficiency of the surface units on the cooking top. The current active mode test procedure is compatible with gas cooking tops and electric cooking tops with electric resistance heating elements (*i.e.*, electric resistance heating under a smooth ceramic surface and open coil electric resistance heating).

1. Test Block Construction

Induction cooking products are compatible with only ferromagnetic cooking vessels because the high magnetic permeability of these vessels concentrates the induced current near the surface of the metal, increasing resistance and thus heating. Aluminum is not a ferromagnetic metal—its lower magnetic permeability allows the magnetic field to penetrate further into the material so that the induced current flows with little resistance, and thus does not heat up when it encounters an oscillating magnetic field. Therefore, the aluminum test blocks currently required by Appendix I are not appropriate for testing induction cooking products.

As part of the January 2013 NOPR, DOE conducted testing to investigate potential substitute test blocks for testing induction cooking products. DOE conducted tests using the same basic test method specified in Appendix I, as described above, using carbon steel, carbon steel hybrid, and stainless steel hybrid test blocks. 78 FR 6232, 6235 (Jan. 30, 2013). Table III.1 describes the construction of the current aluminum test blocks and the three substitute test blocks.

TABLE III.1—TEST BLOCK COMPOSITION DESCRIPTIONS

| Test block classification | Test block composition (component and material) |
|---|---|
| Aluminum | One solid aluminum alloy 6061 block. |
| Carbon Steel | One solid carbon steel alloy 1018 block. |
| Carbon Steel Hybrid | Carbon steel alloy 1018 base + Aluminum alloy 6061 body. |
| Stainless Steel Hybrid | Stainless steel alloy 430 base + Aluminum alloy 6061 body. |

Based on its initial investigative testing, DOE observed that the stainless steel hybrid test block, hereinafter referred to as the hybrid test block, produced the most repeatable results, and proposed amending Appendix I to require these blocks for all cooking top testing. 78 FR 6232, 6235, 6241 (Jan. 30, 2013). DOE verified these initial conclusions through additional testing conducted for this SNOPR (see section III.C.1 through section III.C.4 of this notice), and further evaluated an improvement to the hybrid test block through the application of thermal grease between the stainless steel base and aluminum body (see section III.C.5 of this SNOPR.)

In response to the January 2013 NOPR, AHAM asked whether DOE had information on the typical thickness of a pot or pan, questioning the proposed thickness of the hybrid test block base at 0.25 inches. (AHAM, Public Meeting Transcript, TP No. 5 at p. 29)[6] Through a market search, DOE determined that the typical thickness of cookware compatible with induction cooking tops range from 20 gauge (~0.04 inch) to 8 gauge (~0.17 inch) depending on the type and application of the cookware.[7] Heavy-gauge pans have thicknesses as large as 8 or 9 millimeters (mm) (0.32 to 0.35 inch). Additionally, the IEC Standard 60350–2 Edition 1.0 "Household electric cooking appliances—Part 2: Hobs—Method for measuring performance" specifies test cookware with a base thickness of 6 mm (0.24 inch). DOE selected the 0.25-inch stainless steel base to reduce the impact of warping but still remain within the plausible thickness of a pot or pan, and to harmonize with the IEC cookware base (to the nearest common dimension in inches).

AHAM and BSH expressed concern that the results presented in the January 2013 NOPR were obtained using one laboratory and a single set of test blocks. (AHAM, TP No. 7 at p. 4; BSH, TP No. 8 at p. 4) AHAM and BSH asked whether DOE had examined whether warping of the blocks might impact their heat transfer. (AHAM, Public Meeting Transcript, TP No. 5 at p. 27; AHAM, TP No. 7 at pp. 2, 4; BSH, TP No. 8 at pp. 2, 4) AHAM and BSH emphasized that any change in the flatness of the test blocks, including between layers, whether due to construction or warping over time, could impact test results and increase variation from test to test as there might not be uniform contact between the block and the surface unit. AHAM and BSH requested that DOE study the impact of flatness on energy measurements to define technically feasible and consistent limits for flatness. (AHAM, TP No. 7, at pp. 3–4; BSH, TP No. 8 at pp. 3–4) AHAM and BSH also commented that the proposed flatness of 0.002 total indicator reading (TIR) is not technically feasible for the 9-inch diameter test block because it cannot be verified with commonly accepted laboratory equipment. *Id.*

DOE evaluated the amount of warping observed for both the stainless steel base and aluminum body of the 6.25-inch and 9-inch hybrid test blocks originally

[6] A notation in the form "AHAM, Public Meeting Transcript, TP No. 5 at p. 29" identifies an oral comment that DOE received during the March 4, 2013, NOPR public meeting, was recorded in the public meeting transcript in the docket for this test procedure rulemaking (Docket No. EERE–2012–BT–TP–0013), and is maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made by AHAM during the public meeting; (2) recorded in document number 5, which is the public meeting transcript that is filed in the docket of this test procedure rulemaking; and (3) which appears on page 29 of document number 5.

[7] Cookware Manufacturers Association. Please see: *http://www.cookware.org/tools_2.php.*

purchased for testing in support of the January 2013 NOPR. Each of these test blocks underwent approximately 100 tests. The aluminum body in both test block sizes remained within the 0.002 TIR tolerance specified in the existing test procedure. However, the stainless steel base for both the 6.25-inch and 9-inch test block did not remain within tolerance, resulting in a flatness greater than 0.002 TIR but less than 0.004 inch TIR after one year of use. The cooking tops evaluated for this test series included the test sample listed in Table III.2.

TABLE III.2—COOKING TOP TEST SAMPLE

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter | Surface unit max rated power (W) |
|---|---|---|---|---|
| A | Smooth—Electric Resistance | Front Right (FR) | 9 | 3000 |
| A | Smooth—Electric Resistance | Back Left (BL) | 6 | 1200 |
| B | Coil—Electric Resistance | Front Right (FR) | 8 | 2350 |
| B | Coil—Electric Resistance | Front Left (FL) | 6 | 1500 |
| C | Smooth—Induction | Back Right (BR) | 10 | 3300 |
| C | Smooth—Induction | Front Left (FL) | 7 | 2400 |
| D | Smooth—Induction | Front Right (FR) | 11 | 3700 |
| D | Smooth—Induction | Back Right (BR) | 6 | 1800 |
| E | Gas | Front Right (FR) | | [a] 9000 |
| F | Smooth—Electric Resistance | Front Right (FR) | 12 | 3000 |
| F | Smooth—Electric Resistance | Back Left (BL) | 8 | 2400 |
| G | Smooth—Electric Resistance | Front Right (FR) | 12 | 3000 |
| G | Smooth—Electric Resistance | Back Left (BL) | 6 | 1200 |

[a] Gas surface unit max rated power is in Btu/h.

As part of the testing conducted for the SNOPR, DOE fabricated a new set of test blocks to evaluate the effects of potential warping and to evaluate the reproducibility of the test procedure between multiple test laboratories. DOE conducted tests with these new test blocks as well as additional tests with the original test blocks that exceeded the 0.002 inch TIR requirement. The results shown in Table III.3 provide a comparison between tests run with in-tolerance hybrid test blocks at Laboratory 1 and out-of-tolerance test blocks at Laboratory 2.

TABLE III.3—BLOCK WARPING COMPARISON OF MEASURED SURFACE UNIT EFFICIENCY

| Test block size | Cooking top unit designation | Heating technology | Surface unit designation | Mean efficiency (*Laboratory 1 <0.002 inch TIR*) (percent) | Mean efficiency (*Laboratory 2 <0.004 inch TIR*) (percent) | Difference in measured efficiency |
|---|---|---|---|---|---|---|
| 9-inch Test Block | B | Coil—Electric Resistance | FR | 71.87 | 71.50 | 0.37 |
| | D | Induction | FR | 73.59 | 72.63 | 0.96 |
| 6.25-inch Test Block | B | Coil—Electric Resistance | FL | 71.42 | 71.80 | −0.39 |
| | D | Induction | BR | 72.71 | 73.21 | −0.50 |

The difference in the average measured surface unit efficiency between the test blocks in tolerance and out of tolerance and between the two test facilities is consistently less than 1 percent. Additionally, the out-of-tolerance test block measured efficiencies are not consistently higher or lower than the in-tolerance test block efficiencies, suggesting that the out-of-tolerance test blocks do not have a clear positive or negative effect on the measured efficiencies. Based on these results, DOE tentatively concludes that the hybrid test block produces results that are reproducible and that minor warping has a minimal effect on measured efficiency.

DOE proposes to maintain the current specified flatness of 0.002 inch TIR for the construction of both the aluminum body and stainless steel base of the hybrid test block. Based on the testing results showing that hybrid test block pieces having a flatness of 0.004 inch TIR or less will not greatly impact measured efficiency, DOE proposes that the stainless steel hybrid test blocks may continue to be used until their flatness exceeds 0.004 inch TIR. This will help reduce the burden associated with replacing the test blocks and ensuring they remain within the flatness tolerance. DOE expects that standard machine shops will likely have the ability to measure flatness within the specified tolerances.

AHAM and BSH also stated that larger test blocks may have an increased potential for warping that could lead to increased variation in the test results, especially if a larger test block will need to reach higher temperatures. (AHAM, TP No. 7 at p. 4; BSH, TP No. 8 at p. 4) AHAM and BSH suggested that larger test blocks may not be technologically feasible because there is likely no way to transfer the heat out of the block fast enough. *Id.* Additionally, AHAM and BSH suggested that as the temperature of the block increases, the heat loss increases, and could potentially result in an inaccurate measurement. (AHAM, TP No. 7 at p. 5; BSH, TP No. 8 at p. 5)

To address the concerns of the large test block reaching higher temperatures, DOE evaluated the final block temperatures observed for both the 6.25-inch and 9-inch test blocks. Figure III.1 correlates test block final temperature with surface unit rated power for induction, smooth—electric resistance, and coil—electric resistance cooking tops.

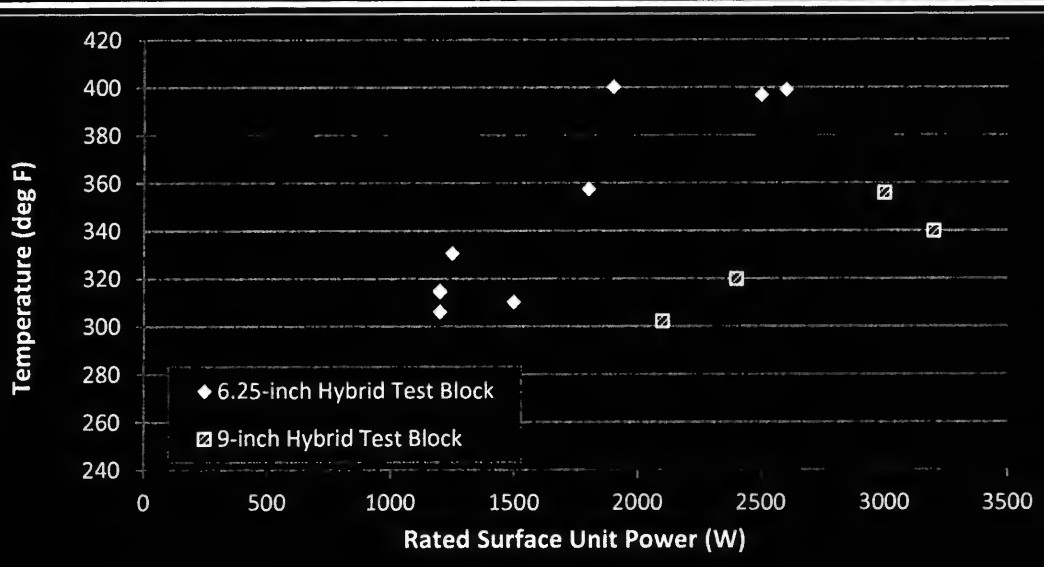


**Figure III.1 Test Block Final Temperatures[8]**

For a given, rated, surface unit power, final temperatures for the 6.25-inch test block were higher than for the 9-inch test block. Generally, the 9-inch test block does not reach significantly higher temperatures when compared to the 6.25-inch test block. Therefore, DOE does not expect any additional warping concerns or heat transfer issues for the 9-inch test block compared to the 6.25-inch test block.

AHAM and BSH noted that because AHAM members have seen variation in stainless steel composition within the same nominal steel type (*e.g.*, differences in the amounts of carbon and chrome), DOE should study the impact of changes in the stainless steel composition on the surface unit efficiency measurement. (AHAM, TP No. 7 at p. 4; BSH, TP No. 8 at p.4)

DOE spoke with material suppliers during the test block fabrication process. Suppliers did not express any concern that magnetic or thermal properties might change from lot to lot of stainless steel alloy 430. Moreover, there is limited variation of the thermal properties even among different grades of stainless steel alloy. Thus, DOE does not anticipate any significant variation within a single grade of stainless steel 430. Additionally, DOE notes that the test results presented above in Table III.3 are based on test blocks purchased in different years. DOE expects that the blocks were manufactured from different lots of stainless steel and aluminum, yet even with the warping issues and testing at different labs, they still produced consistent results.

For the reasons described above, DOE proposes an additional clarification requiring that the block flatness of the hybrid test blocks must be maintained within 0.004 inch TIR for testing.

2. Water-Heating Test Method

For the January 2013 NOPR, DOE also conducted tests to heat water in standardized cooking vessels to compare test repeatability with the metal block-heating tests. DOE stated that water provides a heating medium that is more representative of actual consumer use because many foods cooked on a cooking top have a relatively high liquid content. However, DOE also noted that water heating introduces additional sources of variability not present for metal block heating—the temperature distribution in the water is not always uniform, the properties of the water can vary from laboratory to laboratory, and the ambient conditions and cookware surface effects can have a large impact on the water boiling and evaporating throughout the test. DOE conducted these water-heating tests using the test loads and test methods specified in a draft amendment to the IEC Standard 60350–2 Edition 1.0 "Household electric cooking appliances—Part 2: Hobs—Method for measuring performance" (Draft IEC 60350 Amendment)[9] with additional calculations to estimate the efficiency of the water-heating process. 78 FR 6232, 6239–40 (Jan. 30, 2013). On April 25, 2014, IEC made available the draft version of IEC Standard 60350–2 Edition 2.0 Committee Draft (IEC 60350–2 CD). DOE noted that the Draft IEC 60350 Amendment and IEC 60350–2 CD include the same basic test method.

AHAM and BSH commented that data presented in the January 2013 NOPR did not clearly identify the test block method as being preferable to the water-heating method for induction units and requested DOE perform an additional study to determine which method produces more accurate, repeatable, and reproducible results. (AHAM, TP No. 7 at p. 2; BSH, TP No. 8 at p. 2) AHAM and BSH also commented that they do not believe that the January 2013 NOPR sufficiently demonstrated the stainless steel hybrid test block as the best method for testing induction cooking tops, and that neither of the considered test methods emerged as a more repeatable and reproducible method. Specifically, AHAM and BSH noted that in the January 2013 NOPR, the results were split, with about half of the standard deviations being smaller for the hybrid test block and half being smaller for the water-heating method.

[8] Note that because the application of thermal grease between the hybrid test block pieces affected the rate of temperature increase of the test block, as discussed further in section III.C.5, the final temperatures presented in Figure III.1 were obtained using the hybrid test block with thermal grease.

[9] The Draft IEC 60350 Amendment specifies the quantity of water to be heated in a standardized cooking vessel whose size is based on the diameter of the surface unit. For the January 2013 analysis, DOE chose the two IEC-specified cooking vessels with diameters closest to the diameters specified for the aluminum test blocks (6.25 inches and 9 inches).

(AHAM, TP No. 7 at pp. 3, 4; BSH, TP No. 8 at pp. 3, 4)

In preparation for the SNOPR, DOE performed additional tests to further evaluate the repeatability and reproducibility of the hybrid test block method as compared to the water-heating method. Table III.4 summarizes the test results from Laboratory 1 using the hybrid test blocks, the aluminum-only test blocks, and the IEC 60350–2 CD water loads. The test sample included two induction cooking tops, two conventional electric cooking tops, and one conventional gas cooking top. Because aluminum is not compatible with induction cooking, DOE only tested the aluminum blocks on the three conventional cooking tops in the test sample. The 6.25-inch diameter test load was used for electric surface units with diameters of 7 inches or less. The 9-inch diameter test load was used for electric surface units with diameters greater than 7 inches and all gas surface units, as required by Appendix I.

TABLE III.4—LABORATORY 1 MEAN COOKING TOP EFFICIENCY

| Test load size | Cooking top unit designation | Heating technology | Surface unit designation | Mean efficiency (%) | | |
|---|---|---|---|---|---|---|
| | | | | Hybrid | Aluminum | Water load |
| Large [a] | A | Smooth—Electric Resistance | FR | 67.72 | 75.81 | 79.76 |
| | B | Coil—Electric Resistance | FR | 71.87 | 79.83 | 79.98 |
| | C | Induction | BR | 70.73 | ..... | 78.65 |
| | D | Induction | FR | 73.59 | ..... | 80.49 |
| | E | Gas | FR | 43.94 | 47.02 | ..... |
| Small [b] | A | Smooth—Electric Resistance | BL | 66.22 | 71.01 | 70.44 |
| | B | Coil—Electric Resistance | FL | 71.42 | 76.17 | 76.95 |
| | C | Induction | FL | 69.43 | ..... | 79.16 |
| | D | Induction | BR | 72.71 | ..... | 78.49 |

[a] Large = (9-inch for Hybrid Load and 9.45-inch for IEC Water Load).
[b] Small = (6.25-inch for Hybrid Load and 5.91-inch for IEC Water Load).

To investigate the laboratory-to-laboratory reproducibility of test results, DOE conducted testing in support of the SNOPR at two laboratories. Two of the units in the test sample were tested at both laboratories. At Laboratory 1, a set of ten tests were performed on each surface unit using the proposed hybrid test blocks and the IEC 60350–2 CD water-heating test method. At Laboratory 2, three tests were performed for each surface unit and each test method.[10] Table III.5 compares the measured efficiencies for the hybrid test blocks and the IEC 60350–2 CD water loads for the two cooking tops that were tested at both test laboratories.

TABLE III.5—MEAN COOKING TOP EFFICIENCY COMPARISON BETWEEN TEST LABORATORIES

| Test block size | Cooking top unit designation | Heating technology | Surface unit designation | Hybrid mean efficiency | | Diff. (percent) | Water load mean efficiency | | Diff. (percent) |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Lab 1 (percent) | Lab 2 (percent) | | Lab 1 (percent) | Lab 2 (percent) | |
| Large [a] | B | Coil—Electric Resistance | FR | 71.87 | 71.50 | 0.37 | 79.98 | 79.22 | 0.76 |
| | D | Induction | FR | 73.59 | 72.63 | 0.96 | 80.49 | 81.51 | −1.02 |
| Small [b] | B | Coil—Electric Resistance | FL | 71.42 | 71.80 | −0.39 | 76.95 | 76.80 | 0.15 |
| | D | Induction | FL | 72.71 | 73.21 | −0.50 | 78.49 | 81.67 | −3.18 |

[a] Large = (9-inch for Hybrid Load and 9.45-inch for IEC Water Load).
[b] Small = (6.25-inch for Hybrid Load and 5.91-inch for IEC Water Load).

As discussed in section III.C.1 and shown in Table III.5, the hybrid test blocks produced reproducible results at the two test laboratories. The IEC 60350–2 CD test load also produced similar results between the two test laboratories, with a slightly greater difference in efficiencies compared to the hybrid test blocks for the two induction surface units.

To assess the repeatability of the two test loads, Table III.6 compares the standard deviations for each surface unit tested at Laboratory 1 with both the water-heating and hybrid block-heating tests. As shown in Table III.4, the water-heating tests generally result in higher measured efficiencies compared to the hybrid tests. To account for the higher standard deviations that may be associated with higher measured efficiencies, Table III.6 also includes the coefficient of variation for each set of tests.

TABLE III.6—TEST METHOD STANDARD DEVIATIONS

| Test load size | Cooking top unit designation | Heating technology | Surface unit designation | Standard deviation (%) | | Coefficient of variation | |
|---|---|---|---|---|---|---|---|
| | | | | Hybrid | Water load | Hybrid | Water load |
| Lab 1: | | | | | | | |
| Large | A | Smooth—Electric Resistance | FR | 0.57 | 3.05 | 0.008 | 0.039 |

[10] The additional number of tests conducted at Laboratory 1, as compared to Laboratory 2, were primarily to evaluate repeatability of results from test-to-test.

TABLE III.6—TEST METHOD STANDARD DEVIATIONS—Continued

| Test load size | Cooking top unit designation | Heating technology | Surface unit designation | Standard deviation (%) | | Coefficient of variation | |
|---|---|---|---|---|---|---|---|
| | | | | Hybrid | Water load | Hybrid | Water load |
| | B | Coil—Electric Resistance | FR | 1.05 | 2.15 | 0.015 | 0.027 |
| | C | Induction | BR | 0.74 | 0.66 | 0.011 | 0.008 |
| | D | Induction | FR | 1.02 | 0.57 | 0.014 | 0.007 |
| Small | A | Smooth—Electric Resistance | BL | 1.26 | 3.03 | 0.019 | 0.044 |
| | B | Coil—Electric Resistance | FL | 2.01 | 1.50 | 0.028 | 0.020 |
| | C | Induction | FL | 1.63 | 2.22 | 0.023 | 0.029 |
| | D | Induction | BR | 1.34 | 0.64 | 0.019 | 0.008 |
| Lab 2: | | | | | | | |
| Large | B | Coil—Electric Resistance | FR | 0.39 | 0.37 | 0.004 | 0.004 |
| | D | Induction | FR | 0.24 | 0.71 | 0.003 | 0.008 |
| Small | B | Coil—Electric Resistance | FL | 0.48 | 4.58 | 0.005 | 0.052 |
| | D | Induction | FL | 0.31 | 1.30 | 0.003 | 0.015 |

As shown in Table III.6, the proposed DOE test method produced standard deviations of just over 2 percent or less for each surface unit. Conversely, standard deviations for the IEC 60350–2 CD water-heating test method exceeded 3 percent for some tested surface units, and ranged as high as 4.58 percent. The average standard deviation for the proposed DOE test method across induction units was 0.60 percent for the 9-inch test block and 0.94 percent for the 6.25-inch test block. The average standard deviation across all induction units for the water-heating method was 0.58 percent for the large IEC cookware and 2.19 percent for the small IEC cookware.

Because DOE is proposing the use of the hybrid test block for all surface unit types, DOE also considered the standard deviation across all surface unit types for each test method. The average standard deviation for the proposed DOE test method across all test surface units was 0.67 percent for the 9-inch test block and 1.17 percent for the 6.25-inch block. The average standard deviation across all surface unit types for the water-heating method was 1.25 percent for the large IEC cookware and 2.21 percent for the small IEC cookware. Similarly, the coefficients of variation for the hybrid tests were, on average, lower than for the water-heating tests. The average coefficient of variation across all surface unit types was 0.009 for the 9-inch test block and 0.016 for the 6.25-inch block, while the average coefficients of variation of the large and small IEC cookware were 0.016 and 0.028, respectively.

The water-heating test variability could potentially be reduced by imposing more stringent tolerances on the ambient conditions than Appendix I requires. Ambient air pressure, temperature, and humidity significantly impact the amount of water that evaporates during the test and the temperature at which the water begins to boil. Appendix I, however, only specifies ambient air temperature, and its relatively large tolerance, 77 °F ± 9 °F, could contribute to increased test variability. However, AHAM and BSH also noted that if DOE were to adopt tighter ambient controls, it could require considerable financial investment to construct or modify a test facility to meet these requirements, depending on the limits identified. Test blocks also lose heat to the ambient air and the impact of heat loss could cause variation in test results. (AHAM, TP No. 7 at p. 6; BSH, TP No. 8 at p. 6)

The water-heating tests under the current DOE test conditions do not show an improvement in test-to-test repeatability or laboratory-to-laboratory reproducibility compared to the hybrid block-heating tests across all surface unit types. For induction cooktops alone, the repeatability and reproducibility of the hybrid test block are sufficiently small. Because DOE seeks to implement a single test method applicable to all surface unit types, and because achieving reduced ambient temperature tolerances and adding humidity and pressure tolerances per IEC 60350–2 CD would potentially place a high burden on manufacturers, DOE maintains its proposal to use hybrid test blocks for all products covered under the proposed definition of conventional cooking tops and is not proposing any amendments to the existing ambient test conditions in Appendix I.

In the January 2013 NOPR, DOE indicated that it developed additional calculations to estimate the efficiency of the water-heating process in order to account for the amount of water that evaporated or boiled off. 78 FR 6232, 6240 (Jan. 30, 2013). AHAM and BSH commented that it is inappropriate to calculate efficiency with a water-heating test precisely because it is always unknown how much water evaporates during the test. (AHAM, TP No. 7 at p. 5; BSH, TP No. 8 at p. 5) AHAM and BSH also claimed they cannot fully or meaningfully evaluate the results DOE presented in the notice of proposed rulemaking because those results are based on energy efficiency, not consumption. AHAM and BSH requested that DOE provide energy consumption data to stakeholders and also analyze the energy consumption data itself in order to properly evaluate the accuracy, repeatability, and reproducibility of the water-heating test. AHAM and BSH suggested that it is possible that the standard deviations could be different if energy consumption results are evaluated instead of energy efficiency results and might indicate that the water-heating test is more reproducible and/or repeatable than the hybrid block test procedure. (AHAM, TP No. 7 at p. 5; BSH, TP No. 8 at p. 5)

Table III.7 and Table III.8 list the standard deviations and coefficients of variation for the energy consumption measured for the cooking tops in the test sample using the IEC 60350–2 CD water-heating test method and the proposed DOE test block. Data collected for both the January 2013 NOPR and this SNOPR were used to calculate the standard deviations and coefficients of variation presented in Table III.7 and Table III.8.

TABLE III.7—WATER-HEATING TEST LOAD ENERGY CONSUMPTION REPEATABILITY

| Test load size | Cooking top unit designation | Heating technology | Surface unit designation | Average test energy consumption (Wh) | Standard deviation (Wh) | Coefficient of variation |
|---|---|---|---|---|---|---|
| Large | A | Smooth—Electric Resistance | FR | 550.93 | 10.14 | 0.02 |
| | B | Coil—Electric Resistance | FR | 533.05 | 12.25 | 0.02 |
| | C | Induction | BR | 455.96 | 20.94 | 0.05 |
| | D | Induction | FR | 522.06 | 7.14 | 0.01 |
| Small | A | Smooth—Electric Resistance | BL | 230.78 | 1.67 | 0.01 |
| | B | Coil—Electric Resistance | FL | 241.41 | 5.60 | 0.02 |
| | C | Induction | FL | 247.44 | 3.67 | 0.02 |
| | D | Induction | BR | 226.41 | 9.01 | 0.04 |

TABLE III.8—PROPOSED DOE TEST BLOCK ENERGY CONSUMPTION REPEATABILITY

| Test load size | Cooking top unit designation | Heating technology | Surface unit designation | Average test energy consumption (Wh) | Standard deviation | Coefficient of variation |
|---|---|---|---|---|---|---|
| Large | A | Smooth—Electric Resistance | FR | 560.3 | 11.65 | 0.02 |
| | B | Coil—Electric Resistance | FR | 456.77 | 6.49 | 0.01 |
| | C | Induction | BR | 379.37 | 3.26 | 0.01 |
| | D | Induction | FR | 453.27 | 12.58 | 0.03 |
| Small | A | Smooth—Electric Resistance | BL | 225.84 | 8.1 | 0.04 |
| | B | Coil—Electric Resistance | FL | 231.6 | 10.54 | 0.05 |
| | C | Induction | FL | 226.95 | 3.48 | 0.02 |
| | D | Induction | BR | 210.56 | 3.93 | 0.02 |

Consistent with testing in support of the January 2013 NOPR, DOE found that energy consumption using the IEC 60350–2 CD water-heating test method is not a more repeatable or reproducible metric than cooking efficiency for evaluating cooking top performance. The results based on energy consumption resulted in an average coefficient of variation 0.024 for the water-heating test method, which is similar to the average coefficient of variation for cooking top water-heating efficiency (0.022). Energy consumption as measured with the proposed DOE test block resulted in an average coefficient of variation of 0.025 which is similar to the variation observed using the water-heating test method. In turn, these coefficients of variation are both higher than the average coefficient of variation for cooking efficiency using the hybrid test block (0.0125 on average for both test block sizes). DOE observed that a specific turndown setting would not always maintain the appropriate simmering temperature from test to test. Accordingly, adjustments to the turndown setting between tests were necessary to meet the simmering requirements. These differences in the turndown setting resulted in a wide range of measured energy consumptions. DOE noted that these differences in the reduced settings corresponded to varying amounts of water boiled or evaporated off during the test. Accordingly, DOE developed efficiency calculations that address this variation, which factor in: (a) The total temperature rise of the water to account for differences in simmering temperatures, and (b) the total amount of water lost to boiling or evaporation during the test by measuring the mass of the cookware plus water at the start and end of the test. However, even with these adjustments, the test results with DOE's water-heating efficiency calculations are still less repeatable than the hybrid block-heating tests. For these additional reasons, DOE continues to propose the block-heating test method using the hybrid test blocks.

3. Test Block Sizes

AHAM and BSH noted that because induction coils do not reach full power unless the test block covers the entire surface unit, two test blocks might not be sufficient. According to AHAM and BSH, many use and care guides instruct consumers to match the pot or pan to the size of the coil. Therefore, AHAM and BSH stated that in order for an induction cooking top test procedure to be representative of actual consumer use, the test blocks must fully cover the surface unit. (AHAM, TP No. 7 at p. 4; BSH, TP No. 8 at p. 4)

DOE tested four electric surface units covering a range of diameters using both the 6.25-inch and 9-inch test blocks. The test results evaluated the effects of either oversizing (using the 9-inch test block on a smaller surface unit) or under-sizing (using the 6.25-inch test block on a larger surface unit) the test block relative to the surface unit as shown in Table III.9.

TABLE III.9—DIFFERENCE IN EFFICIENCIES MEASURED WITH 9-INCH AND 6.25-INCH TEST BLOCKS

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter (inches) | 6.25-inch block measured efficiency (%) | 9-inch block measured efficiency (%) | Measured efficiency difference (%) |
|---|---|---|---|---|---|---|
| C | Induction | FL | 7 | 69.43 | 71.39 | 1.96 |
| A | Smooth—Electric Resistance | BL | 6 | 66.22 | 71.25 | 5.03 |
| F[a] | Smooth—Electric Resistance | FR | 12 | 33.17 | 58.95 | 25.78 |

TABLE III.9—DIFFERENCE IN EFFICIENCIES MEASURED WITH 9-INCH AND 6.25-INCH TEST BLOCKS—Continued

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter (inches) | 6.25-inch block measured efficiency (%) | 9-inch block measured efficiency (%) | Measured efficiency difference (%) |
|---|---|---|---|---|---|---|
| F[a] | Smooth—Electric Resistance | BL | 8 | 49.61 | 72.87 | 23.26 |

[a] Cooking top F was added to the test sample to investigate block sizing but was not included in the repeatability results as it was not tested for the January 2013 NOPR.

Results showed that for surface units with diameters up to 7 inches, the difference in measured efficiency between the 9-inch test block and the 6.25-inch test block was on average less than 3.5 percent and within the typical test-to-test variation. However, for surface unit diameters exceeding the small test block diameter by 1.75 inches or more, differences in measured efficiency were on the order of 25 percent. These results show that as the difference between test block diameter and surface unit diameter increases, an undersized test block would reduce measured cooking efficiency for surface units with larger diameters. The results do not show a similar effect for oversizing the test block. While it is not possible to undersize the test block on an induction surface unit because internal controls sense the cookware diameter to protect the unit from misuse, oversizing the test block does not greatly affect current generation in the base of the hybrid test block based on DOE testing, and resulted in similar measured efficiencies between the 6.25-inch and 9-inch block. For smooth cooking tops with electric resistance heating, when the test block is undersized, heat from the surface unit's heating element that exceeds the test block diameter is transferred to the ambient air. When oversized, the entire smooth heating element serves to heat the test block with only limited heat transfer back to the cooktop surface.

Based on a review of the market, DOE found that electric cooking top surface unit diameters typically reach up to 12 inches. In determining an appropriate test block size for these larger surface units, DOE noted that the hybrid test block proposed for use with gas cooking tops with higher surface unit input rates, as described in section III.D.1 below, had the appropriate diameter to capture the range of large electric surface units in the residential market. Selecting this test block for use with large electric surface units would also minimize manufacturer burden because the two test blocks proposed for use with gas cooking tops could be used to test electric cooking tops. Table III.10 contains efficiencies measured with the 10.5-inch test block for four surface units greater than 10 inches in diameter.

TABLE III.10—DIFFERENCE IN EFFICIENCIES MEASURED WITH 10.5-INCH AND 9-INCH TEST BLOCKS

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter (inches) | 9-inch block measured efficiency (%) | 10.5-inch block measured efficiency (%) | Measured efficiency difference (%) |
|---|---|---|---|---|---|---|
| A | Smooth—Electric Resistance | FL | 12 | 52.95 | 56.07 | 3.12 |
| F[a] | Smooth—Electric Resistance | FR | 12 | 58.95 | 63.04 | 4.09 |
| G[a] | Smooth—Electric Resistance | FR | 12 | 57.09 | 71.22 | 14.13 |

[a] Cooking tops F and G were added to the test sample to investigate block sizing but were not included in the repeatability results as it was not tested for the January 2013 NOPR.

Results indicated that efficiencies measured with the 10.5-inch test block are higher than those measured with the 9-inch test block. However, because the difference in size between the two blocks is less than the difference in size between the 6.25-inch and 9-inch test block, the efficiency increase is not as significant.

Table III.11 lists the dimensions and thermal properties of the three proposed hybrid test blocks.

TABLE III.11—HYBRID TEST BLOCK SPECIFICATIONS

| Test block size | Block diameter (inches) | Block height (inches) | Block weight (pounds (lb)) | Specific heat (Btu/lb-°F) | Heat capacity (Btu/°F) |
|---|---|---|---|---|---|
| Small Stainless Steel Base | 6.25 | 0.25 | 2.15 | 0.11 | 0.24 |
| Small Aluminum Body | 6.25 | 2.5 | 7.46 | 0.23 | 1.72 |
| Small Total | 6.25 | 2.75 | 9.61 | 0.20 | 1.96 |
| Medium Stainless Steel Base | 9 | 0.25 | 4.28 | 0.11 | 0.47 |
| Medium Aluminum Body | 9 | 2.72 | 16.85 | 0.23 | 3.87 |
| Medium Total | 9 | 2.97 | 21.13 | 0.21 | 4.34 |
| Large Stainless Steel Base | 10.5 | 0.25 | 6.09 | 0.11 | 0.67 |
| Large Aluminum Body | 10.5 | 3.48 | 29.39 | 0.23 | 6.76 |

TABLE III.11—HYBRID TEST BLOCK SPECIFICATIONS—Continued

| Test block size | Block diameter (inches) | Block height (inches) | Block weight (pounds (lb)) | Specific heat (Btu/lb-°F) | Heat capacity (Btu/°F) |
|---|---|---|---|---|---|
| Large Total | 10.5 | 3.73 | 35.48 | 0.21 | 7.43 |

DOE also investigated how test block size might affect surface unit power during the test to determine if surface unit input rate was dependent on test block diameter. By testing certain surface units with both the 6.25-inch and 9-inch test blocks, DOE was able to compare the average energy input rate and maximum power during the heat-up period (*i.e.*, the period at the maximum setting) for the different block sizes. Table III.12 compares the average and maximum power during the heat-up period for the two current test block sizes on four surface units.

TABLE III.12—ENERGY INPUT RATE AT THE MAXIMUM SETTING

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter (inches) | Test block size | Average power at max setting (W) | Maximum power (W) |
|---|---|---|---|---|---|---|
| A | Smooth—Electric Resistance | BL | 6 | 6.25-inch | 1211.3 | 1344 |
| A | Smooth—Electric Resistance | BL | 6 | 9-inch | 1065.0 | 1317.6 |
| A | Smooth—Electric Resistance | FR | 9 | 6.25-inch | 2894.6 | 3218 |
| A | Smooth—Electric Resistance | FR | 9 | 9-inch | 2644.2 | 3210 |
| D* | Induction | BR | 6 | 6.25-inch | 1878.5 | 2052 |
| D* | Induction | BR | 6 | 9-inch | 1458.6 | 2105 |

*Cooking Top D was tested with thermal grease, which is discussed further in section III.C.5, to determine a more representative maximum power level for induction cooking tops. For smooth—electric resistance cooking tops, based on DOE's testing, the maximum power level for the smooth cooking top was not affected by the presence of thermal grease.

These test results show that for each surface unit tested, the average power during the heat-up period for the 6.25-inch test block is higher than for the 9-inch test block, even when the test block is significantly undersized. However, the maximum instantaneous power measured at the maximum setting on average shows no significant difference between the two test block sizes. Based on these results showing that both test block sizes allow surface units to reach the same maximum power, DOE determined that the proposed test block sizes are appropriate.

4. Non-Circular and Flexible Surface Units

In the January 2013 NOPR, DOE proposed that for non-circular surface units, the appropriate test block size would be determined based on the surface unit's shortest dimension. 78 FR 6232, 6241 (Jan. 30, 2103). AHAM asked whether DOE had conducted any testing on the non-circular types of surface units or considered how different sizes of hybrid test blocks might impact the results. (AHAM, Public Meeting Transcript, TP No. 5 at p. 41) AHAM and BSH also stated that while DOE's test block proposal would address rectangular or oval-shaped surface units, it would not address surface elements that are not clearly defined. According to these commenters, there is a current trend in the market to have flexible cooking zones—*i.e.*, those that do not have clearly defined edges. AHAM and BSH requested that DOE develop a procedure that would allow units with flexible cooking zones to be accurately tested. (AHAM, TP No. 7 at p. 6; BSH, TP No. 8 at p. 6)

Based on a review of products on the market, DOE is aware of full-surface induction cooking tops with no clearly defined cooking zones. These cooking tops have multiple smaller inductors underneath the cooking top surface, which are fully or partially energized depending on the size of the cookware. Because the inductors are typically all the same size and distributed evenly across the cooking surface, DOE does not expect efficiency to vary significantly with location on the cooking surface. However, efficiency may vary with the different test block sizes. For these units with no clear surface unit markings, consumers may use any size cookware on the cooking top. To ensure testing covers the range of heating loads that may be used, DOE proposes that these full-surface cooking tops be tested with each of the proposed hybrid test block sizes (6.25-inch, 9-inch, and 10.5-inch diameters). Each test block would be tested separately by placing the block in the center of the usable induction surface and following the same proposed test method for testing individual surface units. The center of the usable induction surface may be offset from the geometric center of the cooking top because full-surface controls and displays may be embedded in the surface of the cooking top, reducing the usable induction surface available for cooking. DOE proposes that each test block would be centered so that it is equidistant from any boundaries of the usable induction surface, including boundaries due to the placement of the controls or display. The efficiency of the cooking top would be the average of the measured efficiencies using each of test blocks.

DOE measured the efficiency of a single full-surface induction cooking top to evaluate the proposed test method. Table III.13 displays measured efficiency in the center of the cooking top as well as the standard deviation of four tests per test block, run at different positions on the cooking top (center, right of center, back left, and front left).

TABLE III.13—FULL-SURFACE INDUCTION COOKING TOP MEASURED EFFICIENCY

| Hybrid test block diameter | Measured efficiency at the center of the cooking top (%) | Standard deviation of off-center measurements (%) |
|---|---|---|
| 6.25-inch | 65.84 | 1.85 |
| 9-inch | 66.14 | 2.77 |
| 10.5-inch | 71.32 | 2.42 |

Changing test block position did not have a significant effect on measured efficiency, but the standard deviations resulting from changing position were higher than the standard deviations measured with a hybrid test block on a standard induction cooking top. Specifying test block position is necessary to ensure repeatability. Furthermore, the average efficiency, as measured with the three test blocks, is 67.77 percent.

Many smooth—electric resistance cooking tops have "multi-ring" elements that have multiple concentric heating elements for a single surface unit. When a single ring is energized, this corresponds to the smallest diameter surface unit available. When two rings are energized, the diameter of the surface unit increases. This continues for as many concentric heating elements as are available for the surface unit. Multiple heating elements give the user flexibility to adjust the surface unit to fit a certain cookware size. Because each heating element can typically be controlled independently, DOE conducted tests on multi-ring elements to determine if the different control settings result in different measured efficiencies. Table III.14 lists the measured efficiencies for the multi-ring surface units on two smooth—electric resistance cooking tops.

TABLE III.14—MULTI-RING SMOOTH—ELECTRIC RESISTANCE COOKING TOP EFFICIENCY

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit size (inches) | Number of rings energized | Size of largest energized ring (inches) | Test block size (inches) | Cooking efficiency (percent) |
|---|---|---|---|---|---|---|---|
| A | Smooth—Electric Resistance | FR | 9 | Dual | 9 | 9 | 67.7 |
| | | | | Single | 6 | 6.25 | 59.2 |
| F | Smooth—Electric Resistance | FR | 12 | Triple | 12 | 10.5 | 71.9 |
| | | | | Dual | 9 | 9 | 66.7 |
| | | | | Single | 6 | 6.25 | 57.8 |
| F | Smooth—Electric Resistance | BL | 8 | Dual | 8 | 9 | 72.9 |
| | | | | Single | 5 | 6.25 | 62.8 |

For each of the multi-ring surface units, the largest-diameter setting (*i.e.*, the setting using all available rings) resulted in the highest measured efficiencies. Each surface unit showed a significant decrease in efficiency at the smaller-diameter settings, up to 14.1 percentage points. Because of the observed differences in efficiency at the different surface unit settings, DOE proposes that each distinct diameter setting for a multi-ring surface unit be tested as a separate surface unit. For example, if the surface unit has three settings with outer diameters of 12, 9, and 6 inches, each setting would be tested separately with the appropriately sized test block, and the results would be factored in to the overall cooking top efficiency calculation as if they were individual surface units.

DOE is aware of other non-circular electric cooking top elements such as bridge zones, warming plates, grills and griddles that are not intended for use with a typical circular piece of cookware. Appropriate test blocks for these heating elements would depend on the intended function of each surface unit. DOE expects that specifying and requiring additional test blocks for these specific heating elements would place an unreasonable burden on test laboratories and manufacturers. Additionally DOE expects use of these types of surface units to be much less frequent than the standard surface units used for circular pots and pans. DOE notes that some gas cooking tops may also be equipped with warming plates, grills and griddles that are not intended solely for use with a typical piece of circular cookware. As a result, DOE is not proposing to require testing of gas warming plates, grills, and griddles in determining cooking top efficiency.

5. Improved Heat Transfer Within the Hybrid Test Block

In response to the January 2013 NOPR, AHAM and BSH commented that the proposed description of test block construction was ambiguous and requested that construction be clearly defined so as to limit laboratory-to-laboratory variation in test results. AHAM and BSH also asked whether a bonding agent should be used to join the aluminum and stainless steel pieces or if test technicians should layer one piece on top of the other without bonding. Furthermore, AHAM and BSH asked whether DOE had performed testing to see whether adding a bonding agent led to more repeatable and reproducible results. (AHAM, TP No. 7 at p. 3; BSH, TP No. 8 at p. 3)

In addition to questions regarding the construction of the test block, AHAM and BSH asked whether DOE had examined the heat transfer between the stainless steel base and aluminum body of the hybrid test block. (AHAM, Public Meeting Transcript, TP No. 5 at p. 27; AHAM, TP No. 7 at pp. 2, 4; BSH, TP No. 8 at pp. 2, 4) During recent manufacturer interviews conducted as part of a separate rulemaking to consider amended energy conservation standards for conventional cooking products, manufacturers stated that any small imperfections in the contacting surfaces of the hybrid test block, due to warping or machining, leave an air gap between the base and body of the hybrid test block which may result in poor thermal contact between the two layers.

According to manufacturers, the proposed test block construction may not produce test results that are typical of consumer use (*e.g.*, boiling water).

For the January 2013 NOPR, the aluminum body and stainless steel base of the hybrid test blocks were machined from extruded bar stock, and the aluminum body was placed on top of the stainless steel base for each test. No bonding agent was used to join the base and body of the hybrid blocks because DOE observed that the weight and resulting friction kept the aluminum body firmly fixed to the base throughout the duration of the test. However, because stakeholders expressed concern over the thermal contact between the stainless steel base and aluminum body, DOE investigated the effect of applying a layer of thermal grease between the two pieces. Thermal grease is not a permanent bonding agent, but its high viscosity and thermal conductivity ensures good contact between the base and body of the hybrid test block, filling any surface imperfections.

DOE liberally applied a layer of silver-based thermal grease to the stainless steel base, using the aluminum body to apply pressure and spread the grease evenly across the surface of the base until there was complete coverage of the contacting surface of each piece. The thermal conductivity of the selected grease was approximately 1.73 Btu/hr-ft-°F (1.0 W/m-K).

Figure III.2 shows the initial temperature rise of the hybrid test block on an induction surface unit both with and without thermal grease when tested according to Appendix I. As noted above, Appendix I requires that the surface unit be set to its maximum power setting during the initial temperature rise. Once the test block temperature reaches 144 °F above the starting temperature, the control power setting is turned down. The turndown is reflected in the figure as a change in the rate of temperature increase.[11] Figure III.2 also includes the temperature rise of a boiling water load for comparison. All three tests were performed on the 6-inch diameter back right induction surface unit of cooking top D.

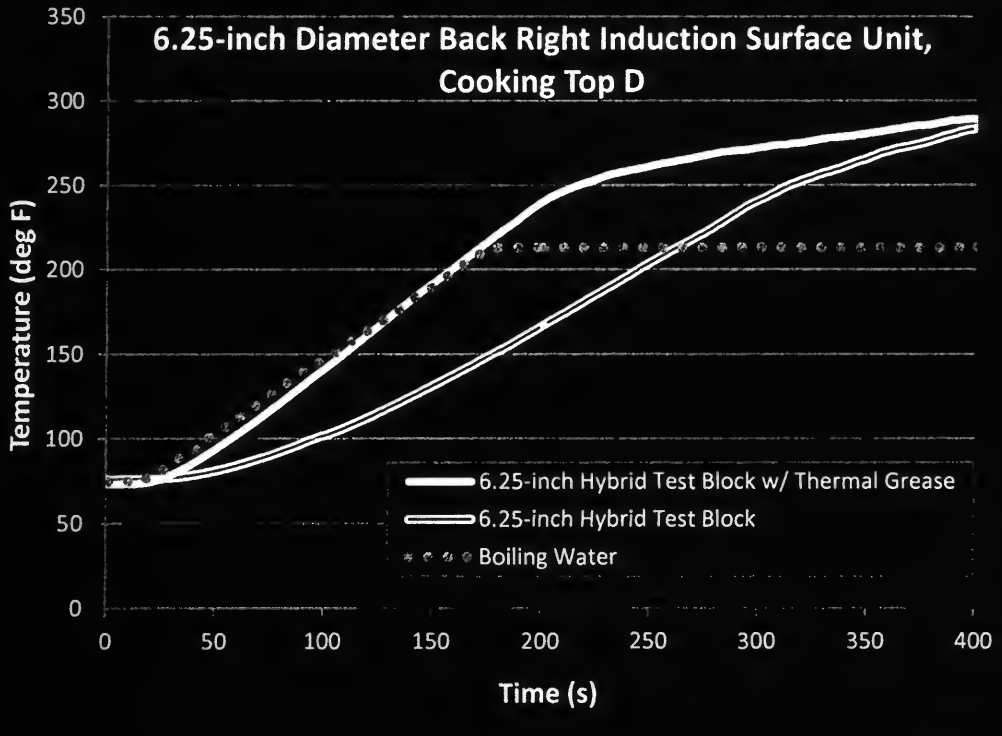


**Figure III.2 Effect of Thermal Grease on Initial Test Block Temperature Rise**

The rate of temperature increase during the initial temperature rise of the hybrid test block changes significantly with the addition of thermal grease and closely resembles the initial temperature rise of the water load as shown in Figure III.2. This change suggests that by adding thermal grease, the hybrid test block method may be more representative of actual cooking top usage than the test block without thermal grease. DOE observed similar changes in the rate of temperature increase for larger test block sizes and for all types of cooking tops.

DOE investigated the impact on measured efficiency and repeatability of varying the quantity of thermal grease as well as varying the application technique. An example application technique included applying the grease in an "X" shape near the center of the stainless steel base and applying pressure with the aluminum body to spread the grease evenly across the base. Alternate techniques included applying the grease in a line and spreading the

[11] The full turndown period is not shown in the Figure III.2. Only the beginning portion of the test cycle is shown to highlight the temperature profile for the heat-up phase of the test.

grease with a spackling knife. Table III.15 contains the average efficiency and standard deviation for multiple runs with each application technique. Regardless of the application technique or grease quantity, thick, even application of the grease yielded similar results. Nineteen investigative thermal grease tests performed on a single induction surface unit, 6 inches in diameter, resulted in an overall standard deviation of 1.43%.

TABLE III.15—EFFECT OF VARIATION IN THERMAL GREASE APPLICATION ON EFFICIENCY FOR COOKING TOP D

| Application type | Number of tests per application | Average efficiency (percent) | Standard deviation (percent) |
|---|---|---|---|
| X-shape, 12 grams (g) | 3 | 70.90 | 0.75 |
| Spread evenly with spackling knife, 7g | 2 | 68.94 | 1.05 |
| X-shape, 10g | 3 | 68.93 | 0.08 |
| Spread evenly with spackling knife, 12g | 6 | 69.99 | 0.57 |
| Spread evenly with spackling knife, 10g | 5 | 71.67 | 0.08 |
| Average for all runs | 19 | 70.30 | 1.43 |

After conducting these tests, DOE separated the hybrid test block pieces and observed that the amount of thermal grease listed in Table III.16 produced an even layer that fully covered the surface between the test blocks. After six tests with a test block, DOE also noted that the thermal grease had dried out and had to be removed and replaced.

TABLE III.16—THERMAL GREASE QUANTITY REQUIRED FOR EVEN TEST BLOCK COVERAGE

| Hybrid test block diameter (inches) | Quantity of thermal grease (g) |
|---|---|
| 6.25 | 10–12 |
| 9 | 20–25 |
| 10.5 | 28–34 |

For the reasons discussed above, DOE proposes to amend Appendix I to require, in addition to the hybrid test block configuration proposed in the January 2013 NOPR, that a layer of thermal grease be applied to evenly cover the surface between the stainless steel base and the aluminum body of the hybrid test block for all test block sizes. The amount of thermal grease applied would be dependent on the test block diameter, according to the quantities listed in Table III.16. The thermal grease would be required to have a thermal conductivity of at least 1.73 Btu/hr-ft-°F (1.0 W/m-K). DOE also proposes to require the use of this modified hybrid test block for all conventional cooking tops and for the cooking top component of all conventional ranges. This will allow measured efficiency to be comparable across product classes and will also reduce manufacturer burden by not requiring additional test block configurations.

6. Expected Cooking Top Performance

AHAM and BSH commented that the test block method in general may not be representative of actual consumer use, especially for induction technology. AHAM and BSH requested that DOE consider the amount of time consumers typically spend cooking a food load to capture any potential energy efficiency benefits to induction technology in the short term (*e.g.*, heating-up phase of cooking) that might even out across technologies as cooking time increases (*e.g.*, simmering). According to AHAM and BSH, energy use and efficiency for cooking products is a function of a consumer's individual cooking behavior, and consumer use of cooking products varies from person to person. (AHAM, TP No. 7 at p. 2; BSH, TP No. 8 at p. 2)

As discussed in section III.C.5, comparing the initial temperature rise of the hybrid test block with thermal grease to the initial temperature rise of water suggests that the test block method is representative of real-world cooking vessel heating. The initial heat-up period at the maximum energy input rate setting as specified in Appendix I is determined based on test block temperature, not a specified time, so if a certain technology achieves the initial temperature rise more quickly (*e.g.*, with less energy to reach that state,) the test procedure would reflect that in a higher cooking efficiency. To examine performance of the heat-up period independent of the simmering period, DOE calculated surface unit efficiency for only the initial temperature rise of 144 °F. Due to changes in product availability over the course of the testing performed for the SNOPR, DOE selected additional cooking tops to evaluate with the thermal grease. Table III.17 provides an updated list of tested surface units for this investigation.

TABLE III.17—COOKING TOP SURFACE UNITS EVALUATED WITH THERMAL GREASE

| Cooking top unit designation | Heating technology | Surface unit designation | Surface unit diameter (inches) | Surface unit max rated power (W) |
|---|---|---|---|---|
| D | Induction | FR | 11 | 3700 |
| D | Induction | BR | 6 | 1800 |
| F | Smooth—Electric Resistance | FR | 12 | 3000 |
| F | Smooth—Electric Resistance | BR | 6 | 1200 |
| G | Smooth—Electric Resistance | FR | 12 | 3000 |
| G | Smooth—Electric Resistance | BL | 6 | 1200 |
| H | Induction | FR | 10 | 3400 |
| H | Induction | BL | 8 | 3200 |
| H | Induction | FL | 7 | 2600 |
| I | Coil—Electric Resistance | BR | 6 | 1250 |
| I | Coil—Electric Resistance | FL | 8 | 2100 |

Table III.18 disaggregates the results from the testing discussed in section III.C.5 to show the average surface unit performance during the initial heat-up period.

TABLE III.18—HYBRID TEST BLOCK HEAT-UP EFFICIENCY

| Test block size | Cooking top unit designation | Heating technology | Surface unit designation | Full test efficiency (percent) | Heat up efficiency (percent) | Heat up time (min) |
|---|---|---|---|---|---|---|
| 10.5-inch Hybrid Test Block | D | Induction | FR | 78.18 | 77.34 | 6.33 |
| | G | Smooth—Electric Resistance | FR | 72.95 | 66.12 | 8.97 |
| | H | Induction | FR | 69.79 | 67.48 | 8.00 |
| 9-inch Hybrid Test Block | H | Induction | BL | 73.78 | 68.20 | 5.05 |
| | I | Coil—Electric Resistance | FR | 68.86 | 64.82 | 8.06 |
| 6.25-inch Hybrid Test Block | D | Induction | BR | 69.99 | 72.30 | 3.67 |
| | G | Smooth—Electric Resistance | BL | 66.94 | 61.17 | 6.37 |
| | H | Induction | FL | 69.38 | 65.61 | 2.97 |
| | I | Coil—Electric Resistance | BR | 73.54 | 70.60 | 5.43 |

Table III.18 shows that for all test block sizes, the measured efficiency during the heat-up period is generally higher for the induction surface units than for the coil—electric resistance, smooth—electric resistance, and gas surface units. Induction surface units also had the shortest heat-up times for each of the test block sizes. Differentiation in efficiency between cooking top types decreases when examining the full test efficiency suggesting that while the test procedure captures the efficiency increase of induction during the initial heat up, induction cooking tops may be less efficient during simmering. Additionally, DOE is not aware of any data showing that consumers use induction cooking tops differently than conventional cooking tops to cook the same food load. Thus, DOE determined that the proposed test procedure, which measures cooking efficiency over an entire cooking process including heat-up and simmering periods, would be appropriate for all of the proposed covered product types.

AHAM and BSH commented that the test results presented in the January 2013 NOPR did not correspond with DOE's former conclusions regarding the efficiency of induction elements as discussed in Chapter 3 of the December 2009 Technical Support Document for residential dishwashers, dehumidifiers, cooking products, and commercial clothes washers, which found a cooking efficiency of 84 percent. Docket No. EERE–2006–STD–0127 (Dec. 2009). AHAM and BSH suggested that one reason why the efficiencies presented in the January 2013 NOPR might not match this earlier figure may be that the proposed test block procedure does not accurately capture induction element efficiency and requested an explanation for the difference. (AHAM, TP No. 7 at p. 3; BSH, TP No. 8 at p. 3)

The 84-percent efficiency listed for induction cooking tops in the December 2009 Technical Support Document was referenced from an external test study.[12] DOE notes that although the efficiencies presented in the January 2013 NOPR and in the SNOPR do not match the values determined in the external study for induction surface units, the study used a similar block-heating procedure. The study tested induction and other cooking tops using a 9-inch carbon steel test block with specifications similar to those used for the carbon steel test block testing conducted in support of the January 2013 NOPR. 78 FR 6232, 6237 (Jan. 30, 2013). The discrepancy in results between DOE's investigative testing and that of the external study is therefore not due to the proposed test block procedure. Based on the consistency of its test data from two test laboratories, DOE determined that the proposed test block-heating test procedure accurately reflects induction surface unit heating efficiencies. 78 FR 6232, 6237–40 (Jan. 30, 2013).

The Appliance Standards Awareness Project (ASAP) asked whether the DOE test results show a relative increase in efficiency for induction compared to electric resistance cooking tops. (ASAP, Public Meeting Transcript, TP No. 5 at p. 30) Based on the proposed hybrid test block results in the SNOPR, the tested induction surface units have an average efficiency of 72.2 percent, which is not significantly higher than the 69.9 average efficiency of smooth—electric resistance surface units or the 71.2-percent average electric coil surface unit efficiency.

ASAP also asked whether the efficiency results measured with the hybrid test block serve as a good predictor of efficiency compared to measurements made by the water-heating test in terms of the relative ranking of units. (ASAP, Public Meeting Transcript, TP No. 5 at p. 38) Table III.19 provides a ranking of selected cooking top surface units by efficiency for each test method.

TABLE III.19—HYBRID TEST BLOCK AND WATER-LOAD RANKING OF SURFACE UNITS BY EFFICIENCY

| Rank | 10.5-inch hybrid | | Large water load | | 6.25-inch hybrid | | Small water load | |
|---|---|---|---|---|---|---|---|---|
| 1 | I—Electric Coil * | 70.89% | I—Electric Coil | 85.54% | I—Electric Coil | 73.54% | H—Induction | 87.47% |
| 2 | D—Induction | 73.59% | H—Induction | 85.05% | D—Induction | 69.99% | D—Induction | 78.49% |
| 3 | H—Induction | 70.74% | D—Induction | 80.45% | H—Induction | 69.38% | I—Electric Coil | 76.80% |
| 4 | F—Smooth | 69.69% | F—Smooth | 79.65% | F—Smooth | 64.06% | F—Smooth | 74.87% |

* Test performed with the 9-inch hybrid test block.

[12] K.C. Datwyler and J.R. McFadden. 1992. "A Comparative Analysis of Performance Characteristics of Gas and Electric Cooktops." *Proceedings of the 43rd Annual International Appliance Technical Conference*, West Lafayette, IN, May, 1992, pp 485–496.

The efficiency results in Table III.19 show that the hybrid test blocks resulted in a more consistent efficiency ranking for the different test block sizes as compared to the water heating test. Although different-sized surface units may have different cooking efficiencies, DOE expects that surface units within the same cooking top using the same heating technology would have similar cooking efficiencies, as observed in the hybrid test block results. The water-heating tests resulted in inconsistent rankings and efficiencies between the two test load sizes The higher test-to-test variability observed from these water heating tests could be one cause for the differences in efficiency rankings compared to the hybrid test block results.

Based on the further investigation of the test results in support of the SNOPR, as discussed above, DOE preliminarily concludes that the proposed test method using hybrid test blocks with thermal grease accurately reflects the performance of covered cooking tops.

7. Clarification of the Reduced Energy Input Setting

AHAM and BSH commented that it would be difficult to determine the turndown setting of the surface unit (25 ± 5 percent of the maximum energy input rate) when using the proposed test block method. According to these commenters, preliminary testing or trial-and-error may be required to determine the appropriate turndown setting. (AHAM, TP No. 7 at p. 5; BSH, TP No. 8 at p. 5)

DOE agrees that a set of preliminary tests are required to determine the correct turndown setting. However, DOE understands that the current test procedure already requires preliminary tests to determine the turndown setting because the power level for each control setting of a given surface unit may not be explicitly stated and may not correspond to an exact percentage of the total power. As a result, this requirement does not increase burden. DOE notes that the preliminary tests to determine appropriate reduced settings are not unique to block-heating tests; the IEC 60350–2 CD procedure requires an initial test to determine when the control setting shall be reduced based on temperature of the water. Test technicians may limit the burden associated with determining the correct setting by using the manufacturer's power rating of the surface unit to make an initial guess at the turndown setting and then making adjustments to the selected setting so that in subsequent tests, the turndown setting corresponds to the 25 ± 5 percent requirement.

Additionally, AHAM and BSH commented that each cooking top has a different maximum energy input rate per surface unit depending on the manufacturer, and the power at the turndown setting can differ significantly between cooking tops. AHAM and BSH noted that while a cooking top requiring a higher power to maintain the 25 percent of the maximum energy input rate during the 15-minute reduced setting period might suggest higher energy losses to the room's ambient air, a higher maximum energy input rate does not necessarily mean that the cooking top is less efficient. AHAM and BSH suggested that a better approach is to control the steady-state temperature of the block, as is done for the water in the IEC water-heating method, instead of the power level. (AHAM, TP No. 7 at p. 5; BSH, TP No. 8 at p. 5)

Although surface units with higher power ratings would be expected to reach higher maximum temperatures throughout testing, Figure III.1 in section III.C.1 shows that power rating and maximum test block temperature are not necessarily correlated. Both test block sizes and a range of surface unit rated powers all resulted in similar maximum temperatures. DOE also notes that requiring a constant test block temperature at the reduced setting would likely result in even greater test burden in determining the reduced control setting. If the energy into the test block did not exactly equal losses to the ambient air, the test block would continue to heat up or cool down at the reduced setting. Finding the appropriate setting to maintain the test block temperature within a reasonable tolerance would likely require more trial-and-error tests than determining the current reduced setting at 25 ± 5 percent of the maximum energy input rate. For these reasons, DOE proposes to maintain its test block-heating procedure requiring a reduced setting at 25 ± 5 percent of the test unit's maximum energy input rate.

DOE also notes that the test procedure does not currently specify the period over which the maximum energy input rate is determined; it could be an instantaneous energy input rate measurement or the average energy consumption rate determined over the entire period at the maximum setting. DOE has observed that the instantaneous maximum energy input rate for electric units may vary from test to test based on instantaneous supply voltage. A spike in voltage within the allowable tolerance at the maximum setting could result in testing at a higher reduced setting, impacting test-to-test repeatability. DOE also notes that at the reduced setting, electric resistance heating elements typically cycle off and on, which results in lower average energy input rates over the entire period compared to the maximum setting, but similar instantaneous energy input rates when the heating element is energized. To improve test-to-test repeatability, and to better reflect typical cooking top operation, DOE is proposing to clarify in section 3.1.2 of Appendix I that the maximum energy input rate be determined as the total energy consumed at the maximum setting divided by the time operated at the maximum setting. Similarly, DOE is proposing to clarify that the energy input rate at the reduced setting be calculated as the total energy consumed at the reduced setting divided by the time operated at the reduced setting; this value shall be 25 ± 5 percent of the maximum energy input rate.

*D. Gas Cooking Products With High Input Rates*

As discussed in section I.B, as part of the February 2014 RFI, DOE stated that it tentatively plans to consider energy conservation standards for all consumer conventional cooking products, including commercial-style gas cooking products and standard surface units with higher input rates. 79 FR 8337, 8340 (Feb. 12, 2014).

The test procedure for gas cooking tops is currently based on measuring temperature rise in an aluminum block with a single diameter for all burner input rates. In the previous energy conservation standards rulemaking, DOE concluded that the diameter of the test block is sufficient to measure consumer cooking top burners with high input rates. For cooking tops that may have high input rate burners with larger diameters to accomplish complete combustion, however, DOE noted that this test block diameter may be too small to achieve proper heat transfer and may not be representative of the dimensions of suitable cookware. DOE further stated that it was not aware of any data to determine the measurement of energy efficiency or energy efficiency characteristics for those products. 72 FR 64432, 64444 (Nov. 15, 2007).

DOE also noted in its previous rulemaking that the test procedure may not adequately measure performance of gas ovens with high input rates. DOE stated that the single oven test block may not adequately measure the temperature distribution that is inherent with the larger cavity volumes and higher input rates typically found in these products. DOE stated that it was not aware of any data upon which to determine the measurement of energy

efficiency or energy efficiency characteristics for gas ovens with high input rates. 72 FR 64432, 64445 (Nov. 15, 2007).

Because DOE is tentatively planning to consider energy conservation standards for all consumer gas cooking products and has observed performance differences between standard gas surface units and units with higher input rates, DOE evaluated the appropriateness of the existing test methods in Appendix I for use with these high input rate products and is proposing to amend test methods for measuring the energy consumption of such gas surface units in this SNOPR. These amendments would apply to all consumer cooking tops with high input rate surface units, including those marketed as commercial-style. Additionally, DOE determined that the existing test methods in Appendix I are appropriate for testing ovens with high input rates, including gas ovens marketed as commercial-style. The proposed amendments are discussed in the following sections.

1. Surface Units With Input Rates Greater Than 14,000 Btu/h

In a response to the February 2014 RFI, Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (hereinafter referred to as the California Investor Owned Utilities (IOUs)) suggested that DOE consider ASTM F1521–12—"Standard Test Method for Performance of Range Tops" when developing a test procedure for "commercial-style" cooking tops or standard consumer gas cooking tops with higher burner input rates. The California IOUs stated that they believe the ASTM test procedure is applicable for higher burner input rates because the energy input rate of the equipment does not significantly impact the measured cooking energy efficiency under this test procedure. (California IOUs, STD No. 11 at p. 2).[13] Additionally, Whirlpool stated that the current test block in Appendix I would not be appropriate for large burners with high burner input rates, as the diameter of the burner flame would be larger than the diameter of the 9-inch test block. Whirlpool also stated that for safety and energy efficiency reasons, consumers are instructed to match the pot size to the burner. (Whirlpool, STD No. 13 at p. 2) Both AHAM and Whirlpool commented that a test procedure should be developed to address commercial-style cooking products if DOE plans to evaluate them in a standards analysis. (AHAM, STD No. 9 at p. 2; Whirlpool, STD No. 13 at p. 1)

The ASTM F1521–12 test method for commercial cooking tops, suggested for use by the California IOUs, is similar to the IEC 60350–2 CD test method DOE considered in the January 2013 NOPR. The primary difference between the ASTM and IEC test methods is that the ASTM method only includes measurement at the full-energy input rate of the surface unit while the IEC water heating method also includes measurement during a simmering period at a calculated turndown temperature. In addition, ASTM F1521–12 specifies a water load that is approximately two times heavier than the largest test load specified in IEC 60350–2 CD. Based on DOE's evaluation of the IEC water heating test method for cooking tops as discussed in section III.C.2, DOE is not considering a water-heating test method for gas surface units with higher input rates because this test method has been shown to be less repeatable and reproducible than DOE's proposed hybrid test block test method.

In a review of consumer gas cooking products on the market, DOE found that the majority of surface units on cooking tops or ranges marketed as commercial-style were rated higher than 14,000 Btu/h. Typical ratings for commercial-style gas surface units ranged from 15,000 Btu/h to 30,000 Btu/h. Conversely, the majority of surface units on standard gas cooking tops or ranges were rated below 14,000 Btu/h. However, many of the surveyed standard gas cooking tops and ranges had a single surface unit rated at a higher input rate (*i.e.*, above 14,000 Btu/h) to be used for rapid boiling or cooking of a larger food load. DOE also noted that manufacturer product literature for all gas cooking tops and ranges reviewed specifies that the surface unit gas flame be adjusted to the size of the pot or pan.

Considering these factors, DOE decided to evaluate the effects of different test block sizes on the efficiency and combustion completion of surface units with high input rates using the test methods and hybrid test block configuration described in section III.C. Table III.20 lists the diameters, heights, weights, and heat capacities of the four hybrid test block sizes DOE considered for this testing. DOE evaluated the surface units with the proposed 9-inch test block as described in section III.C.3 and derived the larger investigative test block dimensions and heat capacities from the range of larger-sized cookware specified in IEC 60350–2 CD. The test block diameters were those specified in IEC 60350–2 CD, and the heights of the test blocks were calculated so that the overall heat capacities matched those of the water loads.

TABLE III.20—HYBRID TEST BLOCK SIZES INVESTIGATED FOR GAS COOKING TOPS WITH HIGH SURFACE UNIT INPUT RATES

| Test block component | Diameter (inches) | Height (inches) | Weight (lbs) | Specific heat (Btu/lb-°F) | Heat capacity (Btu/°F) |
|---|---|---|---|---|---|
| Stainless Steel Base | 9 | 0.25 | 4.28 | 0.11 | 0.47 |
| Aluminum Body | 9 | 2.72 | 16.85 | 0.23 | 3.87 |
| Total | 9 | 2.97 | 21.13 | 0.21 | 4.34 |
| Stainless Steel Base | 10.6 | 0.25 | 6.21 | 0.11 | 0.65 |
| Aluminum Body | 10.6 | 3.48 | 29.95 | 0.23 | 6.89 |
| Total | 10.6 | 3.73 | 36.16 | 0.21 | 7.54 |
| Stainless Steel Base | 11.8 | 0.25 | 7.90 | 0.11 | 0.87 |

[13] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for residential conventional cooking products (Docket No. EERE–2014–BT–STD–0005), which is maintained in the Resource Room of the Building Technologies Program. This notation identifies a written comment: (1) Made by Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (the California Investor Owned Utilities (IOUs)); (2) recorded in document number 11 in the docket for the residential conventional cooking products energy conservation standards rulemaking; and (3) which appears at page 2 of that document.

TABLE III.20—HYBRID TEST BLOCK SIZES INVESTIGATED FOR GAS COOKING TOPS WITH HIGH SURFACE UNIT INPUT RATES—Continued

| Test block component | Diameter (inches) | Height (inches) | Weight (lbs) | Specific heat (Btu/lb-°F) | Heat capacity (Btu/°F) |
|---|---|---|---|---|---|
| Aluminum Body | 11.8 | 3.49 | 37.13 | 0.23 | 8.54 |
| Total | 11.8 | 3.74 | 45.03 | 0.21 | 9.41 |
| Stainless Steel Base | 13 | 0.25 | 9.27 | 0.11 | 1.02 |
| Aluminum Body | 13 | 3.48 | 45.04 | 0.23 | 10.36 |
| Total | 13 | 3.73 | 54.31 | 0.21 | 11.38 |

To select the appropriate block diameter for testing gas surface units with higher input rates, DOE evaluated cooking efficiency and the carbon monoxide (CO) emitted during the heating-up period of the test (*i.e.*, when the surface unit was set to its maximum setting). A high concentration of CO would indicate incomplete combustion and suggest that the test block was improperly sized. DOE also evaluated the quality [14] of the flame, the size of the flame in relation to the test block, and the degree to which the flames impinged on the block in order to determine the appropriate test block size for gas surface units with high input rates. DOE conducted testing on the highest-rated surface unit for four commercial-style gas cooking tops and one standard gas cooking top with a single higher-input rate surface unit. The cooking efficiency was measured using the same proposed test method described in section III.C, but with the test block sizes listed in Table III.20. The CO sample was collected using the test method specified in the American National Standards Institute (ANSI) Standard Z21.1–2010, "Household Cooking Gas Appliances" (ANSI Z21.1–2010), which measures the percent of CO in an air-free sample. The CO sample was measured at 5 minutes after the surface unit was first set at its maximum setting and loaded with the relevant test block.

Based on this testing, DOE initially eliminated the 13-inch test block from consideration because the block overhung the grates of the tested units and significantly limited secondary airflow to the burner ports. As a result, DOE focused its investigation on cooking efficiency and CO emissions for the 9-inch, 10.6-inch and 11.8-inch test blocks. Figure III.3 shows measured cooking efficiency and Figure III.4 shows the measured CO emissions during the initial heating phase of the test for each gas surface unit tested.

[14] Flame quality refers to the shape of the flame, its sharpness, and its color. Mostly yellow, soft, flickering flame tips may indicate insufficient secondary air and incomplete combustion.

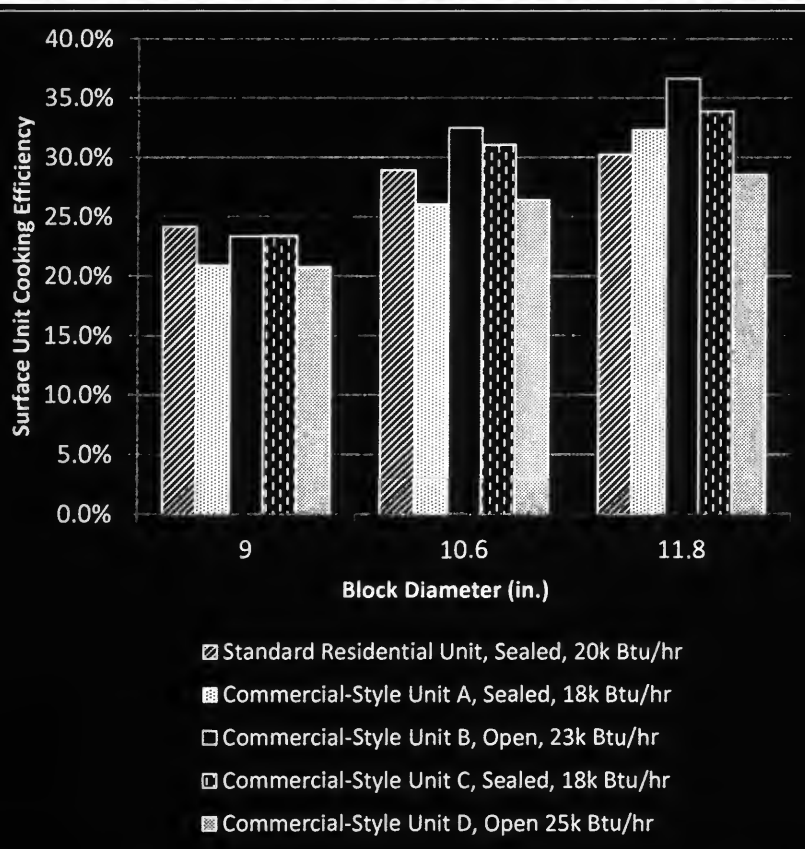


**Figure III.3 Gas Surface Unit Cooking Efficiency by Test Block Diameter**

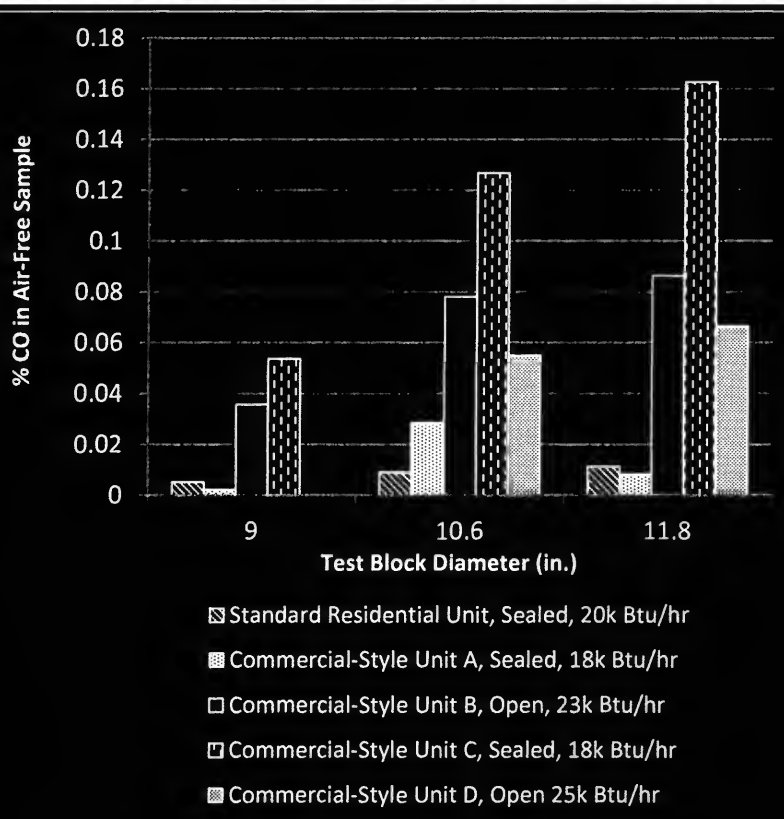


**Figure III.4 CO Emissions by Test Block Diameter**

The test results demonstrate that efficiency alone is not a good indicator of the suitability of a test block for a given gas surface unit input rate, as efficiency increases consistently with increasing test block size. However, the low efficiency measured with the 9-inch test block for each surface unit also suggests that surface units with high input rates are designed to be used with cookware of a larger diameter when at the maximum setting. For two of the sealed surface units, during tests with the 9-inch test block, flames impinged on the sides of the test block when the surface unit was set at the maximum setting. According to the user manuals, the setting should be adjusted so that the flame only impinges on the bottom of the test block.

CO levels also generally increased with increasing test block diameter, suggesting that the 11.8-inch test block was not representative of a food load designed to be used with cooking tops having surface units with higher input rates. The maximum concentration of carbon monoxide allowed by ANSI Z21.1–2010 is 0.08 percent in an air-free sample. One cooking top exhibited lower CO levels with the 11.8-inch block, but this is likely related to the low profile and configuration of the particular cooking top's grates. Considering the efficiency results, CO emissions, and flame characteristics, as discussed above, DOE concluded that the 10.6-inch test block was most representative of a food load designed to be used with a high input rate surface unit.

DOE also examined the typical diameters of cookware items that are compatible with use on higher input rate gas burners. These cookware items are generally higher-cost products designed with thicker gauge material and often heavier-duty disk bases to prevent scorching. Based on DOE's review of 100 "premium" cookware diameters currently available on the market, the average diameter is between 10 and 11 inches. Because a 10.5-inch diameter is a standard size in the United States, DOE decided to reduce the 10.6-inch test block diameter to 10.5 inches.[15]

For the reasons discussed above, DOE is proposing to amend sections 2.7 and 3.1.2 of Appendix I in the SNOPR to require a 10.5-inch hybrid test block, with the dimensions and heat capacities listed in Table III.21, for use with gas surface units having burner input rates greater than 14,000 Btu/h. Although DOE's investigative testing was performed without the use of thermal grease, DOE is also proposing to amend Appendix I to require the use of thermal grease with the hybrid test block for all cooking top product classes, including gas. Preliminary tests conducted by DOE suggest that measured efficiency for gas cooking products will not significantly change with the addition of thermal grease.

[15] Measured cooking efficiencies with the 10.5-inch test block were, on average, 0.78 percentage points less than efficiencies measured with the 10.6-inch test block.

TABLE III.21—PROPOSED TEST BLOCK PARAMETERS FOR GAS SURFACE UNITS WITH HIGH INPUT RATES

| Test block component | Diameter (inches) | Height (inches) | Weight (lbs) | Specific heat (Btu/lb-°F) | Heat capacity (Btu/°F) |
|---|---|---|---|---|---|
| Stainless Steel Base | 10.5 | 0.25 | 6.09 | 0.11 | 0.67 |
| Aluminum Body | 10.5 | 3.48 | 29.39 | 0.23 | 6.76 |
| Total | 10.5 | 3.73 | 35.48 | 0.21 | 7.43 |

2. Gas Ovens With Input Rates Greater Than 22,500 Btu/h

The current active mode test procedure for conventional ovens involves setting the temperature control for the normal baking cooking cycle such that the temperature inside the oven is 325 ± 5 °F higher than the room ambient air temperature (77 ± 9 °F). An 8.5 pound (6.25-inch diameter) cylindrical anodized aluminum test block is then heated in the oven from ambient room air temperature ± 4 °F until the test block temperature has increased 234 °F above its initial temperature. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is tested using the procedure described above in each of those two cooking modes. After the baking test(s), if the oven is equipped with a self-cleaning function, the oven is additionally set for the self-cleaning process in accordance with manufacturer's instruction and allowed to run until completion. The measured energy consumption during these test cycles is used to calculate the cooking efficiency and energy factor.[16]

In response to the February 2014 RFI, the California IOUs recommended that DOE refer to ASTM F1496–13, "Standard Test Method for Performance of Convection Ovens" when developing a test procedure for commercial-style gas ovens or standard gas ovens with higher input rates. California IOUs stated that this test method is applicable to half-size commercial convection ovens. According to the California IOUs, a half-size commercial convection oven may be similar to a standard, consumer gas oven with a higher burner input rate. (California IOUs, STD No. 11 at p. 2)

The ASTM F1496–13 test method for convection ovens involves calibrating the temperature control for the normal bake cooking cycle such that the average temperature inside the oven is 350 ± 5 °F. Once the oven is preheated, the energy consumption to heat a test load to 205 °F is recorded and used to calculate a cooking efficiency. DOE noted that the test load specified in ASTM F1496–13 consists of a food-based test load (potatoes) that varies with oven capacity. The number of pans of potatoes could potentially increase or decrease depending on the number of racks and thus, capacity of the oven. For half-size commercial convection ovens, ASTM F1496–13 requires a smaller pan and fewer potatoes. DOE notes that potatoes and other food loads may be produced in different geographical regions and in different conditions, such as climate, growing conditions (*i.e.*, soil conditions, watering frequency, harvesting time, *etc.*) that may vary throughout the growing seasons even within specific geographic regions. DOE tentatively concludes, therefore, that a food-based test load would not produce repeatable and reproducible test results. As a result, DOE is not considering incorporating test methods based on ASTM F1496–13.

In a review of the consumer gas ovens available on the U.S. market, DOE observed that standard gas ovens typically have an input rate of 16,000 to 18,000 Btu/h. Gas ovens marketed as commercial-style typically have input rates ranging from 22,500 to 30,000 Btu/h.[17] Additional review of both the standard and commercial-style gas oven cavities indicated that there is significant overlap in oven cavity volume between the two oven types. Standard (single) gas oven cavities ranged from 2.5 to 5.6 cubic feet and commercial-style gas oven (single) cavities ranged from 3.0 to 6.0 cubic feet. Sixty percent of the commercial-style models surveyed had cavity volumes between 4.0 and 5.0 cubic feet while fifty percent of the standard models had cavity volumes between 4.0 and 5.0 cubic feet. The primary differentiating factor between the two oven types was burner input rate, which is greater than 22,500 Btu/h for commercial-style gas ovens. In order to develop an appropriate test block size for gas ovens with higher input rates, DOE investigated the effect of increasing oven test block size on oven cooking efficiency. DOE sought to determine whether a larger test block might be more representative of the type of loads used with gas ovens with higher input rates.

DOE evaluated two test block sizes for use with the high input rate gas ovens: The 6.25-inch aluminum test block used in the existing DOE test procedure and a 9-inch diameter aluminum test block, approximately 3 inches high and weighing 19 pounds. Each test block was finished with an anodic black coating with a minimum thickness of 0.001 inch, as specified in the existing DOE test procedure in Appendix I. DOE selected three gas ovens marketed as commercial-style for testing as well as a standard gas oven for comparison. Each oven was tested twice, once with the 6.25-inch test block and once with the 9-inch test block using the test methods specified in the existing DOE test procedure. The resulting cooking efficiencies are presented in Table III.22.

[16] For ovens that can be operated with or without forced convection, the average of the energy consumption for these two modes is used. For self-clean mode, the test procedure in Appendix I assumes an average of 4 self-cleaning operations per year.

[17] However, DOE noted that many gas ranges, while marketed as commercial- or professional-style and having multiple surface units with high input rates, did not have a gas oven with a high input rate.

TABLE III.22—GAS OVEN COOKING EFFICIENCY FOR MULTIPLE TEST BLOCK SIZES

| Type | Input rate (Btu/h) | Width (inches) | Cavity volume (cubic feet) | 6.25-inch test block—cooking efficiency (%) | 9-inch test block—cooking efficiency (%) | Ratio of efficiencies |
|---|---|---|---|---|---|---|
| Commercial-Style Oven A | 28000 | 36 | 5.3 | 4.3 | 8.1 | 1.86 |
| Commercial-Style Oven B | 30000 | 36 | 5.4 | 3.9 | 7.7 | 1.98 |
| Commercial-Style Oven C | 23500 | 30 | 4.4 | 5.2 | 9.5 | 1.85 |
| Standard | 18000 | 30 | 5 | 7.6 | 14.1 | 1.87 |

While cooking efficiency did increase with the larger test block, it scaled by approximately the same factor (1.9) regardless of input rate or capacity, or whether the oven was marketed as commercial-style. The relatively low cooking efficiencies for ovens indicate that the thermal energy required to heat the test block is only a small percentage of the overall energy input to the oven. Other thermal losses in the cavity are large enough that they account for much of the additional oven energy input and are not greatly affected by test block size. Thus, cooking efficiency measured with the larger test block also scales relatively closely with the test block heat capacity. The ratio of the heat capacity of the 9-inch test block to the 6.25-inch test block is 2.2. To minimize the burden of purchasing new test blocks, DOE proposes to use the 6.25-inch test block specified in the existing test procedure to test all gas ovens, including gas ovens with input rates exceeding 22,500 Btu/h.

*E. Incorporating by Reference AHAM–OV–1–2011 for Determination of the Volume of Conventional Ovens*

As discussed above in section I.D, DOE has initiated an effort to determine whether to amend the current energy conservation standards for conventional cooking products. As part of any amended standards for ovens, if DOE determines that cooking efficiency varies as a function of oven cavity volume, DOE may consider proposing standards as a function of oven cavity volume. Therefore, DOE is proposing in the SNOPR to amend section 3.1.1 of Appendix I to include a method for determining oven cavity volume.

In order to develop test methods for measuring the oven cavity volume, DOE reviewed the industry test standard AHAM–OV–1–2011. DOE believes that Section 3, "Definition," section 5.1, "General Principles," and section 5.2 "Overall Volume" of AHAM–OV–1–2011 provides a repeatable and reproducible method to measure cavity dimensions and calculate overall volume because it provides clear definitions of oven characteristics and provides tolerances for dimensional measurements. Section 5.1 of AHAM–OV–1–2011 specifies that if depressions or cutouts exist in the cavity wall, dimensions are taken from the plane representing the largest area of the surface. Section 5.1 of AHAM–OV–1–2011 also specifies that oven lights, racks, and other removable features shall be ignored in the overall volume calculation, and the volume of non-rectangular cavities is calculated by measuring the rectangular portion of the cavity and non-rectangular cavity separately and adding their volumes together.

The procedure also includes a measurement of the oven's usable space, which is the volume inside the oven cavity available for the placement of food. The usable space is oven-specific and determined by measuring either the size of the cavity door aperture or the distance between barriers, racks, and rack supports inside the cavity or on the cavity walls. The lesser of these dimensions is used to calculate the volume of the usable space. DOE is not proposing to include the usable space measurements (section 5.3 of AHAM–OV–1–2011) because the overall cavity volume measurement provides a more accurate representation of the relationship between cavity volume and cooking efficiency as measured by the DOE test procedure in Appendix I.

DOE notes that manufacturers may already be using AHAM–OV–1–2011 to measure the oven cavity volume published in marketing materials. Additionally, manufacturers provide exterior dimensions in the installation instructions. Incorporating a cavity measurement into Appendix I would, in most circumstances, add only the three additional measurements of cavity height, width, and depth. AHAM–OV–1–2011 also gives manufacturers the flexibility of selecting measurement equipment because the device used for measurement is not specified. Therefore, DOE expects that measuring oven volume according to AHAM–OV–1–2011 would not place any significant burden on manufacturers. For the reasons discussed above, DOE proposes to amend section 3.1.1 of Appendix I to incorporate by reference Sections 3, 5.1, and 5.2 of AHAM–OV–1–2011 for measuring the overall oven cavity volume.

*F. Conventional Oven Separator*

As part of DOE's review of products available on the market, DOE observed one conventional electric oven equipped with an oven separator that allows for cooking using the entire oven cavity in the absence of the separator or, if the separator is installed, splitting the oven into two smaller cavities that may be operated individually with independent temperature controls. DOE notes that the current test procedure in Appendix I includes provisions for measuring the energy consumption and cooking efficiency of single ovens and multiple (separate) ovens,[18] but does not include provisions for how to test a single oven that can be configured as a full oven or as two separate smaller cavities. As a result, DOE conducted testing on this product in each possible oven configuration and evaluated the cooking efficiency results. The results from this testing are presented in Table III.23.

[18] For multiple ovens, Appendix I specifies that the energy consumption and cooking efficiency be calculated as the average of each individual oven.

TABLE III.23—OVEN COOKING EFFICIENCY RESULTS FOR OVEN SEPARATOR CONFIGURATIONS

| Oven configuration | Cooking modes | Cavity volume (cubic feet) | Cooking efficiency (%) |
|---|---|---|---|
| Full Oven (No Oven Separator) | Normal Bake, Forced Convection | 5.9 | 10.5 |
| Oven Separator—Upper Cavity | Forced Convection [1] | 2.7 | 16.7 |
| Oven Separator—Bottom Cavity | Normal Bake, Forced Convection | 3.0 | 13.2 |

[1] Upper cavity configuration is only capable of operation in forced convection mode. Normal bake function is not available.

The test results show that the cooking efficiencies in each possible oven configuration were measurably different, ranging from 10.5 percent for the full oven to 16.7 percent for the smaller upper cavity. As a result, DOE is proposing in the SNOPR that conventional ovens equipped with an oven separator shall be tested in each possible oven configuration (*i.e.*, full oven cavity, upper cavity, and lower cavity) with the cooking efficiency and total annual energy consumption averaged.

*G. Standby and Off Mode Test Procedure*

EPCA requires that DOE amend its test procedures for all covered consumer products, including cooking products, to include measures of standby mode and off mode energy consumption, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Accordingly, DOE conducted a rulemaking for conventional cooking products, dishwashers, and dehumidifiers to address standby and off mode energy consumption.[19] In the October 2012 Final Rule, DOE addressed standby mode and off mode energy consumption, as well as active mode fan-only operation, for conventional cooking products. 77 FR 65942 (Oct. 31, 2012).

As part of the January 2013 NOPR, DOE proposed a change to the definition of "conventional cooking top" to include induction technologies. DOE noted that under this proposed definition, induction cooking tops would be covered by the standby and off mode test procedures adopted in the separate test procedure rulemaking. DOE did not observe any standby mode or off mode operation or features unique to induction cooking tops that would warrant any changes to the standby mode and off mode test methods adopted by the October 2012 Final Rule for conventional cooking tops. 78 FR 6232, 6241 (Jan. 30, 2013).

[19] DOE pursued amendments to Appendix I addressing standby and off mode energy for microwave ovens as part of a separate rulemaking. The final rule for this microwave oven rulemaking published on January 18, 2013. 78 FR 4015.

AHAM and BSH commented that they are not aware of any additional features or operational modes for induction cooking products and, thus, agree that the definitions of standby mode and off mode do not require revision. (AHAM, TP No. 7 at p. 6; BSH, TP No. 8 at p. 6) Because DOE did not receive any comments objecting to the proposed determination not to amend the standby mode and off mode test methods, and for the reasons discussed above, DOE is maintaining this determination in the SNOPR.

Similarly, DOE notes that because gas cooking products with higher input rates are covered under the definition of "cooking products" in 10 CFR 430.2, these products are covered by the standby and off mode test procedures discussed above. DOE conducted standby mode and off mode testing on commercial-style units and standard units with higher input rates in its test sample. Based on this testing, DOE did not observe any standby mode or off mode operation or features unique to these products that would warrant any changes to the standby mode and off mode test methods established in Appendix I section 3.1 by the October 2012 Final Rule for conventional cooking products.

*H. Technical Corrections to the Calculation of Derived Results From Test Measurements*

DOE notes that section 4 in Appendix I, regarding the calculation of derived results from test measurements, contains a number of references to incorrect units of measurement. For example, section 4.1.2.1.1 incorrectly provides that the annual primary energy consumption for cooking, $E_{CO}$, should be expressed in Btus per year for gas ovens, instead of kBtu per year. DOE proposes in the SNOPR to correct the following sections of Appendix I to reference the appropriate units: 4.1.2.1.1, 4.1.2.2.1, 4.1.2.4.3, 4.1.2.5.3, 4.1.4.1, 4.1.4.2, 4.2.1.2, 4.2.2.2.1, and 4.2.2.2.2.

DOE also notes that section 4.2.3.2 in Appendix I, regarding the calculation of the integrated energy factor for conventional electric cooking tops, $IR_{CT}$, uses an incorrect value for the annual useful cooking energy output, $O_{CT}$, of 527.6 kBtu per year, which is the annual useful cooking energy output for gas cooking tops. The value of the annual useful cooking energy output for electric cooking tops should instead be 173.1 kWh per year. DOE is proposing to correct this error in the NOPR.

*I. Headings for Conventional Cooking Top Calculations*

DOE notes that the headings for sections 4.2 and 4.2.1 in Appendix I regarding the calculations for conventional cooking tops were inadvertently removed. As a result, DOE is proposing to add the headings for section 4.2 "Conventional cooking top," and section 4.2.1, "Surface unit cooking efficiency" to appropriately describe these sections.

*J. Compliance With Other EPCA Requirements*

EPCA requires that any new or amended test procedures for residential products must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

As part of the January 2013 NOPR, DOE tentatively concluded that the amended test procedures would produce test results that measure the energy consumption of cooking tops during representative use, and that the test procedures would not be unduly burdensome to conduct. 78 FR 6232, 6242 (Jan. 30, 2013).

For cooking tops, the test procedure proposed in January 2013 NOPR and this SNOPR follows the same method currently included in Appendix I, but would replace the aluminum test blocks with hybrid test blocks having thermal grease that joins the stainless steel base and aluminum body. The SNOPR also includes an additional test block size to be used for electric cooking top surface units with large diameters and gas cooking top surface units with higher input rates. In the January 2013 NOPR,

DOE estimated that current testing represents a cost of approximately $500 per test for labor, with a one-time investment of $2,000 for test equipment ($1,000 for test blocks and $1,000 for instrumentation). 78 FR 6232, 6242 (Jan. 30, 2013). The proposed reusable test blocks in the SNOPR would represent an expense of approximately $500 for each test block, or $1,500 for a set of large, medium, and small diameter test blocks. DOE estimated that the thermal grease necessary for a set of three tests blocks would cost approximately $100 but due to the need for frequent reapplication of the grease, DOE increased this estimate to $2,000 resulting in a total updated one-time investment of $4,500 for test equipment. Test blocks would need to be replaced when they are no longer in tolerance. However DOE observed that the test blocks were still within the proposed tolerance after approximately 100 tests. No additional instrumentation would be required beyond what is required in the current test procedure. DOE stated that it does not believe this additional cost represents an excessive burden for test laboratories or manufacturers given the significant investments necessary to manufacture, test and market consumer appliances. The only additional time burden associated with the proposed test method is the time required to weigh the stainless steel base in addition to the aluminum body and to apply the thermal grease. This additional step in the test procedure would increase the test duration by about 5 minutes per surface unit.

AHAM and BSH commented in response to the January 2013 NOPR that with only one set of test blocks, laboratories may only be able to perform two surface unit tests per day because of the time required to cool the test blocks. Accordingly, AHAM and BSH stated that it is likely that manufacturers and third-party laboratories will purchase multiple sets of test blocks to be able to run more tests per day. AHAM and BSH encouraged DOE to ask individual manufacturers and third-party test laboratories how many sets of test blocks they expect to need in order to more fully understand the actual burden imposed by the amended regulation. (AHAM, TP No. 7 at p. 6; BSH, TP No. 8 at p. 6) AHAM and BSH also commented that DOE's test burden analysis is based only on certification and does not account for the required audit testing manufacturers would need to do to ensure that certification remains representative of production. (AHAM, TP No. 7 at p. 6; BSH, TP No. 8 at p. 6) AHAM asked DOE to elaborate more on the estimates for some of the costs, including whether the costs assume each manufacturer would only be requiring one set of test blocks. (AHAM, Public Meeting Transcript, TP No. 5 at p. 46)

DOE's estimates of manufacturer test burden in the January 2013 NOPR were based on a purchase of a single set of test blocks. Manufacturers have the option to purchase multiple sets of test blocks to be able to run more tests per day, but purchasing even four sets would entail a onetime expense of approximately $10,000. Purchasing multiple sets may also extend the lifetime of the test blocks because a single set would not be used for every test. During DOE's testing and testing at a third-party lab, test technicians were able to run between five and seven tests per day. Given that many cooking tops have surface units of varying sizes and multiple cooking tops may be set up for test in a given day, the test technician could alternate which size surface unit was tested to allow time for a test block to cool, *i.e.*, the technician could test a small surface unit with the small test block on a different cooking top while the large test block is cooling. While DOE did not account for any audit testing in the SNOPR, issues regarding compliance certification testing may be addressed as part of any energy conservation standards rulemaking. For the reasons discussed above, DOE concludes, given the small magnitude of the proposed changes (both in terms of the proposed test blocks, including the large test block included in the SNOPR, and the time needed for the test), that the newly proposed amended test procedure for cooking tops will not be unreasonably burdensome to conduct.

As discussed in section III.D.2, DOE is proposing for gas ovens to require that the existing test block be used for all ovens, including both standard residential ovens and ovens with high input rates. As a result, DOE does not expect any increase in testing burden compared to the existing test procedure. As discussed in section III.E, DOE is also proposing to incorporate by reference AHAM–OV–1–2011 for measuring the overall oven cavity volume. DOE estimates that it would take on the order of one-half to one hour to conduct the cavity volume measurement for a single oven, and $50 to $100 per test for labor. Additionally, because manufacturers may already be using the AHAM procedure to measure oven cavity volume and because manufacturers already provide exterior dimensions in the installation instructions, DOE does not anticipate this measurement to be unduly burdensome to conduct. As discussed in section III.F, DOE is also proposing that conventional ovens equipped with an oven separator be tested in each possible oven configuration. DOE notes, based on its testing, that this may add two oven tests for the additional cavity configurations, and add approximately $2,750 for labor. DOE does not believe this additional cost represents an excessive burden for test laboratories or manufacturers given the significant investments necessary to manufacture, test and market consumer appliances.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

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

### *B. Review Under the Regulatory Flexibility Act*

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

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would amend the test method for measuring the energy efficiency of conventional cooking tops and ranges to include test methods applicable to induction cooking products and gas cooking products with higher input rates. The proposed rule would also include a test method for conventional ovens with

oven separators and incorporate by reference a test method to measure oven cavity volume.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (NAICS) that are available at: *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* The threshold number for NAICS classification code 335221, titled "Household Cooking Appliance Manufacturing," is 750 employees; this classification includes manufacturers of residential conventional cooking products.

Most of the manufacturers supplying conventional cooking products are large multinational corporations. DOE surveyed the AHAM member directory to identify manufacturers of residential conventional cooking products. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a "small business manufacturing facility" and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there are nine small businesses that manufacture conventional cooking products covered by the proposed tests procedure amendments.

For the reasons stated in the preamble, DOE has tentatively concluded that the proposed rule would not have a significant impact on small manufacturers under the applicable provisions of the Regulatory Flexibility Act. The proposed rule would amend DOE's test procedures for cooking products by incorporating testing provisions to address active mode energy consumption for induction surface units and surface units with higher input rates that will be used to develop and test compliance with any future energy conservation standards that may be established by DOE. The proposed test procedure amendments involve the measurement of active mode energy consumption through the use of a different metal test block than is currently specified for conventional cooking tops. The proposed amendments would also apply for testing products currently considered conventional cooking tops. DOE estimates a cost for this new equipment of approximately $4,500–$10,000. Additionally, DOE estimates a cost of approximately $23,900 for an average small manufacturer to test a full product line of induction surface units and surface units with high input rates not currently covered by the test procedure. This estimate assumes $500 per test, as described in section III.J, with up to 48 total tests per manufacturer needed, assuming 11 models [20] with either four or six individual tests per cooking top model. This cost is small (0.15 percent) compared to the average annual revenue of the nine identified small businesses, which DOE estimates to be over $16 million.[21] These tests follow the same methodology and can be conducted in the same facilities used for the current energy testing of conventional cooking tops, so there would be no additional facilities costs required by the proposed rule.

The incorporation by reference of AHAM–OV–1–2011 to measure oven cavity volume and the addition of a test method to measure conventional ovens with an oven separator will not significantly impact small manufacturers under the applicable provisions of the Regulatory Flexibility Act. DOE estimates a cost of $4,500 for an average small manufacturer to measure the cavity volume of its entire product offerings which is only 0.03 percent of the average annual revenue of the nine identified small businesses. This estimate assumes $100 per test as described in section III.1 with up to 44 tests per manufacturer. Additionally, no small conventional cooking product manufacturer, as defined by the SBA, offers a product with an oven separator.

For these reasons, DOE tentatively concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

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

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the applicable DOE test procedure, including any amendments adopted for that test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including conventional cooking products. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

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

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for conventional cooking products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies

[20] DOE considered different configurations of the same basic model (where surface units were placed in different positions on the cooking top) as unique models.

[21] Estimated average revenue is based on financial information provided for the small businesses in reports provided by Dun and Bradstreet.

formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

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

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

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

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

*I. Review Under Executive Order 12630*

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

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

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

*K. Review Under Executive Order 13211*

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

The regulatory action to amend the test procedure for measuring the energy efficiency of conventional cooking products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a

significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

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

The proposed rule incorporates test methods contained in the AHAM OV–1–2011 standard, "Procedures for the Determination and Expression of the Volume of Household Microwave and Conventional Ovens". DOE has evaluated this standard and is unable to conclude whether this industry standard fully complies with the requirements of section 32(b) of the FEAA, (*i.e.*, that it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact on competition of using the methods contained in this standard prior to prescribing a final rule.

## V. Public Participation

*A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this SNOPR.

*Submitting comments via regulations.gov.* The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

*B. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Hybrid Test Blocks

DOE seeks comment on its proposal to require the use of hybrid test blocks with a layer of thermal grease for testing all cooking tops, including the potential burden associated with the requirement for such new test equipment. (See section III.C.1 and III.C.5)

2. Typical Cookware Thickness

DOE seeks comment on the typical thickness of cookware compatible with induction cooking tops and gas cooking tops with high surface unit input rates. (See section III.C.1)

3. Additional Test Block Size for Electric Resistance and Induction Surface Units

DOE invites comment on whether the proposed addition of a test block size of 10.5 inches in diameter for larger-diameter electric cooking tops will be sufficient to capture the range of surface unit diameters currently available on the market. (See section III.C.3)

4. Non-Circular and Flexible Electric Surface Units

DOE invites comments on whether using the smallest dimension of a non-circular electric surface unit is appropriate for determining the proper test block size. DOE also invites comments on its proposal to test surface units with flexible concentric sizes at each unique size setting and full-surface induction cooking tops using each of three test block sizes, with the test block placed in the center of the usable cooking surface during each test. DOE also welcomes comments on its proposal to not require testing of electric and gas cooking top surface units, such as bridge zones, warming plates, grills and griddles, in determining cooking top efficiency. (See section III.C.4)

5. Thermal Grease Characteristics

DOE seeks comment on the amount, application technique, and thermal properties of the thermal grease specified for use between the stainless steel base and aluminum body of the hybrid test blocks. Specifically, DOE seeks comment on its proposal to require a thermal grease having a thermal conductivity of at least 1.73 Btu/hr-ft-°F (1.0 W/m-K), applied evenly to the contacting surfaces of the base and body. (See section III.C.5)

6. Clarification of the Reduced Energy Input Setting

DOE requests comment on the proposal to clarify the "maximum energy input rate" specified in the cooking tops test procedure in Appendix I for determining the reduced energy input setting. (See section III.C.7)

7. Gas Cooking Top Surface Units With Input Rates >14,000 Btu/h

DOE seeks comment on its proposal to require the use of a 10.5-inch hybrid test block for testing all gas surface units rated above 14,000 Btu/h, including additional data on the efficiency and combustion characteristics of cooking top surface units with high input rates. (See section III.D.1)

8. Gas Ovens With High Input Rates

DOE seeks comment on its proposal to require the use of the test block currently specified in Appendix I for testing all ovens that are covered by the definition of conventional ovens, including commercial-style ovens or any ovens rated above 22,500 Btu/h. (See section III.D.2)

9. Test Method To Measure Oven Cavity Volume

DOE seeks comment on its proposal to incorporate by reference AHAM–OV–1–2011 to measure the overall oven cavity volume. (See section III.E).

10. Test Method for Conventional Ovens With an Oven Separator

DOE seeks comment on the proposed amendments to require that conventional ovens equipped with an oven separator be tested in each possible oven configuration (*i.e.*, full oven cavity, upper cavity, and lower cavity) with the results averaged. (See section III.F).

11. Technical Corrections

DOE seeks comment on the proposed amendments to correct the units of measurement in sections 4.1.2.1.1, 4.1.2.2.1, 4.1.2.4.3, 4.1.2.5.3, 4.1.4.1, 4.1.4.2, 4.2.1.2, 4.2.2.2.1, and 4.2.2.2.2. DOE also requests comment on the proposed amendments to correct the value of the annual useful cooking energy output for electric cooking tops referenced in section 4.2.3.2. (See section III.H)

## VI. Approval of the Office of the Secretary

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

**List of Subjects in 10 CFR Part 430**

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

Issued in Washington, DC, on November 24, 2014.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.2 is amended by revising the definition for "conventional cooking top" to read as follows:

**§ 430.2 Definitions.**

* * * * *

*Conventional cooking top* means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a horizontal surface containing one or more surface units which utilize a gas flame, electric resistance heating, or electric inductive heating.

* * * * *

■ 3. Section 430.3 is amended by redesignating paragraph (h)(7) as (h)(8) and adding new paragraph (h)(7) to read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(h) * * *

(7) AHAM OV–1–2011, ("AHAM OV–1"), *Procedures for the Determination and Expression of the Volume of Household Microwave and Conventional Ovens,* (2011), IBR approved for appendix I to subpart B.

* * * * *

**Appendix I—[Amended]**

■ 4. Appendix I to subpart B of part 430 is amended:

■ a. By revising the Note;

■ b. In section 1. *Definitions,* by:

■ i. Revising section 1.1;

■ ii. Redesignating sections 1.2 through 1.19 as sections 1.3 through 1.20, respectively; and

■ iii. Adding section 1.2;

■ c. In section 2. *Test Conditions,* by:

■ i. Revising sections 2.6, 2.7, 2.7.2 and 2.7.3;
■ ii. Redesignating sections 2.7.4 and 2.7.5 as sections 2.7.5 and 2.7.6, respectively; and
■ iii. Adding sections 2.7.4 and 2.7.7;
■ d. By revising section 3. *Test Methods and Measurements*
■ e. In section 4. *Calculation of Derived Results From Test Measurements,* by:
■ i. Revising sections 4.1.2.1.1, 4.1.2.2.1, 4.1.2.4.3, 4.1.2.5, 4.1.2.5.1, 4.1.2.5.2, 4.1.2.5.3. 4.1.3.2, 4.1.4.1, 4.1.4.2, 4.2.1.1, 4.2.1.2, 4.2.1.3, 4.2.2.2.1, 4.2.2.2.2, and 4.2.3.2; and
■ ii. Adding sections 4.2 and 4.2.1.

The revisions and additions read as follows:

## Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

*Note:* Any representation related to active mode energy consumption of conventional ranges, conventional cooking tops (except for induction cooking products), and conventional ovens must be based upon results generated under this test procedure. Any representation related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops (except for induction cooking products), conventional ovens, and microwave ovens, and any representation made after [Insert date 180 days after the final rule is published in the **Federal Register**] related to any energy consumption of induction cooking products, must be based upon results generated under this test procedure.

Upon the compliance date(s) of any energy conservation standard(s) for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens, use of the applicable provisions of this test procedure to demonstrate compliance with the energy conservation standard will also be required.

1. Definitions

1.1 *Active mode* means a mode in which the product is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, electric inductive heating, or microwave energy, or circulating air internally or externally to the cooking product. Delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.

1.2 *AHAM–OV–1* means the test standard published by the Association of Home Appliance Manufacturers titled, "Procedures for the Determination and Expression of the Volume of Household Microwave and Conventional Ovens," Standard OV–1–2011 (incorporated by reference; see § 430.3).

* * * * *

2. Test Conditions

* * * * *

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.13 of this appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4 of this appendix, as applicable.

2.7 *Test blocks for conventional oven and cooking top.* The test blocks for conventional ovens and the test block bodies for conventional cooking tops shall be made of aluminum alloy No. 6061, with a specific heat of 0.23 Btu/lb- °F (0.96 kJ/[kg + °C]) and with any temper that will give a coefficient of thermal conductivity of 1073.3 to 1189.1 Btu-in/h-ft$^2$-°F (154.8 to 171.5 W/[m + °C]). Each test block and test block body shall have a hole at its top. The hole shall be 0.08 inch (2.03 mm) in diameter and 0.80 inch (20.3 mm) deep. Other means may be provided which will ensure that the thermocouple junction is installed at this same position and depth.

The test block bases for conventional cooking tops shall be made of stainless steel grade 430, with a specific heat of 0.11 Btu/lb- °F (0.46 kJ/[kg + °C]) and with coefficient of thermal conductivity of 172.0 to 190.0 Btu-in/h-ft$^2$-°F (24.8 to 27.4 W/[m + °C]).

The bottom of each test block and test block body, and top and bottom of each test block base, shall be produced to be flat to within 0.002 inch (0.051 mm) TIR (total indicator reading). The bottom of the test block body and top and bottom of the test block base shall not exceed .004 (0.102 mm) TIR at the start of testing. Determine the actual weight of each test block, test block body, and test block base with a scale with an accuracy as indicated in section 2.9.5 of this appendix.

* * * * *

2.7.2 *Small test block for conventional cooking top.* The small test block shall comprise a body and separate base, between which a 10–12 g layer of thermally conductive grease shall be applied. The small test block body, $W_2$, shall be 6.25 ± 0.05 inches (158.8 ± 1.3 mm) in diameter, approximately 2.5 inches (64 mm) high and shall weigh 7.5 ± 0.1 lbs (3.40 ± 0.05 kg). The small test block base, $W_3$, shall be 6.25 ± 0.05 inches (158.8 ± 1.3 mm) in diameter, approximately 0.25 inches (6.4 mm) high and shall weigh 2.2 ± 0.1 lbs (1.00 ± 0.05 kg). The small test block body shall not be fixed to the base, and shall be centered over the base for testing.

2.7.3 *Medium test block for conventional cooking top.* The large test block shall comprise a body and separate base, between which a 20–25 g layer of thermally conductive grease shall be applied. The medium test block body for the conventional cooking top, $W_4$, shall be 9 ± 0.05 inches (228.6 ± 1.3 mm) in diameter, approximately 2.7 inches (69 mm) high and shall weigh 16.9 ± 0.1 lbs (7.67 ± 0.05 kg). The medium test block base, $W_5$, shall be 9 ± 0.05 inches (228.6 ± 1.3 mm) in diameter, approximately 0.25 inches (6.4 mm) high and shall weigh 4.3 ± 0.1 lbs (1.95 ± 0.05 kg). The medium test block body shall not be fixed to the base, and shall be centered over the base for testing.

2.7.4 *Large test block for conventional cooking top.* The large test block shall comprise a body and separate base, between which a 28–34 g layer of thermally conductive grease shall be applied. The large test block body for the conventional cooking top, $W_6$, shall be 10.5 ± 0.05 inches (266.7 ± 1.3 mm) in diameter, approximately 3.5 inches (88.9 mm) high and shall weigh 29.4 ± 0.1 lbs (13.33 ± 0.05 kg). The large test block base, $W_7$, shall be 10.5 ± 0.05 inches (266.7 ± 1.3 mm) in diameter, approximately 0.25 inches (6.4 mm) high and shall weigh 6.1 ± 0.1 lbs (2.77 ± 0.05 kg). The large test block body shall not be fixed to the base, and shall be centered over the base for testing.

* * * * *

2.7.7 *Thermal grease.* The thermal grease used for each test block shall have a thermal conductivity of greater than or equal to 1.73 Btu/hr-ft-°F (1.0 W/m-K). The thermal grease shall be applied evenly so that it covers the contacting surfaces of the body and base completely. Pressure shall be applied when joining the two pieces together. After six tests, the layer of thermal grease shall be removed and a new layer shall be reapplied. If the aluminum body slides off the stainless steel base during the test, the test shall be terminated and thermal grease shall be reapplied to the test block.

* * * * *

3. Test Methods and Measurements

3.1. *Test methods.*

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this appendix and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal non-operating temperature as defined in section 1.13 and described in section 2.6 of this appendix. Set the conventional oven test block $W_1$ approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for one complete thermostat "cut-off/cut-on" of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, Test Conditions, of this appendix. Turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal non-operating temperature as defined in section 1.13 and described in section 2.6 of this appendix. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional ovens that take

some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in 3.1.1.2.1 and 3.1.1.2.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.1.2.1 If the conventional oven has an inactive mode, as defined in section 1.12 of this appendix, measure and record the average inactive mode power of the conventional oven, $P_{IA}$, in watts.

3.1.1.2.2 If the conventional oven has an off mode, as defined in section 1.14 of this appendix, measure and record the average off mode power of the conventional oven, $P_{OM}$, in watts.

3.1.1.3 *Conventional oven cavity volume.* Measure the oven cavity volume according to the test procedure specified in Sections 3, 5.1 and 5.2 of AHAM–OV–1 (incorporated by reference; see § 430.3).

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, Test Conditions, of this appendix. Turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.13 and described in section 2.6 of this appendix. Set the test block in the center of the surface unit under test. The small test block, $W_2$ and $W_3$, shall be used on electric surface units with a smallest dimension of 7 inches (178 mm) or less. The medium test block, $W_4$ and $W_5$, shall be used on electric surface units with a smallest dimension over 7 inches (178 mm) but less than 10 inches and on gas surface units with input rates less than 14,000 Btu/h. The large test block, $W_6$ and $W_7$, shall be used on electric surface units with a smallest dimension of 10 inches or greater and on gas surface units with input rates greater than or equal to 14,000 Btu/h. Each surface unit shall be tested separately. For electric surface units with flexible concentric sizes, each unique size setting must be tested individually with the appropriate test block based on the outer dimensions of the surface unit corresponding to that particular setting.

Full-surface induction cooking tops must be tested three times, once with each test block size (small, medium, and large). For each test, the test block shall be placed in the center of the usable area of the cooking surface, equidistant from any cooking top boundaries. The center of the usable cooking surface may be offset from the geometric center of the cooking top due to surface unit controls or a display.

Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25 ± 5 percent of the maximum energy input rate. The energy input rate at the reduced setting is calculated as the total energy consumed at the reduced setting divided by the time operated at the reduced setting. The maximum energy input rate is the total energy consumed at the maximum setting divided by the time operated at the maximum setting. After 15 ± 0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions*, of this appendix. For conventional cooktops that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional cooking top to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.2.1.1 and 3.1.2.1.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.2.1.1 If the conventional cooking top has an inactive mode, as defined in section 1.12 of this appendix, measure and record the average inactive mode power of the conventional cooking top, $P_{IA}$, in watts.

3.1.2.1.2 If the conventional cooking top has an off mode, as defined in section 1.14 of this appendix, measure and record the average off mode power of the conventional cooking top, $P_{OM}$, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, Test Conditions, of this appendix. For conventional ranges that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.3.1 and 3.1.3.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.12 of this appendix, measure and record the average inactive mode power of the conventional range, $P_{IA}$, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.14 of this appendix, measure and record the average off mode power of the conventional range, $P_{OM}$, in watts.

3.1.4 *Microwave oven.*

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions*, of this appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.18 and 1.14 of this appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

3.2 *Test measurements.*

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, $E_O$, when the temperature of the block reaches $T_O$ ($T_O$ is 234 °F (130 °C) above the initial block temperature, $T_I$). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, $T_A$, and the energy consumed, $E_A$, or volume of gas consumed, $V_A$, at the end of the last "ON" period of the conventional oven before the block reaches $T_O$. Measure the block temperature, $T_B$, and the energy consumed, $E_B$, or volume of gas consumed, $V_B$, at the beginning of the next "ON" period. Measure the block temperature, $T_C$, and the energy consumed, $E_C$, or volume of gas consumed, VC, at the end of that "ON" period. Measure the block temperature, $T_D$, and the energy consumed, $E_D$, or volume of gas consumed, $V_D$, at the beginning of the following "ON" period. Energy measurements for $E_O$, $E_A$, $E_B$, $E_C$, and $E_D$ should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for $V_A$, $V_B$, $V_C$, and $V_D$ should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical

energy, EIO, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to $T_O$.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches $T_O$ ($T_O$ is 234 °F (130 °C) above the initial block temperature, $T_I$). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, $T_A$, and the energy consumed, $E_A$, or volume of gas consumed, $V_A$, at the end of the last "ON" period of the conventional oven before the block reaches $T_O$. Measure the block temperature, $T_B$, and the energy consumed, $E_B$, or volume of gas consumed, $V_B$, at the beginning of the next "ON" period. Measure the block temperature, $T_C$, and the energy consumed, $E_C$, or volume of gas consumed, $V_C$, at the end of that "ON" period. Measure the block temperature, $T_D$, and the energy consumed, $E_D$, or volume of gas consumed, $V_D$, at the beginning of the following "ON" period. Energy measurements for $E_O$, $E_A$, $E_B$, $E_C$, and $E_D$ should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for $V_A$, $V_B$, $V_C$, and $V_D$ should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to $T_O$ using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Conventional oven fan-only mode energy consumption.* If the conventional oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption, $E_{OF}$, expressed in kilowatt-hours (kJ) of electricity consumed by the conventional oven for the duration of fan-only mode, using a watt-hour meter as specified in section 2.9.1.1 of this appendix. Alternatively, if the duration of fan-only mode is known, the watt-hours consumed may be measured for a period of 10 minutes in fan-only mode, using a watt-hour meter as specified in section 2.9.1.1 of this appendix. Multiply this value by the time in minutes that the conventional oven remains in fan-only mode, $t_{OF}$, and divide by 10,000 to obtain $E_{OF}$. The alternative approach may be used only if the resulting $E_{OF}$ is representative of energy use during the entire fan-only mode.

3.2.1.3 *Energy consumption of self-cleaning operation.* Measure the energy consumption, ES, in watt-hours (kJ) of electricity or the volume of gas consumption, $V_S$, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, $E_{IS}$, consumed by ignition devices or other electrical components required during the self-cleaning test.

3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.2 of this appendix. If the conventional oven is capable of operating in inactive mode, as defined in section 1.12 of this appendix, measure the average inactive mode power of the conventional oven, $P_{IA}$, in watts as specified in section 3.1.1.2.1 of this appendix. If the conventional oven is capable of operating in off mode, as defined in section 1.14 of this appendix, measure the average off mode power of the conventional oven, $P_{OM}$, in watts as specified in section 3.1.1.2.2 of this appendix.

3.2.1.5 *Conventional oven cavity volume.* Measure the oven cavity volume, $CV_O$, in cubic feet (L), as specified in section 3.1.1.3 of this appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, $E_{CT}$, in watt-hours (kJ) of electricity or the volume of gas consumption, $V_{CT}$, in standard cubic feet (L) of gas and the test block temperature, $T_{CT}$, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this appendix and the total time, $t_{CT}$, in hours, that the unit is under test. Measure any electrical energy, $E_{IC}$, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooking top in watt-hours (kJ). For full-surface induction cooking tops, the values described above shall be measured for each test block.

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.1 of this appendix. If the conventional surface unit is capable of operating in inactive mode, as defined in section 1.12 of this appendix, measure the average inactive mode power of the conventional surface unit, $P_{IA}$, in watts as specified in section 3.1.2.1.1 of this appendix. If the conventional surface unit is capable of operating in off mode, as defined in section 1.14 of this appendix, measure the average off mode power of the conventional surface unit, $P_{OM}$, in watts as specified in section 3.1.2.1.2 of this appendix.

3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this appendix. If the conventional range is capable of operating in inactive mode, as defined in section 1.13 of this appendix, measure the average inactive mode power of the conventional range, $P_{IA}$, in watts as specified in section 3.1.3.1 of this appendix. If the conventional range is capable of operating in off mode, as defined in section 1.14 of this appendix, measure the average off mode power of the conventional range, $P_{OM}$, in watts as specified in section 3.1.3.2 of this appendix.

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.18 of this appendix, measure the average standby mode power of the microwave oven, $P_{SB}$, in watts as specified in section 3.1.4.1 of this appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.14 of this appendix, measure the average off mode power of the microwave oven, $P_{OM}$, as specified in section 3.1.4.1.

3.3 *Recorded values.*

3.3.1 Record the test room temperature, $T_R$, at the start and end of each range, oven or cooktop test, as determined in section 2.5 of this appendix.

3.3.2 Record the measured test block, test block body, and test block base weights $W_1$, $W_2$, $W_3$, $W_4$, $W_5$, $W_6$, and $W_7$ in pounds (kg).

3.3.3 Record the initial temperature, $T_I$, of the test block under test.

3.3.4 For a conventional oven with a thermostat which operates by cycling on and off, record the conventional oven test measurements $T_A$, $E_A$, $T_B$, $E_B$, $T_C$, $E_C$, $T_D$, and $E_D$ for conventional electric ovens or $T_A$, $V_A$, $T_B$, $V_B$, $T_C$, $V_C$, $T_D$, and $V_D$ for conventional gas ovens. If the thermostat controls the oven temperature without cycling on and off, record $E_O$. For a gas oven which also uses electrical energy for the ignition or operation of the oven, also record $E_{IO}$.

3.3.5 For a conventional oven that can be operated with or without forced convection and the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$. If the conventional oven operates with or without forced convection and the thermostat controls the oven temperature by cycling on and off, record the conventional oven test measurements $T_A$, $E_A$, $T_B$, $E_B$, $T_C$, $E_C$, $T_D$, and $E_D$ for conventional electric ovens or $T_A$, $V_A$, $T_B$, $V_B$, $T_C$, $V_C$, $T_D$, and $V_D$ for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure any electrical energy consumed by an ignition device or other electrical components used during the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.3.6 Record the measured energy consumption, $E_S$, or gas consumption, $V_S$, and for a gas oven, any electrical energy, $E_{IS}$, for the test of the self-cleaning operation of a conventional oven.

3.3.7 For conventional ovens, record the conventional oven standby mode and off mode test measurements $P_{IA}$ and $P_{OM}$, if applicable. For conventional cooktops, record the conventional cooking top standby mode and off mode test measurements $P_{IA}$ and $P_{OM}$, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements $P_{IA}$ and $P_{OM}$, if applicable.

3.3.8 For conventional ovens, record the measured oven cavity volume, $CV_O$, in cubic feet (L), rounded to the nearest tenth of a cubic foot (nearest L).

3.3.9 For the surface unit under test, record the electric energy consumption, $E_{CT}$,

or the gas volume consumption, $V_{CT}$, the final test block temperature, TCT, and the total test time, $t_{CT}$. For a gas cooking top which uses electrical energy for ignition of the burners, also record EIC.

3.3.10 Record the heating value, Hn, as determined in section 2.2.2.2 of this appendix for the natural gas supply.

3.3.11 Record the heating value, Hp, as determined in section 2.2.2.3 of this appendix for the propane supply.

3.3.12 Record the average standby mode power, $P_{SB}$, for the microwave oven standby mode, as determined in section 3.2.4 of this appendix for a microwave oven capable of operating in standby mode. Record the average off mode power, $P_{OM}$, for the microwave oven off mode power test, as determined in section 3.2.4 of this appendix for a microwave oven capable of operating in off mode.

*4. Calculation of Derived Results From Test Measurements*

* * * * *

4.1.2.1.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for cooking, $E_{CO}$, expressed in kilowatt-hours (kJ) per year for electric ovens and in kBtus (kJ) per year for gas ovens, and defined as:

$$E_{CO} = \frac{E_O \times K_e \times O_O}{W_1 \times C_p \times T_S}$$

for electric ovens,

Where:

$E_O$ = test energy consumption as measured in section 3.2.1 or as calculated in section 4.1.1 or section 4.1.1.1 of this appendix.

$K_e$ = 3.412 Btu/Wh (3.6 kJ/Wh,) conversion factor of watt-hours to Btus.

$O_O$ = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output of conventional electric oven.

$W_1$ = measured weight of test block in pounds (kg).

$C_p$ = 0.23 Btu/lb-°F (0.96 kJ/kg + °C), specific heat of test block.

$T_S$ = 234 °F (130 °C), temperature rise of test block.

$$E_{CO} = \frac{E_O \times O_O}{W_1 \times C_p \times T_S}$$

for gas ovens,

Where:

$E_O$ = test energy consumption as measured in section 3.2.1. or as calculated in section 4.1.1 or section 4.1.1.1 of this appendix.

$O_O$ = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output of conventional gas oven.

$W_1$, $C_p$ and $T_S$ are the same as defined above.

* * * * *

4.1.2.2.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, $E_{SC}$, expressed in kilowatt-hours (kJ) per year for electric ovens and in kBtus (kJ) for gas ovens, and defined as:

$E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

$E_S$ = energy consumption in watt-hours, as measured in section 3.2.1.3 of this appendix.

$S_e$ = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g \times K$, for gas ovens,

Where:

$V_S$ = gas consumption in standard cubic feet (L), as measured in section 3.2.1.3 of this appendix.

H = $H_n$ or $H_p$, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this appendix in Btus per standard cubic foot (kJ/L).

$S_g$ = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

K = 0.001 kBtu/Btu conversion factor for Btus to kBtus

* * * * *

4.1.2.4.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, $E_{AOG}$, expressed in kBtus (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC}$,

Where:

$E_{CO}$ = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

$E_{SC}$ = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, $E_{AOE}$, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

$E_{SO}$ = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

$E_{SS}$ = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, $IE_{AOE}$, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

$E_{SO}$ = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

$E_{SS}$ = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

$E_{OTLP}$ = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

$E_{OF}$ = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

$N_{OG}$ = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

4.1.2.5 *Total annual energy consumption of multiple conventional ovens and conventional ovens with an oven separator.* If the cooking appliance includes more than one conventional oven or consists of a conventional oven equipped with an oven separator that allows for cooking using the entire oven cavity or, if the separator is installed, splitting the oven into two smaller cavities, calculate the total annual energy consumption of the conventional oven(s) using the following equations:

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, $E_{TO}$, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$E_{CO}$ = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i$$

is the average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

$E_{SC}$ = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, $IE_{TO}$, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTLP} + (E_{OF} \times N_{OE})$

Where

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$E_{CO}$ = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i$$

is the average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

$E_{SC}$ = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

$E_{OTLP}$ = annual combined low-power mode energy consumption for the cooking appliance as determined in section 4.1.2.3 of this appendix.

$E_{OF}$ = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

$N_{OE}$ = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, $E_{TOG}$, in kBtus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC}$

Where:

$E_{ACO}$ = average annual primary energy consumption for cooking in kBtus (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i$$

Where:

n = number of conventional ovens in the basic model or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$E_{CO}$ = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

and,

$E_{ASC}$ = average annual self-cleaning energy consumption in kBtus (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

$E_{SC}$ = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, $E_{TOE}$, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}(E_{SO})_i$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$E_{SO}$ = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}(E_{SS})_i$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

$E_{SS}$ = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, $IE_{TOE}$, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTLP} + (E_{OF} \times N_{OG})$

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}(E_{SO})_i$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$E_{SO}$ = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}(E_{SS})_i$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

$E_{SS}$ = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

$E_{OTLP}$ = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

$E_{OF}$ = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

$N_{OG}$ = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

* * * * *

4.1.3.2 *Multiple conventional ovens and conventional ovens with an oven separator.* If the cooking appliance includes more than one conventional oven or consists of a conventional oven equipped with an oven separator that allows for cooking using the entire oven cavity or, if the separator is installed, splitting the oven into two smaller cavities, calculate the cooking efficiency of the conventional oven(s), $Eff_{TO}$, using the following equation:

$$Eff_{TO} = \frac{n}{\sum_{i=1}^{n}(\frac{1}{Eff_{AO}})_i}$$

Where:

n = number of conventional ovens in the cooking appliance or, if the cooking appliance is equipped with an oven separator, the number of oven cavity configurations.

$Eff_{AO}$ = cooking efficiency of each oven determined according to section 4.1.3.1 of this appendix.

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4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, $R_O$, using the following equations:

$$R_O = \frac{O_O}{E_{AO}}$$

For electric ovens,

Where:

$O_O$ = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

$E_{AO}$ = total annual energy consumption for electric ovens as determined in section 4.1.2.4.1 of this appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times K_e)}$$

Where:

$O_O$ = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

$E_{AOG}$ = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

$E_{AOE}$ = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

$K_e$ = 3.412 kBtu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to kBtus.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, $IR_O$, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}}$$

For electric ovens,

Where:

$O_O$ = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

$IE_{AO}$ = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.4.2 of this appendix.

For gas ovens:

$$IR_O = \frac{O_O}{E_{AOG} + (IE_{AOE} \times K_e)}$$

Where:

$O_O$ = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

$E_{AOG}$ = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

$IE_{AOE}$ = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

$K_e$ = 3.412 kBtu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to kBtus.

4.2 *Conventional cooking top.*

4.2.1 *Surface unit cooking efficiency.*

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, $Eff_{SU}$, of the electric surface unit or surface unit size setting under test, defined as:

$$Eff_{SU} = \frac{(W_{TB} \times C_{p,TB} + W_B \times C_{p,B}) \times T_{SU}}{K_e \times E_{CT}}$$

Where:

$W_{TB}$ = measured weight of test block body, $W_2$, $W_4$, or $W_6$ expressed in pounds (kg).

$C_{p,TB}$ = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block body.

$W_B$ = measured weight of test block base, $W_3$, $W_5$, or $W_7$ expressed in pounds (kg).

$C_{p,B}$ = 0.11 Btu/lb-°F (0.46 kJ/kg ÷ °C), specific heat of test block base.

$T_{SU}$ = temperature rise of the test block: final test block temperature, $T_{CT}$, as determined in section 3.2.2 of this appendix, minus the initial test block temperature, $T_I$, expressed in °F (°C) as determined in section 2.7.5 of this appendix.

$K_e$ = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

$E_{CT}$ = measured energy consumption, as determined according to section 3.2.2 of this appendix, expressed in watt-hours (kJ).

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency, $Eff_{SU}$, of the gas surface unit under test, defined as:

$$Eff_{SU} = \frac{(W_{TB} \times C_{p,TB} + W_B \times C_{p,B}) \times T_{SU}}{E}$$

Where:

$W_{TB}$ = measured weight of test block body, $W_4$ or $W_6$, expressed in pounds (kg).

$W_B$ = measured weight of test block base, $W_5$ or $W_7$, expressed in pounds (kg).

$C_{p,TB}$, $C_{p,B}$, and $T_{SU}$ are the same as defined in section 4.2.1.1 of this appendix.

and,

$E = (V_{CT} \times H) + (E_{IC} \times K_e)$,

Where:

$V_{CT}$ = total gas consumption in standard cubic feet (L) for the gas surface unit test as measured in section 3.2.2.1 of this appendix.

$E_{IC}$ = electrical energy consumed in watt-hours (kJ) by an ignition device of a gas surface unit as measured in section 3.2.2.1 of this appendix.

$K_e$ = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

H = either $H_n$ or $H_p$, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this appendix, expressed in Btus per standard cubic foot (kJ/L) of gas.

4.2.1.3 *Conventional cooking top cooking efficiency.* Calculate the conventional cooking top cooking efficiency $Eff_{CT}$ using the following equation:

$$Eff_{CT} = \frac{1}{n}\sum_{i=1}^{n}(Eff_{SU})_i$$

Where:

n = number of cooking top surface units tests. For a full-surface induction cooking top, n = 3.

$Eff_{SU}$ = the efficiency determined during each surface unit test, as determined according to section 4.2.1.1 of this appendix or section 4.2.1.2 of this appendix.

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4.2.2.2.1 *Annual cooking energy consumption.* Calculate the annual energy consumption for cooking, $E_{CC}$, in kBtus (kJ) per year for a gas cooking top, defined as:

$$E_{CC} = \frac{O_{CT}}{Eff_{CT}}$$

Where:

$O_{CT}$ = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output.

$Eff_{CT}$ = the gas cooking top efficiency as defined in Section 4.2.1.3.

4.2.2.2.2 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, $IE_{CA}$, in kBtus (kJ) per year, defined as:

$I_{ECA} = E_{CC} + (E_{CTSO} \times K_e)$

Where:

$E_{CC}$ = energy consumption for cooking as determined in section 4.2.2.2.1 of this appendix.

$E_{CTSO}$ = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

$P_{IA}$ = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this appendix.

$P_{OM}$ = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, $S_{IA}$ and $S_{OM}$ both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, $S_{IA}$, is equal to 8546.9, and the off mode annual hours, $S_{OM}$, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, $S_{IA}$ is equal to 0, and $S_{OM}$ is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

$K_e$ = 3.412 kBtu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to kBtus.

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4.2.3.2 *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, $IR_{CT}$, as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

$O_{CT}$ = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output of cooking top.

$IE_{CA}$ = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

$O_{CT}$ = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

$IE_{CA}$ = total integrated annual energy consumption of cooking top determined according to section 4.2.2.2.2 of this appendix.

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Part IV

## Department of Education

34 CFR Part 263
Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program; Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Part 263**

**RIN 1810–AB19**

**[Docket ID ED–2014–OESE–0050]**

## Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to revise the regulations that govern the Professional Development program and the Demonstration Grants for Indian Children program (Demonstration Grants program), authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The proposed regulations would govern the grant application process for new awards for each program for the next fiscal year in which competitions are conducted for that program and subsequent years. For the Professional Development program, the regulations would enhance the project design and quality of services to better meet the objectives of the program; establish post-award requirements; and govern the payback process for grants in existence on the date these regulations become effective. For the Demonstration Grants program, we propose new priorities, including one for native youth community projects, and application requirements.

**DATES:** We must receive your comments on or before January 2, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202–6135. Telephone: (202) 401–0274.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202–6135. Telephone: (202)401–0274 or by email: *john.cheek@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 3W207, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

### Background

The Secretary proposes to revise the regulations in 34 CFR part 263 that govern the Professional Development program and Demonstration Grants for Indian Children program. For the Professional Development program, we propose adding grantee post-award requirements and revising the selection criteria to better enable the Department and grantees to meet the objectives of the program. For the Demonstration Grants program, we propose new priorities, including one for native youth community projects. For both the Professional Development and Demonstration Grants programs, we propose to amend certain definitions and reorganize sections of the regulations to give the Department more flexibility in determining which priorities and selection criteria to use each year of a competition.

Through our work with grantees under the Professional Development program and our monitoring of their participant recruitment, retention, graduation, and job placement rates, it became apparent that the projects being selected for grant awards were not adequately addressing the issues faced by Indian individuals seeking to become teachers and administrators. These issues include high teacher and administrator turnover rates; lack of cultural relevancy of teacher training programs; and difficulty in finding qualified employment. As a result, many Indian students participating in the Professional Development program either do not complete their course of study or cannot obtain employment upon graduation, and therefore have to repay the assistance they received in cash rather than through a work-related payback.

The proposed regulations would encourage Professional Development program applicants to better tailor their programs to meet the needs of the Indian students participating in the program. The proposed regulations also would encourage Professional Development program applicants to have stronger plans for placing participants in qualifying employment upon completion of the program and in supporting participants in their first year on the job. The proposed changes are designed to result in more participants successfully completing their program of study and obtaining employment as teachers and administrators. The proposed changes should result in fewer participants who, after receiving assistance under these grants, do not complete a "work payback" and instead must repay the Department in cash for the training received because they are not employed as teachers or administrators.

For the Demonstration Grants program, the proposed changes would add new priorities that we could use in any year of a new competition. These new priorities would provide more flexibility to tribal communities in designing coordinated projects to help students become college- and career-ready. By college- and career-ready, we mean that a student graduating from high school has the knowledge and skills to succeed in his or her chosen post-secondary path, including continued education, work, or a traditional lifestyle. A rigorous and well-rounded high school education will provide rewards for a graduate no matter his or her pursuit.

As in all communities, for native students to succeed, they must have a quality school to attend and be surrounded by community and school conditions that support learning. Low educational outcomes can be exacerbated by factors outside of school such as poor health, food insecurity, or unstable housing. Given the interconnectedness of in-school and out-of-school factors, the Federal government proposes to support communities that will assess the set of issues they face in ensuring their students are college- and career-ready, and respond with interconnected, coordinated solutions. The purpose of these proposed priorities is to encourage a community-wide approach to providing academic, social, and other support services, such as health services, for students and students' family members that will result in improved educational outcomes for all children, and specifically college- and career-readiness.

*Tribal Consultation:* Before developing these proposed regulations, the Department held two nationally accessible consultation events on January 28, 2014 and February 5, 2014, pursuant to Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"), to solicit tribal input on the Professional Development program broadly, and on the definition of "Indian organization" for the Demonstration Grants program. A link to the transcripts for these consultations is available at: *http://www2.ed.gov/about/offices/list/oese/oie/index.html.*

Additionally, the Department sent several email messages to tribal leaders from each of the 566 federally recognized Indian tribes to solicit input, via a blog, on the future direction of the Professional Development program. The topics on which we sought input included program participants' job placement, recruitment, and retention; induction services for program participants; costs of training programs; the definition of "Indian organization"; and the subject areas, geographic areas, and specialty areas in which educators are most needed. A link to the blog posting can be found at: *www.ed.gov/edblogs/oese/2014/03/indian-professional-development-program-for-tribal-consultation/.*

While the Department received limited feedback from its consultation efforts regarding the Professional Development program, respondents were generally in favor of the Department placing a greater emphasis on applicants' plans for recruitment and retention of qualified participants; requiring job placement assistance for graduates; and improving induction services during the first year of employment. In addition, while reaction was mixed as to whether we should expand the definition of "Indian organization," most of the commenters were in favor of the broader definition.

The Department then conducted additional consultations regarding proposed new priorities for the Demonstration Grants program, including a priority for native youth community projects. These consultations were held in-person on October 17, 2014 (Alaska) and October 29, 2014 (Georgia), and via webinars on October 21 and 24, 2014. Tribal leaders were generally positive about the concept of native youth community projects. A link to the transcripts for these consultations is available at: *http://www2.ed.gov/about/offices/list/oese/oie/index.html.* Many participants expressed support for allowing grantees the flexibility to identify community-specific barriers and opportunities, rather than being required to address specific issues or grade spans. In addition, participants appreciated the ability to focus attention on one or more opportunities, barriers, and strategies, through this proposal, especially if Federal grant resources are limited in a given year. Participants highlighted the need for guidance and technical assistance in developing strategies and objectives, as well as access to evidence-based and promising practices.

**Significant Proposed Regulations**

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

*Subpart A—Professional Development Program*

Section 263.3 What definitions apply to the Professional Development program?

*Statute:* Under section 7122 of the ESEA, an "Indian organization," in a consortium with an institution of higher education, is eligible to receive a grant under the Professional Development program. However, title VII of the ESEA does not define this term. Similarly, section 7122 states that funds under this program must be used for training, either in-service or pre-service, of Indian individuals to go into the field of education, but it does not define the terms "expenses," "induction services," "professional development activities," "stipend," or "undergraduate degree." The Secretary has the authority to regulate the definitions that apply to the Professional Development program under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Section 263.3 of the current regulations defines key terms used by the Department in administering the program. Current definitions include, among other terms, "expenses," "Indian organization," "induction services," "professional development activities," "stipend," and "undergraduate degree." Under the current regulations:

- "Expenses" is defined as costs incurred by a participant during training, such as tuition, books, fees, room and board, and supplies.
- "Indian organization" is limited to an organization that, in addition to meeting other criteria, has as its primary purpose the promotion of the education of Indians.
- "Induction services" are defined as services meeting certain criteria that grantees provide to program participants

after they complete their training, including such activities as mentoring, access to research on teaching and learning, feedback on performance, and periodic meetings between participants.

- "Professional development activities" are defined as in-service training that focuses on enhancing skills of participants that are already employed.
- "Stipend" is defined as funds provided to participants to cover living expenses such as room and board.
- "Undergraduate degree" is defined as a bachelor's degree awarded by an institution of higher education.

*Proposed Regulations:* First, we propose to remove the definition of "expenses." Next, we propose to modify the definition of "Indian organization" to include an organization that has as one of its purposes the education of Indian students. We also propose to revise the definition of "induction services" to state that they are provided during the participant's first year of teaching to improve participants' performance and promote their retention. Also, the proposed revisions state that induction services must include services assisting teachers to use technology and data as part of their instruction. Additionally, the proposed revisions clarify that the mentoring and coaching services must be of high quality and that the feedback provided to participants must be clear, timely, and useful. Another proposed change is to expand the definition of "professional development activities" to include pre-service training, in addition to in-service training, which is included in the current definition. Additionally, we propose to change the definition of "stipend" to limit this term to only funds used for room, board, and personal living expenses for full-time students living at or near the institution providing the training. The last proposed change is the elimination of the definition of "undergraduate degree."

*Reasons:* First, we propose removing the definition of "expenses" because we propose to explain in detail in § 263.4 what types of student costs are allowable.

Second, we propose to change the definition of "Indian organization" to include organizations that have as *one of* their primary purposes the promotion of the education of Indians, in order to expand the pool of eligible applicants. The current regulatory definition excludes from eligibility Indian organizations that have multiple areas of expertise (*e.g.*, Indian housing or health services in addition to education) and we believe this unnecessarily limits the pool of eligible applicants. Because these organizations have the knowledge necessary to carry out successful projects under the Professional Development program, the Department wants these entities, in consortia with institutions of higher education, to be eligible to apply for these grants.

We propose to amend the definition of "induction services" to more specifically describe the induction services that grantees would provide graduates upon completion of their pre-service training and to better align this definition with similar definitions in other Department programs, such as the Teacher Quality Partnership Grant Program. These changes would ensure that graduates receive useful and productive support in their schools during the crucial first year of teaching, and specifically that they receive training on effective use of technology and data in the classroom. Grantees either can provide induction services directly or use grant funds, as specified in proposed § 263.4(c), to sponsor mentorships at the school or school-district level. We expect these induction services to increase the likelihood that new teachers and administrators remain in the professional fields for which they received training and to increase their effectiveness.

We also propose to expand the definition of "professional development activities" to include pre-service activities to provide maximum flexibility to grantees in creating learning opportunities that will prepare participants to overcome some of the barriers they may encounter as teachers and administrators.

We also plan to limit the definition of "stipend" to only room, board, and personal living expenses for full-time students who are living at or near the institution where they are receiving training, to eliminate the practice of participants receiving stipends from two professional development grants concurrently.

Lastly, we propose to remove the definition of "undergraduate degree" because this term is not used in the regulations or guidance for the Professional Development program. The program now uses the terms "bachelor's degree" or "baccalaureate degree," and we do not believe these terms require definition.

*Section 263.4 What training costs may a Professional Development program include?*

*Statute:* Section 7122 of the ESEA states that grant funds under the Professional Development program may be used to provide support and training for program participants, including continuing programs, workshops, conferences, and direct financial support.

*Current Regulations:* The current regulations explain the training costs that may be covered under the Professional Development program. The regulations state that training costs may include costs to fully finance a student's educational expenses and supplement other financial aid including stipends.

*Proposed Regulations:* We propose to revise the regulations to provide greater detail about the kinds of training costs that may be covered under the Professional Development program, including in-service and pre-service training. We propose to include examples of costs that contribute to the full cost of a participant's education, such as technology costs. Additionally, in 263.4(c), we propose to revise the regulations to specify other kinds of costs that can be covered under the Professional Development program, including costs associated with collaborating with prospective employers, providing in-service training such as mentorships for participants who have graduated, and assisting participants in finding employment. These are costs that cannot be passed on to the participants.

*Reasons:* The inclusion of examples of costs to fully finance a participant's education would help grantees and participants understand what education costs can be covered by the program. This would result in uniform treatment of allowable educational expenses among grantees and reduce the risk that grantees would use program funds for unallowable expenses or incorrectly charge participants for costs that should be covered by grant administration funds.

The inclusion of grantee costs beyond educational expenses in this section of the regulations would encourage grantees to include costs associated with creating partnerships with prospective employers, providing in-service training such as mentorships for graduated participants, and assisting participants in finding employment in their field of study. This would improve the quality of the job placement and in-service supports provided to participants. Specifically, these changes would help increase the pool of available jobs for graduates; assist new teachers and administrators with overcoming workplace challenges they encounter within the first year of employment; and increase the number of program participants finding employment upon graduation.

*Section 263.5 What priority is given to certain projects and applicants?*

*Statute:* Section 7143 of the ESEA states that the Secretary shall give preference to Indian tribes, Indian organizations, and Indian institutions of higher education applying for grants under the Professional Development program. Section 7122 of the ESEA does not establish any other priorities for this program, but it states that funds under this program must be used to provide pre-service or in-service training for Indian individuals to become teachers, administrators, and other education professionals.

*Current Regulations:* Section 263.5 establishes two different competitive preference priorities—one for applications submitted by an Indian tribe, Indian organization, or an Indian institution of higher education, and one for consortium applications that designate a tribal college or university as a fiscal agent—and assigns five points to each of these priorities. In addition, the current regulations establish as absolute priorities applications for pre-service training of teachers and administrators.

*Proposed Regulations:* We propose to combine the two competitive preference priorities in § 263.5(a) and (b) into one competitive preference priority. Instead of setting the number of competitive points at five, as the current regulations do, we propose to determine the number of points awarded for this combined competitive preference priority annually. In other words, we will determine the number of competitive points to be awarded in each year of a new competition for the program. For the remaining current priorities, we propose to designate these priorities as absolute, competitive preference, or invitational in the notice inviting applications.

We also propose to amend the current priorities for pre-service training for teachers and administrators to require that applicants under these priorities include project-specific goals for the number of participants to be recruited, to continue each year, to graduate, and to find jobs upon completion.

Finally, we propose a new priority for applicants that submit a letter of support from a local educational agency (LEA), Bureau of Indian Education-funded school, or other entity in the applicant's service area agreeing to consider program graduates for qualifying employment. We also propose removing the note to paragraph 263.5(c)(1) regarding participants who need a fifth year of study to complete licensure requirements and incorporating that language into paragraph 263.5(b)(i)(A). We believe this change will make it clearer that certain individuals may participate in the Professional Development program even after the end of the grant period.

*Reasons:* The removal of points associated with the competitive preference priority for applications submitted by certain Indian entities and the removal of the designation of the remaining priorities as absolute or competitive preference would provide the Secretary with flexibility to determine the priority structure and priority point allocation for each grant competition. We propose to combine the current competitive preference priorities in § 263.5(a) and (b) into a single priority to streamline the application process. The current priorities ask applicants for similar commitments, and the Department has observed that applicants that meet one of these competitive preference priorities almost always also meet the other. By combining these priorities into a single priority, applicants would no longer receive points twice for the same commitment.

We believe that requiring grantees to establish project goals for participant recruitment, retention, graduation, and job placement as part of the pre-service training priority would make grantees more accountable for setting and reaching goals in these areas.

We propose adding the priority regarding the letter of support from potential employers to improve the relationships between grantees and potential employers from the beginning of the grant period. This priority is expected to help increase the number of participants that obtain employment upon graduation from the program and complete a work-related payback because the Department has learned that grantees that develop a close working relationship with school districts and other potential employers have been more successful placing participants into eligible employment after graduation.

*Section 263.6 How does the Secretary evaluate applications for the Professional Development program?*

*Statute:* Under section 7142 of the ESEA, the Secretary uses a peer review process to review applications submitted for the Professional Development program. Title VII of the ESEA does not address the criteria that should be used to evaluate these applications, and under 20 U.S.C. 1221e–3 and 3474 the Secretary has the authority to establish these selection criteria through regulations.

*Current Regulations:* Under the current regulations, the Secretary awards a fixed number of points for each of the selection criteria used for evaluating grant applications. The current criteria are the:

- Need for the project (5 points);
- Significance of the project (10 points);
- Quality of project design (15 points);
- Quality of project services to be provided (15 points);
- Quality of project personnel (15 points);
- Adequacy of resources to accomplish project goals (10 points);
- Quality of the management plan (15 points); and
- Quality of the project evaluation (15 points).

*Proposed Regulations:* We propose to remove the fixed points assigned to each criterion. Instead, the Secretary would establish the number of points for each selection criterion annually, that is, for each year of a new competition for the program, in the notice inviting applications for the competition. The Secretary could also include any of the selection criteria from 34 CFR 75.210 and select from among the list of factors under each criterion in 34 CFR 75.210 or these regulations when making new grant awards.

We propose to include in the regulations only program-specific factors and to eliminate the factors that are codified in 34 CFR 75.210, as well as entire selection criteria for which we do not propose program-specific factors. To that end, we propose to remove the selection criteria for "adequacy of resources," "quality of the management plan," and "quality of the project evaluation."

In § 263.6(a) we propose to revise the "need for project" selection criterion to address how the proposed project will prepare participants to work in a field of study where there are demonstrated shortages, and the extent to which employment opportunities exist in the project's service area. Both the shortages and the employment opportunities would be demonstrated through a job market analysis.

We also propose to revise the "significance" selection criterion in § 263.6(b) to address how the proposed project would help increase effective strategies for teaching and improving Indian student achievement, and would build local capacity to provide, improve, or expand services that address the specific needs of Indian students.

In § 263.6(c) we propose to add the following factors within the "quality of project design" selection criterion:

- The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious, attainable, and address specific project performance goals;
- The extent to which the applicant designed a recruitment plan that ensures that participants are likely to complete the program; and
- The extent to which the proposed project will incorporate the needs of the potential employers by establishing partnerships and developing programs that meet their employment needs.

We propose to add four new project-specific factors to the selection criterion for "quality of project services" in § 263.6(d). These proposed factors are designed to identify applicants that would:

- Provide learning experiences to help participants become successful teachers or administrators;
- Prepare participants to adapt practice to meet the breadth of Indian student needs;
- Offer job placement activities; and
- Offer induction services that reflect the latest research.

For the selection criterion "Quality of project personnel," we propose amending the factors to include consideration of the cultural competence of proposed key project personnel.

*Reasons:* We propose these changes to make the selection criteria for the Professional Development program more focused on the goals of the program—to train qualified Indian individuals to be teachers and administrators and to increase the number of such individuals in education professions serving Indian people. Through its work with grantees, the Department has learned that the projects that best reach these goals are ones that recruit qualified participants and have supports in place to help them complete their training successfully, have high-quality plans to place graduates in jobs upon their graduation, and provide transition supports to graduates as they begin their careers.

Specifically, the proposed amendments to the "need for project" selection criterion would encourage applicants to demonstrate that their proposed training relates to a field with a demonstrated shortage of teachers and administrators in their geographic area, which would increase the likelihood of participant job placement after graduation. The proposed amendments to the "significance" selection criterion would encourage applicants to demonstrate that the project would significantly improve the effectiveness of training given to Indian teachers and would develop strategies for improving the resulting outcomes for Indian students in ways that can be replicated. The proposed amendments to the "quality of project design" selection criterion would encourage applicants to have specific plans for recruiting qualified applicants and for creating partnerships with potential employers, and to set ambitious goals that would measure success related to these plans. The proposed amendments to the "quality of project services" selection criterion are designed to encourage applicants to have plans to place participants in jobs and to provide participants with supports during the beginning of their careers. Lastly, the proposed amendments to the "quality of project personnel" selection criterion aim to ensure that the project team would have competency regarding cultural challenges facing project participants, and the skills to address differences in learning styles of Indian students.

Additionally, we propose removing the fixed selection criteria points to provide flexibility to determine the point allocation for each grant competition. This would allow us to tailor grant competitions to changing student learning needs and employment opportunities in the field.

Finally, we propose removing the selection criteria that are identical to the selection criteria codified in section 34 CFR 75.210 because, under 34 CFR 75.200, the Secretary has the ability to use these criteria in 34 CFR 75.210 for the Department's discretionary grant programs.

*Section 263.7 What are the requirements for a leave of absence?*

*Statute:* Section 7122 of the ESEA does not address how the Department or grantees should handle situations in which participants take a leave of absence from the course of study. The Secretary has the authority to regulate this issue under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* The current regulations allow participants to be granted a leave of absence for up to one academic year as long as the participant receives approval from the project director, but the regulations do not specify how to handle these situations for the purpose of project performance reporting.

*Proposed Regulations:* We propose to specify that participants who do not return from a leave of absence by the end of the grant period will be considered not to have completed the program for the purposes of project performance reporting. This change is proposed to address situations where participants do not return after taking a leave of absence.

*Reasons:* We propose to add the provision regarding participants who do not return to the program after a leave of absence because the current regulations do not address how such participants are treated for reporting purposes. Currently, grantees generally are not reporting the final status of participants who never return from a leave of absence. The proposed change would ensure that grantees track participant progress through the program more accurately, and it would allow the Department to track grantee progress toward meeting goals for participant completion.

*Section 263.8 What are the payback requirements?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to either perform work-related payback or to repay all or a prorated part of the assistance they received under the program. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* The current regulations in § 263.8 require participants to sign a payback agreement when selected to be in the Professional Development program, perform work related to training received, and repay all or a prorated amount of the assistance received if work-related payback is not completed. For cash payback, the regulations state that the cash payback is equal to the total amount of assistance received. Additionally, the current regulations in § 263.9 ("When does payback begin?") and § 263.10 ("What are the payback reporting requirements?") address other aspects of the payback requirements. Section 263.9 explains that payback begins within six months of training completion, and § 263.10 states that if a participant cannot complete a work-related payback, he or she must complete a cash payback.

*Proposed Regulations:* We propose to consolidate all of the regulatory provisions that govern the payback process, currently in § 263.8 through § 263.10, into § 263.8. First, we propose to outline the general payback requirements. We would clarify the two different types of payback to the Department, work-related payback and cash payback, and to specify that the preference is for participants to

complete a work-related payback. We would also note the payback agreement and employer verification requirements, which we discuss in more detail in § 263.10 and § 263.11. With respect to the payback process, we propose that work-related payback would be tracked and credited on a month-for-month basis, that it would be credited based on actual time worked, and that if a participant is unable to complete a work-related payback he or she would be required to make a cash payback on a prorated basis. For cash payback, we propose that participants who do not report eligible employment within twelve months would be automatically referred for a cash payback, would be responsible to repay the total amount of funds received, and would incur non-refundable fees and interest charges from the date of referral. The regulations would also clarify that cash payback can only be discharged through bankruptcy if repaying the loan would cause undue hardship as defined under bankruptcy law.

*Reasons:* The Department proposes to clarify the regulations that govern the payback process so that participants better understand the repayment requirement. In the current regulations, much of the information regarding work and cash payback appears in § 263.9 and § 263.10, and we believe this is confusing for participants. The proposed regulations better organize the information about work and cash payback requirements and provide more clarity to grantees and participants regarding the requirements for each.

For cash payback, we also propose to add provisions that would better inform participants of the nature of the debt they are incurring when they begin their course of study. To align the regulations with our current practice, we propose the provision regarding non-refundable fees and interest charges to notify participants that they will incur these fees in addition to their training costs if they are referred for a cash payback. Similarly, we propose to specify how loans will be treated in bankruptcy so that participants would be aware that it may not be possible to discharge these loans through bankruptcy.

We also propose to amend the regulations to clarify the date by which the two different types of payback must begin. The current regulations state that work-related payback begins within six months of completion of the training program but do not state when cash payback would begin. We propose to clarify that, for participants who have not previously reported eligible employment, cash payback would begin within twelve months of completion of training, or, for participants who have entered but not completed work-related payback, cash payback would begin when participants have failed to submit verification of eligible employment for a twelve-month period. We believe these changes would reduce the confusion of many participants regarding when work-related payback would begin and when a participant would be referred for a cash payback.

Additionally, we expect these proposed changes would reduce the number of participants completing a cash payback because many participants do not currently submit the required employment verification documentation because they do not understand their responsibilities under the current regulations.

*Section 263.9 What are the requirements for payback deferral?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to either perform work-related payback or to repay all or a prorated part of the assistance they received under the program. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* Section 263.9 is currently titled, "When does payback begin?" and states that payback begins within six months of program completion. Additionally, § 263.9 allows participants who leave the Professional Development program but continue their education as full-time students to defer the payback of assistance.

*Proposed Regulations:* We propose to rename this section of the regulations "What are the requirements for payback deferral?" and to specify the two types of deferral that are available: Education and military service. Current regulations specify the conditions under which education deferrals can be granted, but they do not explain the deferrals of payback for military service.

We also propose to add a provision for deferrals, for no more than 36 months, for individuals called to active duty in the armed services for more than 30 days. We propose to add regulations to establish the criteria for a "military deferral" and the process to request a "military deferral." As part of the request process, we propose that a participant provide to the Secretary a written statement from the recipient's commanding officer or a copy of his or her military orders and military identification.

In addition, we propose to remove the provision stating that payback begins within six months of program completion, as we propose to revise § 263.8 to provide that participants would be referred for cash payback if they do not submit employment verification within twelve months of completion of pre-service or in-service training or for any twelve-month period prior to work-related payback completion.

*Reasons:* We propose changing the title of this section to better reflect the information included in this regulation and to clarify the two situations in which the Department will grant deferrals. We believe the proposed changes would eliminate the confusion regarding what types of payback deferrals are available to participants who receive funding from the Professional Development program. The program has always permitted deferrals for participants who continued their education full-time and for military deployment, and the proposed regulations would clarify and specify the rules for each type of deferment. The military deferment provisions are modeled after those used in the Department's TEACH Grant program (see 34 CFR part 686) and would allow participants serving in specified reserve components of military units to defer their payback obligations if they are called to active military service.

*Section 263.10 What are the participant payback reporting requirements?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to report periodically on their status in work-related payback. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* Section 263.10 requires participants to submit written notice of intent to complete a work-related payback within 30 days of completing the program, develop a plan to demonstrate how their proposed work-related service is related to the training and how it benefits Indian people, notify the Secretary within 30 days of any change in employment once employment has begun, and submit employment verification every six months that includes a certification that the work was continuous. The regulations also state that if participants cannot complete a work-related payback, they must complete a cash payback.

*Proposed Regulations:* First, we propose to amend the title of the section to indicate that the section relates to the reporting requirements of participants,

rather than grantees. We also propose to move the provisions governing the cash and work payback process to § 263.8, "What are the payback requirements?"

We also propose to eliminate the work-related payback plan and the requirement that eligible employment must be continuous.

*Reasons:* We propose to eliminate the participant work plans because these plans have been burdensome for participants to complete and for the Department to track, and they do not help participants secure employment. We propose to eliminate the continuous employment certification because the Department would accept part-time employment, temporary employment, and substitute employment as qualifying employment as this information can now be accurately tracked in the Professional Development Program Data Collection System (DCS). The DCS is an electronic service obligation tracking system that the Department now uses to track participant training assistance and the fulfillment of the work-related payback requirements of the program. The change to accept other types of employment also addresses the difficulty many first-time teachers and administrators have in securing permanent full-time employment.

*Sections 263.11 What are the grantee post-award requirements?*

*Statute:* Section 7122 and the related portions of title VII of the ESEA do not directly address post-award requirements of grantees in the Professional Development program. The Secretary has the authority to regulate the post-award requirements that apply to the Professional Development program under 20 U.S.C. 1221e–3 and 3474. Section 7(b) of the Indian Education and Self-Determination Assistance Act (Pub. L. 93–638) requires that grantees under the Professional Development program give, to the greatest extent feasible, certain employment and procurement preferences to members of federally recognized Indian tribes.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a requirement for grantees to conduct a payback meeting with each participant. At this meeting, the grantee would review the payback requirements with the participant before funds are provided to the participant. We propose to require that grantees report information regarding participant training and payback information to the Department in a manner designated by the Department. We also propose to require that grantees obtain a signed payback agreement from each participant. These agreements would have to contain information about estimated training costs and length of training and document that a payback meeting took place between the grantee and participant. We propose that grantees would submit the signed payback agreements to the Department within seven days of their signing. Additionally, we propose a requirement that grantees assist participants in finding qualifying employment after completing the program. Finally, the proposed regulations would clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.

*Reasons:* The proposed requirements regarding the payback meeting and signed payback agreement would help ensure that participants are aware of the total training costs and payback responsibilities. We expect these changes to reduce misinformation regarding payback and address a major area of complaint from program participants. We propose that grantees report to the Secretary, using DCS, their participants' payback information in order to strengthen the Department's ability to oversee grantees and track their progress toward meeting their goals of graduating and placing participants in qualifying employment. The proposed requirement that grantees perform activities to assist participants in obtaining employment would increase the likelihood that participants will be able to enter qualifying employment upon graduation, which would reduce the number of participants completing a cash payback.

Finally, we propose to add § 263.11(e) to make it clear to grantees that the hiring preference requirements under the Indian Education and Self Determination Act apply to grantees' administration of these grants to the extent that the projects primarily serve members of federally recognized tribes.

*Section 263.12 What are the program-specific requirements for continuation awards?*

*Statute:* Section 7122 and the related portions of title VII of the ESEA do not directly address the issue of continuation awards for the Professional Development program. The Secretary has the authority to regulate on this issue under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add to the criteria the Secretary would use in making continuation awards. In addition to the criteria in 34 CFR 75.253, we propose to add consideration of the extent of grantees' progress toward meeting recruitment, retention, graduation, and job placement goals. In addition, we propose to clarify that we may reduce continuation awards, including the portions of grantees' awards allocated to both administrative and training costs, based on grantees' failure to meet project goals.

*Reasons:* We propose criteria for continuation awards based on grantees' specific project goals to emphasize the importance of achieving the specific goals that grantees establish regarding recruitment, retention, graduation, and job placement of participants. The proposal to allow the Department to reduce continuation awards by taking reductions from administrative costs, student training costs, or both would provide incentives for the grantee to achieve and maintain enrollment in order to receive the full continuation award amount. This change would help reduce the high number of participants who dropout or do not find qualifying employment.

**Subpart B—Demonstration Grants for Indian Children Program**

*Section 263.20 What definitions apply to the Demonstration Grants for Indian Children program?*

*Statute:* Although section 7121 of the ESEA states that Indian organizations are eligible entities to receive grants under the Demonstration Grants program, title VII of the ESEA does not define this term. The Secretary has the authority to regulate the definitions that apply to the Demonstration Grants for Indian Children program under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* Section 263.20 limits the definition of "Indian organization" to an organization that has as its primary purpose the promotion of the education of Indians.

*Proposed Regulations:* We propose to modify the definition of "Indian organization" to include an Indian organization that, in addition to meeting other criteria, has as one of its purposes the education of Indian students. We also propose to add a definition of "native youth community projects."

*Reasons:* Our reasons for proposing the change to the definition of "Indian organization" are described in § 263.3, "What definitions apply to the Professional Development program?"

We propose the definition of "native youth community projects" to accompany the proposed priority for such projects in § 263.21, "*What priority is given to certain projects and applicants?*" Under this definition,

native youth community projects would be focused on a specific local geographic area, as determined by the applicant, and would not be limited to Indian reservations. These projects would be based on partnerships that include at least one tribe or its tribal educational agency, as well as a public school district or a school funded by the Department of the Interior's Bureau of Indian Education (BIE). The proposed definition does not limit the types of entities that could join in a partnership for native youth community projects; other entities such as community-based organizations or national nonprofit organizations could be valuable partners in a local initiative.

Under the statute, eligible entities for Demonstration Grants are: Indian tribes, Indian organizations, Indian institutions (including Indian institutions of higher education), BIE-funded schools, LEAs, and SEAs. For any competition in which we use the proposed priority for native youth community projects as an absolute priority, any of these eligible entities could apply as the lead applicant for a grant, but would be required to have formed a partnership that includes the required tribal and educational entities. In many tribal areas, including on reservations, there are both public schools and BIE schools, and students transfer and transition between them. Projects in such places should ideally include both types of educational institutions in order to improve outcomes for all local Indian students.

Under the proposed definition, native youth community projects would be projects, informed by evidence and data, addressing the greatest in- and out-of-school barriers to student college- and career-readiness. Projects would also address opportunities for improving student outcomes and the availability of existing programs and funding sources. Projects would select and track measurable objectives to determine progress and success of the project. For example, communities could identify, as barriers to college- and career-readiness, inadequate mental health supports for students, ineffective teacher recruitment and retention practices, and low student attendance rates. Applicants could identify opportunities such as the local school board's interest in a partnership with a native language preschool program, the superintendent's hiring goals for more Indian instructional and support staff, and recent changes to criteria for gifted and talented programs that include recognition of native arts and performance arts.

The definition would require applicants to develop a plan that identifies a strategy or strategies to address the barriers or opportunities that it determines to be most crucial for the community. For example, applicants, including the tribe, tribally-controlled school, and local school district partners, after surveying existing services and resources, could jointly decide to focus their projects on early childhood, with services for preschool-aged children and their parents. They could invite health and social service organizations to join as partners and select as measurable objectives the number of kindergarten students who meet the criteria on the State's readiness assessment compared to previous years, or the number of slots available for high-quality full-day prekindergarten. As another example, a community could identify teen substance abuse as its greatest barrier to student success, and design services around the goal of reducing that barrier. Services could include counseling and other supportive services to youth struggling with substance abuse, and prevention programs that improve school performance and teach behavior skills that increase persistence. The partnership could include a nonprofit organization with expertise in drug abuse prevention and a health services organization. Measurable objectives could be grade retention and substance use rates as reported on a school climate survey.

*Section 263.21 What priority is given to certain projects and applicants?*

*Statute:* Section 7143 of the ESEA states that the Secretary shall give preference to Indian tribes, Indian organizations, and Indian institutions of higher education applying for grants under the Demonstration Grants program. In addition, section 7121 states that the Secretary shall give priority to entities that submit applications proposing to combine at least two activities listed in section 7121(c)(1) over a period of more than one year. Section 7121 of the ESEA does not establish any other priorities for this program.

*Current Regulations:* Section 263.21 currently assigns five points to two different competitive preference priorities—one for applications submitted by an Indian tribe, Indian organization, or an Indian institution of higher education, and one for applications that propose to combine at least two activities listed in section 7121(c)(1) of the ESEA. In addition, paragraph (c) of the current regulation establishes school readiness projects, early childhood and kindergarten programs, and transition to college programs as absolute priorities that the Secretary may choose.

*Proposed Regulations:* In proposed § 263.21(a) and (b), instead of setting the number of competitive preference points at five, as the current regulations do, we propose to determine the number of points for the current competitive preference priorities annually. In other words, we will determine the number of competitive preference points that are available in each year of a new competition for the program. In addition, in the current priority for applications submitted by tribes, Indian organizations, and Indian institutions of higher education in paragraph (b), we propose to delete the language that includes members of a consortium of eligible entities.

We propose revising paragraph (c) to: Designate these priorities as absolute, competitive preference, or invitational annually; replace the priorities relating to early childhood education and college preparatory programs that are in current paragraph (c)(1)–(3) with a priority in paragraph (c)(4) that would enable the Department to choose as a priority any of the authorized activities in section 7121(c) of the statute; and add new priorities that the Secretary may use in awarding grants under the Demonstration Grants program.

As new priorities, we first propose in paragraph (c)(1) a priority for native youth community projects. In paragraph (c)(2), we propose a priority for applications in which the lead applicant, or a primary partner that has signed the agreement described in proposed § 263.22(b)(2) of these regulations, has received a grant under another program as specified by the Secretary. Similarly, in paragraph (c)(3) of this section, we propose a priority for applicants that have the Department's approval to consolidate funds, either under the provisions of section 7116 of the ESEA or other authority designated by the Secretary.

*Reasons:* We propose to remove the point values associated with the current competitive preference priorities in paragraphs (a) and (b) to allow for flexibility to determine the point allocation for each year's competition. We also propose to limit the competitive preference priority in paragraph (b) to tribes serving as the lead applicant, in order to build tribal capacity.

We propose to remove the designation of the priorities in paragraph (c) as absolute to allow for flexibility to determine the priority structure for each grant competition. Further, to provide maximum flexibility in tailoring the

demonstration grants to the needs identified by the public, rather than providing for only the existing priorities for early childhood and college-readiness projects, we propose to enable the Department to choose any of the authorized activities in section 7121(c) of the ESEA as a priority. The twelve activities enumerated in the statute include early childhood and college-readiness projects.

We propose in paragraph (c) a new priority for native youth community projects to provide an opportunity for Indian communities to work together to develop and implement projects to address the barriers, in and out of school, to college- and career-readiness that are the most important from that community's point of view. Through tribal consultations we have heard that tribes would like the maximum flexibility to design projects that are culturally relevant, that respect tribal sovereignty, and that are tailored to a community's specific circumstance. We have also heard, and have learned through the Department's State Tribal Education Partnership (STEP) grants administered by the Office of Indian Education, that it is often difficult for tribes and local school districts to work together and share information. However, such coordination benefits students; accordingly, this priority encourages such coordination, while supporting tribal sovereignty and fostering local solutions to local challenges.

Because many Federal grant programs for Indian students have related goals, we have also proposed a priority for an applicant, or one of its primary partners, that has received a grant under another Federal program specified by the Secretary. This priority is designed to help build on existing Federal resources and programs for Indian students. For example, in a year in which the Secretary identifies in the notice inviting applications a competitive preference for applicants that have received a grant under the Department's STEP program or the Department of Interior's Sovereignty in Indian Education Grant program, an applicant or consortium member with one of those grants would receive preference points.

The proposed priority for applicants that have an approvable plan to consolidate funds under section 7116 of the ESEA has a similar goal. Section 7116 permits an entity that receives an Indian Education formula grant under title VII, Part A of the ESEA—school districts, BIE-funded schools, and certain tribes that receive a title VII formula grant in lieu of the local school district—to consolidate funds from Federal grants received for Indian students. We have heard from some school districts that reporting and grant administration requirements are duplicative for the title VII formula grants and the Department of Interior's "Johnson O'Malley" grants, and that combining those funds, which is permissible under a plan submitted under section 7116, would be cost-effective for both programs. A plan submitted under section 7116 would also permit consolidation of funds from other Federal programs intended to benefit Indian students.

Finally, we propose a priority for rural projects. We recognize that many American Indian and Alaska Native students attend schools in urban areas, and urban school districts face unique challenges in serving students from many different tribal backgrounds in their schools. The challenges facing rural areas, however, including Indian reservations, are of a different nature; they often include longstanding problems of poverty and lack of resources due to the inability of local jurisdictions to levy property tax revenues on Indian lands. We believe the proposed priority for rural areas would help such rural areas compete with applicants from urban areas that have more resources.

*Section 263.22 What are the application requirements for these grants?*

*Statute:* To receive a grant under section 7121(d) of the ESEA, an eligible entity must submit an application at such time and in such manner as the Secretary may reasonably require. In addition to four specific application requirements, the Secretary can also require other reasonable information.

*Current Regulations:* None.

*Proposed Regulations:* The proposed regulations would add application requirements for Demonstration Grants. The requirements in proposed § 263.22(a) are statutory. Proposed § 263.22(b) contains requirements that the Secretary could choose in any year of a new grant competition.

*Reasons:* Proposed § 263.22(b) would provide flexibility for the Secretary to choose specific application requirements to correspond to the priorities chosen. The requirement for evidence of a needs assessment or other data analysis would ensure that projects are targeted toward the needs of the community. The requirement for a partnership agreement would provide evidence of a commitment among service providers and identify the responsibilities of each party. These requirements would help ensure that high-quality applications are received and funded.

*Section 263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?*

*Statute:* Section 7(b) of the Indian Education and Self-Determination Assistance Act requires that, for awards that are primarily for the benefit of members of federally recognized tribes, grantees must give, to the greatest extent feasible, certain employment and procurement preferences to members of federally recognized Indian tribes.

*Current Regulations:* None.

*Proposed Regulations:* The proposed regulations would clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.

*Reasons:* Our reasons for proposing this change are in "Section 263.11 What are the grantee post-award requirements?"

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

*Discussion of Costs and Benefits:* The potential costs associated with the proposed priorities and requirements would be minimal while the potential benefits are significant.

For Professional Development grants, applicants may anticipate costs in developing their applications and time spent reporting participant payback information in the DCS. Additional costs would be associated with participant and employer information entered in the DCS, but the costs of carrying out these activities would be paid for with program funds.

The benefits include enhancing project design and quality of services to better meet the objectives of the programs with the end result being more participants successfully completing their programs of study and obtaining employment as teachers and administrators.

For Demonstration grants, applicants may anticipate costs associated with developing a partnership agreement and providing evidence of a local needs assessment or data analysis. These requirements should improve the quality of projects funded and conducted under these grants, and we believe the benefits of these improvements will outweigh the costs.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 263.1 What is the Professional Development Program?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are LEAs, institutions of higher education, tribes, or tribally-operated schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds, including reporting of participant payback information. We note that grantees that would be subject to the minimal requirements that these proposed regulations would impose and would be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Indian Education Discretionary Grant programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

*Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested

data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 263.6, 263.10, and 263.11 contain information collection requirements that have been approved by OMB. These proposed amendments do not change the OMB approved data collection burden. Section 263.22 contains information collection requirements that have not been approved by OMB. As a result of these proposed amendments, the Department is creating a new application package. Under the PRA, the Department has submitted a copy of this section to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

The Department currently collects information from applicants for the Professional Development program using a discretionary Demonstration grant application package under the approved OMB Control Number 1810–0580. For the purposes of the PRA, the burden associated with the information grantees are required to submit would not change as a result of the proposed regulations.

Additionally, grantees, participants, and employers currently report information to the Department through the Indian Education Professional Development Grants Program: Government Performance and Results Act of 1993 (GPRA) and Service Payback Data Collection System (DCS) under the approved OMB Control Number 1810–0698. The burden associated with the information grantees, participants, and employers are currently reporting would not change as a result of the proposed regulations.

In the final regulations we will display the control numbers 1810–0580, 1810–0698, and 1810–NEW assigned by OMB to these information collection requirements.

*Section 263.6—How does the Secretary evaluate applications for the Professional Development program?*

Section 263.6 contains information collection requirements that the Department uses to evaluate applications submitted for the Professional Development program. The proposed changes to these requirements would focus the selection criteria more specifically on the program goals and, by removing the fixed selection criteria points, permit us to tailor competitions to changing student needs and employment opportunities in the field.

Based on the current approved burden for this program, a total of 50 applications are received annually for the grant competition. It takes each applicant 30 hours to complete the application package, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, for a total burden of 1,500 hours for the collection of information through the application package. Burden costs of applicants are calculated at an annual hourly rate of $50. Accordingly, the annual respondent cost for 50 applicants at 30 hours is $44,198. These proposed changes to the regulations would not change the burden hours for this collection.

TABLE A–1

| Data source | Number of estimated respondents | Estimated annual hour burden per respondent | Estimated annual hour burden | Total estimated annual cost |
|---|---|---|---|---|
| Discretionary Grant Professional Development Program Application (1810–0580) | 50 | 30 | 1,500 | $44,198 |
| Totals | 50 | 30 | 1,500 | 44,198 |

*Section 263.10—What are the participant payback reporting requirements? Section 263.11—What are the grantee post-award requirements?*

Sections 263.10 and 263.11 contain information collection requirements. The information collection requirements under these sections are already approved under OMB Control Number 1810–0698 and the associated burden hours would not change as a result of these proposed regulations.

Sections 263.10 and 263.11 require both program participants and grantees to report information to the Department. Under § 263.10, participants initiate contact with Department staff within 30 days of graduating or exiting the program and indicate their intent to complete a work-related or cash payback. They also submit employment information starting six months after completion of the program and an employment status report every six months thereafter. Under § 263.11, grantees report information on all participants for the length of the grant award providing budget and project-specific performance information in the DCS. Grantees also enter into a payback agreement with each participant and submit a copy to the Department.

In addition, as part of the information collection requirements approved under OMB Control Number 1810–0698, employers review and verify the accuracy of the information entered into the DCS by participants for work-related payback.

The three primary purposes for these information collection requirements are to:

- Fulfill six GPRA performance measures and reporting requirements;
- Ensure that participants fulfill the statutory payback requirement; and
- Collect budget and project-specific performance information from grantees for project monitoring.

The proposed changes to the regulations would establish in the program regulations the existing grantee reporting requirements and streamline the participant reporting requirements.

Table A–2 presents the current annual burden and costs for grantees and participants, approved under OMB Control Number 1810–0698. Under OMB control number 1810–0698, there are currently 35 grantees and 776

participants. The burden for grantees of completing the participant record form is two hours per participant per year. The burden for grantees of preparing and submitting a payback agreement is 3.7 hours per participant and occurs when the participant is recruited. On average, each grantee has 22 participants. Burden costs for grantee administrators are calculated at an hourly rate of $50. Accordingly, the annual respondent cost for 35 grantees and 776 participants at 1,540 hours is $77,000.

The burden for participants of completing the training and employment information form is .5 hours per year. Burden costs for participants are calculated at an average hourly rate of $24.69. Accordingly, the annual burden hours for 388 participants are $9,580. The burden for employers of verifying participant employment information is .33 hours per year. Burden costs for employers are calculated at an average hourly rate of $50, with one employer for each participant for a total of 776 employers. Accordingly, the annual burden hours for employers are 259, and the annual burden for employers is $12,950.

The proposed regulations in §§ 263.10 and 263.11 would not change the approved burden hours for this collection.

TABLE A–2

| Data source | Number of respondents | Annual hour burden per respondent | Annual hour burden | Total annual cost |
|---|---|---|---|---|
| Grantees: Participant Record Form (Quarterly) | 35 | 44 | 1,540 | $77,000 |
| Grantees: Payback Agreement (Once) | 35 | 3.7 | 130 | 6,500 |
| Participants: Training and Employment Information Form (Twice/year) | 776 | .5 | 388 | 9,580 |
| Employer Representatives: Employment Verification Form (Twice/year) | 776 | .33 | 259 | 12,950 |
| Totals | 1,622 | 48.5 | 2,317 | 106,030 |

*Section 263.22—What are the application requirements for these grants?*

Section 263.22 contains information collection requirements. The information collection requirements under this section have not been approved by OMB; the Department has submitted a new Information Collection Request (ICR) to OMB adding this proposed section. Section 263.22 proposes to add application requirements for Demonstration grants, such as requirements to submit evidence of a local needs assessment or other data analysis and a copy of an agreement signed by the primary partners in the proposed project.

Table A–3 presents the estimated number of respondents, annual burden and costs for respondents under the proposed ICR 1810–NEW. Under this proposed section, the number of applicants is estimated at 80, and we estimate it would take each applicant 40 hours to complete the application package, for a total burden estimate of 3,200 hours. Burden costs to applicants are estimated at an hourly rate of $45. Accordingly, the annual respondent cost for 80 applicants is estimated at $144,000.

TABLE A–3

| Data source | Estimate of respondents | Annual hour burden estimate per respondent | Annual hour burden estimate | Total annual cost estimate |
|---|---|---|---|---|
| Discretionary Grant Demonstration Program Application (1810–NEW) | 80 | 40 | 3,200 | $144,000 |
| Totals | 80 | 40 | 3,200 | 144,000 |

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Additionally, you may send a copy of these comments to the Department via the Federal eRulemaking Portal listed in the below **ADDRESSES** section.

We have prepared an ICR for these collections. If you want to review and comment on the ICR, it is available at *www.reginfo.gov*. Click on Information Collection Review. This ICR is identified as ED–2014–OESE–0050.

We consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID ED–2014–OESE–0050 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L–OM–2–2E319LBJ, Room 2E115, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

### Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

### Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.299A Demonstration Grants for Indian Children; 84.299B Professional Development Program)

### List of Subjects in 34 CFR Part 263

Business and industry, Colleges and universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: November 26, 2014.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

## PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

### Subpart A—Professional Development Program

Sec.



### Subpart B—Demonstration Grants for Indian Children Program

Sec.



**Authority:** 20 U.S.C. 7441 and 7442, unless otherwise noted.

### Subpart A—Professional Development Program

#### § 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Periodically report to the Secretary on the individual's compliance with the work requirement until work-related payback is complete or the individual has been referred for cash payback.

#### § 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means—

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau of Indian Education (Bureau)-funded school.

(b) Bureau-funded schools are eligible applicants for—

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

#### § 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

*Bureau-funded school* means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

*Department* means the U.S. Department of Education.

*Dependent allowance* means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

*Full course load* means the number of credit hours that the institution requires of a full-time student.

*Full-time student* means a student who—

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

*Good standing* means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

*Graduate degree* means a post-baccalaureate degree awarded by an institution of higher education.

*Indian* means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

*Indian institution of higher education* means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

*Indian organization* means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

*Induction services* means services provided after participant's complete their training program and during their first year of teaching. Induction services support and improve participants' professional performance and promote their retention in the field of education and teaching. They include, at a minimum, these activities:

(1) High-quality mentoring, coaching, and consultation services for the participant to improve performance;

(2) Access to research materials and information on teaching and learning;

(3) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction;

(4) Clear, timely and useful feedback on performance, provided in coordination with the participant's supervisor; and

(5) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

*In-service training* means activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

*Institution of higher education* means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

*Participant* means an Indian individual who is being trained under the Professional Development program.

*Payback* means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

*Pre-service training* means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

*Professional development activities* means pre-service or in-service training offered to enhance the skills and abilities of individual participants.

*Secretary* means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

*Stipend* means that portion of an award that is used for room, board, and personal living expenses for full-time participants who are living at or near the institution providing the training.

(Authority: 20 U.S.C. 7442 and 7491)

### § 263.4 What costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to—

(1) Fully finance a student's educational expenses including tuition, books, and required fees; health insurance required by the institution of higher education; stipend; dependent allowance; technology costs; program required travel; and instructional supplies; or

(2) Supplement other financial aid, including Federal funding other than loans, for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and dependent allowance in the annual notice inviting applications published in the **Federal Register**.

(c) Other costs that a Professional Development program may include, but that must not be included as training costs, include costs for—

(1) Collaborating with prospective employers within the grantees' local service area to create a pool of potentially available qualifying employment opportunities;

(2) In-service training activities such as providing mentorships linking experienced teachers at job placement sites with program participants; and

(3) Assisting participants in identifying and securing qualifying employment opportunities in their field of study following completion of the program.

### § 263.5 What priority is given to certain projects and applicants?

(a) The Secretary gives priority to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive priority points only if the consortium designates the Indian institution of higher education as the fiscal agent. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

(b) The Secretary may annually establish as a priority any of the priorities listed in this paragraph. When inviting applications for a competition under the Professional Development program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority is described in 34 CFR 75.105.

(1) *Pre-Service training for teachers.* The Secretary establishes a priority for projects that:

(i) Provide support and training to Indian individuals to complete a pre-service education program that enables the individuals to meet the requirements for full State certification or licensure as a teacher through—

(A) Training that leads to a bachelor's degree in education before the end of the award period, unless the State requires a fifth year for licensure in a specific subject area;

(B) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(C) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists;

(ii) Provide one year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work in schools with significant Indian student populations; and

(iii) Include goals for the:

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(2) *Pre-service administrator training.* The Secretary establishes a priority for projects that—

(i) Provide support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator;

(ii) Provide one year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations; and

(iii) Include goals for the:

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(3) *Letter of support.* The Secretary establishes a priority for applicants that include a letter of support signed by the authorized representative of a local educational agency (LEA) or Bureau-funded school or other entity in the applicant's service area that agrees to consider program graduates for qualifying employment.

(Authority: 20 U.S.C. 7442 and 7473)

**§ 263.6 How does the Secretary evaluate applications for the Professional Development program?**

The Secretary uses the procedures for establishing selection criteria and factors in 34 CFR § 75.200 through 75.210 of this title to establish the criteria and factors used to evaluate applications submitted in a grant competition for the Professional Development program. The Secretary may also consider one or more of the criteria and factors listed in paragraphs (a) through (e) of this section to evaluate applications.

(a) *Need for project.* In determining the need for the proposed project, the Secretary considers one or more of the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis; and

(2) The extent to which employment opportunities exist in the project's service area, as demonstrated through a job market analysis.

(b) *Significance.* In determining the significance of the proposed project, the Secretary considers one or more of the following:

(1) The potential of the proposed project to develop effective strategies for teaching Indian students and improving Indian student achievement, as demonstrated by a plan to share findings gained from the proposed project with parties who could benefit from such findings, such as other institutions of higher education who are training teachers and administrators who will be serving Indian students; and

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the specific needs of Indian students.

(c) *Quality of the project design.* The Secretary considers one or more of the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address—

(i) The number of participants expected to be recruited in the project each year;

(ii) The number of participants expected to continue in the project each year;

(iii) The number of participants expected to graduate; and

(iv) The number of participants expected to find qualifying jobs within twelve months of completion;

(2) The extent to which the proposed project has a plan for recruiting and selecting participants that ensures that program participants are likely to complete the program; and

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with appropriate entities (*e.g.*, Bureau-funded schools, organizations providing educational services to Indian students, and LEAs) and developing programs that meet their employment needs.

(d) *Quality of project services.* The Secretary considers one or more of the following factors in determining the quality of project services:

(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in schools with significant Indian populations;

(2) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs;

(3) The extent to which the applicant will provide job placement activities that reflect the findings of the job market analysis and needs of potential employers; and

(4) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services.

(e) *Quality of project personnel.* The Secretary considers one or more of the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) The qualifications, including relevant training, experience, and cultural competence, of the project director and the amount of time this individual will spend directly involved in the project;

(2) The qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants; and

(3) The qualifications, including relevant training, experience, and cultural competence (as necessary), of project consultants or subcontractors, if any.

**§ 263.7 What are the requirements for a leave of absence?**

(a) A participant must submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than twelve months, provided the participant has completed at least twelve months of training in the project and is in good standing at the time of request.

(c) The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave of absence.

(d) A participants who is granted a leave of absence and does not return to his or her course of study by the end of the grant project period will be considered not to have completed the course of study for the purpose of project performance reporting.

**§ 263.8 What are the payback requirements?**

(a) *General.* All participants must—

(1) Either perform work-related payback or provide cash reimbursement to the Department for the training received. It is the preference of the Department for participants to complete a work-related payback;

(2) Sign an agreement, at the time of selection for training, that sets forth the payback requirements; and

(3) Report employment verification in a manner specified by the Department or its designee.

(b) *Work-related payback.*

(1) Participants qualify for work-related payback if the work they are performing is in their field of study under the Professional Development program and benefits Indian people. Employment in a school that has a significant Indian student population qualifies as work that benefits Indian people.

(2) The period of time required for a work-related payback is equivalent to the total period of time for which pre-service or in-service training was actually received on a month-for-month basis under the Professional Development program.

(3) Work-related payback is credited for the actual time the participant works, not for how the participant is paid (*e.g.*, for work completed over 9 months but paid over 12 months, the payback credit is 9 months).

(4) For participants that initiate, but cannot complete, a work-related payback, the payback converts to a cash payback that is prorated based upon the amount of work-related payback completed.

(c) *Cash payback.*

(1) Participants who do not submit employment verification within twelve months of program exit or completion, or have not submitted employment verification for a twelve-month period during a work-related payback, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in § 263.9.

(2) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under this program and may be prorated based on any approved work-related service the participant performs.

(3) Participants who are referred to cash payback may incur non-refundable penalty and administrative fees in addition to their total training costs and will incur interest charges starting the day of referral.

(4) The cash payback obligation may only be discharged through bankruptcy if repaying the loan would cause the participant undue hardship as defined in 11 U.S.C. 523(a)(8).

(Authority: 20 U.S.C. 7442)

**§ 263.9 What are the requirements for payback deferral?**

(a) *Education deferral.* If a participant completes or exits the Professional Development program, but plans to continue his or her education as a full-time student without interruption, in a program leading to a degree at an accredited institution of higher education, the Secretary may defer the payback requirement until the participant has completed his or her educational program.

(1) A request for a deferral must be submitted to the Secretary within 30 days of leaving the Professional Development program and must provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) If the Secretary approves the deferment of the payback requirement on the basis that a participant is continuing as a full-time student, the participant must submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(b) *Military deferral.* If a participant exits the Professional Development program because he or she is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed his or her military service, for a period not to exceed 36 months. Requests for deferment must be submitted to the Secretary within 30 days of the earlier of leaving the Professional Development program or the call to military service, and must provide—

(1) A written statement from the participant's commanding or personnel officer certifying—

(i) That the participant is on active duty in the Armed Forces of the United States;

(ii) The date on which the participant's service began; and

(iii) The date on which the participant's service is expected to end; or

(2)(i) A true certified copy of the participant's official military orders; and

(ii) A copy of the participant's military identification.

**§ 263.10 What are the participant payback reporting requirements?**

(a) *Notice of intent.* Participants must submit to the Secretary, within 30 days of completion of, or exit from, as applicable, their training program, a notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.*

(1) Starting within six months after exit from or completion of the program,

participants must submit to the Secretary employment information, which includes information explaining how the employment is related to the training received and benefits Indian people.

(2) Participants must submit an employment status report every six months beginning from the date the work-related service is to begin until the payback obligation has been fulfilled.

(c) *Cash payback.* If a cash payback is to be made, the Department contacts the participant to establish an appropriate schedule for payments.

**§ 263.11 What are the grantee post-award requirements?**

(a) Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) The grantee must report to the Secretary all participant training and payback information in a manner specified by the Department or its designee.

(c)(1) Grantees must obtain a signed payback agreement from each participant before the participant begins training. The agreement must include—

(i) The estimated total training costs;

(ii) The estimated length of training; and

(iii) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

(2) Grantees must submit a signed payback agreement to the Department within seven days of signing of the payback agreement.

(d) Grantees must conduct activities to assist participants in identifying and securing qualifying employment opportunities following completion of the program.

(e)(1) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of paragraph (e), an Indian is a member of any federally recognized Indian tribe.

(Authority: Pub. L. 93–638, Section 7(b); 25 U.S.C. 450b, 450e(b))

**§ 263.12 What are the program-specific requirements for continuation awards?**

(a) In making continuation awards, in addition to applying the criteria in 34 CFR § 75.253, the Secretary considers the extent to which a grantee has achieved its project goals to recruit, retain, graduate, and place in qualifying employment program participants.

(b) The Secretary may reduce continuation awards, including the portion of awards that may be used for administrative costs, as well as student training costs, based on a grantee's failure to achieve its project goals specified in paragraph (a) of this section.

Subpart B—Demonstration Grants for Indian Children Program

**§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?**

The following definitions apply to the Demonstration Grants for Indian Children program:

*Federally supported elementary or secondary school for Indian students* means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Education.

*Indian* means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

*Indian institution of higher education* means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

*Indian organization* means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

*Native youth community projects* mean projects that are—

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by data, which could be either a needs assessment conducted within the last three years or other data analysis, on:

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives; and

(5) Designed and implemented through a partnership of various entities, which includes:

(i) A tribe or its tribal educational agency;

(ii) One or more BIE-funded schools, one or more local educational agencies, or both; and

(iii) Other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes for Indian students through experience with programs funded through other sources.

*Professional development activities* means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a

Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

**§ 263.21 What priority is given to certain projects and applicants?**

(a) The Secretary gives priority to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Elementary and Secondary Education Act of 1965, as amended, over a period of more than one year.

(b) The Secretary gives priority to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program.

(c) The Secretary may give priority to an application that meets any of the priorities listed in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice inviting applications published in the **Federal Register**. The effect of each type of priority is described in 34 CFR 75.105.

(1) Native youth community projects.

(2) Projects in which the applicant or one of its primary partners has received a grant under a Federal program specified by the Secretary in the notice inviting applications.

(3) Projects in which the applicant has Department approval to consolidate funding through a plan that complies with section 7116 of the ESEA or other authority designated by the Secretary.

(4) Projects that focus on a specific activity authorized in section 7121(c) of the ESEA, as designated by the Secretary in the notice inviting applications.

(5) Projects that include either:

(i) A local educational agency that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA, or

(ii) A school that receives funds from the Department of the Interior's Bureau of Indian Education.

(Authority: 20 U.S.C. 7426, 7441, and 7473)

**§ 263.22 What are the application requirements for these grants?**

(a) Each application must contain—

(1) A description of how Indian tribes and parents of Indian children have been, and will be, involved in developing and implementing the proposed activities;

(2) Assurances that the applicant will participate, at the request of the Secretary, in any national evaluation of this program;

(3) Information demonstrating that the proposed project is based on scientific research, where applicable, or an existing program that has been modified to be culturally appropriate for Indian students;

(4) A description of how the applicant will continue the proposed activities once the grant period is over; and

(5) Other assurances and information as the Secretary may reasonably require.

(b) The Secretary may require an applicant to satisfy any of the requirements in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary establishes the application requirements through a notice inviting applications published in the **Federal Register**. If specified in the notice inviting applications, an applicant must submit—

(1) Evidence, which could be either a needs assessment conducted within the last three years or other data analysis, of:

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources.

(2) A copy of an agreement signed by the primary partners in the proposed project, identifying the responsibilities of each partner in the project. The agreement can be either:

(i) A consortium agreement that meets the requirements of 34 CFR 75.128, if each of the primary entities are eligible entities under this program; or

(ii) Another form of partnership agreement, such as a memorandum of understanding or a memorandum of agreement, if not all the primary partners are eligible entities under this program.

(3) Measurable objectives for reaching the project goal or goals.

(Authority: 20 U.S.C. 7441)

**§ 263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?**

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

(Authority: Pub. L. 93–638, Section 7(b); 25 U.S.C. 450b, 450e(b))

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# FEDERAL REGISTER

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Part V

## The President

Federal Register
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# Presidential Documents

Title 3—

The President

## Proclamation 9215 of December 3, 2014

## National Impaired Driving Prevention Month, 2014

By the President of the United States of America

A Proclamation

All Americans deserve to live long and full lives, and every child should have the chance to seize his or her future. But throughout our Nation, too many lives are tragically cut short in traffic crashes involving drunk, drugged, or distracted driving. Impaired driving not only puts the driver at risk—it threatens the lives of passengers and all others who share the road, and every year it causes the deaths of thousands of loved ones. This month, and especially during the holiday season, we dedicate ourselves to driving safely and responsibly, and to promoting these behaviors among our family and friends.

Alcohol and drugs can impair perception, judgment, motor skills, and memory—the skills critical for safe and responsible driving. And as mobile technology becomes ubiquitous, the distractions of texting and cell phone use continue to pose grave dangers on our roadways. Deaths caused by impaired driving are preventable and unacceptable, and my Administration is taking action to reduce and eliminate them. We continue to support the law enforcement officers who work to keep us safe and decrease impaired driving. To help save lives, States and local communities across our Nation will participate in the national *Drive Sober or Get Pulled Over* campaign from December 12 to January 1, reminding all Americans of their important responsibility.

My Administration is striving to increase awareness of the dangers and devastating consequences of impaired driving in all its forms, especially the growing, but often overlooked, problem of drugged driving. Illegal drugs, as well as prescription and over-the-counter medications, can be just as deadly on the road as alcohol, and preventing drugged driving is a public health imperative. As part of our 2014 *National Drug Control Strategy,* we are working to support the data collection that underlies evidence-based policy making, strengthening the protections that keep drugged drivers off the road, and helping bolster law enforcement officials' ability to identify drug-impaired drivers.

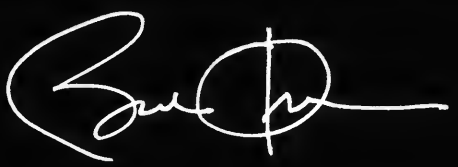
Reducing impaired driving and keeping our roadways safe is everyone's responsibility. Parents and other caring adults can play an important role in educating young Americans about the dangers of impaired driving; adults can model good practices while driving and can help new drivers develop safe habits. This holiday season, all Americans can drive responsibly and encourage their loved ones to do the same, including by designating a sober driver or making alternative transportation arrangements. For more information, please visit *www.NHTSA.gov/DriveSober*, *www.WhiteHouse.gov/ONDCP/DruggedDriving,* and *www.Distraction.gov.*

During National Impaired Driving Prevention Month, let us resolve to do our part to keep our streets and highways safe. Together, our actions can save lives.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2014 as National Impaired Driving Prevention Month. I urge all Americans to

make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.



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# Presidential Documents

## Proclamation 9216 of December 3, 2014

## World AIDS Day, 2014

**By the President of the United States of America**

**A Proclamation**

In communities across our Nation and around the world, we have made extraordinary progress in the global fight against HIV/AIDS. Just over three decades ago, when we knew only the devastation HIV inflicted, those living with it had to fight just to be treated with dignity and compassion, and since the first cases of AIDS were reported, tens of millions of vibrant men and women have lost their lives to this deadly virus. Today, we have transformed what it means to live with HIV/AIDS. More effective prevention, treatment, and care now save millions of lives while awareness has soared and research has surged. This World AIDS Day, we come together to honor all those who have been touched by HIV/AIDS and celebrate the promising public health and scientific advances that have brought us closer to our goal of an AIDS-free generation.

Since I took office, more people who are infected with HIV have learned of their status, allowing them to access the essential care that can improve their health, extend their lives, and prevent transmission of the virus to others. My Administration has made strides to limit new infections and reduce HIV-related disparities and health inequalities, and we have nearly eliminated the waiting list for the AIDS Drug Assistance Program. For many, with testing and access to the right treatment, a disease that was once a death sentence now offers a good chance for a healthy and productive life.

Despite these gains, too many with HIV/AIDS, especially young Americans, still do not know they are infected; too many communities, including gay and bisexual men, African Americans, and Hispanics remain disproportionately impacted; and too many individuals continue to bear the burden of discrimination and stigma. There is more work to do, and my Administration remains steadfast in our commitment to defeating this disease. Guided by our National HIV/AIDS Strategy, we are working to build a society where every person has access to life-extending care, regardless of who they are or whom they love. The Affordable Care Act prohibits insurance companies from denying coverage due to a pre-existing condition, such as HIV/AIDS, and requires that most health plans cover HIV screenings without copays for everyone ages 15 to 65 and others at increased risk. We have expanded opportunities for groundbreaking research, and we continue to invest in innovation to develop a vaccine and find a cure. And this summer, my Administration held a series of listening sessions across the country to better understand the successes and challenges of those fighting HIV at the local and State level.

In the face of a disease that extends far beyond our borders, the United States remains committed to leading the world in the fight against HIV/AIDS and ensuring no one is left behind. Hundreds of thousands of adolescent girls and young women are infected with HIV every year, and we are working to reach and assist them and every community in need. As part of the President's Emergency Plan for AIDS Relief, over 7 million people with HIV around the globe are receiving antiretroviral treatment, a four-fold increase since the start of my Administration. In countries throughout

the world, our initiatives are improving the lives of women and girls, accelerating life-saving treatment for children, and supporting healthy, robust communities.

As a Nation, we have made an unwavering commitment to bend the curve of the HIV epidemic, and the progress we have seen is the result of countless people who have shared their stories, lent their strength, and led the fight to spare others the anguish of this disease. Today, we remember all those who lost their battle with HIV/AIDS, and we recognize those who agitated and organized in their memory. On this day, let us rededicate ourselves to continuing our work until we reach the day we know is possible—when no child has to know the pain of HIV/AIDS and no life is limited by this virus.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States do hereby proclaim December 1, 2014, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in appropriate activities to remember those who have lost their lives to AIDS and to provide support and comfort to those living with this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

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# Reader Aids

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Wednesday, December 3, 2014

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys.* Some laws may not yet be available.

**H.R. 1233/P.L. 113–187**
Presidential and Federal Records Act Amendments of 2014 (Nov. 26, 2014; 128 Stat. 2003)

**H.R. 4194/P.L. 113–188**
Government Reports Elimination Act of 2014 (Nov. 26, 2014; 128 Stat. 2016)

**S. 885/P.L. 113–189**
To designate the facility of the United States Postal Service located at 35 Park Street in Danville, Vermont, as the "Thaddeus Stevens Post Office". (Nov. 26, 2014; 128 Stat. 2027)

**S. 898/P.L. 113–190**
Albuquerque, New Mexico, Federal Land Conveyance Act of 2013 (Nov. 26, 2014; 128 Stat. 2028)

**S. 1093/P.L. 113–191**
To designate the facility of the United States Postal Service located at 130 Caldwell Drive in Hazlehurst, Mississippi, as the "First Lieutenant Alvin Chester Cockrell, Jr. Post Office Building". (Nov. 26, 2014; 128 Stat. 2030)

**S. 1499/P.L. 113–192**
To designate the facility of the United States Postal Service located at 278 Main Street in Chadron, Nebraska, as the "Sergeant Cory Mracek Memorial Post Office". (Nov. 26, 2014; 128 Stat. 2031)

**S. 1512/P.L. 113–193**
To designate the facility of the United States Postal Service located at 1335 Jefferson Road in Rochester, New York, as the "Specialist Theodore Matthew Glende Post Office". (Nov. 26, 2014; 128 Stat. 2032)

**S. 1934/P.L. 113–194**
Clifford P. Hansen Federal Courthouse Conveyance Act (Nov. 26, 2014; 128 Stat. 2033)

**S. 2141/P.L. 113–195**
Sunscreen Innovation Act (Nov. 26, 2014; 128 Stat. 2035)

**S. 2539/P.L. 113–196**
Traumatic Brain Injury Reauthorization Act of 2014 (Nov. 26, 2014; 128 Stat. 2052)

**S. 2583/P.L. 113–197**
Enhance Labeling, Accessing, and Branding of Electronic Licenses Act of 2014 (Nov. 26, 2014; 128 Stat. 2055)

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